

**JUSTICE IN PARTNERED IN THE LEGAL SYSTEM OF PANCASILA
AS THE PARENT OF STRENGTHENING THE VALUE
OF UNITY AND UNITY**

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ABSTRACT: Pancasila as the source of all sources of law in Indonesia. Especially is the side of the value of justice itself which reflects on justice with dignity as a characteristic of justice for the Indonesian nation. The theory of justice which is based on the values of Pancasila, especially the second principle, namely the principle of humanity that is just and civilized and is supported by the first principle of God Almighty. The terms fair and civilized as meant in the second principle of Pancasila, are interpreted by Notonagoro as a sense of humanity that is fair to oneself, to fellow humans, and to God (causa prima). Based on this fair and civilized humanitarian principle, legal justice that is owned by the Indonesian nation is justice that humanizes humans. According to Teguh Prasetyo, justice that humanizes humans is called a dignified theory of justice. In the sense that even though someone has been legally guilty, that person must still be treated as a human being in accordance with their inherent rights. So that justice with dignity is justice that balances rights and obligations. The value of unity and integrity is based on and imbued with the first sila (divinity), the second principle (just and civilized humanity) and underlies and animates the fourth principle (democracy led by wisdom in deliberation / representation) and the fifth principle (social justice for all Indonesian people). Thus, the value of unity and integrity in question is unity and unity that is godly, humane, human, and just, which are the characteristics of the Pancasila legal system.

Keywords: Dignified Justice, Pancasila Legal System, Unity and Unity.

INTRODUCTION

Pancasila and the legal system are essentially two entities that are connected to each other, namely Pancasila as the main source of the legal system and the legal system as a way to strive for the concretization of Pancasila. This reciprocal relationship strengthens the position of Pancasila in the legal system. Therefore, it is also necessary to understand the position of Pancasila as the source of all sources of law in Indonesia. Especially is the side of the value of justice itself which reflects on justice with dignity as a characteristic of justice for the Indonesian nation.

DISCUSSION

Justice with dignity in the Pancasila Legal System as the Mother of Strengthening the Value of Unity and Unity

The source of the law is a place where you can find and explore the law. Sources of law are divided into material sources of law and sources of formal law. The material source of law is the place from which the legal material is taken. This material source of law is a factor that helps form the law; for example, social relations, relations of political power, socioeconomic situation, traditions (religious views, morals), 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 manner in which the regulation is formally enforced.¹

Associated with the two types of legal sources above, Pancasila is a material source of law while formal ones such as statutory regulations, agreements between countries, jurisprudence and habits. The existence of a source of law as a place to explore and find law in a society and a country, resulting in law having its own order. In this regard, the realm of law in the modern and contemporary era is strongly influenced by Hans Kelsen's legal theory regarding grund norm (basic norms) and stufenbau theorie (order of norms). According to Kelsen, norms whose validity cannot be obtained from other higher norms are called basic norms. All norms whose validity can be traced to the same basic norm form a norm system, or an order of norms. The basic norm which is the main source of this is the binding between all the different norms that form a norm order. That a norm is included in a norm system, into a certain normative order, can be tested only by confirming that the norm derives its validity from the basic norms that shape the norm order.²

According to Kelsen's basic norms, Pancasila is the basic norm which is the parent of all kinds of norms in the norm system in Indonesia. To clarify the position of basic norms in the legal system of a country, according to Kelsen, namely, the pattern of relations between norms through the theory of stufenbau or hierarchical norms. Kelsen explained that the relationship between norms that regulate the formation of other norms with other norms can be described as the relationship between "super ordination" and "sub ordination". The norms that determine other norms are the higher norms, while the norms that are formed according to these regulations are the lower norms. According to Achmad Ali, stufenbau theorie Kelsen is a legal

¹ Fais Yonas Bo'a, *Pancasila in the Legal System*, Student Library, Yogyakarta, 2017, p.120-121.

² *Ibid.*, p..121

rule as a whole from the basic norms at the top of the pyramid, and the more diverse and spread out it is. The top basic norms are abstract and the lower the more concrete. In that process, what was originally something "should" turns into something "can" be done.³

Based on Kelsen's ideas above about stufenbau theory or norm order theory, it can be understood that basic norms are at the top of the pyramid. Therefore, Pancasila as the basic norm is at the top of the pyramid of norms. Thus, Pancasila becomes the source of all laws and regulations. For this reason, Pancasila has become a source of orderly law or better known as the source of all sources of law. This was confirmed by the DPR-GR memorandum which was then given a juridical basis through MPR Decree No. XX / MPRS / 1966 in conjunction with MPR Decree No. V / MPR / 1973 in conjunction with MPR Decree No. IX / MPR / 1978 Pancasila as the source of all sources of law is intended as a source of orderly law in the Indonesian state. According to Roeslan Saleh, the function of Pancasila as the source of all sources of law means that Pancasila has the position of:⁴

- (1) Indonesian legal ideology,
- (2) The set of values that must be behind the entirety of Indonesian law,
- (3) The principles that must be followed as instructions in making a choice of law in Indonesia.
- (4) As a statement of the psychological values and desires of the Indonesian people, also in law.

