The Implementation of Emansipatoric Law in Indonesia

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Abstract. There is a sense of mutual limitation that exists in a democratic state of law, which refers to a democracy that is constrained by the law in terms of both its procedure and its content. The fundamental concept of the rule of law in Indonesia, which was clearly expressed in the Constitution of 1945, cannot be divorced from Pancasila, which serves as the cornerstone of the state and the source of all legal sources. The Emancipatory State of Law provides a method of social integration in a diverse society by stipulating a place for the sovereign people to decide and determine what is best for themselves. This place allows people to decide and determine what is best for themselves. Because of this, the relationship between people's sovereignty and the law is dialectical, which is particularly important considering that Article 1 number 3 of the amendment states that Indonesia is the State of Law.

Keywords: Emancipatory Law, Popular Sovereignty, State of Law

1 Introduction

Respectable law, according to Lawrence Friedman, must always incorporate the three components of a legal system: legal structure, legal substance, and legal culture. In this manner, every facet of a legal system should correspond to national conditions, interests, or objectives. In Indonesia, this can be accomplished by aligning it with the ideals or principles outlined in Pancasila as a philosophical standard and the 1945 Constitution of the Republic of Indonesia (Indonesian Constitution) as a state-level norm.

Everything implemented in Indonesia must conform to the values outlined in Pancasila and the Indonesian Constitution, as these two documents are the foundation for achieving the life of society, nation, and state. In addition, all accomplishments in Indonesia must be codified in legislation.

Article 1 number 3 of the Indonesian Constitution states expressly that the Republic of Indonesia is a State of Law, which has legal repercussions that must be accounted for in the practice of living in society, nation, and state. As a nation, state, and society claiming to be a state of law, Indonesia must adhere to and implement all the conditions and guiding principles of the state of law.

It is evident from the formulation of article 1, section 3 (as well as section 2) that the Indonesian state is fundamentally a democratic rule of law. This is consistent with Harjono's view that the formulation of the 1945 Constitution amendments contains two principles simultaneously, namely the democracy principle, which states that sovereignty resides with the people, and the rule of law principle, or the existence of constitutionalism elements as a

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result of the implementation of sovereignty being subject to the constitution as the highest law. Nonetheless, according to Harjono, the term democratic state has two meanings. First, the content of democracy as a political system regarding decision-making procedures. Second, its legal content has a substantial significance, notably in the awareness of constitutional rights [1]; this is especially true of the constitutional rights clause.

The concept of the democratic rule of law encompasses the connotation of mutual limitation, particularly a democracy restricted by law, both in procedure and in substance, and laws that can only be reached through a democratic process. According to Jimly Asshiddiqie, the theoretical or the actual democratic rule of law is governed by a constitution. The law is understood as a component of the hierarchy of legal norms that culminates with the Constitution. A country's constitution serves as a guide for all organisational processes. Consequently, a country's constitution can be used to determine its democratic status. A nation's constitution is a legal, political, and social contract of the pillars of state authority in the relationship between interns and citizens. Fundamentally, the primacy of the constitution in a democratic rule of law. Constitutions are indivisible and a requirement of a country, particularly one that professes to be a rule-of-law state. The supremacy of the constitution is a consequence of the concept of the rule of law and the execution of democracy because the constitution is the highest form of popular consent.

The law occupies a crucial position in the concept of modern democracy. By the law, democracy should be glorified. Without law, democracy could go in the wrong direction since the law can be construed unilaterally by the authorities in the name of democracy. These two aspects have been incorporated and synergised. The expansion of democracy alone will only result in the supremacy of the majority and minority opinions, whereas the expansion of law would result in an authoritarian regime. True democracy is stable democracy founded on the rule of law.

