PANCASILA AS A NATIONAL LEGAL POSTULATE: RE-CONVEYING THE RULES OF RECOGNITION

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ABSTRACT

As a nation-state, Indonesia has experienced a physical revolution in expelling colonialism. However, this revolution, unfortunately, was not followed by a legal revolution which changed the colonial order into an independent one. This paper wants to show that the absence of a legal revolution has resulted in a lack of sufficient attention to law as a secondary rule so that the development of legal substance is not followed by the development of rule of recognition, even though there is Pancasila which is always described as the source of all law. The author also believes that with Pancasila, the national grundnorm can be extracted to produce legal postulates. This paper ends with a presentation on Pancasila which is believed to be a national legal postulate.

Keywords: Pancasila, National Legal Postulat, Lex Specialis, Legal Revolution, Legal Evolution.

INTRODUCTION

The Civil Law tradition in Indonesia emerged due to the success of the French Revolution in the late 18th century. Napoleon's success in spreading the Code Civil, along with his republican expansionist movement in Western Europe and beyond, was the historical key to the spread of this legal tradition beyond Europe, including to Indonesia. Although somewhat slow, the influence of the civil law tradition in Indonesia is very strong. The top-down and structuralist character of this legal tradition enabled the Netherlands to spread the European legal tradition to its colonies. Therefore, a few years after the successful formation of the *Burgelijk Wetboek* (BW) in the Netherlands, the colonial government in the East Indies then insisted on enforcing the BW. As a result, the Dutch King approved the enforcement of the BW in the Dutch East Indies and then through *Staatsblad* No. 23 Year 1847 declared the establishment of the BW, which was a copy of the BW in the Netherlands for the colonial society in the East Indies, and officially took effect on May 1, 1848.

This means that, based on the Dutch legal theory of Concordance, the Dutch treated their BW as applicable not only to Dutch society but also to the colonial society. The main takeaway here is that the Indonesian legal system did not form through a rapid and painful rupture process. What happened was not a harsh legal revolution with numerous casualties but rather a slow but sure evolutionary process. Although the purpose of the establishment of BW was more due to the interests of European society in the colony at that time, it does not mean that this civil law code became ineffective. In fact, in reality, it became the main entity for the smooth process of the deliberate legal evolution built afterward. Moreover, in the following developments, not only the BW but also the commercial law (*Wetboek van Koephandel*, WvK) and criminal law (*Wetboek van Strafrecht*, WvS) codes were also applied to the colonial society.

We have witnessed that the physical revolution was not followed by a hard and fast legal revolution. On the contrary, what happened was a slow evolution and a gradual and soft process of change. Although independence was proclaimed as a total change in all forms of behaviour and culture of the colonial society towards a new and independent social life, it

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seems that this cannot be done in the legal field. A complete change from a colonial legal system to a national legal system is more of a spontaneous idealism due to the euphoria of independence alone. In reality, the values and normativity of Dutch law still lingered for decades after independence was achieved in this country. And this is also supported by the Indonesian constitution, that when a new rule cannot be produced to replace the colonial rule, the colonial rule can still be applied in principle. Therefore, we see that only in 2022 did the DPR (People's Representative Council) manage to establish the Criminal Code after a very long debate. Meanwhile, the Civil Code and the Code of Commerce are still considered reliable references in civil cases, although their basic philosophy and legal epistemology are very different from modern Indonesian constitutionalism. This shows that the growth of our legal system is still very slow.

Following Halperin (2014) thought, the success of a nation's legal system transformation is determined not only by its ability to create a set of primary rules that regulate the lives of all citizens, but more importantly by its success in building a system of secondary rules that regulate the primary rules. This idea is based on Hart et al. (2012), which divides legal systems into two large interconnected parts: primary rules and secondary rules (consisting of three parts: rules of recognition, rules of adjudication, and rules of change). The law in its secondary aspect can be said to become the support of the normative aspect of a legal system, and therefore this aspect is considered the most important aspect of a legal system built within a nation-state. If this is true, the cause of Indonesia's legal system weakness is more due to the weakness of the secondary aspects of the legal system that have been built so far. The history of our legal system seems to be dominated by the primary aspect of norm production, which tends to neglect the development of its secondary aspects. The legal evolution that has taken place in Indonesia seems to mimic the legal evolution that occurred in the Netherlands several decades ago. Verbatim adoption has led to the exclusion of secondary aspects of the national legal system being formed. This means that there is a reluctance on the part of the state to complement the new legal system with secondary rules that focus on the development of the unique philosophical and legal culture bases of Indonesia. The need to create a system of rules of recognition in this country is not considered important because the need for legal substance is easily fulfilled as a result of adopting the European legal tradition. Interestingly, the neglect of secondary aspects has persisted for more than seven decades of Indonesia's independence. Although the substance of the law continues to develop with the increasing number of state legislation rules that are *lex specialis*, fundamental legal issues are still often faced with uncertainty by the government due to the slowness of the development of these secondary aspects.

Of course, this does not mean that during more than seven decades of Indonesia's existence, the secondary rules of the national legal system being built have not undergone improvement. The process of improvement continues amidst the social, political, and economic problems that have plagued the nation, albeit slowly. Here we can say that a significant achievement only occurred after the fall of the New Order government and the beginning of the Reform Order in 1998. Even then, not all layers of aspects could develop evenly. Of the three aspects of secondary rules, the rules of recognition are still in the lowest position of their development, while the rules of adjudication and rules of change are already in the process of improvement due to the pressure of needs for the completeness of the national legal system. The rules of adjudication have been developed since the Soekarno government, and improvements have continued under subsequent regimes. While the rules of change reflected in the judicial review system only developed well after the reform period, especially after the establishment of the Constitutional Court which became the front guard in strengthening constitutional law and values of constitutionalism in Indonesia. And this is

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where the importance of strengthening the philosophical foundation of our national legal system lies so that the system of rules of recognition can be repaired and improved.

