

State and Religion Relationship in the Context of Indonesia Law Enforcement

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ABSTRACT

The problem studied in this research is how the relationship between the state and religion in the context of law enforcement in Indonesia, especially regarding the views of religious values and state power in deciding a case based on the Pancasila Values. This research used qualitative research - verification and direct observation using the analysis of Democracy theory and the Indonesia Constitution model on the relationship between state and religion to see the influence of religious values on judges' decisions and Indonesian government policies. This research proves the role of religious values in a more just political constellation. The focus of the study is on three specific indicators, namely transparency, accountability and law enforcement and government policies. These indicators were chosen in connection with the symptoms that appear in the three indicators based on the results of initial observations, namely: first, in terms of transparency indicators, so far the judiciary has not been fully open in the application of the law because the judiciary always tries to provide unsatisfactory information and data to the public or the public; second, in the accountability indicators, so far, it seems that the lower courts (First Level) do not have the same understanding with the higher Courts (Appeal and Cassation level) against a mighty; and third, on indicators of law enforcement and policies, the Government has not fully implemented the Pancasila law as a form of justice for the Indonesian people.

Keywords: *State, Religion, Law Enforcement, Pancasila Values.*

1. INTRODUCTION

Based on the Constitution or the 1945, in Indonesia the only laws that can be required or enforced by the state against its people are those that are determined by the people themselves through their representatives in the people's representative bodies at the national, regional and local levels. In accordance with the principle of popular sovereignty, in a democratic country, the law is made to protect the human rights of citizens, especially from acts outside the provisions of the law.

The law is carried out in the context of realizing social order and legal certainty and justice, so that the political process in administering government can run peacefully in accordance with legal and constitutional corridors. In the provisions of Article 1 paragraph (3) of the 1945 Constitution as a result of the 2002

Amendment, it is stated that the State of Indonesia is a state of law. In the General Elucidation of the 1945 Constitution before the amendments were made, it was emphasized that the Indonesian government system was a state based on law (*rechstaat*) not based on mere power (*machstaat*). Then the experts questioned, what kind of legal state is adopted by Indonesia as referred to by the *rechstaat*, whether a Continental European type of law state (*rechstaat*) or an Anglo-Saxon type of law state (rule of law).

Justice is the main element inherent in law so that it can be said that justice is a synonym of law or it can be said that law is justice, so the essential concept of law is law as justice. Consequently, as a state of law, every citizen must submit and obey the laws and regulations and court decisions that have permanent legal force (*inkracht vangingwijde*). If this is violated, the state through its apparatus will act by processing it

for the sake of justice, with equal treatment before the law (equality before the law). There should be no citizens who do trouble/damage in an uncultured way. This means that freedom of speech is not completely free, but is limited by national (security) interests. The national interest is higher than the public interest, but national security is also limited to a truly threatening scale. Therefore, the social benefits of freedom of speech or opinion which are individual rights can be set aside if they have affected national (security) interests.

From the concept of justice as described, there are at least two things that are universal, namely the purpose and characteristics of justice itself. Where the goal of justice is something that will be achieved in legal relations between fellow citizens, as well as between citizens and the state or relations between countries. While the characteristics inherent in justice are fair, legal, legal, impartial, equal rights, worthy, morally reasonable and morally correct. This means that when we talk about justice, we are talking about goodness, virtue and truth, which is a moral obligation that binds members of society to one another. In fact, justice is a value that is a goal that is mutually agreed upon by members of the community and strives to achieve it for justice itself. Another meaning of justice is as a result or a decision obtained from the application or implementation of the law, so that justice is perceived as an ideal element as an ideal or an idea contained in all legal rules.

The formation of law in society can sometimes cause problems for the community itself if it has a negative impact, but for some people the law can actually have a positive impact and will be a solution to every problem. This happens because the law as a legal regulatory instrument in a state of law. With such a position, the law has the power to coerce, even though for some people it is not pleasing and does not pay attention to the rule of law. Regarding the existence of law itself in society, Mochtar Kusumaatmadja stated that the main purpose of the existence of law is to guarantee order, justice, and certainty.

The existence of sanctions in the rule of law is actually to emphasize that there is value, there is truth or there is a law that is worthy to be maintained and must be maintained which is regulated in the rule of

law, because if it is not so then sanctions are the same as blind arbitrariness. Hence, the marker of the predicate of law in the rule of law is not because there are sanctions, but because of the value maintained by the rule. In this case, it is not because the regulation has sanctions, so that it can be called a law, but because the regulation is based on law. It means that when the regulation is traced upwards, the content or substance will be based on legal principles. It is the rules that contain norms that are based on legal principles which then have the predicate as law, so that they contain sanctions.

The sanctions are a form of or demands from law enforcement, because the rule of law is designed in such a way for a particular event so that the rule must also be designed to be applicable by embedding sanctions in it. Law is a principle, while legislation is an authoritative product, and a rule of law rests on the authority of its makers or decisions in court from judges[1]. Therefore, the existence of laws and regulations is closely related to the existence of state administrators and their scope of application is limited to the territorial scope of state power where the regulatory authority is located. Meanwhile, law is not limited to the state alone but exceeds the state, so that law can always be found in all societies or is universal and continues to develop according to the dynamics of society[2].

