

The Ideals of Pancasila Law in the Process of Forming Legislation

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Abstract--*The ideals of Pancasila law are thought constructs which are imperative to direct the law to the ideals desired by society. The problem is what are the ideals of Pancasila law in the formulation of democratic laws and regulations and responsive and participatory legal products in this reform era. This study uses a normative juridical method with a legislative approach. This study's result concludes that legislation as a legal product should not be a political product, so that the norms that are explored are based on Indonesian culture, values and legal plurality. Indonesia as a rule of law demands public participation in every formation of laws and regulations in the legislative domain. Opening public space with this communication is a responsive legal typology. The failure of the people's representatives (DPR) to create responsive and participatory laws will eliminate the philosophical meaning and ideals of Pancasila law which is the source of the original cultural roots of the Indonesian nation.*

Keyword- *Idea of Pancasila law; responsive; participative.*

I. INTRODUCTION

The formulation of legislation that is democratic in nature must present the role of law as a tool to dynamize society. Thus the function of the ideals of law in a country that is undergoing change can accommodate all the dynamics of a complex society like Indonesia. The development of technology and industry requires the emergence of a legal system capable of realizing the goals desired by society. For Indonesia, the aspirated goals have been formulated in the Preamble to the 1945 Constitution. To realize these ideals, the government has also tried to implement these values in a concrete manner and every product of legislation.

The product of legislation which is positioned as one of the most representative objects of law is a normative work. On the other hand, everything that is normative opens itself up to deviations. Normative laws are closely related to humanitarian

laws, considering that only humans deserve to be called normative beings.

The potential for irregularities in the law creates a so-called legal gap. The gaps or lacunae that occur actually proceed through simple patterns. The process begins with the availability of positive laws that are waiting to be activated through contact with concrete events. When this contact occurs, there is a possibility that the positive law will not be able to properly answer the needs of the concrete event. This occurs mainly because positive law as a legal product is always perceived as photographing society in the context of a certain portion of time (synchronous).

The problem is, who should be given the role of filling this gap (gap filter). So the figure of the legal profession who is most authoritative in resolving it is the judge, even when the judge is considered a status quo agent. Quoting the sociologist Hans Moregenthau, Steven Vago once stated, "A given status quo is stabilized and perpetuated in a legal system and that the courts, being the chief instruments of a legal system, must act as agents of the status quo." [1] The legal gap is very open to occur because the legislators have never been able to fully predict the variants of what kind of concrete events will happen in the future.

Therefore, the development of this national law is very important for the future of law in Indonesia. Although it is not easy, with the determination and strong will of all elements of the nation and the State, both the government (executive, legislative and judiciary) and society, the national law that has been desired so far can be realized in the future. The importance of building a national law is due to the fact that many laws that have been applied in Indonesia are not in accordance with the personality, values and culture of the Indonesian people. So that the Indonesian nation needs to build a national legal system that is structured and has social values for the people and

nation of Indonesia. Namely national law in accordance with the thoughts of the Indonesian people which are based on the collectivity understanding.[2]

II. PROBLEMS

Based on the explanation above, the problems in this study are:

1. How is the ideals of Pancasila law in the formulation of democratic regulations?
2. What is the character of the responsive and participatory legal products in this reform era?

III. RESEARCH METHOD

This study uses the juridical-normative method. The legislative approach is carried out by analyzing the process of forming laws and regulations. This study has a descriptive-analytical specification, namely research that aims to provide a detailed, systematic and complete description of the problems in this study. The data collection method used is a library study method. Data is analysis by juridical qualitative.

IV. DISCUSSION

Concept of Formation of Legislation

Lord Bryce argued that the function and purpose of the constitution is to guarantee legal protection for the rights of members of society. Meanwhile, from a government perspective, the constitution serves as a structural basis for the administration of government according to a definite constitutional system. He formulated "a frame of political society, organized through and by law, that is to say one in which law has established permanent institutions with recognized functions and definite rights".[3] Meanwhile, Sri Soemantri stated that the important meaning of the constitution, one of which it contains, is a desire for how the nation's constitutional life is to be led, which can be seen in the structure and constitutional system.[4]

This constitution underlies the Republic of Indonesia. So that Indonesia is a state based on law, this is clearly stated in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Eine rechtsstaat a state based on law, a state governed by law. That means, law is not a product formed by the highest institutions and / or high state institutions,

but it also underlies and directs the actions of these institutions. Law is the basis and guide for all aspects of social, national and state activities. The Indonesian people, both in their political, economic, socio-cultural, defense and security life as well as in legal life (in a narrow sense) must always be guided by the institution called law.