The existence of Pancasila as the source of all sources of law is then reaffirmed in MPR Decree No. III / MPR / 2000 concerning Sources of Law and Order of Legislation. Article 1 of the TAP MPR contains three paragraphs:⁵

- (1) Legal sources are sources used as material for the preparation of statutory regulations
- (2) Sources of law consist of sources of written law and unwritten law
- (3) The source of the national basic law is Pancasila as written in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely Almighty Godhead, just and civilized humanity, Indonesian Unity, Democracy led by wisdom wisdom in deliberation / representation, as well as with realizing a social justice for all Indonesian people.

The TAP MPR regulation above further clarifies the meaning of the term sources of law in the legal system in Indonesia that the sources of law (the place to find and explore law) are written

³ *Ibid.*, p. 121-122.

⁴ *Ibid.*, p. 122-123.

⁵ *Ibid.*, p. 123.

and unwritten sources. In addition, making Pancasila the main reference for making all kinds of laws and regulations.⁶

By paying attention to the substance contained in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, it can be understood that the meaning of a rule of law as meant in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is the constitutional state of Pancasila, namely the constitutional state. which is based on the sound of Pancasila. This means that Indonesia has its own meaning in determining the characteristics of an Indonesian rule of law.

The substance contained in the constitutional state of Pancasila is ideal and comprehensive. However, the ideal Pancasila rule of law concept will not be able to contribute greatly to the life of the nation and state without being accompanied by seriousness in realizing it, so presumably all elements of the nation, especially those who hold power in the country, must live and understand and have the will and determination that seriously in realizing a rule of law that prioritizes the noble values of Pancasila.⁷

Pancasila as the basis of state philosophy is a fundamental state norm (staats fundamental norm) which is used as the source of all sources of law or a source of legal order in Indonesia. The position of Pancasila as the state's fundamental norm (staats fundamental norm) was first put forward by Notonagoro. Pancasila as the state's fundamental norm is the highest norm in Indonesia which is a norm that is not formed by a higher norm, but is predetermined by the Indonesian people and is a norm on which the legal norms under it depend.⁸

According to Hans Nawiasky, the contents of the state's fundamental norms (staats fundamental norm) are norms that are the basis for the formation of a country's constitution or Basic Law (staat verfassung), including the norms of its amendment. The essence of the statistical fundamental norm is a requirement for the enactment of a constitution or Basic Law. Fundamental norm statutes first existed before the existence of a constitution or Basic Law.⁹

⁶ *Ibid.*, p. 123.

⁷ Khudzaifah Dimiyati, et al; *State Genealogy: Hegemony of the Corporatocracy of the Indonesian Welfare Law State*, Genta Publishing, Yogyakarta, 2020, p. 87.

⁸ Teguh Prasetyo, *Law and Legal System Based on Pancasila*, Media Perkasa, Yogyakarta, 2015, p. 69.

⁹ *Ibid.*, p. 69-70.

Pancasila as the state's fundamental norm (staats fundamental norm) places it as the basis for the formation of the Indonesian constitution or UUD and also the formation of legal norms under it. This position requires that the formation of positive law is to achieve the ideas in Pancasila, and can be used to test positive law. By stipulating it as the state's fundamental norm (staat fundamental norm), the formation of law, its application and implementation cannot be separated from the values of Pancasila. Thus Pancasila is the highest norm which has a higher position than the Constitution or the Basic Law. this is in accordance with the theory of Hans Nawiasky regarding the arrangement of legal norms. The arrangement is:¹⁰

- (1) State fundamental norms (staats fundamental norm), namely Pancasila;
- (2) Basic state rules (staats grundgesetz), namely the 1945 Constitution of the Republic of Indonesia;
- (3) Formal Law (Formal Gezetetz);
- (4) Implementing regulations or autonomous regulations, namely: starting from government regulations to regional head regulations (regents / mayors).

