Pancasila As a Source of Law “Das Sollen” And “Volkgeist” In Indonesia Law Renewal

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Abstract. Since the Proclamation of Independence August 17, 1945 until now, explicitly or tacitly, consciously or not, the unitary state of the Republic of Indonesia has inherited the remnants of the colonial legal order which consists of its structure (including all forms of the process) and its substance, but systemically changes have been made in the framework of national law reform. The problems that arise from this paper, namely; What is the position of Pancasila as a source of law "das sollen" and "volkgeist" in the renewal of Indonesian law (study in the context of the quo vadis legal reform in Indonesia)? After the proclamation of independence, the development of Indonesian law tried to break away from colonial legal ideas which fully became the substance of national law. However, the fact is that there are factors that are difficult to deny in the framework of building an Indonesian national legal system that is completely separated from the tradition of the colonial legal system. This condition is the entire path of the development of the legal system in Indonesia which has actually been built and clearly defined based on the configuration of the legal principles of colonial government power. Even so, it seems that to build national law by starting from zero, the configuration of new legal reforms that still have to be found does not mean losing the legal basis with a national law dimension that can create modern law. This means that Pancasila still has formal legitimacy to be used as a source of all sources of legal order. Therefore, to adapt to the reform era, including the field of national law development, the desire to build a legal system that is more Indonesian in character with all its attributes of authenticity is indeed a hope (das sollen). Ideally for a modern national law in the era of globalization in addition to containing "local characteristics" such as the ideology of the Pancasila nation, and the nation's traditions, Pancasila as a source of law and the philosophy of the Indonesian nation, is a manifestation of the personality and character of the Indonesian nation or in other words as a form of civilization. the Indonesian people, who deliver ideas for legal reform and as a source of all sources of legal order, and have an attachment as a basis for legal reform in Indonesia.

Keywords: Pancasila; as a source of law and order

1 Introduction

Since the proclamation of Independence August 17, 1945 until now, expressly or secretly, whether consciously or not, have inherited the remnants of the colonial legal order which consists of structures including all forms of processes and their substance, systemically changes have been made. The process of continuing all the remnants of the past legal order in Indonesia to this day is very difficult to avoid because more than a century when Indonesia was still called the Nederlandsch Indie (Dutch Indies) "there has been a process of introduction and development of a foreign legal system into/in Indonesia, an indigenous system of life and law.”

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[1] The foreign legal system in question is none other than the European legal system which is rooted in Indo-German and Roman-Christian legal traditions, and which was updated through various revolutions, starting from the "Papal Revolution" to the Revolution of the bourgeois-liberals in France at the end of the 19th century. 19.

In line with the historical flow of Dutch East Indies law in Indonesia, which was influenced by developments that occurred during the VOC, Daendels, and Raffles, since 1848 various important improvements have been made, for example the constitution, new legal books, reorganization of the judiciary originating from the Netherlands. Even in that era, the Dutch East Indies colonial government was introduced to be grouped into three population groups. The three groups referred to can be read in the Indische Staatsregeling [1] namely: (1) the European group (Europeanen) and those who are equated with it; (2) Foreign Eastern Group (Vreemde Oosterlingen); and (3) the Bumi Putera Group (Inlanders). Each of these population groups applies its own laws.

The main principle is customary law for Indonesians (Bumi Putera) and people who are classified as the same as natives, while Dutch law is for Europeans. However, for reasons that are clear and reasonable, this principle does not apply. In fact, according to Soetandyo, the classification of the people that was maintained until the end of colonial rule indicated that the dualism and pluralism of colonial law would still be confirmed in Indonesia. [1]

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2 Discussion

Approach to this problem-solving study, the author uses the hypothesis of regulation as an apparatus of social designing. Roscou Pound contends that the reason for regulation is to safeguard human interests (regulation as a device of social designing). Human interests are requests that are secured and satisfied by people in the lawful field. Roscou Pound partitions human interests that are safeguarded by regulation into three kinds, in particular:a. public interest

a. social interest;
b. private interest.

The main public interest includes:

a. the interest of the state as a lawful element in keeping up with its character and substance; and;
b. the interests of the state as the guardian of the public interest.

