

Pancasila as a Legal Political Paradigm: Implications for the Judicial System and Law Enforcement in Indonesia

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Abstract. Pancasila as a grundnorm plays an important role in the legal political paradigm in Indonesia as the basis for the formation of the legal system. All laws in Indonesia must be based on Pancasila as the source of all legal sources. The main issue studied is the extent to which Pancasila influences the legislative process and legal policies to realize a fair judicial system, as well as how its values can reform the judicial system and improve the quality of law enforcement. This study uses a normative method with a conceptual approach supported by the analysis of the hierarchy theory of legal norms and development law. The results of the study show that although Pancasila has been recognized as a grundnorm in the legal hierarchy, its implementation in legislation and legal policies still often faces obstacles, so a more responsive and inclusive legal system reform based on Pancasila values is needed.

Keywords: Pancasila, Grundnorm, Judicial, System.

1. INTRODUCTION

Pancasila, which is recognized as the basis of the state and the nation's ideology, has been inherent in people's lives and has become a philosophical, ideological, and normative foundation that functions to organize the entire life of the nation and state. As a view of the nation's life, Pancasila includes fundamental values such as social justice, just and civilized humanity, and democracy led by wisdom in deliberation. These points are also enshrined in the preamble of Undang-Undang Dasar Republik Indonesia Tahun 1945 and detailed in the articles of UUD NRI Tahun 1945 which provide guidelines for the administration of the state, including in the formation of laws and the judicial system in Indonesia (Ilma, 2024).

Talking about the basis of the state, it is related to Hans Kelsen's theory regarding the level of legal norms (*Stufentheorie*). This theory is described that the law is tiered, layered or tiered in a hierarchical order. At the lower level, it applies, based on and sourced from higher norms and applies so on to the highest and cannot be traced higher to the highest level of norms which are hypothetical and fictitious, which is known as the *grundnorm* (basic norm). The basic norm as the highest norm is formed directly by society and becomes the source of lower norms, therefore the basic norm is called presupposed or predetermined (Syahuri, 2011). In the Indonesian, it means the basic norm in the

hierarchy of legal norms is Pancasila, while the other level or layer is the consideration of laws and regulations (Indrati, 1998).

The hierarchy of norms departs from Hans Nawiaky's theory which states that the structure of norms consists of: a) State Fundamental Norms (*Staatfundamentalnorm*); b) Basic Rules of the State (*staatsgrundgesetz*); c) Formal Law (*formell gesetz*); d) Implementation regulations and autonomous regulations (*verordnung en autonome satzung*) (Attamimi, 1990). Based on Hans Nawiasky's opinion above, the definition of basic norms (*grundnorms*) can be classified into the first level of understanding, namely *staatsfundamentalnorm* (fundamental norms of the state). This norm is the highest legal norm that is the basis for the formation of basic legal norms (*staatsgrundgesetz*), such as the constitution or Constitution of a country (Syahuri, 2011).

Furthermore, Notonegoro stated that if the 1945 NRI Constitution is the basic rule of the state, then Pancasila is in the position of *Staatfundamentalnorm* which is located as the Fundamental Norm of the State. Even though the mention of Pancasila as the Basis of the State has never existed in the constitution, this is because Pancasila is not included in the meaning of the constitution, but is above the constitution (Danasastro, 2020). The Constitution or the Constitution is the basic rule or basic rule of the state which is the source and basis for the formation of a lower legal rule (Syahuri, 2011).

As a Fundamental Norm that affects the formation of national law, Pancasila is not just a theoretical reference, but should be used as a substantive basis in formulating every legal policy.¹ In the practice of legal politics in Indonesia, Pancasila should ideally be used as a benchmark in the legislation process to ensure that every law and policy produced not only follows legal logic, but also prioritizes social justice and democracy. Pancasila also provides direction for the state to achieve equitable social justice, a just and civilized humanity, and the rule of law that favors the interests of the people. However, facts on the ground show that the legislation process often does not fully refer to the values of Pancasila. Various legal regulations that are born often cause injustice, both structurally and substantively, which has an impact on the weakening of public trust in legal institutions (Pinasang, 2012).

