

The Values of Pancasila as the First Reforming the Law



Yasminingrum¹, Sri Retno Widyorini²

^{1,2}Faculty of Law UNTAG Semarang

Corresponding author: Yasminingrum

ABSTRACT: Reforms are corrective steps in all aspects of life to create a better order based on the values of Pancasila. The reform movement that began in 1988 in Indonesia was launched by students and intellectual groups who saw that there had been deviations from Pancasila and the 1945 Constitution, resulting in the fall of the President who was in power then. This reform movement can be said to be the second movement after the first movement, namely in 1966 whose goal was to overthrow the President who was seen as having deviated from the values of Pancasila and the mechanisms of the 1945 Constitution. This discussion aims to prevent the reality of the fading understanding, appreciation, and practice of Pancasila values in people's lives. For this reason, the will of the reform era needs to be maintained, rearranged, and given clear and firm legal guidelines so that the administration of government will no longer deviate from the values of Pancasila and the 1945 Constitution with all its changes based on substance, structure and legal culture.

KEYWORDS: Pancasila, Reform, Law

I. INTRODUCTION

Since gaining independence on August 17, 1945, the Indonesian nation has experienced two total movements due to deviations from Pancasila and the 1945 Constitution. The first movement occurred in 1966, which was known as the 66th generation movement with the aim of overthrowing the government. The second movement occurred in 1988, namely, the reform movement, which in the post-reform agenda was to make improvements in the field of law both in substance, structure, and legal culture.

Reforming law and justice is very complex and not as simple as we think. Because reforming the law does not only mean reforming laws and regulations but also includes reforming the legal system as a whole, including the substance, structure, and culture of law.

The important thing to pay attention to is the nation's morality which is increasingly leading to the destruction of the social order, and deviating from the path that has become a common goal that will lead to the limit when it will end. It also follows that in people's lives, there are also horizontal conflicts that we encounter every day such as fights, murders, robberies, corruption, collusion, and nepotism are rampant in self-government.

Problems are increasingly adding to the burden on society with the occurrence of an economic crisis, the emergence of justice mafias, the disintegration of the nation, and educational issues. Of course, there are still many problems that make this nation's burden even heavier. For this reason, it is necessary to reflect on the multi-dimensional crises that have occurred in the life of the nation and state.

Carrying out legal reforms will realize the goals of the State to be achieved. For this reason, the values of Pancasila must be understood and embodied in legal sources up to the substance level supported by strong morality. As said by Darji Darmodiharjo(1), "Objectively the values of Pancasila are proven to be true, so they are selected and used as a guideline so that the moral commitment of the Indonesian people in carrying out various policies. Legal reform will approach the desired goal, if the values of legal sources are properly understood, up to their substance, not just a mere formality, and accompanied by strong levels of morality, strong moral personality, and all parties related to the law.

Based on the discussion above, it appears that the values of Pancasila are very objective truths and are no doubt the nation's moral guidelines and commitments. For this reason, this discussion will raise the issue of Pancasila and the Reform Era and the Existence of Pancasila Values in Legal Reform.

This discussion is based on historical facts in the Government System of the Republic of Indonesia by collecting literature from several essays by scholars relating to Pancasila and legal reform, to produce laws that are in accordance with the spirit of the Indonesian Nation as a Constitutional Democratic State that is expected by the Indonesian people.

The Values of Pancasila as the First Reforming the Law

II. DISCUSSION

a. Pancasila and the Reformation Era

The total reform movement is to provide a total correction so that it can return to the order based on Pancasila and the 1945 Constitution properly and correctly. The first correction to the Government of the Republic of Indonesia began in 1966 known as the Forces of 66 Movement and the second correction was made in 1988, in which this correction was made because it saw that there were deviations from Pancasila and the 1945 Constitution with the dismissal of the President's office.

On June 1, 1945, which is referred to as the birth of Pancasila, in his speech President Soekarno gave the names of the 5 foundations of the Indonesian state to be founded, namely Pancasila, Panca means Five and Sila means Principles or foundations. So, Pancasila is the name given by Bung Karno to the five foundations of the Unitary State of the Republic of Indonesia.(2)

In 1966 the Batch of 66 Movement with the aim of overthrowing President Soekarno's government was seen as having deviated from the values of Pancasila and the mechanisms of the 1945 Constitution, which resulted in the dismissal of President Soekarno from the position of President by the Indonesian MPRS in its session in March 1967.