After the proclamation of independence, Indonesia has two legal traditions, each of which is open to be chosen, in particular the provincial overall set of laws with every one of its complexities and individuals' overall set of laws with all its variety. At first the public chiefs attempted to fabricate Indonesian regulation by making an honest effort to split away from frontier legitimate thoughts, which was not easy. This is the initial period with the belief that the legal substance of the people who have been colonized will be able to be fully appointed and developed into the substance of national law. In any case, actually it closes with the affirmation that the acknowledgment interaction isn't quite as basic as the essential models in the principle.[1]

Under these conditions, a large number of other scholars wanted a state with a European-style legal system that prevailed during the colonial period. This seems to have happened because of the various difficulties that have arisen not only because of the diversity of people's laws which are generally not explicitly formulated, but also because the management system as a modern legal system includes organizational arrangements, procedures, and doctrinal principles of procurement. and its enforcement, as well as the professionalization of its implementation, have already been created completely as a colonial legacy that will not be easily overhauled or replaced in a short time.

However, the fact is that there are factors that are difficult to deny in the framework of building an Indonesian national legal system that is completely separated from the tradition of the colonial legal system. The factor referred to once again is not only because of the diversity of people's laws which are generally not explicitly formulated, but also the existence of conditions that are not easily overhauled. The condition referred to is "the entire path of the development of the legal system in Indonesia has actually been built and clearly outlined based on the configuration of principles that have been laid long before the power of the colonial government fell.

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After choosing and believing that it would be more practical to continue the tradition of the colonial legal system which was considered to have been better understood and had a more definite structure, it turned out to be not without problems in the next journey. Setting aside the choice of using people's laws that are diverse and not explicitly formulated, by choosing a European legal pattern that adheres to the principle of unity through codification is not without consequences.

The problem that then arises is the flexibility of written norms in their implementation in court institutions. The formulation of explicit legal norms in the form of legislation often seems rigid and limiting, although in its implementation there are still opportunities for judges to make interpretations, considering that any codification of legal norms is created with conditions that are not always complete. In addition to the normative aspect, the factor of the judiciary is also a problem in itself, because the existence of this institution is also the result of the introduction of the colonial government into the legal system of the colonized people.

Therefore, in its application to concrete cases in court, these legal norms or rules often raise various problems which lead to the difficulty of realizing substantial justice for the seeker. The judge only caught what was called "legal justice", but failed to capture "social justice". Judges have abandoned fair legal considerations in their decisions. As a result, the court's performance is often highlighted because most of the court's decisions still tend to show a more “formalism-procedural” rather than closeness to “the sense of justice of the citizens”.

The use of an overall set of laws that doesn't begin or develop from the substance of society is an issue, particularly in nations that are changing in light of the fact that there is a bungle between the qualities that help overall sets of laws from different nations and the qualities that are lived by individuals from the local area themselves.[2]

Nevertheless, it seems that to build national law by starting from zero, the configuration of new legal reforms that are still to be found does not mean losing the legal basis with a national law dimension that can create modern law. This means that Pancasila still has formal legitimacy to be used as a source of all sources of legal order. However, it is also not true to say that Indonesian legal leaders did not have new ideas to escape the shackles of colonial law. [3]

With regard to the above problems, the attention of the republican leaders at that time was mostly focused on efforts to realize national unity and unity, thus ignoring the innovations of public and state institutions and institutions. Therefore, the choice to continue the application of the old legal rules with the Transitional Rules of Article II of the 1945 Constitution, in the end it is very open for amendments to the 1945 Constitution, which are intended to adapt to the reform era, including the field of national law development. The desire to build a general set of laws that is more trait of Indonesia with every one of its credits of credibility is without a doubt an expectation (das sollen). Since acquiring various guidelines and lawful establishments from the pioneer time frame really implies keeping up with the perspectives and acting in view of individualistic comprehension. This, obviously, isn't in accordance with the attitude of the Indonesian public, which depends on collectivist understanding.

In that regard, Sunarjati Hartono,[4] recommends several things in the context of the formation and development of Indonesian national law, namely:

a. National law must be a continuation (inclusive modernization) of customary law, with the understanding that national law must have the spirit of Pancasila. It means, the soul of the five precepts of Pancasila must be able to meet the needs of the Indonesian people in the present and as much as possible in the future;
b. Indonesian National Law will not only revolve around the issue of selecting parts between customary law and western law, but must consist of newly created rules according to the need to solve new problems as well;

According to Satjipto Rahardjo, that the law as acknowledged and executed in nations in this present reality, by and large falls into the class of current law.[5] It has the accompanying attributes: (1) in a composed structure, (2) applies to the whole domain of the nation, and (3) as an instrument that is deliberately used to understand the political choices of its kin. The three qualities of current regulation are for sure unequivocally connected to the general set of laws starting from central area Europe which was acquired by Indonesia after autonomy. Thusly, its thought is considered to pick a composed regulation to be more future-oriented. Then the issue of uniformity in its application is also another important consideration in line with the ideals of establishing this nation state in the form of the Unitary State of the Republic of Indonesia (NKRI).