¹ Pancasila is declared as the source of all legal sources through the TAP MPR No. XX/MPRS/1966 in the DPR-GR Memorandum concerning the Source of Legal Order of the Republic of Indonesia and the Legal Order Decree. After the reform, the existence of Pancasila was confirmed in Undang-Undang No. 10 Tahun 2004 which was later updated with Undang-Undang No. 12 Tahun 2011 and Undang-Undang No. 15 Tahun 2019.

In the history of the development of Indonesian legal politics, Pancasila should be the foundation for every policy born from the legislative process. However, in practice, the judicial system and legal policy in Indonesia often face various obstacles that cause inequality between the ideals of justice contained in Pancasila and the reality of law enforcement in the field. Legal injustice, weak law enforcement, and frequent abuse of authority in the judicial system are fundamental problems that show the gap between Pancasila values and law enforcement in Indonesia.

This fact raises a big question about the extent to which Pancasila values are consistently integrated in the legislative and legal policy process in Indonesia. Pancasila, which places social justice as one of its main values, should be a guideline in shaping a judicial system that upholds justice, honesty, and transparency. However, in reality, the law in Indonesia is often considered to be more in favor of the interests of certain groups, rather than on comprehensive justice for all Indonesian people. This shows that reform in the judicial sector, which is rooted in the Pancasila-based legal political paradigm, is necessary. Based on the background of introduction, the author was interested to make an article entitled "*Pancasila as a Legal Political Paradigm: Implications for the Judicial System and Law Enforcement in Indonesia*" by containing a discussion of the influence of Pancasila in the legislative process and legal policies on the formation of a just judicial system and discussing the role of Pancasila as a legal political paradigm in reforming the judicial system and improving the quality of law enforcement in Indonesia.

2. THEORIES

Stufentheorie

Hans Kelsen's *Stufentheorie*, or hierarchy of norms, describes a structured system of legal norms in which lower-level norms derive their authority from higher ones, culminating in the *grundnorm* (fundamental norm). In the Indonesian context, Pancasila serves as the *grundnorm*, acting as the ultimate source of all legal norms within the legal system. This theory emphasizes that every legislative and judicial action must align with the values and principles of Pancasila, ensuring coherence and legitimacy within the legal framework. Pancasila's role as the *grundnorm* places it above all laws, symbolizing the nation's philosophical and ideological foundation (Kelsen, 1945).

Legal Hierarchy Theory

Hans Nawiasky extended Kelsen's framework by categorizing legal norms into four levels: Staatfundamentalnorm (Fundamental Norm of the State), *Staatsgrundgesetz* (Basic

Laws of the State), *Formell Gesetz* (Formal Laws), and *Verordnung und autonome Satzung* (Regulations and Autonomous Rules) (Muttaqien, 2007). In Indonesia, Pancasila is recognized as the *Staatfundamentalnorm*, serving as the foundation for all other legal norms, including the Constitution (UUD NRI Tahun 1945). Nawiasky's theory reinforces Pancasila's central role in maintaining consistency across various legal instruments and preserving the integrity of the legal system.

Legal Character Theory

Philippe Nonet and Philip Selznick classify legal systems into three stages: repressive, autonomous, and responsive. Repressive law functions as a tool of power, autonomous law operates independently but rigidly, and responsive law adapts to societal needs (Muttaqien, 2007). Pancasila aligns with the concept of responsive law, as it advocates for the creation of legal systems that address society's evolving needs while upholding values of humanity, justice, and democracy. This approach ensures that Indonesian laws remain functional and reflective of the nation's core values.

