

## PANCASILA AS A LEGAL SCIENCE PARADIGM

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### Abstract

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.

Keywords: Legal Studies, Pancasila, Pradigma.

### A. INTRODUCTION

In general, knowledge is interpreted by the community as a result of the learning process. Science itself is often equated with knowledge. One way to gain knowledge, namely through education. the word science means knowledge or a system of knowledge covering general truths or the operation of general laws especially as obtained and tested through scientific method.<sup>1</sup>

The definition of science in Latin is *scientia*, not English science, while knowledge of law is called legal science which in Latin is called *scientia iuris*. The word *iuris* is a plural form of the word *ius* which means that in Indonesian the law is interpreted as a set of guidelines for achieving justice.

From the word *ius*, the term *iustitia* emerged, which indeed means justice. In addition to *ius*, in Latin there is the word *lex* which means in Indonesian is the law, which is a set of rules of conduct to regulate public order. Simply put, law is the study of and examines all matters relating to law. The law itself is generally a set of rules or norms that regulate the community, in which there are sanctions as a coercive effort for compliance with the law, and is a punishment for those who break them. As a science, jurisprudence

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1 Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Edisi Revisi, Cetakan Keempat, Kencana Prenada Media Group, Jakarta, 2012, P. 1.

enters prescriptive science numbers, meaning that science carries or is full of values. Jurisprudence is advocating not only for what it is. Therefore, legal science is not included in the empirical field of science. The truth to be obtained is the truth of coherence not the truth of correspondence.

Bergas Prana Jaya argued that the science of law in a broad sense, namely knowledge that includes and discusses everything and all the intricacies of law. Legal science in the narrow sense, namely legal science that studies the objective meaning of positive law.<sup>2</sup>

The Indonesian people recognized and gained legal knowledge for the first time from the Dutch with the establishment of Rechtsschool in 1909, which was later developed into Rechtshogeschool in 1924. As a consequence, the legal science taught by itself was Dutch national law, namely the science of Dutch national law, namely science intended to study Dutch national law adapted to the conditions of the Dutch East Indies.

Of course, Dutch national law is aimed at the interests of the Dutch colonial, which are individual and liberal. Dutch national law is no longer compatible with the realm of independence, especially in the current reform era. In addition to being inconsistent with the current condition of the Indonesian people who have entered the era of reform, Dutch national legal science does not reflect the noble values of the Indonesian people and the philosophy of the Indonesian people. The nations of the world, as they are known to have the characteristics and specificities of each, including the cultural works of these nations. For example the British nation that is known by the nations of the world in discovering and developing science, as well as thinking about the state and law. The Greeks who have contributed a lot of various thoughts both in the field of science, as well as in the fields of state and law, for example thoughts about the city state by Plato, the basics of democracy and the understanding of the republic by Aristotle, and so on. The French are also known for developing a spirit of democracy after the French revolution with the motto: "Liberte, Egalite and Fraternite". The American nation that echoes the independence and freedom set forth in the Declarations of Independence, which is even preserved by the construction of the statue of Liberty. The characteristics or specificities possessed by these nations, are not only known and recognized by other nations in the world, but their special characteristics and specialties make these nations become strong, large and have high sense of solidarity, so respected by other nations in the world.

Such is the case with the Indonesian nation, which is known as a large and sovereign nation, has a monu-mental work of the nation, and should be the pride of the nation, which is the result of thinking about the principles of national and state life, namely Pancasila. The basic principles of community, nation and state that can overcome all problems in society, nation and state as contained in the precepts of the Pancasila,

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2 Bergas Prana Jaya, *Pengantar Ilmu Hukum*, Cetakan Pertama, Legality, Yogyakarta, 2017, P.52.

which certainly can not be separated from the destiny determined by God Almighty that the Indonesian people have carved out his history with his own cultural work. Pancasila philosophy which is the essence of the nation's great works in social, national and state life which should be a nation's work must be upheld, placed in line with the thinkers of the great nations of the world, such as liberalism, communism, socialism, and other philosophies of life, and practiced in the life of society, nation and state by the Indonesian people. A person may have exclusive rights over an idea that comes from his or her mind, as long as he is able to keep the idea for himself and not spread to others.<sup>3</sup>