Based on the above reality, in fact the people in charge of legal development in Indonesia in the early days of independence were indeed faced with a very difficult condition on how to create a legal system for a nation that was already a state, independent, with a great spirit to maintain unity and integrity. [6]

Therefore, as an independent nation-state, sovereign Indonesia, and part of the community of other civilized nations, to use customary law which contains national traditions with its "local characteristics", is actually not sufficient. Meanwhile, in order to accommodate the increasingly complex interactions between civilized peoples in various forms, both investment and commercial cooperation that takes place in urban centers, for this purpose legal rules are needed that are more certain and apply to all citizens without exception. [7]

Pancasila as a source of law and the Philosofische Grondslag of the Indonesian nation, in the everyday sense, ideas are equated with ideals. The ideals in question are fixed ideals that must be achieved, so that permanent ideals are at the same time a basis, view or understanding. Thus ideology includes the notion of ideas, basic understanding, ideas and ideals, as well as the source of the rule of law.

The position of Pancasila is as a philosofische grondslag (philosophical basis) or weltanschauung (view of life) for the Indonesian nation, which teaches about the importance of

the values of "Divinity, Humanity, Unity, Democracy, Wisdom, and Justice". In addition, Pancasila is an identity or national identity of Indonesia. [7]

Pancasila is a manifestation of the personality and character of the Indonesian nation or in other words as a form of civilization of the Indonesian nation, which brings ideas for legal reform that are based on Pancasila as the state ideology. The role of Pancasila ideology is very important because Pancasila is actually a source of identity, personality, morality, and the direction of the nation's life. Indonesia will be in the form of a nation that has a great civilization if all the people of its nation are willing to sacrifice themselves to practice Pancasila in every aspect of life in a country based on law (recht staat).

Indonesia has now likewise expressed its obligation to modernization. Modernization is supposed to be a scaffold that drives individuals and country of Indonesia to a prosperous and prosperous life. However, the commitment to modernization sooner or later will in turn have an influence on the legal field, especially in relation to its position, which further explains that the position of Pancasila as the source of all sources of legal order, and has an attachment as the basis for legal reform in Indonesia.

4 Conclusion

In closing, it can be stated that Pancasila as an ideology resulting from the deepest thought of the Indonesian nation has been proven to be trusted and believed to be the truest, most just, wisest, best and most honest (reality, norms, values) ideology. suitable for the Indonesian people, can be used as the basis for legal reform in Indonesia. So the main functions of Pancasila for the Indonesian nation and state are:

a. Pancasila as the way of life of the Indonesian people;
b. Pancasila as the state foundation of the Republic of Indonesia; and
c. Pancasila as the soul and personality of the Indonesian nation.
d. Pancasila as the source of all sources of law in Indonesia.

Thus, so that the spirit of the formation and development of the Indonesian legal system in the future is in harmony with its cultural roots, the ideals of the Proclamation of Independence of the Indonesian nation must be its main capital. Furthermore, in turn, Pancasila must be made "das sollen" and at the same time become "Volkgeist" or the soul of the Indonesian nation in the context of establishing and developing reforms and the Indonesian legal system now and in the future.

References

[1] Wignjosoebroto, S. 1994. Dari Hukum Kolonial Ke Hukum Nasional Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesia. Jakarta: Raja Grafindo Persada.
[2] Pujirahayu. 2018. Mewujudkan Tujuan Hukum (Proses Penegakan Hukum dan Persoalan Keadilan); Pamator Press, Jakarta.
[3] Gani, A. 2010. Pembaharuan Hukum Nasional, Dharmawangsa Press, Surabaya.
[4] Sunarjati, H. 1991. Dari Hukum Antar Golongan ke Hukum Antar Adat. Bandung: Alumni.
[5] Rahardjo, S. 2009. Ilmu Hukum, Bandung: Alumni.
[6] Sunny, I. 2014. Filsafat Hukum (Suatu Pengantar), Jakarta; Gunung Agung.
[7] Irnandi, D. 2017. Pembangunan Hukum Nasional, Jakarta; Penamedia.