2. METHODS

This paper was prepared using a normative juridical method with a statutory and conceptual approach.[3] Based on this approach, several primary legal materials are used, namely laws and regulations relevant to the object of study.

3. RESULT AND DISCUSSION

I. PANCASILA AS THE GROUND LAW IN A NATION

Pancasila is the only National Principle that is Unique in the world and is only used by the Indonesian people. The points or basics contained in Pancasila are extracted from the treasures of the life of the Indonesian nation which are then used as basic laws in the association of nation and state. Indonesia as a sovereign country establishes Pancasila as a forum for its nation's ideology [4]. This means that in Pancasila embodied

religious values, customs, and cultures that exist in Indonesia as the basis for creating legal provisions (Conditional Law). As a country that upholds the rule of law, of course Indonesia will not be separated from the basic conception that is used as the basis for creating a nation state which is at the highest state and legal level called the constitution. This a universal basis that applies to each country. At the level of the constitutional corridor, the issue of the rule of law is manifested in a nation-society called a constitutional law state, where every action of state administrators, namely the government and all state equipment at the center and in the regions is subject to the constitution.

There are differences that are not found in formal law countries and material law countries. The characteristics of the Pancasila state law are very clearly seen from the close relationship between religion and the state, relying on the one and only God, freedom of religion in a positive sense, atheism is not allowed, and communism is prohibited, the principles of family and harmony. There seem to be some similarities, because the concept of a formal and material legal state is adapted to the conditions of the pluralistic Indonesian society. These elements can be seen, among others: Pancasila, MPR, constitutional system, equality, and an independent judiciary. The term *rechtsstaat* contained in the explanation of the 1945 Constitution of the Republic of Indonesia cannot be interpreted in its totality to mean the legal state of *rechtsstaat* and the rule of law as proposed by its pioneers. This is clearly different, intended to adjust the implementation of the constitution which prioritizes the interests of the pluralistic Indonesian people.

As already explained, Indonesia is one of the countries in the world which based on its constitution states "Indonesia is a state of law" which is based on Pancasila and the Indonesia Constitution[5]. It is quite different from the concept of a state of law that applies in the western world. The rule of law in the West emphasizes limiting power and guaranteeing individual rights. Meanwhile, the Indonesian legal state based on Pancasila, has a different birth background and concept from the legal state known in the West. Although different, the Pancasila state law has the same elements as the state law element in *rechtstaat* and the rule of law, namely the guarantee of basic human rights. In addition, it also has specific elements that make the Indonesian state of law different from the commonly

known concept of the rule of law. The difference lies in the values contained in the Preamble to the 1945 Constitution which contains Pancasila with the principles of God Almighty and the absence of separation between state and religion, the principle of deliberation in the exercise of state government power, the principle of social justice, kinship and mutual cooperation. and laws that serve the integrity of the unitary state of Indonesia.

The Indonesia Constitution actually has basic criteria that can be used to create a state of law in which the rule of law will be realized. If you look closely at the Indonesia Constitution, it has actually explained that: "Indonesia is a country based on a rule of law, not based on mere power". This phrase is actually Ground norm which was given by the Founding fathers of Indonesia who built this country. How will we formulate a state of law, how will the state of law be directed, in the sense of why we are creating this state of law, as well as being required to enforce the law as one of the tools that can be used appropriately in realizing the wishes or ideals of the nation. The 1945 Constitution formula contains a basic understanding that in a country built by the Indonesian people, it is actually recognized that there are two factors involved in realizing a rule of law, namely one legal factor and the second is a power factor. This means that the law cannot be enforced unconcretely in the life of the nation, state and society without power and is manifested in the state constitution in the form of the 1945 Constitution of the Republic of Indonesia.

II. LAW AND POWER IN THE PANCASILA STATE

In the administration of state government, there are two very significant factors, namely law and power. These two factors cannot be separated from each other, like the locomotive and its rails and the carriages pulled by the locomotive. This means that the law cannot be enforced and even paralyzed without the support of power. On the other hand, power must not leave the law at all, because if power is built and without heeding the law, what happens is an authoritarian state. The function of power is essentially to provide dynamics to legal and state life in accordance with the basic norms or ground norms as outlined in the 1945 Constitution of the Republic of Indonesia and then further elaborated

correctly in the hierarchy of laws that must refer to the following matters.