Materially substantial and intrinsic, Pancasila is philosophical. For example, the nature of the Just and Civilized Precepts of Humanity, not to mention the values in the Divine Precepts of the Almighty, and the values in other precepts. All of them are metaphysical / philosophical. Furthermore, according to Syam, practically-functionally, in the cultural order of the pre-independence Indonesian society and still ongoing until now and should in the future, the value of Pancasila as a philosophy of life or view of life practiced. Meanwhile, formally-constitutionally, the Indonesian people recognized that Pancasila was the basis of the state (state philosophy) of the Republic of Indonesia. There is not a single law in the positive legal system in Indonesia that does not include an acknowledgment that all structures, contents, ways of working, goals, functions and basic principles and various legal rules, etc. in any law that is not include Pancasila.<sup>4</sup>

Pancasila is the philosophical basis of the Unitary Republic of Indonesia which has consequences for every aspect of the life of society, nation and state. and the attitudes and behavior of the Indonesian people must be based on the values contained in Pancasila.

Pancasila must be discussed or dialogued by all elements to become the energy of the unity of the whole nation. The greater the party or component of the nation to understand Pancasila, the greater the energy that is formed to achieve the ideals of the nation and state so that the emission will illuminate the future of the nation and the world. In that context Pancasila needs to get attention, especially its function which not only stops being a commitment together, but it must be understood as the vision of the nation that always strived to be realized as well. Pancasila is the ambition and the signs in carrying out the state.<sup>5</sup>

Pancasila is proof of the results of the creativity of the nation's children and is also a proof of historical milestones that show the next generation of the nation that the

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3 Anis Mashdurohatun, Hayyan UI Haq, Sony Zulhuda, SOCIAL FUNCTION RECONSTRUCTION OF INTELLECTUAL PROPERTY RIGHTS (IPR) BASED ON JUSTICE VALUES, *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017, P.141-160.

4 Teguh Prasetyo, Keadilan Bermartabat, *Perspektif Teori Hukum*, Cetakan Kedua, Nusa Media, Bandung, 2015, P.77 dan 78.

5 Muhammad Chairul Huda, TRENGTHENING PANCASILA AS NATIONAL IDEOLOGY TO IMPLEMENTATE THE BALANCING VALUES TO IMPROVE LAW'S APPLICATION IN INDONESIA, *Jurnal Pembaharuan Hukum*, Volume V No. 1 April-Agustus 2018, P.1-12

Indonesian nation has also produced a thought about the basics of philosophy in the life of the state and society. Pancasila must be appointed as a great work of the Indonesian people at the same level as other great works, and to show the world that the Indonesian people have a view of life.

Potentially, the philosophy of Pancasila will develop with cultural dynamics. Pancasila philosophy will develop conceptually, rich conceptually and in terms of quantity and quality. Pancasila philosophy is part of the repertoire and philosophy that exists in modern literature and civilization.

Indonesian law is currently still vacillating. Especially in the era of globalization which also affects not only the law but also the culture of society. The effects of globalization cannot be dammed. The negative impact of globalization has a bad effect not only on the behavior of the nation's next generation, but also on the type of crime that is increasing by utilizing science and technology.

Pancasila is the right choice for Indonesia's law state. As the legal ideals of the Indonesian nation, Pancasila is in accordance with the soul and noble values of the Indonesian nation, so that the science of law whose object is law makes the Pancasila legal ideal as its paradigm.

Pancasila as a legal ideal is a guide and guideline for the formation of law and its implementation. As the objectives to be realized by law, namely legal certainty, expediency, and justice.

As mentioned above, Indonesian law is still influenced by Dutch national law. This can be reflected from the use of the Criminal Code and the Civil Code, which are clearly not in harmony with the values of the Pancasila, so that in the future law science must be formed with the true Pancasila paradigm.

The Pancasila paradigm in jurisprudence, is expected to be able to solve all legal problems that so far cannot be solved by conventional legal science at this time. The failure of science (jurisprudence) in guiding human life is also addressed to the appearance of science that is too physical and ignores the depth of meaning and spirituality, so that what arises is materialism. For example is a law scholar who then works as a judge, and only masters legal science in theory or emphasizes legal positivism, so when he makes a decision, he will only hold on to the sound of the law or just as a mouthpiece of the law, without looking at the facts that occurs in society, so the result is injustice that is not in accordance with the values that live in society.