In a democratic country, it is the people who determine the law through their representatives in parliament who are directly elected by the people themselves. The will of the majority of the people in a democratic country becomes the will of the state, it can even become state law without having to question its pros and cons. So that the will of the people becomes a source of binding law.[5]

The process of making laws as a form of legal development is a series of events starting from planning, proposing, discussing and ratifying. All these processes are carried out by actors who in a modern democratic system are called the executive and legislative (DPR). In a democratic law formation system, the process of forming the law has a bottom up type, namely requiring that the legal material that is to be a reflection of the values and will of the people.[6]

In connection with the hierarchy of legal norms, Hans Kelsen put forward a theory about the level of legal theory, (stufenbou theorie). Hans Kelsen argues that legal norms are stratified and layered in a hierarchy (arrangement), in the sense that a higher norm applies, originates and is based on even higher norms, and so on until a norm that is cannot be traced further and is hypothetical and fictitious, namely the basic norm (*Grundnorm*).[7]

The characteristics of a rule of law demand that there is a rule of law that every state administrator in formulating a policy up to the stage of its implementation, must be based on regulations that show consistency, coherence and correspondence between regulations starting from the very top norms to the lower norms. In addition, the level of vertical and horizontal synchronization, whether the regulations made by the legislature or the executive at the central and regional levels, do not clash or conflict with legal ideals (rechts idee), namely Pancasila.

Ideals of Law in the Process of Making Laws

Ideals of law are thought constructs that require law to lead to the ideals desired by society.

According to Gustav Radbruch, as quoted by Sutjipto Rahardjo, he argues that the ideal of law functions as a measure that is both regulative and constructive. Without legal ideals, the resulting legal product will lose its meaning.[8]

As a basis and binder in the process of forming legislation, the ideals of law are related to public policy. Regarding public policy, Esmi Warassih said that the ideals of law function internally for policy makers (technical policies), where the dimensions of value exist from the formation of regulations to the time of implementation. It is at the time of implementation that a more technical operational policy product is needed.[9]

Therefore, the making of statutory regulations and in the process of embodying legal ideals into legal norms, is highly dependent on the level of awareness and appreciation of the legislators. The absence of awareness and appreciation of the values contained in the ideals of law will create a gap between the ideals of law and the legal norms that are made. The Republic of Indonesia has the ideals of the law (*recht sidee*) Pancasila as well as the fundamental norms of the state (*staatsfundamental-norm*), every regulation made should be colored and flowed with the values contained in the ideals of the law. There are four principles of legal ideals (*recht sidee*), namely:

1. Protecting all elements of the nation;
2. Realizing all social justice in the economic and social fields;
3. Realizing people's sovereignty (*democracy*) and a rule of law (*nomocracy*);
4. Creating tolerance on the basis of humanity and civilization in religious life.

The four principles of legal ideals must always be the general principles that guide the realization of the ideals and goals of the state, because law is a normative and constitutive belief framework. The ideal of law is normative because it functions as an ideal precondition and basis for every positive law and is constitutive because it directs the law to the goals the state wants to achieve.

According to Mahfud MD, law is a political product, so the character of the legal product changes if the political configuration that gives birth changes. Throughout history, Indonesia has seen political changes alternating between a democratic

political configuration and an authoritarian political configuration. In line with these configuration changes, the character of the legal product also changes. The thicker the legal content with the issue of power relations, the stronger the influence of the political configuration on the law.[10] However, people do not always say that the law is a political product. The constitution clearly states that Indonesia is a rule of law, of course not made into law as a political product, but law is a legal product, whether it is published by the legislative or the central and regional executives.

Meanwhile, if we look at the typology of legal products that are formed or made, this can be responsive or repressive. So that conflicts of interest and clashes between ideals and reality become art in the formulation of legislation in parliamentary institutions.

According to Nonet & Selznick, responsive law considers the public's wishes more and has a commitment to the creation of substantial justice, rather than procedural justice. Responsive, according to him, is defined as openness to the public, adaptive in the midst of community development, criticizing institutions that have authority or established legal products and then pushing for change.