With its position as the state's fundamental norm (staats fundamental norm) it has positioned Pancasila as the source of all sources of law or the source of orderly law in Indonesia. this means that it has made Pancasila a measure in judging law. Legal rules applied in society must reflect awareness and sense of justice in accordance with the personality and life philosophy of the Indonesian nation, namely Pancasila.¹¹

The source of the legal order of the Republic of Indonesia is the view of life, awareness and ideals of law as well as moral ideals which include the psychological atmosphere and character of the Indonesian nation, namely the ideals of individual independence, national independence, humanity, social justice, international and international peace, political ideals regarding the nature of the form and purpose of the state, moral ideals regarding social and religious life as the manifestation of human conscience.¹²

The values contained in the Pancasila are concretized into legal norms. Therefore, every legal norm in Indonesia must be based on the values contained in the Pancasila principles. Pancasila

¹⁰ *Ibid.*, p. 70.

¹¹ *Ibid.*, p. 70-71.

¹² *Ibid.*, p. 71.

as the guiding star for the formation of every legal norm, then these legal norms must not conflict with the values of Pancasila. Besides that, hierarchically, the lower legal norms should not conflict with higher legal norms.

Pancasila as a legal system needs to gain a deeper understanding of the legal system; according to Sudikno Mertokusumo the legal system is an open system, but open in the sense of "dictating out", not dictated from outside. Law is "influencing", not "influenced" because the idea that exists in law as a legal system, namely that the legal system is complete. Incompleteness or deficiencies in the system are complemented by the system itself with interpretations.¹³

The Pancasila Legal System is a legal system that belongs to the Nation and the State of Indonesia itself, part of the legacy of world civilization. The Pancasila Legal System is an authentic, original legal system. The Pancasila Legal System is a legal system in itself, different from any legal system in the world. Even though the Pancasila Legal System is a legal system in itself, sovereign and must be different from any legal system in the world, the Pancasila Legal System lives in a tolerant manner with other legal systems. Tolerance in the Pancasila Legal System is shown through coexistence with legal systems that are already established, civilized and have been accepted as legal systems within the respective legal systems.¹⁴

In principle, the Pancasila Legal System is a unified legal system that is complete and pure and is not fragmented. The current legal system in Indonesia is the Pancasila Legal System, in which Pancasila is the source of all sources of law in Indonesia. Different conditions with Indonesia during the colonial period, for example during the "Dutch East Indies" period, the people were not subject to the same legal system, but the people were classified into groups. At that time there were European groups, Bumiputera groups and Foreign Eastern groups. The non-compliance of the laws in force during the Dutch East Indies era, was not only interpreted as the absence of a uniform legal system, but was clearly interpreted as having no system, because it was fragmented. this is different from the wholeness and integrity in the Pancasila Legal System.¹⁵

¹³ Sulistiowati and Nurhasan Ismail, *Normalizing the Principles of Pancasila Law, in Cooperative Business Activities and Limited Liability Companies*, Gadjah Mada University Press, Yogyakarta, 2018, p. 31.

¹⁴ *Ibid.*, p. 31-32.

¹⁵ *Ibid.*, p. 32.

In principle, all these elements exist in a unified and unified whole called the Pancasila Legal System, which is distinct when compared to all the elements in another entity outside the Pancasila Legal System. Within the integrity of the Pancasila Legal System there are systematic relationships between elements in the system. The elements in the unity are interconnected and bind each other (internal relationship between its various parts). With the unity where each part is shoulder to shoulder with each other in the bonds of each part forming a whole and round part.¹⁶

Functions with different characteristics make the barrier stretch out like a dividing line between the Pancasila Legal System as the legal system of Indonesia from a sovereign state.¹⁷

The Pancasila Legal System is essentially a creation of the Indonesian Nation, under the wisdom and wisdom given by God, all of which have been summarized in Pancasila. That Pancasila must really be used as the source of all sources of law or the main source of law, the first agreement, the positive legal system of Indonesia. Law enforcement models, such as those developed in the West, seem to be often adopted, without including how their social bases and social origins are studied and developed or adapted to national philosophical, juridical and sociological ways. Western models or concepts that were previously accepted as if they were normative absolutes must of course be adapted to the national or Volksgeist spirit.¹⁸

Concrete efforts are needed to develop and develop law in Indonesia in a rational systemic manner, perfect the understanding of the rule of law which is not always identical with the concept of the rule of law or rechts staat, and adjust the concept of a rule of law as a direct translation from rechts staat to a rule of law based on Pancasila. Namely a rule of law that contains values in Pancasila which are extracted from Indonesia's own soil and which are conceptually known as Volksgeists.¹⁹

Indonesia also recognizes the theory of dignified justice, namely the theory of justice which is based on the values of Pancasila, especially the second principle, namely the principle of humanitarianism that is just and civilized and is maintained by the first principle of God Almighty. The terms fair and civilized as meant in the second principle of Pancasila, are

¹⁶ *Ibid.*, p. 32-3.