Esmi Warassih stated that the positivistic point of view was so forward and seemed to be felt in the first strata of the Faculty of Law. This is one of the causes of difficulties in reforming the legal system. The legal products that are born so much are felt to be increasingly shackling people's lives, so that justice and usefulness and peace are difficult to realize. Existing laws are felt increasingly far from their social base, and even the gap

between people's hopes and needs is difficult to meet. It seems that the law is increasingly uncomfortable to be used to protect and direct the community towards more dignity. The law actually tends to be used to legitimize certain interests and thus those interests finally have legal validity that is difficult to refute. In a context like this, philosophical and sociological perspectives seem to be being ignored in the framework of the legal order.<sup>6</sup>

With the Pancasila paradigm in jurisprudence, from the formation of law to its implementation it will prioritize the values of the Five-precepts which prioritizes justice and the interests of society. Pancasila is the identity and characteristic of the Indonesian nation. In order for Pancasila to become an ideology that is in line with other ideologies in the world, the only way is to practice the values contained in its five principles. Not only that, the values of Pancasila are also synergized with the curriculum of law education in Indonesia, so as to produce output in the form of law graduates with the spirit of Pancasila.

## B. DISCUSSION

The principle of legality in the Pancasila legal state is the principle of legality which is a combination of the principle of legal legality that prioritizes the value of legal certainty and the principle of material legality that recognizes the living law in society, namely the application of pluralistic religious and customary law in fulfilling the values of justice and benefit based on Pancasila justice values.<sup>7</sup>

Indonesian jurisprudence whose job is to describe and explain the legal life in this country also cannot be separated from the 1945 Constitution of the Republic of Indonesia. among others:

1. The Almighty God;
2. Humanity;
3. Unity;
4. Popular people;
5. Social Justice;
6. Kinship;
7. Harmony; and
8. Deliberation.

The above paradigm can guide in the field of the administration of a rule of law, namely the making of laws, law enforcement, and justice. The legal order that operates in

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6 Esmi Warassih, *Pranata Hukum Sebuah Telaah Sosiologis*, Cetakan Kedua, Badan Penerbit Universitas Diponegoro, Semarang, 2011, P.179.

7 Muhammad Yahya Selma, *RECONSTRUCTION OF PRINCIPLES OF LEGALITY IN CRIMINAL LAW BASED ON JUSTICE VALUE OF PANCASILA*, *Jurnal Pembaharuan Hukum*, Volume IV No. 3 September-Desember 2017, P.305-312.

a society is basically the embodiment of the legal ideals embraced in the community concerned into a variety of positive legal rules, legal institutions and processes (government and community bureaucratic behavior). The development and development of law in Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. It implicitly shows that the drafting of the law in force in Indonesia cannot be separated from the national outlook and philosophy of the nation, namely Pancasila.

Juridically, Pancasila as the basis of state philosophy is contained in the Preamble of the 1945 Constitution of the Republic of Indonesia of the Fourth Paragraph which reads:

the Indonesian national independence was compiled in a Constitution of the Indonesian state, which was formed in an arrangement of the Indonesian state that was sovereign of the people based on: God Almighty, just and civilized humanity, Indonesian unity and populace led by wisdom in wisdom consultative / representative.

Basically, Pancasila as a philosophical system has 2 (two) functions, namely:

1. Theoretical function;

A philosophical system is a system of knowledge and understanding that is deepest and comprehensive, so it is universal. This is based on the fact that a philosophical system discusses everything to its essence, or in other words to the level of essential knowledge. The Pancasila philosophical system which objectively in itself is a system of knowledge of the nature of human life in full, when accepted the truth is lived, understood, impregnated and practiced will bring happiness to life both physically and spiritually. The Pancasila philosophy system which is an essential knowledge system provides knowledge about wisdom in human life in relation to God Almighty, with the state, and with everything around him. In this sense the system has been transformed into a view of life and worldview.

The worldview and world view are terraced in terms of their breadth in line with their supporting environment. Covering a certain age, so that it is a worldview and view of life for all humanity. Covering a particular place, so that it can be a worldview and view of life for certain nations, certain groups or ethnic groups, communities or even individual humans.

A philosophical system after being accepted as a worldview and view of life, has permeated so that it encompasses the whole human soul and thus manifests itself in all realities of life. In this sense, the philosophical system is a source of values, norms and determines the attitude of life or way of life. Because of the unification of the Pancasila philosophy system with the life philosophy of life, it cannot be separated from the Indonesian people in all aspects of their lives.

## 2. Practical function.

All aspects of the implementation and administration of the state are the result of the derivation of Pancasila values. Pancasila which already has a basis on human nature as a principal supporter of the state and the nature of society, nation and state is practically a source, principle of kerokhanian in every aspect of the implementation and organization of the state, including the order of Indonesian law, state power, national defense, every means of state equipment and especially the State Guidelines Outlines whose relation is a dynamic state-building.