The formulation of the precepts in Pancasila can also be referred to as the basic formulation of the ideals of the state and at the same time the basis of the legal ideals of the Indonesian state. As the ideals of the state, it is formulated based on the ideals that live in society, namely that people develop their own ideals, which contain the ideals, hopes, desires, norms, and the ideal form of society they aspire to[5]. As a legal ideal, Pancasila contains the most basic norms that serve as a guide for the formulation of lower legal norms in the country. Therefore, Pancasila is often referred to as "the source of all sources of law. The concept of a state of law adopted by the state of law Pancasila (Indonesia) is a welfare state. This rule of law is now adopted by most countries in the world.[6]

Thus, with regard to these obligations, the government must have a relatively large authority to enter aspects of people's lives. Indeed, it will have an impact on various problems and challenges that must be faced by the government in realizing welfare for its citizens, so it is necessary to give a special authority that is only owned by the government, namely *Freies Ermessen* or *Discretionaire*. *Freies Ermessen* is the authority given to the government to take action to solve urgent problems that come suddenly where there are not enough or no regulations. The concept of the state of law Pancasila that is adopted and applied in Indonesia does not purely adopt the concept of the rule of law in countries that adhere to the civil law legal system, nor the concept of the rule of law in countries that adhere to the common law legal system. The law that adapts to the conditions and soul of the Indonesian nation which historically was born not because of resistance to absolutism carried out by the ruler or king as the background for the emergence of *rechtsstaat* and rule of law thoughts, but was born because of the desire of the Indonesian people to be free from the shackles of imperialism and colonialism carried out by the Indonesian people.

On the other hand, it is colored by Indonesian aspirations with the five fundamental values of Pancasila which are formulated materially based on the perspective (paradigm) of the Indonesian nation in an integralistic state that is unique to Indonesia, taking into account the provisions in the 1945 Constitution while at

the same time comparing it with the concept of a liberal law state, namely *rechtstaat* and the rule of law.¹⁵ As has been explained, that based on the provisions of the 1945 Constitution of the Republic of Indonesia, it is expressly stated that the state of Indonesia is a state of law. However, the principle of the rule of law in Indonesia does not refer directly to two different notions or schools of law regarding the rule of law, namely the rule of law in the sense of *rechtsstaat* and the rule of law in the sense of the rule of law. In fact, the principle of the rule of law in Indonesia is based on Pancasila as its ideology.[7]

The Indonesian state of law does not provide the possibility for freedom to have no religion, freedom to promote anti-religion and does not allow for insulting or desecrating religious teachings which are the source of religious beliefs or defile the name of God. This element is one of the elements that signifies the main difference between the rule of law of Indonesia and Western law, so that in the implementation of state government, law formation, implementation of government and justice, the basis of divinity and religious teachings and values become a measuring tool for determining law. good or bad law even to determine constitutional law or unconstitutional law. Then other elements of this Pancasila state law are the principles of deliberation, social justice and laws that are subject to national interests and the unity of the Indonesian nation that protects all Indonesian bloodshed.

The principle of deliberation and social justice of course cannot be considered simple, because it contains deep meaning for elements of the Indonesian rule of law. The principle of deliberation is one of the basic foundations for Indonesian constitutional law so that it is one of the important elements of the Indonesian rule of law. In the practice and political culture of the Indonesian state administration in the relationship between state institutions, it is clear that the principle of deliberation is highly respected, the principle of social justice is an important element for the rule of law in Indonesia. The last principle of the Pancasila state law is an independent and impartial judiciary. In carrying out their judicial duties, judges should not be influenced by anyone, either because of the interests of office (politics) or the interests of money (economics).[8] In order to guarantee justice and truth, no "intervention" into the justice decision-

making process by judges, either intervention from the executive or legislative powers or from the public and the mass media. However, judges must remain open in examining cases and living up to the values of justice in making decisions. Thus, in the practice of living in society, nation and state, it is necessary to fulfill and realize the requirements and principles as mentioned above. With the formulation of the pattern of Indonesia as a state based on law in the 1945 Constitution.[9]

4. CONCLUSION

In a country that adheres to the Pancasila Law, the state is obliged to consider the religious beliefs of its people in making legal norms and formulating a policy. The state is also obliged to facilitate and provide services for the implementation of religious teachings for all religious adherents who live and develop in the Indonesian state as far as the state's role and involvement is required in carrying it out. In Indonesia's pluralistic society, some people who according to their religious beliefs do drink alcohol, are not prohibited. Like Christians, Catholics, Hindus, Buddhists and Confucians eating pork is "halal" and not something "haram" or forbidden as belief for Muslims. Therefore, for citizens and residents who think that alcohol or pork is not something haram, the state must protect and facilitate their interests. Of course, the provisions that apply to adherents of Islam cannot be applied to adherents of other religions, and vice versa.

Even in countries based on Islam, arrangements for the interests of adherents of religions other than Islam will still exist. The rights of non-Muslim citizens must be protected and guaranteed by a state based on Islam. Therefore, in a country based on Pancasila, such things exist and have been implemented in practice. For example, in traditional markets in various regions, special counters are still set up to sell pork which are written specifically for it. The place is made in such a way, comfortable and not disturbing Muslims who certainly have no interest in stopping by the counter where the pork sells. Likewise with the regulation regarding alcohol, it should also be done that way.

In the state of Pancasila law, pig farming is certainly allowed, but it is declared closed for investment except with certain conditions, the place is special and subject to certain strict conditions so as

not to cause chaos between residents. Likewise, investment in a liquor factory should be declared closed for investment, except with certain conditions. In addition to investment matters, strict supervision of the liquor trade must be tightened. And of course, don't open investment in selling alcohol at street vendors, this must be prohibited and not facilitated as stipulated in the attachment of Presidential Regulation No. 10 of 2021 as described above.

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