My main thesis is that Pancasila can act as the main legal postulate at a time when outside legal influences are so heavy influencing the development of the legal system in Indonesia. Thus, even though the absence of a legal revolution has resulted in less attention to law as secondary rules so that the rule of recognition has become less developed, Pancasila can still continue to function as the main legal postulate. This is where the function of Pancasila as a legal *grundnorm* can continue to be extracted to produce the postulates. Here, through juridical research, this paper seeks to develop the values of Pancasila to become legal postulates, capable of being the basis for the development of law in Indonesia.

Theoretical Framework

Masaji Chiba explains that in a healthy nation-state, the legal system must contain three interconnected layers of law that are parallel to each other. These three layers are: (1) Official Law; (2) Unofficial Law; and (3) Legal Postulate (Chiba, 1986). Official Law refers to the rules and regulations established by the state institution and applied nationally, while Unofficial Law refers to the rules and regulations that exist within society but have not been accepted by the state as official law. Legal Postulate, on the other hand, encompasses all abstract ideas, aspirations, and legal values that determine the existence of both official and unofficial law. Chiba's theory provides a foundational understanding that these three elements of law are crucial determinants of the legal system and serve as the pillars of the nation-state, built by all stakeholders within the relevant country.

In a separate writing, Chiba emphasizes the importance of building an "*Identity Postulate*," (Chiba, 1986) or what can be called a "*National Legal Postulate*" (Lukito, 2013) in a country, so that the national law created therein truly reflects its unique characteristics. Chiba seems to be very concerned about the phenomenon of legal pluralism, which has become common in various post-colonial countries, and how the complications arising from this situation can be effectively handled. Therefore, Chiba's theory above appears to have a strong sense of legal pluralism, as a legal system is believed to be able to function properly when these different layers of law can coexist in balance. This balance can certainly be achieved if the relationship between the three layers is well-maintained, thereby providing a strong foundation for the legal system of a country.

While H.L.A. Hart argued in his writing that law can be distinguished into two concepts: primary rules and secondary rules (Hart et al., 2012). Primary rules are basic rules that govern our behaviour and interaction with others. These rules provide direct obligations and prohibitions, such as "*Do not kill*," "*Do not steal*," and "*Pay your taxes*." These rules are enforced with sanctions, which can be formal (such as imprisonment) or informal (such as social stigma). On the other hand, secondary rules are rules that govern the creation, modification, and enforcement of primary rules. They provide the framework for the legal system, and without them, primary rules would be difficult to enforce. This includes three aspects: (1) Rules of recognition: These are rules that determine what is considered law in a particular legal system. They establish the criteria that legal officials must use to identify and recognize the existence and validity of primary rules. In other words, it is a rule about how a legal tradition that lives in society can be accepted as an officially applicable law throughout the country; (2) Rules of change: these are rules that govern how primary rules can be created, modified, or repealed. For example, in democratic societies, laws are usually made through the legislative process. In this case, they are rules about changing the law, so that a change can be made to the official rule if necessary; and (3) Rules of adjudication: are rules that provide for the resolution of disputes over the interpretation and application of primary

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rules. They determine the procedures that must be followed when legal disputes arise, such as the role of judges and the standards of evidence that must be met. This means that it is a rule about how the legal process can be conducted properly when the legal rules are violated. In situations of legal pluralism, rules of recognition can be played in such a way that a legal rule can be recognized as applicable in society or even rejected. It all depends on the consideration of experts and legal officials. This means that law as a secondary rule plays a very vital role in a country experiencing legal pluralism. For this reason, the two opinions of the two legal experts above become the theoretical basis that we use to discuss Pancasila.

We know that legal pluralism in Indonesia is a reality, although the nation-state we are building together requires legal monism. Therefore, the aspect of rules of recognition in our national legal system should be strengthened from the beginning so that it can become an effective foundation and means of law in facing various problems of pluralism. Epistemologically, pluralism is opposed to the idea of legal unification. And this is an inherent problem wherever nation-building and nation-states want to be built to accommodate a collection of communities in one place. Pluralism requires all circles of society to accept various normative values that live within them, while nationalism requires society to submit only to one dominant legal value, namely the law of the state. Here, rules of recognition can play a role in bridging the epistemological divide between these two values.

In line with Masaji Chiba's thinking, we can understand that the inevitability of plural situations in a national legal system manifests itself in three layers of law that are a unity of official legal norms, unofficial law, and its legal postulates. Official legal norms are built on the basis of legal monism, while unofficial law is always plural in character because it is built on the multicultural reality of the nation in question. The two can theoretically be bridged by the structure of legal postulates, which can serve as a bridge to connect the two norms that are inherently different in nature. This means that Chiba's theory of legal postulates above can function as a tool that serves as the rules of recognition in the language of Hart. It is also the national legal postulate that can be a lifesaver for a plural nation-state such as Indonesia, so that the nationalist ideals built within the ethnic ties in society can remain existent, regardless of the various changes in time and conditions surrounding it.

The above thinking is actually in line with current trends. What Twinning theorized as General Jurisprudence actually leads to the idea of the same direction of all legal units in each nation-state tie (Twining, 2009). This is also in line with the direction of the development of international legal theory which is increasingly brought towards an approach (rapprochement) with national law. International law is no longer seen as an enemy (stumbling block) for the development of national legal systems but rather as a strengthening element (building block) for national law (Lukito, 2017). If so, the differences and all variations in the world's legal system can actually be reconciled with each other because the gaps and differences between them can always be bridged and resolved from any conflicts that may arise due to these differences. In the context of the legal system built in the homeland, the national legal postulate is the greatest hope so that the gap between legal monism and pluralism can be bridged, and therefore the reality of legal pluralism can be a blessing for this diverse nation, rather than a curse that can destroy the national legal system that has already been built and is being built.

In accordance with the aspirations and ideas of the founding fathers of the nation, the postulates of national law can only be built by basing themselves on philosophical ideas and the views of the Indonesian people, as reflected in the articles of Pancasila. The five principles of Pancasila essentially embody basic values that comprehensively unite to create a complete national system in Indonesia. These five values are: Godliness, Humanity, Unity, Democracy and Justice. All of these values can be understood as fundamental philosophical values that must be used as the foundation for generic values that can give rise to various

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behaviours and attitudes of Indonesian society that are practical in daily life. In legal theory, these five Pancasila values serve as the *grundnorm* in Hans Kelsen's terminology, (Kelsen, 1978; & Kelsen, 1985) or *Staatsfundamentalnorm* borrowing from Hans Nawiasky's terminology, (Nawiasky, et al., 1958) which are nothing but the great values of the nation that form the basis for the development of legal norms (law as a system of rules). This is what Chiba means by the postulates of national law, which can play a role in bridging the epistemological differences between official and unofficial law that exist in this country.