Law as a Tool of Social Engineering

Mochtar Kusumaatmadja's theory posits that law is a tool for societal development, facilitating change and fostering progress (Kusumaatmadja, 1972). In Indonesia, this perspective underscores the role of Pancasila as a moral compass for lawmaking, guiding legal frameworks to achieve unity, equity, and justice. By promoting laws that support national aspirations, Pancasila ensures that legal instruments serve as agents of positive transformation, balancing individual and collective interests.

Philosophical-Sociological Approach of Law

Jimly Asshiddiqie advocates for laws that integrate philosophical, sociological, and juridical principles. Jimly emphasizes that laws should embody universal values such as justice and humanity while addressing Indonesia's unique sociocultural dynamics. Pancasila serves as the philosophical backbone of this approach, ensuring that legal norms resonate with the diverse realities of Indonesian society (Asshiddiqie, 2006). This perspective highlights the importance of aligning laws with the nation's moral and cultural values to promote harmony and inclusiveness.

3. METHOD

This study examines Pancasila as a paradigm in the reform of criminal law and justice, using the type of normative juridical research. This type of research focuses on written legal analysis that includes laws, jurisprudence, and legal doctrines, especially

those related to the application of Pancasila values in the criminal law system. The problem approach is carried out through a legislative approach and conceptual approach, where the focus of analysis is directed to the review of relevant regulations, such as the legal basis of Pancasila in the TAP MPR and the laws that support its application in criminal law. This approach is important to explore how Pancasila as a basic norm (*grundnorm*) directs the criminal justice system in a fair direction.

The source of research data consists of primary data, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Kitab Undang-Undang Hukum Pidana, Kitab Undang-Undang Hukum Acara Pidana and any of criminal regulations, as well as court decisions that describe criminal law practice. Secondary data includes law books, academic journals, and other supporting literature, while tertiary data is in the form of legal dictionaries or legal encyclopedias as additional references. Data were collected through the library research method, which involved an in-depth study of relevant legal literature and criminal regulations. The results of the study were analyzed qualitatively descriptively, to systematically describe the relationship between Pancasila values, criminal law reform, and the judicial system. This study shows that the Pancasila paradigm provides a strong philosophical and normative foundation in building criminal law that is oriented towards social justice and respect for human rights.

4. RESULT

The Influence of Pancasila in Legislation Process and Legal Policy on the Formation of Judicial System

As a *grundnorm*, Pancasila has underpinned all legal products in Indonesia so that they remain in accordance with the nation's philosophy and are in a corridor that is connected to the five precepts. The five precepts come from the consensus of the previous founding fathers. This is in line with Hans Kelsen's statement that basic norms are presupposed (Kelsen, 1945). Philip Setznick and Philippe Nonet divide three types of legal characters which are: 1) Repressive Legal Characters; 2) Autonomous Legal Character; and 3) Responsive Legal Character (Muttaqien, 2007).

Through these three types of characters, Philippe Nonet and Philip Setznick place the subordinate law over politics and economics in the first position, then continued with the law of autonomous institutions as the second legal character, which is considered parallel and coordinating with politics and economics. The third character is the law as a facilitator and catalyst who is responsive in responding to the needs of public.

a. The Existence of Pancasila in the Three Types of Legal Characters

The existence of Pancasila in three legal characters can be explained in several aspects. First, Law as a Subordinate to Politics and Economics reflects a condition in which the law lacks independence and serves as a tool for the legitimacy of political or economic policies set by the ruler. In this context, the law tends to ignore the principle of justice and the interests of the wider community, only serving the interests of the dominant power. This is contrary to the values of Pancasila, especially the second and fifth precepts. The second precept, "Just and civilized humanity," demands that the law protect human rights fairly. If the law only follows political or economic interests, human values are often overlooked. In addition, the fifth precept, "Social justice for all Indonesian people," emphasizes that the law must serve the interests of all people equally, not just the interests of some people.