Respective legal products in the constitutional legal system in Indonesia are essentially able to translate legal ideals and be transformed into legislation. The ideal of law comes from Pancasila which is a philosophical gronslag and common platform as the basis of the state. Law-making institutions in their activities are directed at Pancasila values which are full of culture and values that live in society or local wisdom.

Pancasila acts as a legal development paradigm and must be a reference in all thoughts, attitudes and actions as well as legal activities carried out in the Indonesian state. Including in the field of law, of course it must be guided by Pancasila, so that the resulting law is in accordance with the principles of Pancasila values. As the source of all sources of law, Pancasila is a grundnorm for every statutory regulation that has a position under Pancasila. So that they must base their logical ratios on Pancasila and must not conflict with them. The application of the values of the Pancasila legal philosophy is important in every statutory regulation in Indonesia. Pancasila legal philosophy material is extracted

from the noble values of the Indonesian people that have existed since thousands of years ago. Pancasila legal philosophy is thus born from the feelings and knowledge of the Indonesian people about themselves and their environment.

Pancasila as the basic philosophy and paradigm of Indonesian legal development must place Pancasila as the source of the formation, implementation and enforcement of the law. So that Pancasila as a legal ideology is not only seen as a formal written requirement, but is more meaningful and implemented in the practice of law enforcement in Indonesia. Pancasila is a source of law that is infinitely broad, deep and rich. Pancasila is the essence of all state and legal institutions as well as the solution to national problems. Indonesian state administration with its implementation intricacies and problems can be broken down by using Pancasila as a guideline for its implementation. It has been proven in the history of the Indonesian state that Pancasila is a protector from all threats that try to disrupt Indonesia's national integration.[11] Pancasila as a philosophy of the nation's view of life should be reflected in the principles, values and norms of life in the nation, state and culture. Thus the values inherent in Pancasila deserve to be the basic norms for the Indonesian legal system. In that context Pancasila is Indonesia's normative belief.

Therefore, the Pancasila legal system combines harmoniously and well the elements of *rechtstaat* (legal certainty) and the rule of law (substantial justice). In this conception the *rechtstaat* principle and the rule of law are not positioned as two alternative or compilative conceptions whose application can be chosen based on one-sided taste, but as a cumulative conception as a mutually reinforcing unit.

Therefore, how can legislators harmonize the *rechtstaat* element with the rule of law element. Because substantial justice is a form of justice that is expected by members of the community as a legal adresat at the time the legislation is enacted. The exploration of the values that live in the community, local wisdom and local customary culture to be transformed into the drafting of laws and regulations has a special place.

So that the purpose of making laws and regulations is for order and legitimacy which also considers competence. In terms of legitimacy, we must acknowledge that social resilience is the goal

of the state (certain regions), but also has achieved procedural legitimacy, although not yet substantive. Proportive regulations create harmony between citizens in society, because in the manufacturing process, what is the aspiration, ideas of the community has been accommodated. For example, customary law community units, even though they are not written, have become a unanimous agreement between them to be obeyed and implemented.

State Goals and Legal Policy

The objectives of the Indonesian state as stated in the Preamble to the 1945 Constitution, can be formulated as advancing public welfare and the intellectual life of the nation based on the principle of social justice for all Indonesian people. The objectives contained in the preamble were later stated in the body of the 1945 Constitution in various provisions concerning the welfare of the people. Therefore, however, law in Indonesia must refer to the ideals of the nation, namely the establishment of a democratic constitutional state and social justice. Legal development must be aimed at ending an unjust social order and oppressing human rights, so that legal politics must be oriented to the ideals of a rule of law based on the principles of democracy and social justice in a united Indonesian society as stated in in the preamble to the 1945 Constitution.[12]

The state's goal must be achieved by the state as the highest organization of the Indonesian nation whose implementation is based on the five principles of Pancasila. Pancasila has become a guide to national legal politics in various fields. Mahfud MD mapped the principle of "God Almighty", which becomes the basis for legal politics based on religious morals; the principle of "Just and Civilized Humanity", becomes the basis for legal politics that respects and protects non-discriminatory human rights. the principle of "Unity of Indonesia", becomes the basis for legal politics to unite all elements of the nation with their various primordial ties; the principle of "Population led by the wisdom of wisdom in representative deliberations", becomes the basis for legal politics that puts power under the power of the people (democratic); and the principle of "Social justice for all the people of Indonesia", becomes the basis of legal politics in a socially just society so that those

who are socially and economically weak are not arbitrarily oppressed by those who are strong.