Pancasila as a value system will function steadily as a view of the life of the nation (way of life, Weltanschauung), if all citizens as components of the nation have come to believe in the truth of Pancasila values. On the basis of his belief, the values of Pancasila will be seen as philosophical values. To arrive at such beliefs, all components of the nation need to try to understand thoroughly the truth values associated with themselves as human beings, the truth about nature, and the truth of God Almighty, as well as the relationship and its position among the three. The results of the process of hunting for ultimate truth over 3 (three) things (human, natural, and God Almighty) will give birth to what in science is called a paradigm. It is this paradigm that will determine the theological, philosophical, and ideological values that it adopts.<sup>8</sup>

The study of Pancasila as a paradigm of law becomes very important, and therefore needs to be strengthened, related to the following arguments:

1. The paradigm is "a set of values (about God, nature and humans, and the relationship between the three), which is believed to be true and the laws and application techniques that are shared by members of a scientific community";
2. The paradigm is the source, foundation, origin and beginning of the existence and development of knowledge;
3. In the Symposium and Workshop on Pancasila at UGM in mid-2006 as well as the National Seminar on Nailvalues of Pancasila at Pancasila University in Jakarta in late 2006, it was believed that the paradigm of Indonesian science was Pancasila. It means, practicing law and practicing law must pivot, process and lead to the values of Pancasila.

Pancasila, can be seen in its formulation and the values contained in it, has talked fundamentally about the concept of God, nature and Indonesian people in a unified whole. The relevance of the placement of Pancasila as the paradigm of Indonesian law, we can

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8 Sudjito Atmoredjo, *Ideologi Hukum Indonesia, Kajian Tentang Pancasila Dalam Perspektif Ilmu Hukum dan Dasar Negara Indonesia*, Cetakan Kedua, Lingkar Media, Yogyakarta, 2018, P. 90.

examine through understanding the nature of the understanding of the principles of Pancasila, as follows:

1. First Sila: Ketuhanan Yang Maha Esa

Ketuhanan Yang Maha Esa contains the understanding and belief in the existence of God, the Creator of the universe and its contents. As the First Precepts, Godhead becomes the main source of the life values of the Indonesian people, animates and underlies and guides the realization of Fair and Civilized Humanity, raising the Indonesian Unity which has formed the Republic of Indonesia which is fully sovereign, populist, led by Wisdom. Policy in Consultative / Representative in order to realize Social Justice for All Indonesian People.

First Sila this clearly implies the concept of the existence of a God who continues to establish relationships and unity with humans and the universe and their contents. This is clearly contrary to the Cartesian-Newtonian paradigm which views that God has "retired" since the universe and humans as its inhabitants have been created, but instead matches the theistic character of legal science with a holistic paradigm.

2. Second Sila: Kemanusiaan yang Adil dan Beradab.

Humanity, comes from the word human, which is a virtuous creature that has the potential of thought, taste, intention and creativity. Because of this potential humans occupy or have high dignity. With his mind, humans become cultured. With their conscience, people are aware of values, norms. With fair and civilized humanity, every citizen is guaranteed his rights and freedoms relating to relations with God, with people, with the state in accordance with their human rights

This Second Sila clearly implies the concept of a whole human being. In its wholeness, there is spiritual and physical. As a spiritual unity, the existence of conscience (qalbu) is no less important than reason. Conscience and mind are in a single entity, although their functions are different. Conscience carries the function of morality so that humans can distinguish between right or wrong, good or bad, just or wrong, and so on so that the direction of human life is always on the straight path; while reason carries out the functions of creativity and progressiveness, so that human life continues to experience progress. In the dimension of legal science, creativity and progressiveness of the mind are controlled by the conscience, so that it is always straight towards the achievement of absolute truth and justice. Pancasila Man recognizes and respects the existence of reason (ratio), but not everything (ratio above else) as the credo "cogito ergo sum".

The words "just and civilized humanity also imply the concept of humans who are united with nature, social, and God, which always establishes relationships



on the basis of the principle of pan-subjectivity. That is civilized human beings, human beings who are just, balk to themselves itself, social, nature and God, a human concept that is far different from the understanding of individual-liberalism.

3. Third Sila: Persatuan Indonesia.

Persatuan Indonesia is the embodiment of the ideology of Indonesian pride embodied by the Almighty God, and Fair and Civilized Humanity. The imperative to place the First Precepts and Second Precepts as a frame of Indonesian Unity, demonstrates the holistic character of the ideology of Indonesian nationalism, as well as the rejection of the ideology of ethnicism and ethnocentrism.