Second, Law as an Autonomous Institution emphasizes the importance of legal independence that should not be controlled by politics or economics. In this case, the law must be positioned as a stand-alone institution but still coordinate with the two fields. Autonomous laws can regulate and limit political power and control economic activities so that they continue to run in accordance with applicable rules. This approach is in line with the fourth precept of Pancasila, "Democracy led by wisdom in deliberation/representation," which emphasizes that laws must be decided democratically and should not be unilaterally regulated by political or economic forces. In addition, the fifth precept also supports this concept by demanding that the law apply to everyone fairly, maintaining a balance between politics, economics, and the interests of society (Muhammad, 2009).

Third, Law as a Facilitator and Catalyst describes the role of law that not only regulates, but also functions to make it easier for people to carry out social, economic, and political activities. As a facilitator, the law provides a framework that allows people to access their rights and fulfill their obligations fairly. In addition, the law also acts as a catalyst, which is able to respond to changes and evolving needs in society. Laws that are catalysts can encourage positive changes and developments in accordance with the demands of the times, such as regulatory adjustments to technological developments and social dynamics (Setyawan, 2021).

The role of the law as a facilitator and catalyst is very much in accordance with the second and third precepts of Pancasila. The second precept emphasizes that the law must serve human needs in a fair manner, treating all individuals with equal

dignity. On the other hand, the third precept, "Unity of Indonesia," requires the law to respond to the diverse and ever-changing needs of society, maintaining unity and harmony in differences. Thus, the law must be dynamic and responsive to social, economic, and cultural changes, and be able to encourage progress in accordance with the values of Pancasila, such as justice, humanity, and equality.

b. The Influence of Pancasila in the Legislation Process and Legal Policy on the Formation of a Fair Judicial System

Indonesia is a state of law based on Pancasila, which is the basis for the implementation of government functions and state duties (Basah, 1997). As a legal basis, Pancasila ensures that every government action respects human rights and balances the public interest with individual rights. In dealing with disputes between the government and the people, Pancasila provides legal protection based on the principle of justice, making it the main identity of the national legal order. The philosophical values contained in the five precepts of Pancasila are fundamental guidelines in the formation of a fair and just law (Kaelan, Pendidikan Pancasila, 2014).

As a legal political paradigm, Pancasila directs every legal policy to reflect the moral and ethical values of the nation, with the aim of realizing common welfare, social justice, and national harmony. Pancasila functions not only as a source of value, but also as a guide in legislation, law enforcement, and judicial reform. The legal system built on Pancasila aims to create laws that are inclusive, democratic, and responsive to the needs of the community (Pinasang, 2012).

In the Preamble to the 1945 Constitution, the principles of Pancasila such as Godhead, Humanity, Unity, Democracy, and Social Justice became the basis of national law, as explained by Mochtar Kusumaatmadja (Kusumaatmadja, 1972). These principles guarantee that the law is not only normative but also reflects substantive justice. Pancasila functions constitutively, provides meaning and legal basis, and is regulatively to assess the positive legal justice produced.

As a *staatsfundamentalnorm*, Pancasila determines the content and form of laws and regulations in Indonesia. The Pancasila-based legal hierarchy ensures consistency between higher and lower rules. If there are norms that are contrary to Pancasila, then the norms are considered null and void (Kusumaatmadja, 1972). Mahfud MD added that laws based on Pancasila must protect national unity, ensure social justice, strengthen democracy, and encourage religious tolerance (Sidharta, 2017).

In criminal law, Pancasila directs a balance between the protection of the community, victims, and perpetrators. According to Barda Nawawi Arief, the concept of the future Criminal Code must pay attention to the principle of balance between the interests of the community and individuals, the protection of perpetrators and victims, and legal certainty with the flexibility of justice (Arief, 2014). The formulation of criminal law must also be responsive to changes in society, from traditional to digital, and be able to reflect national and global values.

As a paradigm of criminal law, Pancasila emphasizes the importance of equitable justice for all parties. Criminal law must be simple, clear, and easy to apply in order to effectively maintain the morality of the nation and protect the public from immoral acts. With this principle of balance, Pancasila is a guide in building a legal system that is fair, harmonious, and adaptive to social changes (Najib, 2014).

