

The Rule of Law Internalization Model in a State of Law based on Pancasila

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Abstract

Pancasila for the Indonesian people was the basic norm (*Grundnorm*) and *Staatsfundamentalnorm* (fundamental norms of the state). As the most fundamental legal norm, Pancasila was the highest, fundamental principle, and becomes the core of every legal and state order. Therefore, every applicable legal regulation must be sourced and inspired by the values of Pancasila as its basic norm (Latif, 2019: 1). In its practice, in order that the value of Pancasila could manifest itself in rule of law life in daily basis, the values of Pancasila must internalize the Indonesian people. The problems are: 1) How is the rule of law model of the Indonesian according to Pancasila values? 2) How do you internalize the rule of law model in your social, nation and state life? This writing method used literature review. The results represented that Pancasila is aware of the fact of diversity, thus it chooses attitudes of non-allergic to diversity. Pancasila overcomes diversity by fostering national awareness, and introduces deliberation as a way to make agreements in dealing with conflicts. 2) The way to internalize rule of law model can be achieved through culture, education and example. The conclusion represents that it is important to have the model of internalizing Pancasila-based rule of law culture in the fact of diversity.

Keywords: Rule of law; internalization model; Pancasila

Introduction

Indonesia is a country based on law, this means that every problem solving that concerns both personal life in relation to the State and the problems of community groups in relation to the State and between State/government institutions is always based on applicable laws and regulations/laws. Status as a legal state requires the government to undertake the development of national law, which is a legal system that is truly based on the personality and values that become the soul of the Indonesian nation. Every citizen has very big role in forming and materializing status as a legal state. However, every citizen has a national identity that is inseparable from its people's identity. In order to undertake the development of national law, it is inseparable from the legal system which consists of several inter-related elements to achieve the objectives of the law itself. As the existence of very diverse (plural) Indonesian nation in ethnicity, language, culture and religion, that it still acknowledges that the validity of legal pluralism and legal systems (Prasetyo, 2014: 213) will influence how the process of national law development from the nature of legal pluralism (customary law) which is being strived for and it needs to take into consideration to the main problem, which is the problem of community legal awareness and the legal culture of the community. This is because Indonesian society is a pluralistic society, which includes various personal and group awareness (Purba, 2017: 149).

The theory of Friedman's legal system in (Purba, 2017:149) states that there are three elements that form the legal system, which is legal substance, legal structure and legal culture. Legal structure is a structural component or organ that moves within a mechanism, both in making regulations and in applying or implementing regulations. Legal substance is a product of the legal structure whether the regulations are made through a formal structure mechanism or regulation that is born out of custom. While legal culture is the value, thought, and expectation of the rules or norms in the social life of the community. These three elements forming the legal system are inter-related in which the three

elements are harmonized in the process of achieving the legal objectives. Strengthening the national legal culture is inseparable from the basic norms or values agreed upon as a nation and state, which is the Pancasila and the 1945 Constitution of the Republic of Indonesia. Every citizen in the legal system can take over in the legal culture subsystem. Of the three elements that make up the legal system according to Friedman, the legal culture precedes two other elements. Friedman's opinion is highly rational as in fact, in the order of community life there are values naturally formed and live in the process of ongoing social interaction. Preceding in this case does not mean that it is the most important than the other two elements.

According to the provisions of Law Number 10 of 2004 junto Law Number 12 of 2011 on the hierarchy of Indonesian laws and regulations, in lieu of TAP MPR Number III/MPR/2000, it acknowledges the position of Pancasila as the source of all sources of law in force in the State of Indonesia. Article 2 of Law Number 10 of 2004 states that Pancasila is a legal source of all legal sources of the Unitary State of the Republic of Indonesia. Furthermore in the elucidation of Article 2 of Law 12/2011, the placement of Pancasila as a legal source of all sources of State law is in accordance with the Preamble of the 1945 Constitution, which places Pancasila as the basis of the state and state ideology, as well as the philosophical basis of the nation and state. Therefore, any material contained in the laws and regulations may not conflict with the values contained in the Pancasila (Latif, 2019: 9).

By juridical insights as mentioned above, all Indonesian people, both state administrators and citizen must believe, know and emulate the values of Pancasila in their daily lives, both in the life of society, nation and state without exception. With such strong legal basis, thus juridically, the Pancasila ideology must be carried out in a planned, integrated and controlled manner, in order to uphold the Pancasila as the basis of the state and as an ethical principle of legal products in the State of Indonesia.

Based on the description above, the arising problem is what is the rule of law model of the Indonesian nation according to the Pancasila values? And how do you internalize this rule of law model in living in a nation and state life?