¹⁷ *Ibid.*, p. 33.

¹⁸ Teguh Prasetyo, 2015, *Justice with Dignity in Legal Theory Perspective*, Nusa Media, Bandung, 2015, p. 183.

¹⁹ *Ibid.*, p. 184.

interpreted by Notonagoro as a sense of humanity that is fair to oneself, to fellow humans, and to God (*causa prima*). Based on this fair and civilized humanitarian principle, legal justice that is owned by the Indonesian nation is justice that humanizes humans. According to Teguh Prasetyo, justice that humanizes humans is called a dignified theory of justice. In the sense that even though someone has been legally guilty, that person must still be treated as a human being in accordance with their inherent rights. So that justice with dignity is justice that balances rights and obligations.²⁰

Many legal problems in Indonesia are only sought for rationalization or explanation as well as justification for these various problems in terms of the rule of law and *rechts staat* which are considered identical or synonymous with the rule of law. Grammatically, the word *rechts staat*, for example, has an equivalent meaning or is synonymous with the word rule of law. *Recht* means law and *staat* means country. If the *rechts* and *staat* syllables in the German dictionary *rechts staat* are traced etymologically, then *rechts staat* is a combination of the words *rechts* and *staat*. If the roots of a word are known, and if a word consisting of a root or syllable has been identified as coming from a German language that has the same meaning as the denotative meaning that exists according to the Indonesian dictionary, then that means, there is no other way, except to acknowledge a combination. the second meaning of the syllable, namely *rechts staat*, is synonymous with rule of law. According to the theory of justice, dignified views that such a lexical understanding seems simplistic.²¹

Simplistic is, that this meaning ignores the basic principles of adopting principles and rules that come from one legal system into another, it is obligatory not to ignore historical (*Volksgeist*) and cultural factors that have given birth to concepts such as the rule of law and *rech staat*. The theory of justice with dignity, is then called dignified considering that this theory criticizes the adoption of concepts such as *recht staat* and the rule of law without considering *Volksgeists* and culture and other social dimensions behind the birth of these concepts.²²

The theory of justice with dignity puts forward the argument that although concepts such as the rule of law and *rechts staat* are etymologically synonymous with the rule of law, the two concepts cannot be equated with the concept of a rule of law or the concept of a rule of law

²⁰ file:///C:/Users/multimedia/Downloads/433-Article%20Text-1060-1-10-20160711%20(2).pdf. p. 20-21.

²¹ *Ibid.*, p. 184

²² *Ibid.*, p.184 -185

based on Pancasila. The dignified justice theory arrives at such arguments after finding that the results of extracting the noble values of Pancasila as a source of values and measures of good behavior are the values and virtues that are most in accordance with the values of the nation. The values in Pancasila as the first agreement, according to the theory of dignified justice, are then used as values that come from one source of philosophical law, a source of historical law, and a source of sociological law as a package. that is because, all the values and standards of good behavior are in fact within, and the same and congruent with the law itself.²³

The rule of law of Pancasila is a state of law based on the values contained in Pancasila as an entity that represents the reality of life of Indonesian society. The reality of life is as embodied in Pancasila, such as Divinity as the foundation of morals and religion, humanity as the foundation of a rational and civilized society, unity as the foundation of the same fate and responsibility, democracy or democracy as the foundation of kinship and ideal politics, welfare as the foundation of a stable economy based on kinship. and justice as the foundation of legal life. Therefore, it becomes a demand and need that the constitutional state of Indonesia is a state based on Pancasila law.²⁴

CONCLUSION

Strengthening the value of unity and integrity as a legal principle must of course be based on and animated by the values that exist in the Pancasila value system which is also a legal system, strengthened by a dignified justice theory that puts forward historical, cultural, sociological and philosophical factors as well as the soul and spirit of its people. as a basis. Thus the value of unity and integrity is based on and imbued with the first principle (divinity), the second principle (just and civilized humanity) and underlies and animates the fourth principle (democracy led by wisdom in deliberation / representation) and the fifth principle (social justice for all the people of Indonesia). Thus, the value of unity and integrity in question is unity and unity that is godly, humane, human, and just, which are the characteristics of the Pancasila legal system.

²³ *Ibid.*, p. 185

²⁴ Fais Yonas Bo'a, *Pancasila in the Legal System, Student Library*, Yogyakarta, 2017, p.120.

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