Consequently, the concepts of democracy and nomocracy are viewed as complementary. Thus, a nation can be described as both democratic and law-based. The democratic rule of law necessitates that this concept is carried out according to the democratic method that has been established. A democratic state must be founded on the rule of law. Mahfud MD had a similar point of view, stating that the study of democracy as a constitutional governance system cannot be divorced from the study of the constitution and that the constitution itself is part of the law. Both are instances of the same entities. Without the rule of law, democracy cannot be constructed effectively and may result in anarchy. In contrast, laws devoid of a democratic constitutional structure will be elitist and authoritarian [2].

In retrospect, the fundamental concept of the Indonesian constitutional state articulated in the 1945 Constitution cannot be divorced from Pancasila as the basis of the state and the source of all law sources. Therefore, Pancasila inspires the entirety of the legal state of Indonesia. This is mentioned because Pancasila is the Philosophy of the Indonesian Nation. Philosophy is a way of thinking that encompasses "the meaning of life and the world" (the meaning of the world and life). Moreover, the concept of Pancasila has been accepted and acknowledged as the ideology of the Indonesian people. Thus it does not need to be demonstrated once more. Therefore, all activities and actions regarding the development of the Indonesian state and society must be grounded in Pancasila. In the realms of law, education, economics, the arts, and the state, as well as in virtually all other fields. This is significant because, according to C.F.G. Sunaryati Hartono, the creation of a national legal system (the Indonesian legal system) must begin with the national legal culture, which affects the power and efficacy of its application and its status as a national legal principle. Nevertheless,

according to Sunaryati, the current state of the Indonesian nation is precarious because Indonesians in the twenty-first century tend to be "selfish" and individualistic as a result of changes in technology, material, and a more advanced and open social life as a result of the speed of communication between nations globally without being noticed, as well as the shift from national identity to international identity on the other hand (traditional society).

The following characters are how Bernard Arief Sidharta defines the State of Pancasila Law. First, the Pancasila state is a state of the law in which all uses of authority must be founded on the legal foundation and within the legal boundaries framework (a fortiori for using public power). Thus, the ideal government is based on and guided by the law (rule by law and the rule of law). Second, the Pancasila state is a democratic state that, in all its state activities, is always open to the participation of all the people; in the bestowal of authority and the use of public power, it should be accountable to the people and always open to rational evaluation by all parties within the framework of values and the applicable legal order. In all its state activities, it should be accountable to the people and always open to rational evaluation by all parties. In addition, the judiciary freely exercises its authority, other government bureaucracies are subject to the judiciary's decisions, and citizens can challenge government bureaucratic actions before the court. Regarding its policies and activities, the government is exposed to the scrutiny of the House of Representatives and the general public. Third, the Pancasila State is an organisation of all people who organise themselves rationally to work together, within the framework and through the order of applicable legal rules, to achieve inner and outer well-being for all people while always referring to the values of human dignity and the One Godhead [3].

From a theoretical and philosophical perspective, it will be crucial to redefine the meaning of law in general. Based on the ideas above, several fundamental problems can be formulated, such as: how thinkers view sovereignty and people's sovereignty; what are the implications of this view on the relationship between sovereignty and people's sovereignty and the law; and how to interpret the law as an expression of the general will within the dialectical relationship between sovereignty and the people's sovereignty. By law, citizens The purpose of this study is to introduce the basic concept of emancipatory law that was investigated and discussed by the late Eduardus Marius Bo.

2 Result and Discussion

2.1 Sovereignty, the General Will and the Rule of Law

According to Jimly Asshiddiqie, sovereignty is a term typically utilised as an object in political philosophy and state law. Dimalanta refers to a concept associated with the notion of the state's highest authority. Regarding language, the word sovereignty in Indonesian is derived from Arabic, namely, the sovereign of the word, whose traditional meaning is change, transition, or circulation (of authority) [4]. In addition, the term sovereign (sovereignty) is often used historically to refer to a dynasty, political regime, or time of dominance. Thus, the traditional definition of sovereignty is intimately associated with the concept of utmost authority in the economic and political spheres. Regarding the concept of the highest power, however, there is also a dimension of time and its transitional process as a natural event.

