

## Pancasila Values in Indonesian Legal System

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**ABSTRACT:** Pancasila has a very important role in the legal order in Indonesia, because Pancasila is the source of all sources of law which gives a meaning that the legal system in Indonesia must be based on or guided by Pancasila. At this time the existence of Pancasila is increasingly being eroded in the national legal system, because it is influenced by several reasons, including the New Order Period which used Pancasila for the sake of the perpetuation of an authoritarian power. The strengthening of legal pluralism which results in legal contradictions or disharmony.

Pancasila is only used as a symbol in law. Therefore, it is necessary to make efforts to apply Pancasila as the source of all sources of law in the national legal system where Pancasila is a legal school so that legal disharmony does not occur again due to the implementation of legal pluralism. The position of Pancasila as the pinnacle of legislation so that Pancasila has binding power to all types of legislation so that it does not violate the existing legal rules in Indonesia.

**KEYWORDS:** Values of Pancasila and the Indonesian Legal System

### INTRODUCTION

August 18, 1945 by the Indonesian Independence Preparatory Committee Pancasila has a very high and important position in the order of the life of the nation and state in Indonesia. With a very high and important position in the life order of the nation and state, Pancasila provides awareness and references that must be carried out in all aspects of the life order of the nation and state, especially social life, politics, religion, and law.

Pancasila is the source of all sources of law in Indonesia in accordance with MPR Decree Number XX/MPRS/1966 jo MPR Decree Number V/MPR/1973 jo MPR Decree Number IX/MPR/1978. Therefore, Pancasila is the main source in the legal order even though there are so many sources of law that exist, the source of law must be in accordance with Pancasila.

In his book, Sudarto explained that the Indonesian state in carrying out its legal politics is based on the basic philosophy of the State, namely Pancasila and the 1945 Constitution. In his book, Satjipto argues that the Pancasila philosophy, along with the objectives listed in the Preamble to the 1945 Constitution, is the frame of reference for the development of a new legal system. Pancasila contains many religious, humanistic and democratic values. In his book according to Ismail Pancasila as the basis in the development of the national legal system, then in the Indonesian legal system there should be no conflict of values between written law and unwritten law.

Pancasila must include legal planning, law formation, legal research and development, so that Pancasila must be a source of value and a foundation in the framework of thinking. In this context, all Indonesian legal products must be based on the ideas contained in Pancasila.

Pancasila in the life of the nation and state is the philosophy and ideology of the nation and state of Indonesia. The values contained in Pancasila come from the Indonesian people themselves, namely the values of customs, culture and religious values.

In his book, according to M. Ali Mansyur, Pancasila is a basic value and norm to regulate the state government / state administrators. Therefore, the entire implementation and administration of the state, especially state laws and regulations, are elaborated and derived from the values of Pancasila. Furthermore, according to M. Ali Mansyur, Pancasila as the basis of the state is the philosophy of national law should have an imperative nature, namely Pancasila is used as the basis and direction of the development of the philosophy of national law and becomes a reference in the preparation, development and development of a philosophy of law that is consistent and relevant to the values of Pancasila itself.

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In his book according to Soerjanto, Pancasila is the state philosophy, therefore Pancasila is a normative basic value for the entire organization of the Republic of Indonesia. Starting from this opinion, it becomes a necessity that in establishing a regulation that becomes the basis for organizing the life of the nation and state must use the values of Pancasila as a philosophical foundation.

According to Mubyarto, all people in Indonesia must adapt to and implement the principles of Pancasila in all areas of life. Implicitly, Mubyarto's opinion says that Pancasila is the source of all sources of law governing the life of the nation and state for all Indonesians.

Pancasila as the ideology, state foundation and philosophy of the Indonesian nation, whose actualization is reflected in various life arrangements in a broad sense, should be the basis of Indonesia's national legal development, because Pancasila is actually local wisdom for the Indonesian nation according to Wibisono. In conducting national legal development needs to be done through several approaches, including policy approaches, religious approaches and value approaches. Regarding the value-oriented approach, the reconstruction of Indonesian criminal law must be based on the basic ideas of Pancasila as the basic values in life and nationality for the Indonesian people according to Barda.

According to B. Arief Pancasila as the philosophical foundation and norms of criticism of the Indonesian legal system, the development of Indonesian law - in the context of organizing the life of the nation and state - must be imbued with Pancasila. Furthermore, Barda Nawawi Arief said that the reform of national criminal law should be motivated and based on the basic ideas of Pancasila.

