

Juridical Analysis of the Design of Pancasila Ideology Direction

R. Rahaditya^{1,2,*} Muhammad Rizqi Fadhlillah¹

¹ Tarumanagara University, Jakarta, Indonesia

² Tarumanagara University, Jakarta, Indonesia

*Corresponding author. Email: rahaditya.aditya@gmail.com

ABSTRACT

Pancasila, which has become an ideology of the state, is currently facing a polemic with the Draft of the Pancasila Ideology (RUU HIP) proposed by members of the DPR. This polemic arose because the absence of TAP MPRS NUMBER 25 / MPRS / 1966 of 1966 concerning the Disbanding of the Indonesian Communist Party, Statement as a Prohibited Organization in the Entire Territory of the Republic of Indonesia and the Prohibition of Every Activity to Spread Or Develop Communist / Marxist-Leninism and Pancasila Doctrine has been conceived to be squeezed into Trisila and Ekasila. The research method used in this study is normative research. The existence of the Draft Bill of Ideology is considered to change the basis of the state and change the state and national life order of the Indonesian people, therefore the Draft of the Pancasila Ideology Bow course must be rejected.

Keywords: Draft Law, Pancasila

1. INTRODUCTION

Rechtstaat or the rule of law in Indonesian literature is often translated as a rule of law, Notohamidjojo uses *rechtstaat* in the sense of the rule of law, as well as Muhammad Yamin who uses *rechtstaat*, government of law in the sense of the rule of law, in addition to using the term *rechtstaat*, some use the term the rule of law.¹⁾ Indonesia is a state of law outlined in Article 1 paragraph (3) which states that "the state of Indonesia is a state of law". The rule of law in Indonesia has unique characteristics originating from Indonesia, namely the rule of law which is based on Pancasila². Pancasila as the ideology of the state has the values of national and state life in carrying out the objectives of the Indonesian state as set out in the fourth paragraph of the Preamble of the 1945 Constitution.

Pancasila contains the principle of divinity that is the Almighty God, the principle of humanity that is Fair and Civilized Humanity, the principle of unity that is the principle of the Unity of Indonesia, the principle of populism that is Democracy led by the wisdom of Consultation / Representative, and the principle of justice which is Social Justice for all the people of Indonesia. So

that the existence of Pancasila can be used as a test of positive law in Indonesia, which means that all the formation of law and its application are inseparable from the values of Pancasila as *Staatsfundamental norm* or basic norms of the state.³

Staatsfundamentalnorm is part of the theory of the level of law (*Stufentheorie*) which was developed by Hans Nawiasky, a student of Hans Kelsen. *Staatsfundamentalnorm* is the norm that is the basis for the formation of a country's constitution or constitution. The legal position of the *staatsfundamentalnorm* is as a condition for the application of the constitution. A.Hamid S.Attamimi applies the theory put forward by Hans Nawiasky to the structure of Indonesian legal system as follows:⁴

- a. *Staatsfundamentalnorm*: Pancasila (Preamble to the constitution 1945)
- b. *Staatsgerundgesetz*: The body of the 1945 Constitution, MPR Decree, and Convention
- c. *Foemeel gesetz*: Constitution
- d. *Verodnung en autonome Satzung*: Government Regulations to Regional Regulations.

¹⁾ Iriyanto A.Baso Ence, *Negara Hukum dan Hak Uji Konstitusionalitas Mahkamah Konstitusi*, (PT Alumni, Bandung:2008), hal.13.

² Sjahan Basah, *Eksistensi dan tolak ukur badan peradilan administrasi negara di Indonesia, Cet ke 3* (Bandung: Alumni, 1985), hlm 11

³ Notonogoro, *Pancasila dasar falsafah negara, kumpulan tiga uraian pokok –pokok persoalan tentang Pancasila*, Cetakan kelima, (Jakarta: Bina Aksara, 1983), hlm 53

⁴ Jimly Asshiddiqie dan Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, (Jakarta: Konstitusi Press,2012), hlm.154-155

Pancasila as the state ideology is currently facing a polemic which is the Draft of the Pancasila Ideology Bill (RUU HIP) proposed by members of the DPR. This polemic arose because the absence of TAP MPRS NUMBER 25 / MPRS / 1966 of 1966 concerning the Disbanding of the Indonesian Communist Party, Statement as a Prohibited Organization in the Entire Territory of the Republic of Indonesia and the Prohibition of Every Activity to Spread Or Develop Communist / Marxist-Leninism and Pancasila Doctrine has been conceived to be squeezed into Trisila and Ekasila.

One of the reasons for the rejection of the Pancasila Ideology Bow Bill was initiated by the Indonesian Ulema Council (MUI). The MUI states that it does not include TAP MPRS NUMBER 25 / MPRS / 1966 of 1966 concerning the Disbanding of the Indonesian Communist Party, Statement as a Prohibited Organization in the Entire Territory of the Republic of Indonesia and the Prohibition of Every Activity to Spread Or Develop Communist / Marxist-Leninism and Pancasila Doctrine which Has Been Banned it was conceived to be squeezed into Trisila and Ekasila The HIP bill would change various aspects of law and norms that had previously been. However, public dynamics about the urgency and substance of the draft law in a democratic rule of law are natural. However, the dynamics must be put in the spirit of trying to seek mutual agreement, therefore the HIP Bill is interesting to study from the perspective of the juridical aspect.

