



Pancasila Law Theory in Law Enforcement in Indonesia

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Abstract. This research uses a type of normative research that is prescriptive with library study techniques. The research results were obtained from primary and secondary legal materials, that the Pancasila legal theory was born as a synthesis of developmental legal theory, progressive law, and integrative legal theory. The implementation of Pancasila legal theory in law enforcement in Indonesia is still very low, meaning that the enforcement system has not fully implemented Pancasila values. For this reason, it is necessary to evaluate the factors that cause the law not to fulfill its purpose. The Pancasila legal theory is a synthesis of development law, progressive law and integrative law, which is based on law as living law and is based on the values of Pancasila.

Keywords: Law, Pancasila, and Law Enforcement.

1. Introduction

Legal dogmatics is law that focuses on statutory regulations, and law in a positive way. While the function of legal theory is to analyze, study, and as an instrument due to phenomena in society. Law is the basic rules, norms, or rules that have the goal of creating order, peace, and comfort. Generally, each expert has his own opinion regarding the meaning of law or the purpose of law. Therefore, legal theory in its development has changed in the sense that previous legal findings have received criticism from subsequent legal research, and from the discovery of new legal theories that do not abolish previous legal theories. Precisely these theories continue to be studied and analyzed by the real conditions of the nation and state.

The existing adage is, law exists for society, or society exists for law. Turmoil in society continues to increase and continues to emerge. To avoid this, it is necessary to have a legal theory that can protect the community and can answer community problems. For this reason, it is necessary to study what theories are developing in society, especially regarding how the legal theory of Pancasila emerged and how the legal theory of Pancasila in law enforcement in Indonesia.

2. Problems

- a. How did the theory of Pancasila law emerge as a characteristic of the Indonesian State?
- b. How is the theory of Pancasila law in law enforcement in Indonesia?

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3. Method

The type of research used is normative juridical, with a case approach and a statutory approach. The specification of this research is prescriptive, namely, research that explains the condition of the object that is the subject of the research, namely related to legal discipline. The type of data used is secondary data. The method of presenting data in this study will use the form of narrative text, the data collected from the literature study is reviewed and collected as a unified whole systematically.

4. Discussion

4.1 Development of Pancasila Law Theory

Law is a norm, a rule that is guided by the Indonesian people to create an orderly, peaceful, prosperous, and prosperous life. In general, the law is known as normative law which is only binding and listed in statutory regulations as a form of codification of rules, but over time the law has undergone changes or developments, especially laws that are guided by the noble values of Pancasila. The initial emergence or development of Pancasila legal theory is from the existence of:

a. Legal Theory

Indonesia's constitutional basis is the 1945 Constitution, which contains the preamble and body. The objective of the law is conceptually stated in paragraph 4 of the Preamble of the 1945 Constitution, one of which contains legal development. The main objective of law development in Indonesia is to achieve the nation's ideals, protect the entire Indonesian nation and all of Indonesia's bloodshed to realize general welfare, based on the life of the nation and participate in creating world peace based on eternal peace and social justice. The purpose of law according to Mochtar is to achieve order by realizing legal certainty. Law is also a means of social renewal, or what he adopted from Roscoe Pound's theory of law as a tool of social engineering with several main thoughts. [1] First: order and regularity in the context of renewal or development is something that is desired, even seen as absolute. Second: law in the sense of rules or legal regulations can function as a regulatory tool or a means of development in the sense of channeling the direction of human activity that seeks the direction of renewal.

b. Development Law Theory

Legal development must exist in Indonesia to create a safe, peaceful, and peaceful society. One of them is the law enforcement system, The assumption of a sharp downward blunt upward law describes that the law exists amid society but not for the community, the law itself does not play a role and is instead considered to impede societal change. Apart from that, the emergence of the legal theory of development also occurred due to a change like people's thinking towards modern law.[2]

Development Law theory was pioneered by Prof. Dr. Mochtar Kusumaatmadja, SH, LL.M. who was influenced by the way of thinking from

Herold D. Laswell and Myres S. Mc Dougal (Policy Approach) and Roscoe Pound's legal theory (minus the mechanical conception). These theories were used as Mochtar's provision to be adapted to the legal system in Indonesia. According to Laswell and Mc Dougal, how important is the cooperation between theoretical law bearers and students in general (scholars) and practical law bearers (specialists in decision) in the process of creating a public policy, which on the one hand is politically effective, but on the other hand it is also enlightening.[3] To complement it all, Mochtar added a pragmatic objective as suggested by Roscoe Pound and Eugen Ehrlich, namely that there is a correlation between Laswell's and Mc Dougal's statements. that cooperation between law students and practical law bearers is ideally capable of producing a theory of law (theory about law), a theory that has a pragmatic dimension or practical uses. Mochtar brilliantly changed the notion of law as a tool to become law as an instrument for community development.[4]