In contemporary political literature, law, and state theory, sovereignty is generally regarded as a concept borrowed from Latin, soverain and superanus, which later became sovereign and sovereignty in English and signifies supreme ruler and power. Thus, historical

developments have resulted in changes and shifts in meaning such that the terminology of sovereignty in the Indonesian political language is no longer distinguishable in terms of its meaning, regardless of whether it was borrowed from western sources or its source. Therefore, the most significant aspect is that, theoretically, the concept of sovereignty is tied to the concept of supreme power.

Jean Bodin can be considered the first pioneer in science to address sovereignty as the idea of the highest authority. In his mammoth work, six volumes of the Republic, Jean Bodin describes this in detail. In this work, Jean Bodin employs the Spanish word Maestas, meaning majesty, to refer to sovereignty. According to specialists, this book is the first to comprehensively and thoroughly discuss the scientific idea of sovereignty. Bodin uses summa Potestas to relate to the sense of the word souverainete, which Hugo Grotius also uses frequently. Similarly, summa Potestas and summum imperium are frequently used for the same reason in various works of literature.

In his work de cive, Thomas Hobbes employs the terms summa Potestas, summum imperium, and summum dominium in various interpretations. Thomas Hobbes substitutes all of these phrases with sovereignty in his book Leviathan (preeminence). Since Hobbes, the concept of sovereignty has morphed into a myth that has profoundly affected the study of law and politics.

Rousseau's definition of law as a manifestation of the universal will suggests that the law is the majority's will (majority rules apply). At the whole application level, this approach presents several obstacles. First, the question of the nature of the people's will arises. If this will is nothing more than the majority's opinion, Rousseau's plan will likely impose a manipulative majority tyranny. During the 19th century, J.S. Mills performed these actions. In a different context, Mill says that the will of society practically refers to the will of the majority; thus, the will of society can suppress and obstruct the will of some members. Consequently, this must be prevented in the same way as power abuse must be prevented.

The principles of Jean-Jacques Rousseau's teachings are as follows:

a. The people's power should reflect the general/common well as the highest power.
b. The people themselves determine how and by whom they are led.
c. Everyone has the right to determine himself and participate in decision-making processes that affect the entire community.

This principle derives from the premise that no one has the authority to rule over another person unless that authority is founded on the consent of the community members themselves. Rousseau's arbitrariness in tying the general will to the will of the majority is his theory's most evident structural flaw. Even with this arrangement, he intended to convey that the minority was pronounced to be defeated and in the wrong. Herein lies the fragility of Rousseau's conception of the general will, which is equivalent to the majority's will.

Rousseau tended to adopt an anti-emancipatory or, at the very least, denial of emancipatory viewpoints. His approach towards minorities reflects this perspective. Minorities are compelled to comply or face extinction. In this setting, Rousseau tends to adopt an anti-democratic viewpoint and is more in favour of tyranny. According to Rousseau, whoever disobeys the general will be compelled to do so by society as a whole. Therefore, Rousseau's general will is the majority's and infallible.

Consequently, the ongoing problem in the context of Rousseau's perspective is an attempt to establish theoretical and philosophical foundations to search and discover new ideas for the construction of law as an expression of the general will in a pluralist Indonesian society. Efforts must be made to reconstruct the understanding, especially that the general will must be regarded as a dialectical interaction between sovereignty and law within the framework of

values (axis). The general will cannot be equated with a majority vote or even a unanimous vote resulting from a popular vote. If this is known to be the case, the general will be infallible. Because the general always desires the good to be together, he will always be right.

The word "general" has two meanings in the general will: the global subject and the universal object. The general will is the will of the universal subject, the sovereign, as opposed to the will of particular individuals. In addition, the general will can also be interpreted as the object's will, specifically the good and the common interest. Therefore, the general will not be compared with a majority or a unanimous vote resulting from a popular vote. The general consensus cannot be incorrect if it is interpreted in this manner. The general will is always correct because it constantly seeks to bring together the good.