If this is true, then what we need to do is to continue to explore the values of these Pancasila postulates since they are abstract and generic, making them open to all forms of interpretation that arise from the various legal thought processes of Indonesian society. The duty of scholars and observers towards these fundamental Pancasila values is to incorporate them into various national attitudes and behaviours that are realized in various wide-ranging fields of life. In the field of law, the question is how the Pancasila postulates of law can be translated into various official legal rules and norms that apply to all citizens without discrimination based on any form of primordial ties.

Five Legal Postulates

Pancasila is the foundation of the state and national ideology of Indonesia, which contains five principles or fundamental values, namely The One and Only God, Just and Civilized Humanity, the Unity of Indonesia, Democracy Guided by the Inner Wisdom in the Unanimity Arising out of Deliberations Amongst Representatives, and Social Justice for All Indonesians. Since the beginning, Pancasila has been used as a guide in the formation of the state and law in Indonesia. Pancasila is used as the basis for developing laws and public policies that reflect the values contained in Pancasila. In this context, Pancasila is considered the highest source of law in Indonesia. Because it provides direction and purpose for the development of law in Indonesia, Pancasila refers to the values that must be applied in the formation of law and public policy. These values are included in the legal values that can be drawn from each principles in Pancasila, namely: Godliness, humanism, Unity, Democracy, and Social Justice. We will discuss each of these legal postulates in the following paragraphs.

First, the Postulate of Godliness. How can the phrase "*Belief in the One and Only God*" in the first principle of Pancasila be derived into a legal postulate? This has been a tug of war during the pre and early independence era that could not be resolved entirely. The essence of this problem is the question: to what extent can the character of a God-fearing nation embody the national legal system essentially formed from the secular traditions of modern (European) society? This issue has become a big enigma haunting almost all third world countries where Islamic legal traditions are strong in their communities. Similarly, in Indonesia, the debate about the relationship between religion and state is a very sensitive issue because of the fierce struggle between secular nationalist groups and Muslims, each of which has detrimental ideological differences. Secular nationalist groups always want Indonesia to be a secular country that rigidly separates religion from the state. In the field of law, the national legal system must be secular, so legal ideas from Islamic teachings must be rejected. This is, of course, in direct contrast to the Muslim group who always want Islam as the basis of the state. Islam must always be integrated into the public life of the state; therefore, there should be no separation between the two because Islam is understood as a religious teaching system that never separates the affairs of the state from the affairs of worship; there is no separation between private and public life in society.

The concept of the Godliness in Pancasila serves as a remedy for eternal conflicts. The legal postulate that can be drawn from the value of the Godliness is that our national law must be built on the teachings that are based on religious values, although it does not mean

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that national law is religious or based on a particular religious law. The reflection of this teaching is on the choice of our legal ideology, which, although secular, does not strictly separate religion from the state. This means that although our country is not a religious state, teachings of religious law can influence the development of our national law. Therefore, the state's system of rules of recognition must formulate the basic values of this religious-based national law from the beginning, so that theoretically, the state does not reject any form of adoption of religious law teachings into official law. In other words, the state has a formula to build a filter for the entry of religious law teachings into national law, so that although it is not a secular state, it is also not a state based on a religious ideology. The relationship between religion and the state is seen as a continuum that is interconnected. Between the two, there is no dark gap that kills the potential of both sides, but there is a middle ground that bridges the differences between each side. What is called the Middle Way ideology can become a trademark for the legal postulate of Pancasila: the conflict between religious law and secular law of the state can be bridged by adopting religious law teachings into the national legal system (Natsif, 2017).

This postulate of the Godliness can be a material for the formation of Indonesia's legal character. Although Indonesia is not a country that bases its ideology on a particular religious doctrine, the national legal system built in it is not a secular legal system, in the sense of completely separating the religious entity from the state, or a rigid separation between religious law and the state's official law (separation between church and state), as known in the Constitution of the United States, or the ideologies of European countries in general. Because fundamentally, the legal postulate of Pancasila places the value of the Godliness as a fundamental value, then the Indonesian legal system must have a religious character. This means that the substance, institution, and legal culture built in the nation-state of Indonesia are not secular because they are not built on secularism, but on spiritualism, where God's law is believed to be the soul of the development of the legal system. In other words, the legal rules in Indonesia must not contradict religious teachings or go against any principles of religious teachings. The main reflection of the postulate of the Godliness is that Indonesian law holds the principle of non-secularism, which is reflected in two main principles: (1) Acceptance of certain religious law teachings as the basis for the formation of Indonesian law (establishment of religious law); (2) Guarantee of the freedom of the people to practice their religious teachings (religious freedom).

The two principles above become the main principles for translating the legal postulate of the Godliness derived from the first principle of Pancasila. And here is the essence, that the state must be careful in managing and dealing with this religious legal issue so as not to become a capital for certain religious separatist groups to impose their understanding of religion in the Indonesian legal system. The complexity in this matter is how the principle of non-secularism on the one hand and non-religion (not based on a particular religious ideology) on the other, which wants to be used as the basis for the nation's ideological approach, can be applied in building a national legal ideology. The middle principle (neither a religious state nor a secular state) as has been touted all this time can only be realized if the rules of recognition system of the Indonesian legal system is founded on a sound theoretical basis. First, it must be clarified how the state approaches the existence of religious legal teachings in Indonesia, where these legal teachings exist in the midst of society, as non-official laws (non-state normative orderings). This means that from the outset, it must be formulated how the state policy towards various religious legal teachings, whether they will be accepted as official state law or remain non-official law. And *second*, how the manifestation of freedom of religion can be reflected in the national legal system. In other words, how the state's rules and policies can guarantee the freedom of every citizen to practice their respective religions. These two things essentially become the main agenda of

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Indonesia's legal system today, which is said to be able to provide recognition of the legal pluralism that exists in a society with diverse religious ties.