The Role of Pancasila as a Legal Political Paradigm in Reforming the Judicial System and Improving the Quality of Law Enforcement in Indonesia

As a *grundnorm*, Pancasila has underpinned all legal products in Indonesia so that they remain in accordance with the nation's philosophy and are in a corridor that is connected to the five precepts. The five precepts come from the consensus of the previous founding fathers. This is in line with Hans Kelsen's statement that basic norms are presupposed (Kelsen, 1945). Philip Setznick and Philippe Nonet divide three types of legal characters which are: 1) Repressive Legal Characters; 2) Autonomous Legal Character; and 3) Responsive Legal Character (Muttaqien, 2007).

The essence of the state as a humanitarian institution includes both external and inner dimensions, so that the entire state life in Indonesia is covered by the spiritual principle of Pancasila (Rukka, 2013). Positive law in Indonesia is compiled and carried out in unity with the psychological and human values contained in Pancasila, including truth, beauty, morality, and human consciousness as a creature of God. The mechanism for the formation of laws and regulations in Indonesia is based on these values to create a legal system that is in accordance with the national philosophy.

According to Jimly Asshiddiqie, the formation of legal rules must be based on philosophical, sociological, juridical, political, and administrative aspects (Asshiddiqie, 2006). Good rules must also reflect universal values such as justice and humanity, which are in accordance with the principle of universality in the legal politics of Pancasila. This principle emphasizes that every legal norm must be widely accepted, reflecting the values

of justice, humanity, and unity, which are the main foundations of the legal system in Indonesia (Indrayana, 2008).

In the framework of the second and fifth precepts of Pancasila, the law aims to protect individual and collective rights equally. The law must be an instrument of justice that protects all citizens without discrimination. The legal politics of Pancasila demands that the law does not side only with certain groups, but becomes a social glue tool to maintain national unity (Rusli, 2017). The inability of the law to accommodate the diversity of society can trigger injustice and social disintegration.

The transition of legal norms in Indonesia presents a big challenge to the legal politics of Pancasila. The process of law-making must remain within the corridor of the values of justice, humanity, and unity, despite political tug-of-war (Nurhadi, 2006). The values of Pancasila must be a counterweight in legislation, so that the law not only accommodates political or economic interests, but also maintains morality and the welfare of the people (Kaelan, 2018)

The foundation of law formation in Indonesia must reflect morality in accordance with the legal politics of Pancasila. Legal principles such as democracy, social justice, and a just and civilized humanity are important elements in achieving legal goals. These values ensure that the law not only provides formal justice, but also substantial legal certainty for all people (Hartanto, 2015).

Legal politics of Pancasila emphasizes the importance of integrating Pancasila values in every aspect of the formation and implementation of laws. Laws based on Pancasila are not only a regulatory tool, but also a reflection of the nation's morals that ensure unity, social justice, and common welfare. Thus, Pancasila is a guide in realizing a humanist, democratic, and inclusive legal system (Mertokusumo, 2010).

Legal reform, especially in criminal law, in Indonesia needs to be based on the values of Pancasila as the nation's ideology and outlook on life. Pancasila is not only the basis of the state's philosophy, but also serves as a guideline in legal reform. Each precept in Pancasila provides specific directions related to the formation and implementation of criminal law that reflects the values of humanity, justice, and unity. For example, the First Precept which contains a spiritual dimension inspired the reform of criminal law that respects human rights as a creation of God Almighty. These reforms should introduce a rehabilitative approach, which focuses more on the rehabilitation and respect for the dignity of prisoners, rather than simply punishing them (Yudianto, 2016). This is also the

basis for the application of the principle of presumption of innocence which provides protection for the alleged perpetrator until he is legally proven guilty.

Furthermore, the Second Precept, which emphasizes the respect and protection of human rights, requires that the punishment applied is restorative, not retribution. Although criminal law still allows for severe crimes to protect the community, what is more important is transparency in law enforcement. Criminal law is not only to punish, but also to improve and restore the situation. This is in line with the principles contained in Pancasila, which emphasizes the importance of social justice for all levels of society (Yudianto, 2016).