c. Progressive Law Theory

Progressive legal theory exists as an answer so that law enforcers are not only focused on a positive legal system, but laws that can create justice even though the statutory regulations have not been written, but that law already exists and develops in society, and it should indeed be implemented that way. Implementation and law enforcement are not solely in normative studies but are able to achieve the values of justice, moral values, spiritual values, the values of substantive justice, or in other words the values that are developed in people's lives (living law).[4]

d. Integrative Law Theory

Integrative legal theory is a combination of the thoughts of Mochtar and Muladi, that law is a norm that is seen as a means in development to create order and regularity. Integrative law considers law in a normative sense and law in the sense of social, economic, political, security, and so on. Integrative Law Theory must be understood in a dynamic sense, not status quo, and passive, but law has an active mobility of function and role by developments in the state of national and international society from time to time.[5]

e. Pancasila Law Theory

Pancasila legal theory is a synthesis of development law, progressive law, and integrative law. The law grows in the development of society, this is in line with Savigny's thought that legal instruments grow from the culture, ideals and spirit of society. Law in constitutional practice often uses constitutional habits that are not listed in laws and regulations, even in law enforcement, that is, not all cases are resolved based on the Criminal Code, or related laws. Settlement of cases can be done by deliberation or using customary law that lives in society. The law that develops in society is an elaboration of Pancasila values aimed at building the moral awareness of the nation and state both from the legal structure, legal substance, or the legal culture itself. Thus, all national and state activities are always based on Pancasila values.

The five precepts of Pancasila are a series of ideological, philosophical systems that have scientific logic as the source of all sources, or *grundnorm*. [6] Pancasila legal theory is a legal theory which is ontologically, epistemologically and axiologically based on Pancasila values. That is, law as a product that is implemented and is expected to become a guideline in people's lives, must contain the legal principles of Pancasila, namely the principle of divinity, the principle of humanity, the principle of unity and unity/nationality, the principle of democracy, and the principle of social justice. [7] Both Pancasila values and Pancasila legal principles in general cannot stand alone, all aspects will influence each other and complement one another.

In essence, the ontological basis of Pancasila is human beings who have elements of one unit that are organic and harmonious. The five precepts of Pancasila describe that the supporting subjects in the Pancasila principle are humans. Meanwhile, epistemologically, Pancasila cannot be separated from its essence, human beings. This happens on the basis of: [7] 1) Pancasila recognizes the truth of ratios that originate from human reason, 2) Pancasila recognizes empirical truth, especially positive human knowledge (humans have the senses to obtain empirical truth knowledge), 3) Pancasila recognizes the truth of knowledge that is based on intuition, 4) Pancasila also recognizes the absolute truth of revelation (prophetic truth) as the highest level of truth.

Axiologically, the values of Pancasila are also a unit, which contains nothing but spiritual values which explain that divine values are the absolute highest values. So it is not surprising that the law in Indonesia is based on the one and only God, such as in court decisions or indictments and so on. The essence of the law is based on divinity, the law is not allowed to conflict with divine values. Therefore the legal theory of Pancasila is said to be the embodiment of transcendental legal theory (law based on divine values). Not only that, the legal theory of Pancasila is also synonymous with integralistic prophetic science guided by prophetic ethical ideals (historical activism, transcendence, humanization and liberation). [7] The values of Pancasila are human life which in its development are always faced with social phenomena, therefore philosophically the values of Pancasila are also social theory. uHuk

4.2 Pancasila Law Theory in Law Enforcement in Indonesia

The essence of Pancasila is none other than divinity, humanity, unity, democracy and justice. All components in the values of Pancasila must be implemented in law enforcement in Indonesia, moreover Indonesia is known as a constitutional state that upholds human rights. The implementation of the second and fifth precepts of Pancasila as a society that must be respected and receive equal treatment before the law is known as the equality before the law system. Law enforcement is aimed at achieving justice, benefits and legal certainty. Law enforcement is aimed at accommodating legal needs in accordance with societal developments, so that existing laws are able to function as guidelines or rules that are efficient and responsive to the implementation of national and state life. [8]