This is because Pancasila contains a balance of values, including the value of divinity (religious morals), humanity (humanistic), nationality, democracy, and social justice, therefore it is necessary to explore religious law and customary law as a basis for motivation, inspiration and even for the basis of evaluating the current law according to Barda. The background underlying this opinion is because the values of Pancasila are sourced in the values of religious law and customary law, and these values are more in accordance with the characteristics of Indonesian society which is monodualistic and pluralistic according to Barda.

In relation to national goals which are the ideals of the entire Indonesian nation, the laws used must be in accordance with the ideals and values of the Indonesian nation, because laws that can be enforced and effective are laws that are in accordance with the values of a nation. The law in accordance with the values and soul of the Indonesian nation is a law based on the ideology of the Indonesian nation, because ideology is the crystallization of the values of a nation that is believed to be true. The ideology of the Indonesian nation is Pancasila, then making Pancasila as the ideal of law is a necessity. Pancasila as the source of all sources of law has been established at the time of Indonesia's new independence, namely since the Pancasila principles were included in the preamble of the 1945 Constitution as the basis of the state. Performing criminal law reform based on Pancasila values is expected to achieve Pancasila justice, namely divine justice, humanitarian justice, democratic justice, nationalistic justice and social justice. Pancasila justice that is realized in the category of five kinds of justice is a form of real justice (substantive justice), not just formal justice according to Barda.

As the foundation of the state, Pancasila is the basic law for the state where everything related to the constitutional life of the Republic of Indonesia must be based on Pancasila. This implies that all regulations that apply in the republic of Indonesia must be based on Pancasila. In other words, Pancasila is the source of all sources of law for the nation and state of Indonesia. Therefore, all acts of power or force in society must be based on the rule of law sourced from Pancasila according to Darji.

The necessity of law based on Pancasila as the ideology of the nation is because the ideology of the nation is the basis of the philosophy of the State according to Kaelan. This shows that the law cannot simply be transformed from one country to another, because the law of a nation is a reflection of the values and morals of the nation concerned According to Suteki. Law can be enforced if the law is in accordance with the values of the nation itself according to Satjipto. So an effective law is a law based on the values of the nation.

### Problem Formulation

The problems above, make Pancasila as the source of all sources of law during the reformation period until now increasingly experiencing erosion. Therefore, Pancasila must be truly applied as the source of all sources of law in the national legal system. For this reason, the writing of this paper intends to examine:

1. How is the existence of Pancasila as the source of all sources of law?
2. How are efforts to strengthen and apply Pancasila as the source of all sources of law in the national legal system?

### RESEARCH METHODS

The type of research used in this research is Normative-Empirical. Normative in essence examines the law which is conceptualised as a norm or rule that applies in society, and becomes a reference for the behaviour of every human being. Normative research according to Soerjono Soekanto and Sri Mamudji is legal research conducted by examining library materials or secondary data (literature, legal writings, and relevant journals).

### DISCUSSION

The source of law is essentially where we can find and explore the law. Legal sources according to Zevenbergen can be divided into material legal sources and formal legal sources. The source of material law is the place from which the legal material is taken. This source of material law is a factor that helps the formation of law, for example: social relations, political power relations, socio-economic situations, traditions (religious views, morality), international developments, geographical conditions. The source of formal law is the place or source from which a regulation obtains legal force. This relates to the form or method that causes the regulation to formally apply.

According to Dani, if it is associated with the two types of legal sources above, then Pancasila is a material source of law while formal ones such as laws and regulations, interstate agreements, jurisprudence and customs. Pancasila as a source of material law is determined by the content or weight of the material contained in Pancasila. There are at least three qualities of Pancasila material, namely: First, the content of Pancasila is the philosophical content of the Indonesian nation. Second, the content of Pancasila as a national legal identity. Third, Pancasila does not determine orders, prohibitions and sanctions but only determines the fundamental principles for the formation of law (meta-juris).

The existence of legal sources as a place to explore and find laws in a society and state, resulting in the law having its own order. In this regard, modern and contemporary legal scholarship is strongly influenced by Hans Kelsen's legal theory of *grundnorm* (basic norm) and *stufenbauthorie* (order of norms). According to Kelsen, norms whose validity cannot be derived from other higher norms are referred to as basic norms. All norms whose validity can be traced to the same basic norm form a system of norms, or an order of norms. This primary source norm is the binder between all the different norms that form a norm order. That a norm belongs to a system of norms, to a particular normative order, can be tested only by confirming that it derives its validity from the basic norm that forms that normative order.