Theoretically, there are three approaches that can be adopted in the state policy strategy in dealing with the existence of religious law in Indonesia, namely: (1) Liberal approach; (2) Communitarian approach; and (3) Pragmatic approach (Peach, 2002). First, the liberal approach to the existence of religious teachings is basically based on the reality of the diverse existence of religions in society. It is the state's obligation to protect every religion that is embraced by citizens; therefore, the protection of the community that embraces a certain religious teaching, especially those of certain religious minority groups, must be based on the main principle of respect for individuals, which is highly upheld by the state through the constitution. In this case, liberal groups tend to ignore the fundamental role that religion can play in the development of the state's legal system. Therefore, the liberal approach tends to reject the existence of religion in a secular state's legal system. Even if religious teachings still exist in society, the state should not intervene too deeply because religion is essentially a personal matter that has nothing to do with the existence of a group. Religion is seen as a separate entity from the state, and therefore religious practice is a private area that is entirely the concern of the adherents of that religion. Although current liberal theorists pay more attention to the reality of the role of religious teachings in the process of creating state law, in general, they still believe that the state does not need to give much attention to these religious teachings, as religion is an individual matter, and it is not appropriate for the state to interfere with it (Peach, 2002).

The second group, communitarian, offers a somewhat different view. Unlike liberals who are highly individualistic in their view of religion, communitarian groups focus more on social life and the principles of community in understanding the status of religion. Religion is essentially a social construct, formed from the relationships between members of society. Therefore, the role of religion in social life must be appreciated and considered in such a way that its character as a social product is not side-lined. This means, according to communitarians, that the role of religion in the national legal development of a country must be recognized. However, this theory fundamentally ignores the role of the individual in experiencing religious teachings, so the extent to which a teaching will be accepted or not by the state institution depends largely on the role of the relevant community. Thus, the state is more reactive, depending on the pressure from certain religious communities. The weakness of this approach lies in the state's tendency to favor dominant communities, which often harms vulnerable and minority groups (Peach, 2002).

The third group, pragmatists, differs from the previous two groups, emphasizing a pragmatic approach to the issue. For pragmatists, the existence of religious teachings does not necessarily depend entirely on the individual (as individualists believe) or entirely determined by the community (as communitarian views). Religion is an existence that lies between the two factors of the individual and society. A religious follower has the right to base themselves on their own personal views (moral self), just as at other times they may follow their community's understanding (social self). This theory reflects an understanding that religious teachings must be seen in their entirety and balance in the reality of the individual and society in which that individual exists. In relation to the possibility of recognition from the state towards religious teachings, this group tends to believe that acceptance of religion should be based on its existence, both at the individual and group levels. This means that the pragmatic approach proposes a basis for accepting religion based on more comprehensive considerations, involving aspects of both the individual followers of religion and the wider religious community, so that it can advance the interests of society as a whole, not just personal interests. At least, the government must be able to focus its policies on creating legal decisions that are more based on broader public interests (Peach, 2002). The concept of God

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in the national legal system may be more compatible with this third group than with the first and second groups, to determine its approach in building the direction of the state's law regarding the existence of religion in a plural land like Indonesia. As a legal concept, the value of Godliness should be a guidance for creating rules of recognition in the acceptance of religious law in the national legal system, so that the substance, institution, and legal culture that are created can uphold those values of Godliness.

Secondly, the Postulate of Humanism. This value can be a basis for the formation of a national legal postulate that adheres more to the principles of humanism in the development of Indonesian law. Humanism here is defined as a perspective that emphasizes the potential, abilities, and goodness of human beings as living creatures. With humanism, the acceptance of truth is based more on rationalism and empirical evidence than acceptance of dogma and mysticism. The values of the humanistic legal postulate provide an opportunity for every citizen to actively participate in building a strong legal system, based on the belief that every human being has hidden talents to do good and is able to rationally solve all legal problems they face. With a legal postulate based on these humanistic values, the legal system in Indonesia should emphasize the basic humanity of every citizen; there should be no discrimination based on race or primordial group, but more on the efforts they make to face all life problems. With the foundation of a humanistic legal postulate, the legal system in Indonesia must give high respect to the inherent and genuine values of human rights for every Indonesian person without exception.

Some of the characteristics and values of humanistic philosophy can be applied towards the formation of basic values for the national legal postulates of Indonesia, which have always been believed to be in accordance with fundamental human values. Some of these characteristics include:

1. Humanistic philosophy places greater emphasis on the role of reason and knowledge as tools for understanding phenomena. This means that humanists rely more on reason and science than on mystical and superstitious beliefs in evaluating things. Reason should be prioritized over blind faith or uncritical adherence to beliefs that are not based on independent human thought. In the field of law, a humanistic postulate would reflect a modern attitude and approach where truth is based on careful observation and reasoned analysis. Legal decisions must therefore be the result of in-depth research into a phenomenon, using sound legal reasoning, after all relevant factors have been carefully examined. Legal decisions must not be based on mere assumptions and beliefs about something that is uncertain. Judges must therefore be truly humanistic in the sense of making their decisions based on careful logical calculations, not just on unclear assumptions and feelings. Similarly, national legislators must base their thinking in the creation of laws on the real social, cultural, and political conditions encountered in society, rather than just on their subjective feelings and tendencies.
2. Humanism carries a deep appreciation for the existence and importance of moral values. Humanists generally have a strong character trait of paying close attention to morals and ethics. An action can objectively carry a moral right or wrong value. This means that the action itself can be morally right or wrong without the assistance of other parties. If so, then humanists rely more on the role of science and common sense. Therefore, as Stephen Law explains, "*they usually suppose that our ethical framework should be strongly informed and shaped by an empirically grounded understanding of what human beings are actually like, and of what enables them to flourish*" (Law). If applied to the idea of the Pancasila legal postulate, a legal system built on a humanistic postulate would be highly rationalistic and moralistic. In other words, the substance and institutions of the law built on it must be based on values born from rational calculations, but still maintain moral values. Legal decisions by judges must also be humanistic in the sense that they are based on solid research and do not contradict strong moral values. Humanistic law therefore connotes the meaning that the law created is influenced and monitored by strong moral values.
3. Humanism emphasizes individual autonomy and moral responsibility. This means that humanists place a strong emphasis on the role and responsibility of individuals, rather than assigning responsibility to external factors or parties outside of the individual themselves. Humanism encourages personal accountability for one's actions, with awareness of what one is doing. Good moral education will be one that avoids encouraging passive, uncritical acceptance of a particular moral and religious or other

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world view (including Humanism itself), and will instead focus on developing the intellectual, emotional and other skills individuals will need to discharge that responsibility properly (Law). In relation to the law, humanism thus influences the individualistic nature and character of a nation's legal system by deeply valuing and recognizing the role of each individual in society. As a legal subject, the individual is the centre of the legal system. This value, in turn, shapes the character of the national legal system, which highly respects human rights because they are built on a deep appreciation of each human individual's unique qualities.