The revocation of the power of the State Government from President Soekarno was based on MPRS RI Decree No. XXXIII/MPRS/1966(3), which essentially states that the President cannot fulfill constitutional responsibilities, cannot carry out the direction and decisions of the MPRS, prohibits political activities until the general election, stipulates the enactment of MPRS Decree No. XV/MPRS/1966 and MPRS Decree No. IX/MPRS/1966 regarding the appointment of the President.

With the election of President Soeharto, who is committed to implementing Pancasila and the 1945 Constitution purely and consistently and is development-oriented in all aspects of life. On June 1, 1967, President Soeharto expressed his feelings that "we are blessed as a nation that has the basic philosophy of the state, namely Pancasila, we are truly always grateful, that we set Pancasila as the philosophy of our country. Thus, we have a philosophical and constitutional basis for developing our personality as a nation, building a balanced and harmonious physical, spiritual, and spiritual life.(4)

At the same time, the new Order was born. The term New Order emerged because President Soekarno's government structure had deviated from Pancasila and the 1945 Constitution. The term New Order emerged because the government system in President Soekarno's era had deviated from Pancasila and the 1945 Constitution and was called the Old Order.

President Soeharto's government failed to implement the New Order, so there was the second correction in 1988 carried out by the Total Reform Movement which also aimed to bring down the government regime because after being in power for 31 years it finally deviated from Pancasila and the 1945 Constitution which brought almost damage to all aspects of life, especially the political field. , law and economics.

As stated in Chapter II General Conditions of the Draft Outlines of State Policy which is an integral part of MPR RI Decree No. IV/MPR/1999 Concerning the Outlines of State Policy for 1999-2004 as a product of the Reform government: "State administration that deviates from the ideology of Pancasila and the mechanisms of the 1945 Constitution has resulted in an imbalance of power among state institutions and further away from the image of democracy and independence which is characterized by the ongoing system of absolute power due to the excessive authority and power of the President which gave birth to a culture of corruption, collusion and nepotism resulting in a multidimensional crisis in almost all aspects of life"

Thus, reform activities must be guarded against violating or contradicting Pancasila values because an order based on Pancasila does not require conflict and division in people's lives, but must maintain strong togetherness, cooperation, unity, and integrity based on existing pluralism.

Reform does not want conflict in society that smells of SARA (Ethnicity, Religion, Race, and Intergroup), does not want coercion, arbitrary attitudes from one group/group to another, do not want enjoyment and benefits for the group/group certain things that are detrimental to the people, especially the lowly people/poor and weak groups. Reform must realize the conscience of the Indonesian people who have long yearned for justice and truth for the sake of prosperity, peace, security, and peace in life.

The most basic thing is that Pancasila cannot be changed and the 1945 Constitution cannot be discarded and replaced with a new Constitution, but changes can be made to its articles. The reform government as a manifestation of the Reform Movement from the start must have taken steps to evaluate the existing order, which ones went wrong to be corrected and replaced with better ones, and matters that have not been regulated in accordance with the needs and demands of progress to be regulated immediately. best.

What is more important is not only changing and/or promulgating good and necessary laws and regulations for governance, but how to implement them in a real, firm, and correct manner in accordance with the goals and objectives of the regulations. If laws and regulations only stop on paper, it means that law enforcement is not working.

b. The Existence of Pancasila Values in Legal Reform

The people do not only need good regulations, but what is needed is the implementation of real, good, and correct regulations that guarantee the realization of people's welfare and the realization of a safe, just, and peaceful atmosphere in the reform era with the condition of the people who are still not prosperous. On the other hand, community leaders, official's government, and political elite leaders can control themselves and their interests, not struggle to improve themselves. However, trying to improve work facilities and infrastructure for the smooth running of tasks proportionally.

The Values of Pancasila as the First Reforming the Law

It is very undemocratic if the people's representatives and government officials earn high incomes with magnificent facilities, while the people represented are far away in the arms of suffering, poverty, and impoverishment, while their surroundings are still full of waste, abuse of authority and law irregularities are becoming more rampant, all of which will result in more rampant corruption and lack of justice and truth.

The place of law in society, according to Talcott Parsons, is said "to be able to reveal the interlocking relationship between law on the one hand and other areas of social life on the other. The all-encompassing framework of society starts from individual actions. Individual action in the first place is not seen as a biological behavior, but as a meaningful behavior. A person's actions are always placed in a certain (social) relationship or other words, are structured actions. A person's actions are placed within a large system's framework and are divided into sub-systems. Each sub-system has its primary function, namely:

- a. Social sub-system's primary function is integration
- b. The primary function of the cultural sub-system is to maintain patterns
- c. The primary function of the personality sub-system is to achieve goals
- d. The primary function of the behavioral sub-system is adaptation."(5)

According to Lawrence M Friedmann, every law always contains three components, namely a structural component, a substantial component, and a cultural component.(6) The legal structure concerns law-making, such as the government, the House of Representatives, the judiciary, the police, and the prosecutor's office which is related to the procurement of law or the legal process that is carried out, the substance of the law concerns existing regulations and is structured as a legal product made by humans with norms -norms that are relative in nature so that their values can change and be changed for the benefit of humans (utilitarian) in achieving the welfare of people's lives. The structure of the legal culture will influence the structure and substance of the law as an element of the legal system in the society or nation concerned.