The Third Precept reminds the importance of criminal law that accommodates values that live in society, taking into account the diverse social and cultural conditions in Indonesia. This includes accommodating local norms that are in line with the principles of justice. One concrete example is the consideration of supernatural practices that are still believed by some people. The solution to the discrepancy between formal law and social values can be achieved through community empowerment in the legal process, such as through a restorative justice approach (Yudianto, 2016). This approach involves the community in the criminal law process, building social agreements, and strengthening national unity.

The Fourth Precept emphasizes that the interests of the community must be prioritized without neglecting individual rights. The current criminal law reform must focus on restoring the conditions as before the crime occurred, not just providing the heaviest sanctions. Therefore, it is important to involve the community in the process of forming laws through deliberation and representation mechanisms. Public participation in the making of laws and legal decisions ensures that the resulting legal products truly reflect the needs and aspirations of the community (Hartanto, 2015). The policies taken must be based on in-depth analysis and accurate data to ensure that the law remains relevant to the development of society.

The Fifth Precept requires equal legal protection for all citizens, as well as restrictions on the abuse of power. In this context, the role of judges as a judicial body is very important to maintain balance. The criminal law applied must guarantee that there is no discrimination based on social class, ethnicity, or economic background. In addition, the legal system must ensure that victims of crime receive fair redress and restitution (Ilma, 2024). This is in line with the principle of penal justice that prioritizes the return of the situation to its original state, which provides justice for all parties involved.

In the reform of criminal law, Pancasila also reflects the principle of balance, which can be seen in various aspects of criminal law. This balance includes the relationship between the public and individual interests, the protection of the rights of perpetrators and victims, as well as the balance between objective and subjective elements in criminal punishment (Muhammad, 2009). Not all criminal actions must lead to punishment, but the perpetrator's fault must be considered. The balance in question also includes legal certainty, justice, and legal flexibility, where the principle of legality must be combined with the values of justice that are in line with the needs of society.

Mahmud Kusuma in his book *Diving into the Spirit of Progressive Law* puts forward the criteria for effective criminal law, which include: systematic legal necessity, high legal certainty (adequacy), and clear certainty without ambiguity (legal certainty). This criterion reflects the second and third precepts of Pancasila, which emphasizes justice, humanity, and unity. The law must also be able to adapt to the development of society (actuality) and be responsible (feasibility). Verification and enforcement criteria (verifiability, enforceability) are also important to ensure that justice can be tested objectively, providing transparency and trust to the public (Kusuma, 2009). The integration of these criteria in criminal law reform is expected to create a legal system that better reflects the values of Pancasila and ensures welfare and social justice for all people.

5. CONCLUSION

As a fundamental norm of the state, Pancasila has the highest position in the legislative hierarchy, as stated in Article 2 of Undang-Undang No. 12 Tahun 2011. As the source of all legal resources, Pancasila is the foundation for every legal product, court decision, and law enforcement to fulfill the principles of justice in accordance with the nation's ideals. As a legal political paradigm, Pancasila directs the judicial system to uphold substantive justice, humanity, and unity, with a focus on legal certainty and equal protection of people's rights. In this context, Pancasila encourages judicial system reform that is adaptive to social changes but still based on the nation's noble values to realize justice and welfare for all people.

To strengthen the role of Pancasila in the legal system, the government needs to ensure that Pancasila values are the main reference in every stage of legislation with transparent supervision and involving the community. Judges are also expected to refer more explicitly to Pancasila in rulings to uphold justice that reflects human values and social justice. In addition, education and training for law enforcement officials must be

strengthened to increase a deeper understanding of Pancasila, so that legal policies are in line with the ideals of justice and welfare. The legal system also needs to be more responsive to social changes and open to community participation to maintain unity and realize prosperity for all people.

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