4. Humanism leads to a secular nature, meaning that the state must create an open and democratic society. Therefore, the state must be neutral towards any religion that exists within society. The state must provide absolute freedom to its citizens to practice their own religious beliefs and convictions, and in this regard, the state acts as a neutral facilitator that does not take sides with any particular religion, even if that religion is in the majority. Therefore, the state should not become a theocratic institution, where a particular religious doctrine forms the basis of its politics and policies that affect the wider community. The state must be fair to all religious traditions living in society, without any discrimination between them. If this is applied in the field of law, then the national legal system created in Indonesia must be fair and wise in dealing with any religious or spiritual institution or belief in society. A humanistic law must emphasize rules and norms that are neutral towards all forms of religion and belief. This neutrality is manifested in the development of institutions and the substance of the law, which can provide openness and justice to all forms of religion and spiritual beliefs that exist in society, as long as those beliefs do not contradict the basic values of the state ideology itself. As expressed by Stephen Law: "*Humanists want a level playing field so far as religion and non-religion are concerned*" (Law).

The four characteristics of humanism above provide a profound explanation of the meaning behind the second principle of Pancasila, where the just and civilized nature of humanity can be embodied in the form of fundamental values of a humanistic national law, which in turn can serve as guidance for the creation of institutions and legal substance in Indonesia.

The third is the Unity Postulate. This principle provides the basis for the national behavioural values that are rooted in the awareness of the diversity of various ethnic groups living in Indonesia. The behaviour of willingness to live together within the framework of unity forms the basis for accepting the doctrine of "Unity in Diversity" (Bhinneka Tunggal Ika), which is the logical consequence of accepting the nation-state form in this country. As previously explained, the concept of the nation-state is essentially an answer to the need for a new state to bring together various ethnic groups to live together and unite within the idea of territorial unity, even though the intrinsic characteristics of each ethnic group are different. The willingness to unite despite differences is the absolute prerequisite for the formation of the nation-state in the archipelago of Nusantara. This is the manifestation of our socio-cultural awareness to become a country that lives sustainably in a plural and multicultural atmosphere. This means that Indonesia's unity is an absolute prerequisite for the realization of the nation-state itself, where the characteristics of multiculturalism in society can continue to manifest in the daily lives of citizens.

In the field of law, the Unity Postulate can be used as the basis for values in developing legal pluralism in Indonesia. No matter how strong legal pluralism may be, the stronger the interest in continuing to unite in differences. Therefore, legal pluralism in Indonesia must be built with a mature consideration of the importance of unity. Theoretically, this condition brings about an inevitability that a plural national legal system must pay closer attention to various efforts to bring together the various living values. This is where legal pluralism can be implemented in Indonesia, namely weak state pluralism (Griffiths, 1986), in which the state becomes the unifying factor for the various legal traditions that live and evolve in society. Theoretical considerations suggest that this approach assume that various living legal traditions are not suppressed by the presence of state official law, but instead are accepted to influence the development of the national legal system. The extent to which the

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state accepts various unofficial legal traditions (non-state normative orderings) is determined by the legal political variables of a regime that builds a rule of recognition system in accordance with the regime's understanding of the basic legal values contained in the Pancasila legal postulates.

Indonesia's experience with legal pluralism shows that for at least six decades of national governance, the state has tended to adopt a state-centred approach. With this approach, the extent to which various unofficial legal traditions that exist within society can be adopted as state law depends heavily on their compatibility with the characteristics of state law. This is a logical consequence of the weak state pluralism theory itself, as the strong demands of legal nationalism lead the state to take an excessive attitude in transforming the nature and character of such varied unofficial legal traditions into official state law traditions. Unfortunately, this was not accompanied by a mature rule of recognition standard that should have been established since the beginning of independence. Instead, there is a strong dependence on the policies of the ruling regime at a given time, rather than clear and effective legal standards.

In the rapidly changing social and political situation, especially since the strong reform movement following the fall of the New Order in 1998, the weak state pluralism approach that has been practiced since the beginning of independence is no longer fully appropriate for the demands of reorientation and redefinition of the meaning of legal unity in the midst of legal diversity, as described above. This means that the unity of Indonesia brought by the teachings of Pancasila must be translated into a new national context. Therefore, the weak state pluralism theory needs to be replaced with a theory that emphasizes legal diversity rather than the imposition of legal unity that may be weak in its core system. Movements based on the idea of strengthening regional autonomy since the early 2000s have become a very appropriate moment to direct the development of legal pluralism in Indonesia towards an approach and theory that is more suitable for current conditions. This is not only happening in Indonesia, as countries in both the southern and northern hemispheres are increasingly experiencing strong currents and waves of change that require the formulation of various understandings and concepts of national life towards a more decentralized approach, providing greater space for various community units to fight for their freedoms.

In line with the social and political movements, pluralistic legal theory has provided various theories that are appropriate for development. Following John Griffith's thinking, deep legal pluralism is an alternative that can provide a solution to the rigidity of weak legal pluralism as described above (Griffiths, 1986). While weak theory emphasizes the effort to unify various forms of diverse traditions, deep theory focuses more on the effort to mainstream the diversity of facts. This leads to a position for the state itself to provide more leeway for legal traditions that exist in the lower stream to emerge and assert their existence. This is in line with the development of modern legal politics, which tend to focus on substantive legal pluralism rather than the old theory that tended to move pluralism towards monism. In the realm of legal politics, the regional autonomy movement in Indonesia can be an example of the importance of developing the model of deep legal pluralism, where the national legal system that serves as a unification tool can provide more leeway for regional governments to revive local legal traditions that are still effective in community life. In line with the principle of deep theory, several theories can be presented here to strengthen the direction of analysis, including: Sally Falk Moore's Semi-Autonomous Social Field theory, John Smith's theory of Corporationism, and Pospisil's Legal Levels theory.