On the other hand, the collective will can be incorrect. Although the general will cannot be equated with the will of everyone, there is a relationship between the general will and the specific will of the individual. Rousseau intended to imply that if we discard all that is more or less the specific will of persons who annihilate each other, we will discover what is known as the general will.

In debates about Indonesian legal philosophy, three concepts are typically employed to express what its proponents mean: rechtstaat, the rule of law, and the rule of law or a law-based state—translation of rechtstaat, Dutch, and German terminology. The varied definitions of these phrases, specifically rechtstaat and the rule of law, and their application together depict something that is not merely interchangeable [5].

In terms of political configuration, the law is utilised as a tool, as described by Mahfud MD, which defines legal politics as a legal policy addressing laws that will be enforced or not enforced to accomplish state objectives. This is based on the reality that our nation has goals that must be realised and that these goals are pursued using the law as a tool through the legislation or non-enforcement of laws by the stages of development faced by society and the state. According to Mahfud, there are permanent or long-term legal politics as well as periodic permanent legal politics, such as the application of the principle of judicial review, populist economy, the balance between legal certainty, justice, and expediency, and the replacement of colonial laws with national laws [6].

From the formal rule of law to the material condition of law, the concept of the rule of law evolved. In a formal legal state, the ruler's acts must adhere to the law or the principle of legality. In contrast, in a material law state, the ruler's actions may diverge from the law or apply the principle of opportunity. If it is in the public interest, primarily the community's public interest, the government can take this action. Community growth and community needs are insufficient if just the idea of lawfulness is explicitly governed. Referring to Schelterna's opinion, Arief Sidharta explained the fundamental elements and principles of the rule of law as follows: [7]

2.1.1 Recognition, Respect, and Protection of Human Rights (Human Dignity)

2.1.2 The principle of lawful conviction

The rule of law aims to ensure that lawful conviction is implemented in society. The law aims to conceive certainty in human relations, particularly to ensure predictability and aims to prevent the strongest and enforceable rights as well. Some of the principles contained in the principle of lawful conviction are:

a. The principles of legality, constitutionality, and the rule of law.
b. The principle of law establishes disparate sets of rules on how the government and its officials attain government actions.

c. The principle of non-retroactive legislation;
d. The principle of justice is free-impartial-and humanly.
e. The non-*liquet* principle, a judge may not refuse a case before him accost that the law is not clear or does not exist.
f. Law should formulate and protect the human rights.

2.1.3 The principle of similia similibus (principle of equality).

In a state of law, the government is forbidden to privilege certain people (must be non-discriminatory). The rule of law applies equally to everyone, due to the fact that it must be formulated in a general and abstract way. Two important things enclosed in this principle are:
a. Equality before the law and government; and
b. Demands equal treatment for all citizens.

The concept of *rechtstaat* was born from the struggle against absolutism which resulted in a revolutionary character. On the other hand, the rule of law concept develops evolutionarily. This can be seen from the content or criteria for *rechtstaat* and criteria for the rule of law. The *rechtstaat* concept rests on a continental system called civil law. Whilst the concept of the rule of law rests on a system called common law. The characteristics of civil law are administrative, whilst the characteristics of common law are judicial. The characteristics of *rechtstaat* are:
1. The existence of a constitution or constitution which encompasses written provisions regarding the relations between the ruler and the people.
2. There is a division of state power.
3. The people's rights and freedoms are recognized and protected.

Meanwhile, the rule of law is as follows:
1. Absolute supremacy or predominance of regular law to oppose the influence of arbitrary power and eliminate arbitrariness, the broad prerogative of the government.
2. Equality before or equal submission of all groups to the ordinary law of the land carried out by the ordinary court; this means that no one is above it; no state administrative court.
3. The constitution is the result of the land ordinary law, the constitution is not a source, but a consequence of the individual rights existence which is formulated and affirmed by the judiciary.