The concept of Kelsen's basic norm was later affirmed by Nawiasky although with another designation, namely *Staatfundamentalnornm*. Nawiasky asserted, *Staatfundamentalnornm* or state fundamental norm (basic norm) is the highest norm in a state and this norm is a norm that is not formed by higher norms, but is pre-supposed or determined in advance by the community in the state and is a norm on which the legal norms below depend. Even Nawiasky also emphasized that the content of the state's fundamental norms is the basis for the formation of the constitution or basic law according to Maria Farida.

Pancasila as the source of all sources of law is intended as the source of the legal order of the Indonesian state. According to Roeslan Saleh, the function of Pancasila as the source of all sources of law means that Pancasila serves as:

- 1) Indonesian legal ideology,
- 2) A collection of values that must be behind the whole of Indonesian law,
- 3) Principles that must be followed as a guide in making legal choices in Indonesia,
- 4) As a statement of the psychological values and desires of the Indonesian nation, also in law according to Roslan Saleh.

The above TAP MPR regulation further clarifies the meaning of the term source of law in the legal system in Indonesia that the source of law (the place to find and explore the law) is written and unwritten sources. In addition, it makes Pancasila the main reference for making all kinds of laws and regulations. However, the term Pancasila as the source of all sources of law is no longer found. This does not interfere with the existence of Pancasila as a basic norm that induces all norms but certainly reduces the supremacy and binding power of Pancasila in the legal order. It is said so, because the values of Pancasila as a way of life, consciousness, legal ideals and moral ideals no longer get juridical legitimacy. Especially, the modern legal system has been heavily influenced by the legal positivism school of thought which only recognizes written regulations. For this reason, it is a mistake not to explain explicitly about Pancasila as the source of all sources of law.

Interestingly, the supremacy of Pancasila in the legal system is again found in Law No. 10/2004 on the Formation of Laws and Regulations. Article 2 of this law states "Pancasila is the source of all sources of state law". The law was later replaced by Law No. 12/2011 which regulates the same thing. Article 2 of this law still emphasizes the same thing as in Law NO. 10 Year 2004 that Pancasila is the source of all sources of state law. Thus, the existence of Pancasila has again become the supreme norm in the Indonesian legal system so that Pancasila as a way of life, awareness and legal ideals and moral ideals of the nation is legitimized juridically.

The erosion of Pancasila as the source of all sources of law has resulted in Pancasila no longer having binding power in the national legal system. The reality of law that is far from the corridor of the basic norms of this state causes the legal content and implementation of law in Indonesia to not find a clear form. Moreover, the attitudes of resistance to the New Order and the strengthening of legal pluralism add to the lack of identity of the national legal system.

Although Pancasila as the source of all sources of law has a legal home both through TAP MPR and Law No. 10 of 2004 which was later replaced by Law No. 12 of 2011, it still does not guarantee the position of Pancasila in the Indonesian national legal system. Therefore, some efforts are needed so that Pancasila as the source of all sources of law is not only limited to having a legal house but can be applied in the legal system. There are two efforts for that, namely: making Pancasila as a stream of positive law and positioning Pancasila as the peak of legislation.

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The thinking that legitimizes the absolute power of the ruler is then refined according to the needs and development of society and the times. Austin's certainty thinking that placed legal certainty on the ruler's orders was refined (developed) by Hans Kelsen into legal certainty found in all written regulations or legism. Although it has been refined, it must be remembered that the existence of a school of law is always determined by its relevance. That is, a school of law will remain true if it is in accordance with a certain time and space.

For example, legal positivism will still be considered correct and ideal to be applied in Indonesia as long as it is still relevant to the needs and development of Indonesian society. Based on the formation of a legal school above, Pancasila is eligible as a legal school.

In a series of formation processes, Pancasila was proposed by Soekarno on June 1, 1945 and then refined by the Committee of Nine which produced the Mukadimmah/Genlement Agreement / Jakarta Charter on June 22, 1945. Then, it was refined again by crossing out seven words in the formulation of the first principle and then finalized on August 18, 1945. This series of processes has shown Pancasila to be feasible as a school of thought. Likewise, in the principle of relevance or suitability to the needs and development of society, Pancasila has fulfilled it. Thus, if Pancasila is used as a school of law, it means the flow of law that was born and developed according to the reality of life, the needs and development of the Indonesian nation. The important purpose of making Pancasila into a legal school is certainly not to fight against legal schools that are still relevant to be applied as positive law but mainly so that the Indonesian state has a clear, intact and impartial national legal system.