Sally Falk Moore's semi-autonomous social field theory basically argues that in the era of legal pluralism, a particular social group that lives in a society can have the right to create its own law, even while still subject to the law created by the group above it that controls it (Moore, 1972). This means that even though a smaller group is under the shadow

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of the power of another group that controls it, the smaller group can have the right to create its own law and at the same time obey the law of its ruling group. Moore's theory is proposed to counter the general theory of "*legal instrumentalism*," which brings the notion that social change can be created solely through legislation (law creation) originating from law-making agents who control society. Law cannot automatically change society, as the small nodes in society have the ability to create their own law. This theory supports the idea that legal pluralism in society is an inevitability because in their lives, society has the power to create their own law, even though they still must obey the laws of the country where they are located. Moore's theory emphasizes more on the interaction that must occur in such a pluralistic society, rather than the constructional aspects of socio-legal structures that emerge.

In its development, the concept of "*Corporationism*" by M.G. Smith emphasizes the essential role played by corporations in strengthening society (Smith, 1974). Legal pluralism is logical in society because of the many corporations built within it. Therefore, corporations can act as agents in providing an authoritative legal framework and regulation for the wider community. There are three types of corporations according to this theory: "*Uniform Incorporation*", "*Consociational Incorporation*", and "*Differential Incorporation*". "*Uniform Incorporation*" theory states that a group of people will automatically join a large public domain due to certain social and political status similarities. In this case, the association is realized because each individual in the group has similarities with the larger institution. In other words, those similarities can unite those individuals. Meanwhile, "*Consociational Incorporation*" theory requires that several diverse associations can be united in a particular society that acts as a single corporate unit with equal rights and status or complements each other in a particular public domain. The third type, "*Differential Incorporation*", posits that society is a collection of various types of corporations that are structurally exclusive and diverse, so that one part can dominate another. These three concepts describe the spectrum of diversity in society and how it relates to the ability of society to unite all of its members.

This theory of Corporationism is in line with the idea proposed by Pospisil, which is a reaction to the centralism of the law brought by the nation-state (Pospisil, 1971). The Legal Levels theory proposed by L. Pospisil essentially argues that centralism of the law arises because of the view that the law is owned by the community as a whole. Therefore, the law cannot arise in a society that does not have a political organization at the macro level. Here, the view that the law is the property of the community as a whole leads to the notion that the law is nothing but an expression of a fully integrated societal system. In reality, there is no single society with a single legal system; in society, there are various forms of law that work at the subgroup level, reflecting the diversity of the social unit at different levels.

These three theories above clearly describe how contemporary society is developing towards pluralism, due to the increasing level of grouping and diversity within society. At some point, unity is considered utopian, especially if unity is interpreted as a way to eliminate all the differences that each group of individuals possesses intrinsically. Unity in society is therefore more interpreted as an effort to unite these various diverse groups into one container without erasing its diverse nature (salad bowl). In the field of law, Indonesia's legal unity based on the value of unity in Pancasila is not necessarily achieved through the weak state pluralism approach that has been used for more than six decades since independence. In a society surrounded by advanced information technology today, where the relationship between countries is so close due to the strengthening principles of transnationalism, the approach to the state legal monism ideology must be changed from state centrism to non-state involvement approach, so that the doctrine of Bhinneka Tunggal Ika (Unity in Diversity) does not have to be confined to the Melting Pot theory, but rather based on the Salad Bowl theory.

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The Fourth tenet, the Postulate of Democracy. The fourth principle of Pancasila absolutely implies that all Indonesian citizens are subject to a representative democracy system, which is a distinctive feature of Pancasila democracy. This is a logical reflection of the phrase in Pancasila, "*The People Led by Wisdom in Consultation/Representation*." Democracy itself can literally be defined as "*a form of government in which the people freely govern themselves; where the executive (or administrative) and law-making (or legislative) power is given to persons chosen by the population; the free people*." This means that democracy is essentially a form of government in which people have the freedom to govern themselves. This independent governance is reflected in the form of general elections in which all members of society choose both executive and administrative government officials and legislators. In practice, the fourth principle of Pancasila defines democracy as a political system in which citizens (free people) have the fundamental right to govern themselves, which is reflected in the form of the right to representation given to legislative members to make laws, while the executive implements the laws and is fully accountable to the entire population. In short, in a democratic system, government comes from the people and is based on the will of the people.

Moreover, in a democracy, every member of society has basic rights that cannot be taken away by the state. These rights are internationally recognized and protected. Therefore, every member of society has the fundamental right to have faith, including the right to believe in a religion, and the right to speak and express opinions orally or in writing about what they believe and think. Additionally, every individual has the same right to seek specific information and ideas. Thus, it is their basic right to associate and gather with others, including the right to form organizations according to their own wishes. However, the fundamental rights given to each individual in society must be exercised while considering the rights of others to ensure that the exercise of these rights does not create chaos. Similarly, in a democratic society, the exercise of political rights by citizens must be carried out while respecting the law, constitution, and the will of the people as a whole; these political rights are exercised through elected representatives who act as members of the legislative branch.

In its structure, the government power that is in the hands of the President and assisted by his ministers cannot create laws or intervene in the power of the judiciary. The holders of executive power are obligated to implement various policies and programs that are made, organize national finances, and handle state affairs. All law creation activities must be carried out in parliament and established based on parliamentary approval. In addition, only the judiciary has the authority to give legal decisions to lawbreakers, and only the highest judicial institutions have the right to decide whether a government-created rule does not conflict with the law (in its implementation, in Indonesia, the Supreme Court has the right to examine whether a regulation conflicts with a law, and only the Constitutional Court has the right to determine whether a law violates constitutional principles) (Diamond & Morlino, 2005).