The five principles that guide legal politics above, further stated by Mahfud MD as four guiding principles in the making of legal politics or other state policies, including when making laws in the legislative realm, including:

1. General policies and legal politics must maintain the integrity of the nation, both ideologically and territorially. Any law or policy in Indonesia must not cause or have the potential to threaten our integrity as a nation, both ideologically and in its territorial territory. Political law and general policy must belong to and be accepted together without being corrupted by sectarian values.
2. General policies and legal politics must be based on efforts to build both democracy (people's sovereignty) and nomocracy (rule of law). Indonesia is a democratic country which means handing over government and determining the direction of state policy to the people through sound political constellation, but Indonesia is also a constitutional state (nomocracy) so that any state policy made on behalf of the people must be in accordance with legal principles and legal philosophy underlying it;
3. General policies and legal politics must be based on efforts to build social justice for all Indonesian people. Indonesia is not a liberal adherent, but ideologically embraces a prismatic between individualism and collectivism with an emphasis on general welfare and social justice. That is why in social and economic development, togetherness, mutual cooperation and tolerance as emphasized by the principles in Articles 33 and 34 of the 1945 Constitution.
4. General policies and legal politics must be based on the principle of civilized religious tolerance. Indonesia is not a religious country so it is not allowed to produce legal policies or politics based on or dominated by one particular religion on any behalf, but Indonesia is also not a secular country devoid of religion so that any policy or political law must be inspired by the teachings of various religions as a source of

law. it must be interpreted as a material source of law, namely material to be used as formal statutory law which has a certain form after being processed with other legal materials.[13]

The ideals of Pancasila law are used as a holistic thinking construction for legislators. The norms that are stated explicitly in each article in the legislation are actually a concretization of the values extracted in the pluralistic life of Indonesian society, regardless of political interests, power, party blocks or defense of the constituents of the winning regions.

Furthermore, in the making of legislation up to the implementation stage, it is necessary to have comprehensive socialization to the public. The values contained in each norm can be accepted by all levels of society, not only having certainty, but also benefiting the people with sociological implications. When observed, the structure of Indonesian society is characterized by two unique characteristics, namely horizontally and vertically. Horizontally, it is marked by the fact that there are social units based on differences in ethnicity, religion, customs and regions. Vertically, the structure of Indonesian society is marked by vertical differences in the form of upper and lower layers, agriculture and industry.

Public space in policy making and law

Public space is defined as a space for critical discussion which is open to all. In this public space, private citizens gather to form a public, where public reasoning will be directed to oversee government power and state power. The public sphere assumes the existence of freedom of speech and assembly, free press, and the right to freely participate in political debates and information media such as newspapers and journals. In addition, public spaces are drinking places and coffee shops, meeting halls, and other public spaces where socio-political discussions take place.

The public sphere is characterized by three things, namely responsiveness, democracy, and meaning. Responsive in the sense of public space is a space that can be used for various activities and broad interests. Democratic, meaning that public space can be used by the general public from various social, economic and cultural backgrounds as well as for various human physical conditions.

Meaningful means that the public space must have a link between humans, space, and the wider world and the social context. Thus, effective communication by legislators with civil society plays a major role in producing legal products that can be universally accepted and reach consensus by society in all circles. The forms of dialogue regarding the product of law, power and ethics become a public space that is separated from the authorities.

In the context of law-making through the legislative body of the DPR, its legal formation refers to Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Article 10 paragraph (1) letter e states the fulfillment of legal needs in society, which is one of the contents of a Constitution. Fulfilling community needs reflects the concept of responsive and aspirational law formation. How is the stage in the drafting of a law involving public representation, academics, activists and a number of NGOs who are concerned with law and public policy. In addition, public involvement in every policy maker, legal decision and power can be an effective practice when a regulation or policy has benefits for society.