4. The fourth Sila: Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan Dalam Permusyawaratan/Perwakilan.

This Sila implies the concept that the people or representatives of the people in exercising their power must be led by wisdom, with a full sense of responsibility, both vertically to the Almighty God and horizontally to all Indonesians, and not oncemany times on the basis of strength and formal legality. A philosophical wisdom will arise if humans love the truth. The closer man is to the source of absolute truth, namely God, the morewise he will be. The concept of populist Pancasila is compatible with the characteristics of a holistic paradigm of law.

5. The fifth Sila: Keadilan Sosial Bagi Seluruh Rakyat Indonesia

Keadilan Sosial means justice that applies in society in all fields of life, both material and spiritual. Obviously, justice is not formal justice, a justice that is born out of legislation, but rather justice that is linked to its social habitat, namely the Indonesian people in a frame of justice based on the Godhead. How clear, the concept of Pancasila justice is different from the concept of justice positivism, and it actually matches the realistic and theistic character of the holistic paradigm of law. if we look at the fifth sila of Pancasila keadilan social bagi seluruh rakyat Indonesia it means no there is debate between human beings, rights and stay the same.<sup>9</sup>

The world view of God, nature and Indonesian people in the Pancasila above has taken root in the life and life of the Indonesian people. The founding fathers have succeeded in digging up these noble values, and then crystallize them in a formula as the basis of the state, namely Pancasila. So, it is very open and even a necessity to make Pancasila a holistic paradigm of Indonesian law, because these noble values have taken root, are believed to be true, and have become a national consensus to be used as a guide in all life activities.

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9 Dzanurusyamsi, UPAYA PENGADILAN DALAM PERLINDUNGAN HUKUM ANAK LUAR NIKAH BERDASARKAN SILA KE-5 PANCASILA, *Jurnal Pembaharuan Hukum*, Volume III No. 1 Januari - April 2016, P.86-96

Pancasila paradigm of law is a category of law that is unique to Indonesia, but objective-universal. This law, pivots from God Almighty. This jurisprudence is loaded with the values of the Almighty God and other values in the frame of the value of the Almighty God. The existence and presence of this legal knowledge for the Indonesian people is a gift. Up to the Indonesian people through religious teachings. On the basis of religious teachings, the truth and justice in legal science is truth and justice in the perspective of God. This is where, for the Indonesian people, legal theology is part of Indonesian law. Theology here is not merely as a discipline that studies divinity, is abstract, normative, and scholastic, but rather as an interpretation of reality in a divine perspective.

Furthermore, when Indonesian people realize the nature of their humanity, that is, as intelligent beings, the understanding of the values of God, religion and theology is not based on dogma, force or pressure, but is a rational understanding. Indonesian people always use their minds to the maximum in order to be able to understand the nature of God, nature, and humans. It is the result of thinking that gives birth to philosophy. Thus, the philosophy of jurisprudence is a part of Indonesian jurisprudence which examines truth and ultimate truth on the basis of ratio. It is this philosophical truth and justice that further drives the emergence of various ideas, concepts or ideas in the Indonesian people concerned. An Indonesian legal ideology is an ideology rooted in the value of Godhead.

From this legal ideology various legal theories will emerge, as a means to capture, explain and predict the future, all realities of life both theological, metaphysical and physical-empirical realities. To be able to explain the whole reality of life well, a legal theory requires facilities/tools in the form of legal science methodology. Of course, the type and quality of a legal science methodology has a profound effect on its ability to provide assistance to legal theory in capturing and explaining the realities it faces. Therefore, Indonesian jurisprudence also requires a type of legal methodology that is uniquely Indonesian. The uniqueness of the methodology of Indonesian law lies in the object of cultivation, method/method of cultivation and the purpose of cultivation.

All forms of irregularities (anomalies) that take place in the form of various legal problems that fail to be solved by conventional legal science (legal-positivistic), may make us aware of the need to return to the paradigm of the original Indonesian law, namely Pancasila. Indonesian legal science like this is said to be true and beneficial for the life of the afterlife.

### C. CONCLUSION

The methodology of Indonesian jurisprudence must be able to help legal theory to explain the theological, metaphysical, and physical-empirical realities, both those that run in an orderly and orderly manner and those that are chaotic, anomalous and even anarchic. A comprehensive and comprehensive explanation, both outward and inward

aspects, both the essence and existence, both meaningful and symbolic of the reality studied by law, is very much needed as legal education and learning material for law, so that from time to time Indonesian legal science develops more advanced approaching absolute truth and justice.

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