The basic principles of democracy as above must be reflected in the national legal system. With the democracy postulate that can be drawn from the fourth article of Pancasila, the national legal system must have main elements that can make it democratic. At least there are three main elements of a democratic legal system, namely legal equality, political freedom, and the rule of law (Donnell, 2005). Legal equality brings the understanding that the national legal system must treat all citizens equally, in the sense that every individual citizen must be treated the same by the state, regardless of the primordial ties that they have attached to themselves. The unity of the nation that manifests itself in the unity of the law brings a logical consequence that differences in ethnicity, race, religion, and social ties obeyed by a citizen should not lead to differences in treatment before the law for that individual. Therefore, legal equality has the same meaning as the principle of equality before the law,

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which leads to demands on the state to treat every citizen equally in the face of the law. This equal treatment cannot be carried out if the principle of due process of law is not upheld in the national legal system. Therefore, every person who has a legal problem must receive the same service so that the judicial process can be carried out well, honestly, and openly, where the legal process has been established from the beginning by the state and can be used to ensure a clean, fair, and authoritative judicial process.

Here, the law actually has a close relationship with equality, transparency, and justice. These three principles are closely related: equality cannot be achieved without transparency. Likewise, transparency cannot be realized without justice. A democratic law, therefore, will have a character that fully upholds the practice of the principle of equality before the law as mentioned above. This is the point of Article 7 of the Universal Declaration of Human Rights, which clearly states that "*All are equal before the law and are entitled without any discrimination to equal protection of the law*." Legal equality thus clearly has a dimension of human rights, because the equality of every human being leads to a positive influence in upholding these human rights principles. In short, every person has the right to fair and equal legal services regardless of any form of discrimination resulting from race, gender, birthplace, ethnicity, religion, or other primordial factors.

The second principle is political freedom. This political freedom is a fundamental element of democratic life. Forms of political freedom include freedom from all forms of pressure and coercion, as well as the absence of various elements that can weaken someone to meet a particular demand that arises in society. Also included in this condition is the guarantee of state protection for affiliating with certain political attitudes and behaviours. In this regard, the concept of political freedom can refer to freedom from all forms of obstacles in carrying out political actions, whether in the form of actions or speech. This concept is therefore often associated with the concept of civil liberties and human rights, which in democratic societies are usually embodied in the form of state protection against such political actions.

Meanwhile, the third principle is the rule of law. This brings an understanding that the law must be the main regulator of a nation, as opposed to a state governed by the decisions of individual government officials. This principle primarily refers to legal authority in a society, especially in the understanding of the law as a barrier to the behaviour of government officials. In its development, the rule of law principle implies that every society must comply with a law that is made, including the lawmakers themselves. In this sense, the rule of law is very different from autocracy, dictatorship, and oligarchy because in all forms of these ancient governance models, the leaders are placed above the law itself so that problems that arise are not resolved through legal rules, but through the policy decisions of government leaders. In this case, if a country does not have an effective mechanism for punishing a crime, then the rule of law principle will become even weaker, and if the government does not take appropriate action, then the rule of law will become increasingly unfulfilled in the life of the nation-state. Therefore, the country will no longer be able to support democratic life, but will tend more towards autocracy.

In our country's experience of practicing these democratic principles for more than seven decades, we have achieved some progress, especially since the awareness to amend the 1945 Constitution emerged after the reform movement in 1998. The amendment of the 1945 Constitution has provided representative democratic principles that are far better than before, where several crucial articles related to democracy principles and citizens' rights are regulated in detail. Likewise, the postulates of democracy in our national legal system can be formulated even better through a constitution that gives more attention to the democratic values desired by Pancasila as mentioned above. The three basic values of democratic legal

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postulates, namely legal equality, political freedom, and the rule of law, can be further realized in national life.

Fifth, the Social Justice Postulate. The fifth principle of Pancasila contributes to the value of the social justice legal postulate that comes from its verbatim meaning: "Social Justice for All Indonesian People." Explicitly, this principle directs the complete goal of forming the nation-state that we adhere to, namely the realization of social justice for all Indonesian people, without exception. This seems to provide a strong link that the meaning of the four Pancasila principles mentioned earlier can be evaluated for success or failure from this fifth principle. The basic principles of Belief in One God, Humanity, Unity, and Democracy are essentially aimed absolutely at creating a just atmosphere for all social layers of society. Therefore, this postulate of social justice must be the basis of values and axiological direction for the development of the national legal system. In practice, the national law that we build must reflect the values of social justice, and likewise, the methodological direction of its formation must also aim at the main goal of the legal system, which is the achievement of social justice for all citizens. In short, the principle of social justice is not a separate value from the other values contained in Pancasila. And therefore, these five principles provide an understanding that is parallel and interrelated to each other.

The understanding of the meaning of social justice has undergone rapid development, in line with the social and cultural changes in today's global community. Basically, social justice is a depiction of the condition of the relationship between individuals and society. In general, the term social justice is used to describe the distribution of wealth, opportunities to achieve a certain social position or individual role. Therefore, we see that in both the East and the West, the concept of social justice usually refers to a process of achieving one's status in their social role and receiving certain benefits from society. In today's more complex world, social justice is often linked to grassroots movements to fight for their rights, with an emphasis on how to eliminate various obstacles that exist in social mobility, the creation of safety nets for social security and economic justice in society. Therefore, social justice usually refers to a discussion of rights and obligations within the institutions of society, where individuals will obtain their fundamental rights and obligations to work together in community life. Here there is a reciprocal relationship between individuals and society at large.

Relevant issues in social justice in modern times can be mentioned as taxation, social insurance, public health, educational institutions, public services, labour law, market regulation, and so on, all of which aim to ensure equal distribution of wealth and balanced social role opportunities. Therefore, in the study of social justice today, scholars tend to connect issues of justice with reciprocal relationships in society that are always influenced by cultural factors surrounding it. Eastern culture, which emphasizes community entities rather than individuals, usually tends to see the problem of social justice in the balance between access to power and accountability for that power towards society. In Western society, on the other hand, where individual roles are emphasized, social justice will emphasize individual accountability to their environment. That is why debates about social justice in the current era cover a much wider spectrum, not only on issues of gender, race, and other social equality issues, but also touch on current issues such as justice for migrants, prisoners, environmental issues, and the rights of people with disabilities and mental illness.