The legal system with its three elements has a close correlation with each other. In terms of substance, various statutory regulations will regulate what is permissible and what cannot be done in law. These structures are legal institutions that have duties and functions in the field of law. The functioning of structure and substance is greatly influenced by the legal culture (internal and external) that lives in society. In this connection, the legal culture component, which is the overall attitude of society and the value system that exists in society, which will determine how the law should apply in society, needs constant guidance.

In more detail, Daniel S Lev tries to break down the legal culture into the values of "procedural law" and the value of "substantive law". And it is said further that ways of conflict resolution have their own characteristics due to the support of certain values. Compromise and peace are values that have strong support from society.(7)

Based on this relationship, it can be said that the development of community structure and culture is inseparable from the will to realize community legal awareness, because community legal awareness is a very important right and determines the enactment of a law in society. And to Dardji Darmodihardjo and Sidharta, it is said that the legal culture of a society can also be given the same limitations as legal awareness.(8)

The constitution in the legal order is the highest level of positive law. According to Hans Kelsen, the legal order is not a coordinated system of equal norms, but a hierarchy of legal norms with various levels.(9) The rule of law as a whole is derived from the basic norms which are at the top of the pyramid and as they go down they become more diverse and widespread. The top basic norms are abstract and the lower they are, the more concrete they are.

Legal functions according to Jeremy Bentham, are:

to preserve good and prevent evil. He views that the interests of society and individuals must be considered in everything that is taken by the government. The government is obliged to act and take useful steps to generate profit and happiness.(10)

Aubert states that the function of law in society is as follows:(11)

- a. governing function;
- b. Resource distribution function;
- c. Safeguard function against community expectations
- d. Conflict resolution function;
- e. The function of expression of the values and ideals of society.

According to Soerjono Soekanto, the functions of law are:

Law is a tool to change society, in the sense that law may be used as a tool by agents of change. In this case, the agent of change or the pioneer of change is a person or group of people who gain the trust of the community as a leader or more social institutions. In other words, the function of law as "a tool of social engineering" .(12)

Law contains ideas or concepts that can be classified as something abstract including justice, benefits, and legal certainty. There is a close relationship between the renewal of the substantial component and the cultural component. Substantial components should be built based on the cultural components that are owned by the nation. As the argument put forward by Robert B. Seidman about "The law of non-transferability of law", namely an argument which states "The law of a nation cannot be transferred to another nation. This is because the social structure and culture where the law is passed are not the same. The same law with the same character but applied to different social structures will result in different law enforcement.(13)

The Values of Pancasila as the First Reforming the Law

The characteristics of Indonesian law are reflected in Pancasila which contains elements of morality and justice, as stated in the fifth precept, "Social justice for all Indonesian people". Hans Kelsen, said that justice means the maintenance of a positive legal order through its application which is truly in accordance with the spirit and the legal system.(14) According to Immanuel Kant, justice is the extreme freedom of every person limited by the freedom of all other people. Justice is a synthesis of freedom and equality.(15)

Hans Kelsen in his book *General Theory of Law and State*, views that law as a social order that can be declared fair if it can sufficiently regulate humans so that they can find happiness in it.(16) Hans Kelsen's view is positivism, in which the values of individual justice can be known by legal rules that accommodate general values, but still, fulfill a sense of justice and happiness.

In the above definition, it can be said that justice is the main pillar of applicable law which expressly recognizes the rights of each person to another and what should be his part, and vice versa. And the justice that society covets is substantial justice which has a material dimension and a religious moral dimension. Therefore, justice is the starting point in establishing law.

Indonesian society is referred to as a plural society.(17) Horizontally it is marked by the fact that social units are based on differences in ethnicity, religion, custom, and regionalism and vertically, the structure of Indonesian society is marked by differences. The vertical differences are the top layer and the bottom layer, agriculture, and industry.