1.1. Research Methods

This type of research method used is a normative legal research method, namely research on library materials which are basic data which in science are classified as secondary data ⁵⁾ Normative legal research functions to provide juridical argumentation when there is emptiness, obscurity, and norm conflicts.⁶⁾

2. BACKGROUND

2.1. Results and Discussion

Launch of Meeting Notes Legislation Council Decision On the Preparation of the Draft Law On The ideology of Pancasila Policy on 22 April 2020, the HIP bill is a bill proposed by the House of Representatives and referred stipulated in the bill Prolegnas Priorities 2020. Based on the record of the meeting, said that there is currently no law as a legal basis governing the Pancasila Ideology Direction to

become a guideline for the life of the nation and state so that it is required that the Law on Pancasila Ideology Direction.⁷ Problems arise and become polemic starting from the non-inclusion of TAP MPRS NUMBER 25 / MPRS / 1966 of 1966 concerning the Disbanding of the Indonesian Communist Party, Statement as a Prohibited Organization in the Entire Territory of the Republic of Indonesia and the Prohibition of Every Activity to Spread Or Develop Communist / Marxist-Leninist Understanding or Teachings . This is considered as a form of disregard for the history that occurred in the Indonesian State of things done by the Indonesian Communist Party in the past.

Besides that, squeezing Pancasila into Trisila and then Ekasila was considered an effort to override the meaning of Pancasila and was considered to want to eliminate the First Principle of Pancasila, namely the Almighty God as stipulated in Article 29 paragraph (1) of the 1945 Constitution. Adapted from the draft of the HIP Bill , the Trisila and Ekasila concepts are contained in Article 7. The article contains three verses whose contents are as follows:

- a. The main characteristic of Pancasila is justice and social welfare with a family spirit which is a combination of the principles of God, humanity, unity, social / political democracy and economy in a single unit.
- b. The main characteristics of Pancasila are trisila, namely socio-nationalism, socio-democracy, and cultural divinity.
- c. Trisila as referred to in paragraph (2) is crystallized in ekasila, namely mutual cooperation. Therefore, it is a form of denial of the existence of the Preamble and Body of the 1945 Constitution as the State Foundation, so this is considered as the dissolution of the Republic of Indonesia based on these 5 Precepts.

3. CONCLUSION

Based on the presentation that has been delivered, the conclusions regarding Juridical Analysis of the Draft Ideology of Pancasila are, namely:

- a. Based on the absence of TAP MPRS No. XXV / MPRS / 1966 of 1966 concerning the Disbanding of the Indonesian Communist Party and the Prohibition of Every Activity to Spread Or Develop Communism / Marxism-Leninism Understanding or Teachings, became a strong enough background to reject the HIP Bill because the Indonesian people could not forget the bloody tragedy of the 30 September Movement The PKI and previous bloody events which formed the basis for the issuance of the MPRS Decree. Prohibition of spreading or developing the teachings of

⁵⁾ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: PT. Raja Grafindo Persada, 2004), hal. 24.

⁶⁾ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif*, (Jakarta: PT Kharisma Putra Utama, 2016), hal 12

⁷⁾ Nur Rohmi Aida. "Apa Itu RUU HIP yang Dipersoalkan NU dan Muhammadiyah?". <https://www.kompas.com/tren/read/2020/06/17/062559765/apa-itu-ruu-hip-yang-dipersoalkan-nu-dan-muhammadiyah?page=all>. 23 Juni 2020

Communism / Marxism-Leninism by Law No. 27 of 1999 concerning Amendments to the Indonesian Criminal Code relating to Crimes Against State Security, is punishable by a maximum imprisonment of 12 (twelve) years.

- b. The draft of the Pancasila Ideology Bill which contains the main thoughts and beliefs that became the spirit of the Bill. Pancasila can be squeezed into trisila (socio-nationalism, socio-democracy, and cultural divinity) and squeezed again into ekasila (mutual cooperation). Such understanding is a distortion of Pancasila, and therefore must be rejected. What is stated in the HIP Bill is not a new idea. That is an old idea whose history has proven its failure. The idea will remind the Indonesian people of the doctrine of Nasakom (Nationalism, Religion, and Communism), PKI (Indonesian Communist Party) and the PKI G 30S event.
- c. Pancasila in the life of the nation and state is the highest norm and the basis of state philosophy. So that the formulation of Pancasila at the norm level of the Law reduces the value of the Pancasila as the basis of the nation's philosophy and downplays the position of the Pancasila, therefore it is better for the Faction in the House of Representatives to not continue the Draft of the Pancasila Ideology Direction because it will change the national and state life order Indonesian society.

- [7] Nur Rohmi Aida. "Apa Itu RUU HIP yang Dipersoalkan NU dan Muhammadiyah?". [https://www.kompas.com/tren/read/2020/06/17/062559765/apa-itu-ruu-hip-yang-dipersoalkan-
nu-dan-muhammadiyah?page=all](https://www.kompas.com/tren/read/2020/06/17/062559765/apa-itu-ruu-hip-yang-dipersoalkan-nu-dan-muhammadiyah?page=all). 23 Juni 2020

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