



The Existence of Pancasila Ideology in the Concept in Indonesia Legal State

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Abstract

Purpose of this paper is to describe the existence of Pancasila in the concept of state Indonesian law. The approach used in this research is a qualitative approach using data sources in the form of writings such as books, journals and research results. The source in question is of course the concept of the Indonesian rule of law. The analytical method used is a descriptive method related to the theme of the writing. It can be concluded that Indonesia is a constitutional state. Article 1 paragraph (3) states that Indonesia is a state based on law. Thus it is clear that the form of the state of Indonesia is a constitutional state. The rule of law in Indonesia refers to the concept of the rule of law *rechtsstaat* and the rule of law, but Indonesia has its own characteristics and uniqueness because the laws that are formed and implemented in Indonesia are guided by Pancasila in all aspects of people's lives.

Keywords: *Ideology; Pancasila; Rule of Law*

Introduction

Recently, many countries have used the concept of a rule of law as an ideal state concept. This shows that the importance of law in a country in regulating the life of the nation and state. At first, the idea of the concept of the rule of law was contemplated by a philosopher named Plato, who was subsequently developed by Aristotle who was also a philosopher. Plato's idea emerged because it was influenced by the conditions that occurred in his country which was led by a leader who did not care about the fate of his people. This situation urges Plato to think about the ideal form of state (Hakim, 2011: 118).

However, at the beginning of its appearance, the rule of law concept was limited to an attempt to oppose the king's power which was too absolute. At that time, the concept of a rule of law was only limited to limiting the power of the king, because the power of a country was controlled by the king, it was very vulnerable to cause gaps. With these considerations, the limitation of power by the king is carried out for the survival of the life of a country today and in the future (Siagallan, 2016: 131). Without restrictions on the king's power, it will be difficult to monitor the performance carried out by the government. Thus, the basis for the concept of a state in the form of law is identical to the limited government power and protects human rights (HAM).

The ideas produced by Plato and Aristotle were not only limited to thinking, but Immanuel Kant tried to implement these ideas in Continental Europe supported by the conditions that existed at that time, so the nature of the law was liberal with two main principles, namely limited government power and protecting human rights. owned by every citizen. The concept of the rule of law implemented by Immanuel Kant is growing over time and until that time it gets attention and improvement from Friedrich Julius Stahl who provides an overview of the concept of a rule of law in its implementation, which is protecting human rights and limiting power by the rulers through the distribution of power as taught regarding trias politica (Muslih, 2013: 131).

Indonesia is a state based on law, as stated in Article 1 Paragraph (3), "Indonesia is a state based on law. Indonesia is a constitutional state, but it is not an article in the law that provides an explanation of the concept of a rule of law adopted by Indonesia. Indonesia is a law state, where every aspect of people's life must be guided by in its implementation, Indonesia refers to both the *rechtsstaat concept* and the concept *rule of law rule of law*. However, Indonesia has its own characteristics, because the rule of law in Indonesia is based on the values contained in in Pancasila. The role played by Pancasila is not only limited to the ideology of the Indonesian state, but Pancasila also plays an important role as the basis and ideals of Indonesian law (Notonegoro, 1983: 53).

Law is a very important thing in order to form a prosperous society. Thus, in its formation it must be based on the law that is rooted in Pancasila. This means that in the formation and implementation of the law, it must be guided by Pancasila. Where Pancasila functions as a basic norm in the formation of laws and regulations.

Today, there are many ideologies that continue to develop and globalization that is happening so fast. Where globalization can affect a legal system in a country. Based on Pancasila, a form and implementation of the law is expected to become the support and foundation of the nation. In addition, Pancasila is also a tool that functions to unite all Indonesian citizens without exception in facing all kinds of challenges that exist today.

Pancasila contains five principles consisting of principles, namely Divinity, namely Humanity, Nationality, and Justice. Thus, in Indonesia, all kinds of law formation and implementation cannot be separated from Pancasila. It can be said that the laws adhered to by the Indonesian nation state are based on Pancasila. Not only is the law adopted, but all forms of Indonesian government are also based on Pancasila.