The characteristics mentioned above cause the development of community life cannot to be synchronized. On the one hand, society is still struggling in the agrarian sector, on the other hand, some have stepped into the industrial world or even stepped into the information world. Fred W Riggs referred to as a prismatic society (prismatic society).(18)

In a prismatic society, such as Indonesia, its legal discoveries are based on a system of prismatic legal discoveries, which is a combination of the Civil Law legal system and the Common Law legal system. And known as the "Pancasila Legal System". Humans in everyday life almost in all fields are governed by law. According to Hans Kelsen, the law is an order of human action. Order is a system of rules. The law is not, as it is sometimes said, a rule. Law is a set of rules that contain a kind of unity that is understood as a system.(19)

According to Satjipto Rahardjo, he argues that law is only one of the institutions in society that helps create order. The legal order is the configuration of various institutions such as law and tradition.(19) A broader understanding is said by Muchtar Kusuma Atmadja, that law is one of the social rules (besides moral rules, religion, social rules, decency, customs, etc.) which is a reflection of the values prevailing in society. , so that good law is a living law (living law).(20)

The presence of a rule-of-law state in Indonesia is different from a rule-of-law state, because there are various characteristics such as kinship, fatherhood, balance harmony, and deliberation that must be accommodated in the concept of a rule-of-law country in Indonesia. These values are the roots of Indonesian legal culture which are reflected in the values of Pancasila. The state is not opposed to the people, because it puts forward the characteristics of kinship, cooperation, and fatherhood.

The basis of Belief in the One and Only God is the basis that guides the aspirations of the Indonesian state to carry out all that is good for the people and society. The basis of human behavior is the continuation by the action of the basis that led earlier in the practice of life. The basis of Indonesian unity emphasizes the nature of the Indonesian state as a national state that is one and undivided, based on its ideology. The basis of democracy creates a just government that reflects the will of the people, which is carried out with a sense of responsibility, so that social justice is implemented. The basis of social justice is the guideline and the goal of both.

Law is the basis and guides for all aspects of the community, national, and state activities, of the Indonesian people, both in political, economic, social, cultural, defense, and security life as well as in legal life must always be guided by an institution called law. According to Moh. Mahfud MD, said that the legislature is the parliament which is the legislator by the will of the people. In a democratic country, it is the people who determine the law through their representatives in parliament who are directly elected by the people themselves.(21)

The main purpose of forming laws is no longer to create codification of the norms and values of life that have settled in society, but the main purpose of forming laws is to create codification or change in people's lives.(22) The process of making laws as a form of legal development is a series of events that start from planning, proposing, discussing, and ratifying. In terms of legislation, the Government has carried out a lot to further uphold the existence of Pancasila, including:

- a. The Law on Human Rights, although adopted from outside, still has to be filtered by Pancasila and the 1945 Constitution.
- b. The Law on Clean Governance Free from Corruption, Collusion, and Nepotism, is a good and appropriate legal tool to be upheld and state administrators must understand and live up to Pancasila as the nation's view of life and Pancasila as the basis of the Unitary State of the Republic of Indonesia.
- c. The Law on General Elections, to maintain the Unitary State of the Republic of Indonesia is based on Pancasila and of course cannot be separated from the ideology of Pancasila as the ideals and goals of the nation and the State of Indonesia which are colored by the attitudes and behavior of Indonesian citizens in the life of society, nation, and state.
- d. The Law on Regional Government, Pancasila and the 1945 Constitution, Pancasila Democracy and the Unitary State of the Republic of Indonesia is an integral part and must be implemented and maintained in the Imperative, BEE Media Indonesia, Jakarta, administration of government from the village, district/city to provincial levels.

The Values of Pancasila as the First Reforming the Law

Norms in laws are formed by state bodies entrusted with legislative tasks, namely the task of forming laws. The legislature is a representative body of the people, this body is the hope of the people in making laws according to what the people want.

III. CONCLUSION

1. In the course of the change of government and state from 1945 to the reform era, everything was still based on Pancasila, and in the reform era, Pancasila remained committed to being enforced as a way of life, as the basis of the Unitary State of the Republic of Indonesia and as the Indonesian National Ideology, accompanied by the determination that Pancasila would continue to be practiced. Consistently in the life of society, nation, and state, and there may not be laws and regulations that conflict with the noble values of Pancasila.
2. Efforts to improve the law as a whole involve changes to the content of the law, the structure of the law, and the culture of the law. The improvement of law in Indonesia is still limited to the contents of the law, it is proven that they are happy to make as many laws and regulations as possible to overcome problems in society, which are often not based on the people's need for laws. The structure of the law is still dominated by officials who carry out deviant legal practices, and in the culture of law, there is still bribery that is very prominent in terms of the professionalism of law enforcement officials. In carrying out legal improvements, it is still based on Pancasila values, so that Pancasila always exists at all times.

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