Pancasila as a school of law will certainly eliminate the pluralism of legal systems in law because the more plural or diverse the laws applied, the more contradictions that occur between these legal systems. Islamic law cannot be parallel to common law and customary law cannot be parallel to civil law. The diversity of legal systems like this is what makes law unproductive and results in the difficulty of achieving the ideals of Indonesian law such as certainty, justice and usefulness as well as prosperity and welfare. Pancasila must be present as a school of law to reconcile legal disharmony caused by legal diversity. Especially, in order to achieve the ideals of Indonesian national law.

Pancasila as the source of all sources of law does have a legal home or juridical legitimacy, but does not yet have a position in the hierarchy of legislation. Regarding Pancasila in the hierarchical system of legislation, so far an unproductive view has often been maintained that Pancasila is unethical to be included in the hierarchy of laws and regulations because Pancasila is the basis of the state which has become a source of legal order. However, when referring to Kelsen and Nawiasky's *stufenbautheory* which requires that the top of the hierarchy of norms is the basic norm or *Grundnorm/Staatsfundamentalnorn* then Pancasila as the basic norm should be at the top of the order of norms. Thus, the order of legislation from top to bottom becomes as follows:

- a) Pancasila,
- b) Constitution of the Republic of Indonesia Year 1945,
- c) Decree of the People's Consultative Assembly of the Republic of Indonesia,
- d) Laws / Government Regulations in Lieu of Laws
- e) Government Regulation,
- f) Presidential Regulations,
- g) Provincial Regional Regulations; and
- h) Regency/City Regional Regulations.

The position of Pancasila as the top of the hierarchy of laws and regulations is not intended to reduce the existence of Pancasila as a way of life and the basis of the state but as an effort to avoid deviations in laws and regulations. Pancasila as the source of legal order or the source of all sources of law in the Indonesian legal order has become something that means mere formality. The facts have proven that so many laws and regulations have deviated from Pancasila. The cancellation of 139 local regulations by the Minister of Home Affairs is evidence of deviations from Pancasila in legislation. These deviations will certainly remain potentially repeated if Pancasila is not included in the hierarchy of laws and regulations. Thus, Pancasila as a basic norm must be included in the hierarchy of laws and regulations in order to have binding power for all laws and regulations.

Disharmonization between these laws has two meanings: First, the law is unable to concretize the 1945 Constitution and denies Pancasila as stated in the Preamble of the 1945 Constitution. Second, the 1945 Constitution, which is included in the hierarchy of laws and regulations, still provides room to be violated, let alone Pancasila, which is not included in the order of laws and regulations. Therefore, referring to the school of legal positivism which prioritizes the element of legal certainty or legism, all legal instruments must be given clear legal certainty. One of the efforts to provide legal certainty is to include all the fittings of these rules in the order of laws and regulations. Thus, Pancasila as one of the organs of the rule, namely as a basic norm, must be included in the hierarchy of laws and regulations.

Making Pancasila a school of law and placing Pancasila as the top of the hierarchy of laws and regulations will strengthen the existence of Pancasila as the source of all sources of law in the national legal order. Thus, the face of legal pluralism or the practice of law that often makes Pancasila a mere symbolic has no place anymore in the national legal system. Likewise, the attitude of resistance to the Orba which has utilized the status of Pancasila as a source of legal order for the benefit of power and strengthening authoritarian rule; will not continue to haunt the Indonesian people. The author's optimism for the implementation of Pancasila as

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the source of all sources of law in the national legal system is added by the formation of Presidential Regulation Number 54 of 2017 concerning the Presidential Working Unit for Pancasila Ideology Development (UKP-PIP). It is hoped that with the Perpres, the enforcement of Pancasila is not only in the order of daily life both in society, education and bureaucracy. However, also in the legal order so that the existence of Pancasila as the source of all sources of law is truly applied in the national legal order.

### CONCLUSION

Based on the description above, it can be concluded that the existence of Pancasila as the source of all sources of law in the national legal order still cannot be applied practically. The development of national law must be based on the principles that exist in the values of Pancasila because the values of Pancasila are actually the crystallization of religious values and customary values that are believed to be true by the Indonesian people and become a guide to life. Pancasila as the source of all sources of law in the national legal system is sought to make Pancasila a legal stream so that there is no longer Pancasila is no longer merely normative-semantic as the source of all sources of law but can actually be applied in the national legal system.

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