Discussion

1. Rule of Law Concept

The concept of the rule Plato has the concept of rule of law that:

"a good rule of law is based on a good rule (law) which is referred to as *nomoi*". In the 17th century, where there was an oppression carried out by the gp; the king's food to the smart and rich groups or what was called the *menschen von bezits und bildung*. This is carried out because they want a change in the social structure which they feel is not beneficial for them (Azhary, 2007: 88-89).

Starting from a resistance to abuse by the authorities (Agus, 2017: 6). During its development, the rule of law concept is divided into two models; consisting of models *European* Continental and *Anglo Saxon*. The model *European* Continental is a model of a rule of law based on the rule of law

(*rechts soevereiniteit*) with the core *rechtsstaat* (rule of law). And the Anglo Saxon model is a model that is based on *Common Law* and is based on *The Rule of Law* (Kusniati, 2011: 80).

Both *rechtsstaat* and *rule of law* are theories which consider that the highest supremacy is carried out by law, and use law as a guide in various aspects of people's life. *Rechtsstaat* in his idea is oriented to a system used by a country in a legal context. The legal system used is based on *Europe Continent* Which is often referred to as *civil law* or *modern roman law* which at the beginning of its appearance came from a revolutionary struggle. Meanwhile, the concept of *rule of law* *rule of law* is a concept that was born from the state *Anglo Saxon* which in its journey developed revolutionarily. The differences in the concept of *rechtsstaat* and *rule of law* *rule of law* are as follows (Alexander, 2015: 80).

With different backgrounds, of course the two have differences. But both also have something in common, namely trying to recognize and protect the human rights of citizens (Huda, 2006: 73-74). In general, both have the main objective, namely, to provide protection for every citizen from all kinds of problems that occur, to provide opportunities for every citizen to manage their own life based on rational thinking and the rule of law must provide guarantee of any misconduct - handedness is happening to citizens (Fallon, 1997: 11).

Frederich Stahl stated that there are four elements contained in *rechtstaat*, namely protection of human rights for every citizen, separation of sovereignty, all forms of governance based on the regulations applicable in a country, and judicial power that can take place without direction. Meanwhile, in the Rule of Law, Albert Venn Dicey stated three important components containing the law states that the absolute supremacy, *equality before the law* and *the constitution* (Wijaya, 2015: 202).

The four elements of the state of law submitted by Frederich Stahl can be put together with the rule of law delivered by Albert Vann Dicey to mark the characteristics of the rule of law concept today, namely the legality of human rights and the rule of law (Wahid, Sunardi, & Kurniati, 2018: 213). The principle of rule of law considered significant by "*The International Commission of Jurist*" is as follows (Kusniati, 2011: 80).

- a. Every citizen is subject to the regulations that have been set,
- b. The state authorities respect the rights possessed by every citizen, as well as
- c. Impartial judicial power.

In this regard, Scheltema has 5 separate formulations regarding the basis of the rule of law, namely:

- a. Respecting human rights by centering on the dignity possessed by each citizen.
- b. The principle of legal provisions.
- c. Applying the principle of equality in the eyes of the law (*similia similibus or equality before the law*), the government must consider all its people to be equal before the law without privileging or discriminating against a particular group.
- d. The principle of democracy, every citizen has the same opportunity to be involved in government activities.
- e. Both the government and state officials have the duty to ensure the lives of their citizens.

2. State of Law of Indonesia

Both *rechtstaat* and *rule of law* cannot be separated from the concept of *nomocracy*. *Nomocracy* can with the word democracy which comes from the word "*nomos*" which means

norm and " *cratos* " which means power. Democracy and rule of law, where the implementation of absolute government is constitutionally dependent on the laws that are above it (Ridlwani, 2012: 114).

The factor that is used as a limit in the implementation of sovereignty is the applicable regulations, therefore *nomocracy* is closely related to law as it acts as the rule of law. This situation can be related to the concept of " *rule of law* " developed by Albert Venn Dicey, which transformed into " *the rule of law, not of man* " which means that the law is the leader, not the person. Plato wrote a book with the title " *Nomoi* " or " *The Laws* ", illustrating that *democracy* has been developed since Ancient Greece (Wahid, Sunardi, & Kurniati, 2018: 211).