Method

The method used in writing this paper is using literature study, by conducting studies and searches from various literatures to obtain data related to legal theories and materials as well as various valid informations regarding the establishment of Pancasila as an Ideology and the Basic Philosophy for the Indonesian Nation.

Result and Discussion

Rule of Law Model Pursuant to Pancasila Values

Rahayu (2014:85) stated that the conception of the state of Indonesian law was different from the conception of *rechtstaat* and *the rule of law*. The concept of Indonesian law has features and characteristics based on the spirit and soul (*volkgeist*) of the Indonesian nation that is the Pancasila. The State of Indonesian Law has a distinctive Indonesian characteristic, as it has a Pancasila state of life. Pancasila must be appointed as the basic principle and source of law, then the Indonesian state of law can also be referred to as the State of Pancasila Law. One of the main characteristics in the State of Pancasila Law is the assurance to the freedom of religion. Muhammad Tahir Azhary in Tengku Erwinsyahbana (2012:13) further stated that even though in the Elucidation of the 1945 Constitution used the term *rechtstaats*, but the one adopted by the Indonesian State was neither the concept of *rechtstaat* nor the concept of *the rule of law*. Instead, it is the concept of the State of Pancasila Law that has characteristics: there is a close relationship between religion and state; resting on the One Supreme God; religious freedom in a positive sense; atheism is not justified and communism is prohibited, and the familial and harmony principle.

In another opinion according to Bernard Arief Sidharta in (Erwinsyahbana, 2012: 14), it is stated that the State of Pancasila has characteristics, namely: The State of Pancasila is a legal state, in which all uses of power must always have a legal basis and within the framework of boundaries stipulated

by the law, *a fortiori* for the use of public power. Therefore, the desired government is government based on, with and by the law ("*rule by law*" and "*rule of law*"). The State of Pancasila is a democratic state that in all its upholding state activities is always open to the participation of all people, in which the exercise of authority and use of public power must be accountable to the people and must be open to rational assessment by all parties in the applicable legal framework and values. In addition, the judicial body exercises its authority freely, other government bureaucracies are subject to the decisions of the judiciary, and citizens can submit actions to the government bureaucracy in the court. The government is open to critical assessment by the House of Representatives and the community regarding its policies and actions. The State of Pancasila is an organization of all people who organize themselves rationally in mutual endeavors, within the framework and through the rules of applicable law, materialize physically and spiritually well-being for all people by constantly referring to the values of human dignity and the One Supreme God. In this conception of the state of Pancasila, the state and government are more coordination of various centers of rational decision-making based on the principles of rationality-efficiency, rationality-propriety, rationality-methodical and principles of rationality-value, rather than mere organizations of power. Thus, it can be said that the aspired State of Pancasila is a legal state based on democratic principles aimed at materializing equitable prosperity (social justice) for all Indonesian people and world peace.

Pancasila as the fundamental norm of the state must be used as a measure or standard of value for the enactment of a law and regulation. This reflection of the noble values of Pancasila in every legal instrument that applies in Indonesia is the differentiating element between the concept of the Pancasila state of law and the concept of the rule of law (*rechtstaats* or *the rule of law*) which is commonly known in other countries. Therefore, positive law should be harmonized with the values contained in the Pancasila Precepts and therefore, every rule of law in Indonesia must reflect the noble and pure values contained in each of the Pancasila Precepts. Balance in all its precepts is a balance between the interests of individuals and the interests of society and the interests of the State. Therefore, in applying or implementing a rule of law model must pay attention to justice for all parties, which is justice that balances, harmonizes or synchronizes individual interests between general interests (interests of society and the state) and always prioritizes consensus in every conflict resolution.

Pancasila as a result of the agreement has contained awareness with the fact of diversity and Pancasila chose the attitude of non-allergic/antipathy to diversity. Politically, Pancasila overcomes diversity by fostering national awareness above it, and introducing deliberation as a way to make an agreement. In addition, it also contains an awareness that diversity will be followed by the struggle of individuals and groups to fight for their respective interests, Pancasila still formulates a common good, which is social justice (Simarmata, 2019:8) for all Indonesians imbued with kinship and mutual cooperation in one bond of unity and integrity. This is precisely the legal portrait or model for the Indonesian people as embedded in the values of Pancasila.