The public, which is the incarnation of civil society, functions as control of the exercise of power, both in the formation of judicial powers and the power to run the government. When the public sphere in people's lives, especially under the rule of law umbrella and upholding democratic values becomes empty, dry from the idea of *ius constituendum* or constructive ideas for each state administration, it will lose the philosophy of state life based on *Pancasila*. Legislative bodies still only represent and carry out personal interests and seek the highest bidder for laws which are used as trading commodities.

Law No.14 of 2008 concerning the disclosure of public information comprehensively regulates how the public space can conduct dialogue with state officials. The purpose of this regulation is based on the provisions of Article 3 of Law no. 14 of 2008, among others, is to guarantee the rights of citizens to know about plans for making public policies, public policy programs, and public decision-making processes as well as the reasons for making a public decision. Then also encourage public participation in the public policy making

process and increase the active role of the community in public policy making.

After that, if the public policy has entered the field of legal life, then its formulation must also be subject to statutory-making techniques. Likewise, every public policy to be expressed or stated in the form of a regulation must meet certain criteria. In addition, the method of formulation carried out through statutory regulations is to formulate hypotheses. As a result, sometimes the law has much to say about concepts that are difficult for those who have not studied it to know. The concept is a tool used to identify and classify the phenomena that are characteristic of social reality.

A concept is also required to contain meaning, because it aims to provide information. For example, the concept of rights, obligations, mistakes and so on is something abstract, so that it makes it difficult for people to understand it, and can even provide different interpretations. It must be realized that the formulation of law is not an empirical fact. That is why, the general formulation of something can make a difference in its application, and therefore a more concrete explanation is necessary.

Meanwhile, discussing the relationship between law and public policy will be more relevant when implemented. The implementation activity is actually part of policy making. This situation must really be realized considering that the implementation process always involves a different environment and conditions in each place, because it has characteristics of different social structures. Likewise, the involvement of institutions in the implementation process will always work in a certain social context so that there is a reciprocal relationship that can influence each other.

If the means chosen is law as a process of shaping public policy, then non-legal factors will always influence the implementation process. To anticipate this, policy steps are needed including: First, combining the action plan of a program by establishing clear examinations, implementation standards, costs and time; Second, carry out the program by mobilizing the structure, staff, costs, resources, procedures and methods, and Third, make an implementation and monitoring schedule to ensure that the program continues according to plan. Thus, if there is a violation in the implementation of the program, actions will be taken which will

involve elements of timing, planning and monitoring.[14]

Starting from the above description, it can be said that the formation of laws and regulations should be accompanied by an action plan. In Indonesia, to be able to implement government programs, it is necessary to describe it more concretely in the form of laws and regulations. Gladden classifies the policies according to the high and low levels, namely, (1) political policies, (2) executive policies, (3) administrative policies, and (4) technical or operational policies.[15] Regarding the level of this policy has been seen in the legislation in Indonesia.

Legal policy or law politics of lawmaking requires input, constructive ideas from civil society which is a representation of the public. Communication between groups, dialogue between various elements of society to reach a consensus and not fighting each other in order to maintain the sublime value of the Pancasila value itself. Public domination can be observed when they are active in conducting hearings of law and policy-making institutions, contributing thoughts and conducting FGD (Focus Group Discussion) in collaboration with a number of experts, activists and academics. The thinking construction of civil society when contributing to the process of drafting the law understands that the ideals of Pancasila law are derived from Indonesian society which is plural, pluralistic and rich in local wisdom.

V. CONCLUSION

In a social and political context, the rule of law cannot be understood. The spirit of democracy and legal reform must be rooted in the culture of the Indonesian people in the formation of laws in the legislative domain that accommodate cultural values, interests of all groups and characters that reflect legal pluralism. Looking for a democratic legislative model is expected to produce responsive legal conditions so that it can answer various demands of the community.

The formulation of the character of a responsive and participatory legal product in the reform era requires a public space that is free from domination of power or the interests of a number of political elites. The involvement of the community (civil society) in overseeing the drafting of the law starts

from the stage of drafting an academic paper to holding a public hearing before the law is passed. Expanded communication requires direct communication with the public in order to receive the legal products produced without any gaps between the rulers and the people. Substantial reforms by legislators ultimately lead to the law as an engine of social change (law as a tool of social engineering), because basically the law is for humans, not the other way around and a way of creating funny legal products. in accordance with the call for social justice and the conscience of the people.

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