Jimly Assidique stated that the concept of *rechtstaat* and *rule of law* had been used as references since before independence, but initially they were only used as ideas related to the conceptual building of the Indonesian state (Muslih, 2013: 134). In the concept of a rule of law, the people and state authorities must respect and be guided by the applicable rules. By looking at several definitions of a rule of law, it can be seen that law serves the purposes of the state as stated in the Preamble to the 1945 Law in paragraph VI that the constitutional state of Indonesia is the constitutional state of the Republic of Indonesia can be said to be a constitutional state based on Pancasila. Historically, the formulation of Pancasila was the brainchild of the nation's founders which began to be discussed at the first session of BPUPKI which was held on May 29 to June 1.

Based on this, the Indonesian state works on the law in "protecting the entire Indonesian nation and all the blood of Indonesia, promoting public welfare, educating the nation's life and participating in implementing world order based on independence, eternal peace and social justice" (Butarbutar, 2010: 191). As a rule of law based on Pancasila, it must conform to the values that contained in Pancasila and contained in the Preamble to the 1945 Constitution, Wahid, Sunardi, & Kurniati (2018: 214) which is based on the principle of divinity, the principle of humanity, the principle of unity and integrity, the principle of democracy, and The principle of social justice.

Pancasila as the ideology or basis of the state for the Indonesian nation, namely as the basis or foundation in all aspects of life, especially in the legal aspect. This has been implemented since the enactment of Pancasila as the basis of the Indonesian state until now. Pancasila always shows its existence as a reference in achieving all kinds of goals of the Indonesian state. By using Pancasila as the basis of reference in various aspects of life, it is hoped that the Indonesian nation can achieve its goals and society can practice the values contained in Pancasila at any time and without exception.

Currently, the world is faced with an outbreak of the corona virus (COVID-19). Many countries have citizens infected with the virus, without exception, Indonesia. During this difficult time, the government is trying to implement *social distancing* in order to break the chain of spreading COVID-19. The Indonesian government's policies continue to race to prevent COVID-19, laws and public policies related to COVID-19 have been created and put into effect (Noor, Atuningtyas, & Prihatiningsih, 2020: 29). Thus, the steps taken by the government were formed in a Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). The steps taken by the government were formed in a Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB).

As it is known that COVID-19 is an international pandemic. With this, every country in the world is obliged to prevent and handle this pandemic.

Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) is decided by the government based on considerations regarding the typology of Indonesian citizens and is guided by Pancasila. Large-scale Social Restrictions (PSBB) are carried out by limiting

oneself to living at home and reducing the number of mass gatherings. In dealing with this pandemic, it is not only the government that plays an important role. However, all elements of society have an important role to play in being able to cooperate and comply with the regulations made by the government.

Since the independence era, Indonesian citizens have used Pancasila as a guide in all aspects of life in the formation and implementation of applicable laws in Indonesia. The formation of a regulation or, law aims to create justice for society and public order become demands in the formation of a law. With the formation of rules regarding PSBB in accordance with and guided by Pancasila, this shows the existence of Pancasila from ancient times to the present which has always accompanied the Indonesian nation in making decisions and forming a rule that is useful for all society.

Apart from being a reference in the formation of regulations in the face of an ongoing pandemic, the form of Pancasila's existence can also affect community activities, namely by praying more to God, because God is a source of human strength in dealing with all kinds of problems, feeling what is the problem or obstacle that is faced by others, the community is expected to place the value of unity on the main basis for the interests and safety of all Indonesian citizens, and to help each other. Given that Pancasila is the personality of the Indonesian nation, Pancasila must always be present in facing any situation.

As a rule of law based on Pancasila, the Indonesian State is a country with a Pancasila personality, therefore Indonesian constitutional experts think that there is a separate concept regarding the elements of the Indonesian constitutional state. In accordance with what was stated by Prof. DR. Oemar Seno Adji, SH, that it is necessary to think about a modern legal system rooted in Indonesian soil and apart from European and Anglo-American concepts, but in accordance with legal requirements at regional and international levels.