One of the most prominent philosophers in his theory of social justice, (Rawls, 2020). tries to conceptualize social justice by emphasizing the balance between the individual and society. In his thinking, society is essentially a fair cooperation system that takes place continuously, from one generation to the next. Therefore, according to him, every person has a high resilience towards justice, and even a strong society cannot support injustice. Therefore, it cannot be considered fair if the absence of freedom from members of society is considered a correct thing only because many other societies lose that freedom. Every society

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has its own social, economic, cultural, and political elements. How these elements can live together and function healthily depends heavily on the legitimacy of the social contract between the members of that society. Whether the social life of that society is truly valid depends on the agreement between its members. Rawls bases his theory on John Locke's social contract theory, which essentially believes that every member of society is a free, independent, and intelligent individual, making them not easily swayed by various temptations or even coercion. For this reason, Rawls' theory of social justice is closely related to human rights issues and social equality where individual freedom is an absolute prerequisite. In Rawls' view, a good society, with a mature level of social justice, must meet at least the following six elements:

1. Freedom of thought;
2. Freedom of self-awareness, as this can affect social relationships based on religious teachings, philosophy, or moral values;
3. Political freedom, for example, with the presence of democratic representative institutions, freedom of speech and the press, and freedom to assemble;
4. Freedom to associate;
5. Other freedoms needed to build an individual's independence and integrity, such as freedom from slavery, freedom of movement, and freedom to choose a preferred occupation; and
6. Rights and obligations regulated by the principle of the Rule of Law.

What Rawls proposes above essentially provides the basis for understanding the scope and meaning of social justice in contemporary life, especially when social life is heavily influenced by nation-state ties that bring together various forms of pre-existing social bonds. This means that social justice in the perspective of modern society provides space for diversity and real diversity in social life.

In the post-John Rawls era, social justice has been further developed by linking it to global development issues and the need for more global social justice. The United Nations, for example, offers an understanding of social justice as fair and equitable distribution of the fruits of economic progress. In this regard, the term social justice by the UN is more understood as a new term replacing the term protection of human rights, which was introduced through the UN Declaration in the late 1960s. This implies that the issue of social justice is nothing but a basic global human right issue that must be fought for by all global citizens. Therefore, social justice cannot be achieved without coherent distribution policies intentionally created and implemented by public institutions. This means that the role of the state is vital in the practice of distributing justice values for all citizens (United Nations, 2006).

Understanding the theory of social justice as above, we can believe that the postulate of social justice that we can derive from the fifth principle of Pancasila is closely related to other postulates, especially those of humanity and democracy, where the components of those postulates are interrelated. The value of social justice that we can make as a postulate of Indonesian law that is socially just means that the legal system built on these postulates must have a just nature by absorbing the understanding and elements of social justice as developed in modern understanding as above. National law based on the values of Pancasila's postulates must therefore be a law that is socially just, meaning that various laws and regulations created within it have principles that encourage the achievement of justice for all segments of society. If in modern thinking the meaning of social justice is emphasized on the reciprocal relationship pattern between individuals and society or between citizens and the state, then the reciprocal social justice postulate can be directed to become the basis of the values that animate the process of building a national legal system (Menski, 1988).

In other words, a national legal system that upholds social justice can be achieved by adopting these modern values of social justice. Both the substance and the institutions and

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culture of law that are developed must be able to embody these values in the daily lives of the nation and state. It is understood that social justice cannot be achieved without building social relationships between individuals and society/state that are mutually reciprocal. Therefore, various administrative laws and regulations must be able to evoke these reciprocal relationships. Essentially, the relationship between the two is based on an agreement in a social contract that has been agreed upon together. Similarly, as in John Rawls' theory of social justice, the postulate of a legal system that is just and fair must be able to provide opportunities for a positive atmosphere for the growth of freedom for all citizens to express themselves, think, associate, and engage in politics in a healthy way, supported by mature principles of the rule of law.

CONCLUSION

Understanding the postulates of Pancasila as described above, we can comprehend the interconnectedness between each principle within Pancasila. The values of the law postulates that can be drawn from Pancasila are actually a formation of a complete national value system, where one value intertwines with another. The five postulates, namely Godliness, Humanity, Unity, Democracy, and Social Justice, are connected as one national law postulate system, touching on the elements that form these values. The spiritual value that can be drawn from the postulate of Godliness can serve as the soul for all other postulates. This means that no matter how much the development of value building ideas for the national law system may continue, it must always remain spiritual, meaning not abandoning the values of Belief in the One and Only God in its essence. Other values of legal postulates must also be imbued in the development of the legal system in Indonesia as only through such embodiment can the law postulates be reflected in the substantive and institutional aspects of law developed later. This step is important to make the rules of recognition significant again in the development of the legal system in Indonesia, because only through the Pancasila legal postulate can the rules of recognition be established and maintained in this country.

In other words, the national legal system, which consists of three main elements: substance, institution, and legal culture, must therefore be continuously developed based on the five Pancasila legal postulates. Therefore, it is impossible for the values of Pancasila legal postulates to be understood in a rigid and closed manner. The five values must be open to all forms of interpretation renewal and reading, adjusted to the development of existing social and cultural values. The openness to interpretation cannot be done without continually cultivating a fertile reading activity towards life in an open manner. Reading of sacred and non-sacred texts that exist around the community's life. In this regard, discourse criticism must continue to be heard so that our ability to read the phenomena of life can continue to improve in quality. In legal studies, weakened discourse criticism will result in intellectual decadence among legal experts and scholars, with its subsequent detrimental effects on legal study institutions and judicial institutions in general.

This means that Pancasila legal postulates can be sustainably developed to be more in line with modern legal values if two approaches are used: systemic and open approaches. First, the five national law postulates derived from Pancasila values are treated as a system, where all of its elements are interconnected and have an impact on each other. And second, the elements of the law postulates must be read with an open and non-rigid perspective to prepare for all possibilities of value system development and understanding of life itself, which is actually never stagnant.

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