The way to internalize the legal model based on Pancasila Values

Law must contain principles or values to ensure that it can create a civilized system of life. The produced order is by treating human as person, having the will and being able to think independently. The value of equality and the principle of equality before the law are made to ensure that no citizen is not treated as a person. These values and principles are created to ensure that the law does not negate or demean someone's status as a person. The most eager effort to ensure that law contains values is a thought that identifies the law with morality. Law must contain morality or make it a standard that its control over people's behavior ends up in the virtues of life such as happiness and justice. Moral by overlooking the law is not used for the purposes of human and to a certain degree keeping the law from falling into instrumental rationality. Therefore, laws that are not in accordance with morals are not laws in the substantive sense (Simarmata, 2019:6). A new rule can be stated to be legal only if it is willing to achieve justice. The ideas above argue that a values-contained law is natural. It is not born or produced from social or political agreements and therefore cannot be

excluded from the agreements. In legal thinking, how far a legal system contains these values will determine its quality. Rule of law is one of the central concepts in legal thinking that formulates the measures of a good legal system. In this concept, the values of morality and justice are included as substantive elements used as a measure to assess whether or not the exercise of power by the state or community groups/classes is in accordance with the common interest.

Pancasila as crystallization of the noble values of the Indonesian nation can actually be stated to have prepared the core values required by the nation (nation state) to maintain its existence in the course of history. Pancasila as a constitutive paradigm is able to establish an individual's attachment to identity as a nation. Pancasila is able to reflect the character that meets the needs of the Indonesian people as citizens. Pancasila as the basis of State philosophy is a solid paradigm in building citizenship and has a commitment to pluralism and multiculturalism that it can build an open spirit of citizenship (Ali) (Ali, 2003). The realization of Pancasila can be objectively materialized through implementation of the Pancasila in the administration of the state and in the life of the nation in which Pancasila is implemented in the 1945 Constitution of the Republic of Indonesia, all legal regulations and in other less inferior laws and regulation (Suhadi, 1998: 92).

Embodiment of the Rule of Law in accordance with the values of Pancasila in the description above that it can internalize within the citizens as well as a nation with identity and character of Pancasila can be implemented through channels of education, culture and example.

Education as a learning process to bring forth a culturally independent person in accordance with human nature is oriented to two things, they are understanding oneself and the environment. Education must provide a vehicle for students to recognize themselves, acknowledge their potential and be able to put their potential in balance and sustainability life in society. In this case, education in schools through a variety of subjects, both those that are directly related to socially structured material with the community, for example, subjects of Pancasila Education and citizenship are expected to embed and internalize the way of life in a society according to the applicable legal norms and rules. Thus, through formal education, informal education and non-formal education with a learning pattern in accordance with the level of intelligence and catching power of each student is able to implement a simple legal model by adhering to the rules of the school, arrive at school on time and so on is a part of the simple application of Pancasila values and rule of law models. And later, after these students will be graduated and start living in a society they will be accustomed to behave well in accordance with the adhered norms and become part of their lives to obey the prevailing rules of law. In addition, education must be able to provide a vehicle for students to acknowledge and develop culture as a value system, knowledge system, and shared behavior system, by intellectual, affective, initiative and physical. Culture as these value system, knowledge system, and behavior system entirely form a social environment that can determine the disposition of a person's character in society.

Legal culture as part of the legal system component greatly provides a hue in the practice of the rule of law norms in society. The way someone behaves in rule of law is a part of the internalization process of legal values and norms in daily life with other people in society. It is because someone's behavior is formed when he or she is able to adapt him/herself to the environment in which he lives with other people in society. As good as the rule of law was created, if the behavior of the people to obey the rule of law is not supportive, it is practical that the rule of law will mean nothing, as there will certainly continue to be various violations and crimes in society that the legal objective of creating public order will never be materialized. For example, the unresolved major problem that the Indonesian people currently have to deal with is corruption, which is increasingly never-ending. Law on corruption that the government had set forth even has always been improved/amended according to the requirements, but corruption crime continues to increase.

Example, as part of the way to internalize the rule of law model in accordance with Pancasila values, needs to be disseminated. The large number of State officials, political figures and community leaders who are often involved with legal issues makes law enforcement less meaningful, as these figures should be good examples for the community but it is contrary. Not to mention the news

through various media, which we often hear that the legal term in the upwards is quite blunt while downwards is sharper. It makes people increasingly mistrust law enforcement in this country. Therefore, especially the behavior of important people, community leaders, State officials and political figures becomes highly important that the existing law can be applied fairly and the community is increasingly obedient to the law.

Conclusions

For the Indonesian nation, the rule of law model actually exists as contained in the values of Pancasila, both Pancasila as the *groundnorm* and Pancasila as *staatsfundamentalnorm*. Therefore, it is important that this nation internalize these values in its rule of law for their citizens. The process of internalizing the values of Pancasila in a rule of law model in the community can be materialized through education, culture and example from the leaders of the nation.

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