Regarding the existence of a separate concept, Prof. DR. Azhary, SH stated that there are seven components contained in the constitutional state of Indonesia, namely based on Pancasila, guided by statutory regulations, power is in the hands of all members of society, equality before the law, neutral and impartial judicial power, drafting of the constitution and MPR arrangement (Sumarsono, 2017: 317). In the concept of a legal state in Indonesia, Pancasila is the ideal of law, where law is the highest regulation. Apart from that, it also serves as the legal basis for all kinds of applicable regulatory arrangements. Based on Pancasila, all the provisions that apply in the Indonesian state must be guided by Pancasila without exception.

Moh. Mahfud expressed his thoughts that "as a legal ideal, Pancasila is also a frame for the Pancasila legal system, as a distinctive legal system owned by the Indonesian nation which is different from the legal systems of other countries. Pancasila grows as a concept unique, which in its growth is always issued with the reality of the development of the Indonesian nation. With Pancasila as the legal ideal of the Indonesian nation, Indonesia is not only a secular law and is only based on certain religions. In the view of the legal system, Pancasila makes the legal system different by taking the concept from *rechtsstaat* and *the rule of law*" (Kesowo, 2012: 15).

The rule of law has its own uniqueness which makes it different from other countries. By looking at the concept and the fact that all kinds of regulations are guided by Pancasila. The main element that characterizes the constitutional state of Indonesia is that society is given opportunities in terms of religious freedom. This opportunity is in a positive perspective, which means that not all people must have a religion that matches what they want, so that not a single citizen will have has no religion. Meanwhile, according to Philipus Hadjon, what is characteristic of a rule of law based on Pancasila is the equality between state rulers and citizens in the context of harmony, professional

linkages that are established between government order, justice is used as the latest solution, and there is harmony between what belongs to citizens. and obligations that must be carried out by citizens (Sunarjo, 2014: 76).

Indonesia in forming and implementing law, not only based on Pancasila but also based on the 1945 Constitution, has characteristics that are not much different when compared to the concept of the state law *rechtsstaat* and *the rule of law*, namely recognizing the following principles (Butarbutar, 2010: 191).

- a. There is a guarantee of human rights.
- b. There is a neutral (impartial)
- c. Sovereignty. There is a separation of state sovereignty.
- d. There is freedom in holding general elections.
- e. There is discretion in groups and discretion in terms of conveying aspirations.
- f. There is an equal position before the law and state sovereignty.

Indonesia is a constitutional state based on Pancasila, thus the established regulations must be guided by Pancasila as the basis for the Indonesian state as stated in the Preamble of the 1945 Constitution of Aline IV that:

"..... based on the Almighty Godhead, Just and Civilized Humanity, Indonesian Unity, and People Guided by Wisdom and Consultation / Representation, and by Creating a Social Justice for All Indonesian People".

In building a constitutional state, Indonesia is guided by the five principles contained in Pancasila as the philosophy, basis, view of life of the Indonesian state and also as a benchmark in community activities in the nation and state which can be described as follows.

- a. A rule of law based on the one and only Godhead

The Godhead in One God, describes the vertical connection that is made by a person as an individual with His Lord. All kinds of laws that are made must be in accordance with the rules that come from God, the laws and regulations must be in accordance with religious values. Religion exists as the spirit of the Indonesian people against the revolutionary regime. However, this is different from what was experienced by other countries because the rule of law in Europe was formed by the resistance made by the smart and rich groups against absolutism by the royal class of a rule of law based on.

- b. A just and civilized humanity

Justice is the main element in creating welfare for people's lives. Justice is still an ongoing problem that haunts all countries in the world, including Indonesia. The problems that occur in Indonesia are probably caused by the problems of justice that are still occurring in Indonesia.

In this case, the focus is on the recognition of universal humanism. Not only that, but in establishing a rule of law based on a just and civilized humanity, it focuses on humanitarian interests and is solely focused on human rights issues but focuses on the obligations carried by society, and the existence of harmony between the opportunities given and the actions that must be done by citizens (Dayanto, 2013: 505).