Laws that are based on and guided by and imbued with Pancasila aim that Indonesian national law is able to answer society's problems and is able to protect society. In fact, the law is considered to hurt the common people and the term law appears sharp downwards blunt upwards. This phenomenon started with small cases that should have been resolved fairly through deliberation but were sentenced to court, including: The story of Minah's grandmother who took 3 cocoa pods and was sentenced to 1 month and 15 days in prison with a probation period of 3 months; Samirin's grandfather, who collected rubber tree sap, was sentenced to 2 months and 4 days in prison; The case of grandmother Saulina who cut down a durian tree with a diameter of 5 inches and was sentenced to 1 month and 14 days in prison; etc. The case that happened to Minah's grandmother, Samirin's grandfather, and Saulina's grandmother should have been settled out of court, even though in this case the elements of a criminal act were fulfilled. However, the law is not torturing some people. The law must be fair and protect the community, the law is impartial. Moreover, law in Indonesia is based on the values of Pancasila which prioritizes divinity and justice, it should provide a deterrent effect and set an example to the community so that criminal acts are not repeated, administrative sanctions can be imposed. Criminal law is the last resort in solving problems, therefore punishment in the form of a criminal sentence is not absolutely imposed in the settlement of cases, especially in small cases. This is very unfair with big cases that are given light sentences, such as Idrus Mahram who was caught in a bribery case which at the First Instance Court was sentenced to 3 years in prison and a fine of 150 million subsidiary 2 months in prison; Heru Wahyudi in the corruption case was sentenced to 1 year and 6 months in prison and a fine of 50 million subsidiary 2 months in prison and compensation of 15 million, and Jabiat Sagala in the corruption case was sentenced to 1 year in prison. Not only in imposing sanctions or threats but in providing convenience services, for example, Setnov, who was a corruptor in the e-KTP case, which clearly harmed the state, was actually facilitated by the state, such as a cell that was different from other convicts and provided services that were far different from the convicted case. only the floor and barred cells jostling.

From these cases it is clear that law enforcement has not fully implemented Pancasila values. In fact, the irah-irah in law enforcement agencies is "For the sake of Justice Based on Belief in the One and Only God". But that's just a slogan. The legal structure, legal substance or legal culture are required to follow Pancasila values.

Law in Indonesia is divided into written and unwritten laws (customs or habits). Pancasila as the incarnation of volkgeist requires law enforcement that comes from the spirit of Pancasila values. According to Karl Menhein's view,^[9] that law enforcement should see and respond to the values and soul of the nation (volkgeist) that live in a certain society as a whole for the sake of achieving justice in society. The role of Pancasila in enhancing the integrity of law enforcement is to encourage law enforcement officials to live up to, explore, search for and find and compile the values contained in the soul of society so that justice is created which is not only legal justice but also social justice, namely justice that is respect equality between humans and other human beings in society itself, as well as justice that brings together the spirit and soul of the Indonesian nation (volkgeits) of the Indonesian nation as the

goal of the Indonesian state in the preamble of the 1945 Constitution, paragraph 4. [10]

The Pancasila legal paradigm is a legal category that is unique to Indonesia, but is universally objective. This jurisprudence is based on God Almighty. This jurisprudence is loaded with the values of Almighty God and other values in the frame of the value of Almighty God. The existence and existence of this legal knowledge for the people of Indonesia is a gift. To change the paradigm of higher education in the field of law, it must start by changing education fundamentally as a dynamic subject of the reality of people's lives so that understanding of law becomes holistic, visionary, and meaningful. One way to elevate Pancasila as the nation's identity and be known by the nations of the world, is by practicing the values contained in the five principles, by synergizing Pancasila values with the legal education curriculum in Indonesia, so that it will produce law graduates who live the values of Pancasila.[11]

The four basic demands in the concept of a rule of law are that there is legal certainty which is a societal need, the law must apply equally to all society, there must be democratic legitimacy, the state upholds human dignity. By referring to the ideas and construction of the 1945 Constitution, legal development must always prioritize legal structure, legal substance and legal culture. In relation to these three aspects of the legal system, the Pancasila legal system can be emphasized by requiring humans, consisting of law enforcers, state administrators and also citizens who think and act based on morals, conscience and empathy which depart from and are guided by values. Pancasila. Laws with a Pancasila character must pay attention to the implicit and explicit meanings contained in all the principles of Pancasila. This is because laws with a Pancasila character cannot be separated from the internalization of Pancasila values into the legal system itself, resulting in laws with a Pancasila character. Pancasila is a dynamic guiding principle which must be the spirit that underlies every formation of national law and every action in administering the state and society so that the principle of justice which is the core of divinemorals, the basic foundation of humanity, unity and sovereignty of the people can be realized in Indonesia through law. which is based on Pancasila.

The five main ideologies that make up Pancasila are the five principles of Pancasila. The main ideology is stated in the fourth paragraph in the Preamble to the 1945 Constitution: Belief in the one and only God just and civilized humanity the unity of Indonesia Democracy led by wisdom in deliberation/representation, as well Social justice for all the people of Indonesia should be a legal theory that is suitable for Indonesia

5. Conclusion

The Pancasila legal theory is a synthesis of development law, progressive law, and integrative law, which is based on law as a living law and based on Pancasila values. This is because the legal theory of Pancasila is the ontological, epistemological and even axiological basis of Pancasila. The legal theory of Pancasila in law enforcement in Indonesia has not been fully implemented properly, this can be seen from the term

"sharp law downwards blunt upwards", even though law enforcement is based on the motto "For the sake of Justice Based on Belief in One Almighty God". The purpose of the law is in accordance with the Preamble of the 1945 Constitution which is essentially based on Pancasila values.

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