Just and Civilized Humanity is a precept that prioritizes problems related to human problems. This in forming a law that is applied in Indonesia must consider human characteristics. Where the law

that is formed and applied must be for the common interest and good, it is not an individual or group interest.

c. A rule of law based on the unity of Indonesia.

Indonesian society is formed of various kinds of diversity, which must be a consideration for the formation of a country called Indonesia. The Youth Pledge as the seed of the national consciousness of the Indonesian nation. The Youth Pledge is a pledge made by Indonesian youth as an example of the unity of the Indonesian nation.

That way, in order to build a law, it cannot be contrary to the value of unity. In the development of an Indonesian constitutional state based on Pancasila, there must be no legal product that favors the interests of certain groups and ignores the interests of other communities. The value of the unity of the Indonesian nation can be implemented in community life so that unity between members of the community can continue to be well established.

d. A populist rule of law led by wisdom and deliberation / representation.

Community Leadership by Wisdom and Consultation / Representation means that the goals and ideals of the Indonesian state are for the needs of all Indonesian people. Thus, laws are formulated and implemented according to the interests and desires of the people, not because of the will of an individual or group acting on behalf of democracy.

The constitutional state of Indonesia which is based on Pancasila, aspires to carry out all kinds of democratic governmental activities and to carry out simultaneously with the principle of democracy. Because if a country has a government that is not democratic, it can make the country an authoritarian country. And if a democratic country is run without any rules, that country can become a country full of violence.

The rule of law of Indonesia, institutional values and democracy must be developed as important elements. This is done so that the content in legal products plays a full response role to serve all citizens because democracy is a place or vehicle that is used by all citizens for the interests and goals of the Indonesian state.

e. A rule of law based on social justice for all Indonesians

Social Justice for All Indonesians has the keyword "fair". Fair can be defined as an action or attitude where a person or group is reluctant to take sides with any party. This precept emphasizes that the goal of the Indonesian state is to create justice for all Indonesian people, justice that contains the sovereignty of the people. With the existence of "fair" which is meant so that it can become a matter of consideration in the formulation of rules where these rules really become a rule that is useful for all the people, not only useful for a part of society or groups.

The rule of law in Indonesia has the hope of becoming a *welfare state*. In this context, law exists not only as a solution in resolving a conflict that occurs in a country and as a guardian of public order as assumed in the classical rule of law as a night watchman, where a country is only for the benefit of the rich. Within the scope of rule of law, the state has a very important role. A country is required to be able to have responsibility in listening to the grievances felt by the lower class people who are defeated in social and social competition, both locally, nationally and globally.

Conclusion

The rule of law in Indonesia, in its formation and implementation, refers to two developing legal state concepts, namely *rechtstaat* and *rule of law*. However, Indonesia has its own peculiarities because the constitutional state of Indonesia in the formation and implementation of law must be based on the principles contained in Pancasila. First, the divine principle, that the absence of law allows citizens to have no religion, which means that all citizens must have a religion. Second, the principle of humanity. Every rule that applies in the country of Indonesia must respect and uphold the human rights possessed by every citizen. Third, the principle of unity and integrity. All regulations that are valid and implemented in Indonesia are useful as a means to unite all Indonesian people. Fourth, the principle of democracy. Existing sovereignty must obey absolute rules and be impartial. Fifth, the principle of Social Justice. Where all members of society has the same position before the law. Based on the concept contained in Pancasila, the concept implemented by the Indonesian state in the context of law has the same characteristics as the concept of a rule of law that is implemented or implemented by all countries in any part of the world, namely the guarantee of human rights, the existence of sovereignty neutral (impartiality), there is separation of state sovereignty, freedom in holding general elections, freedom to group and freedom in terms of conveying aspirations for all levels of society, and there is equal position before the law and state sovereignty. All legal aspects that are formed and implemented in the constitutional state of Indonesia cannot be separated from the principles contained in Pancasila.

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