What is the relationship between the general will and the law? Law, according to Rousseau, is the ability to act in the interests of all citizens. Law is a concrete expression of the general will. Law is an institutionalized general will. As the general will comes from common interests, the law refers to and the state participates in formulating and ratifying the law as well, but there are two things that need to be sharpened here, they are regarding the content or legal boundaries that are legal and without coercion and regarding the law-making procedure. Hence, the law is a product of the general will, the government only obeys the law, nothing else, every citizen is a member of the legislature, and every citizen is in two relations with the state.

Law, like a general will, must be general in nature and relate to abstract actions. Legitimate law thus only operates at a minimal level, particularly touching basic things so that individual freedoms still have their place. Law is a kind of frame or framework that individuals have the ability to fulfil their needs. At this point, it can be concluded that the law, as an expression of the general will must apply to all individuals and derives from the consent of all individuals to attain its legitimacy.

A democratic rule of law has five fundamental normative principles, such as: [8]

1. The principle of legality.
2. Protection of basic rights.
3. The principle of supervision by the court.
4. Separation of powers.
5. Democracy.

2.2 Pancasila Law State

Since it was constitutionally established on August 18, 1945, Pancasila has been acknowledged as the state's philosophy, life philosophy, and national ideology. In a nutshell, Pancasila is a firm foundation that unites the nation and a vibrant compass that steers it in accomplishing its goals. In this position, Pancasila is the source of the nation's identity, personality, morals, and direction [9].

As previously indicated in the exposition of the 1945 Constitution, Indonesia is a state of law (Rechtsstaat) and not a power-based state (Machtsstaat). Article 1, paragraph 3 of the Indonesian Constitution Amendments emphasises that Indonesia is now a constitutional state with a defining characteristic. According to the Indonesian Constitution, "the State of Indonesia is a legal state." The question is whether or not Indonesia adopted the concept of the rule of law following the amendment to the Indonesian Constitution, whether it was Rechtsstaat or the Rule of Law. The question that emerges and is of equal importance is whether the Indonesian state truly accepted the Rechtsstaat notion prior to the 1945 Constitutional Amendment.

To determine if the Indonesian government adopts the notion of the rule of law, it is necessary to examine the Preamble and Articles of the Indonesian Constitution as the sole source of Indonesian legal politics. The Preamble and articles of the Indonesian Constitution include the purposes, premise, legal ideals, and fundamental standards of the Indonesian state, which must serve as the objectives and foundations of Indonesian legal politics. Second, the Preamble and Articles of the Indonesian Constitution contain specific principles derived from the beliefs and culture of the Indonesian people, which were passed down from their predecessors. This is not the concept of Rechtsstaat nor the concept of the Rule of Law, but rather a new legal state founded on the values and philosophies of the noble life of the Indonesian people. The novel idea is a state of law. As stated in the Preamble to the 1945 Constitution and indicated in the Articles of the 1945 Constitution of the Republic of Indonesia [10], Pancasila is a crystallisation of the sublime ethical and moral principles of the Indonesian people's worldview and philosophy of life. As a normative and constitutive belief structure, Pancasila is both the fundamental norm of the Indonesian state (Grundnorm) and the ideals of Indonesian state law (rechtsidee). It is normative because it serves as the fundamental and ideal prerequisite for every positive law, and it is constitutive because it drives the law toward the desired outcome. In the subsequent stage, Pancasila was enshrined in the Preamble of the Indonesian Constitution as the staatsfundamentalnorm (state's fundamental rule guiding)'s philosophy (UUD 1945).

The following are characteristics of the Pancasila state law. First, it is a state of families. Individual rights (including property rights) or human rights are recognised in a family state, but the national interest (common interest) takes precedence over individual interests. On the one hand, this is consistent with the community-based social ideals of the Indonesian people. On the other, it is consistent with the transition of Indonesian society towards a patembayan contemporary society. This is in direct contrast to the concept of a western legal state, which promotes individual freedom to the fullest, and the concept of a socialist-communist legal

state, which emphasises community or shared interests. In a state governed by Pancasila law, efforts are made to create harmony and balance between individual and national (society) interests by allowing the state to intervene as long as it is essential for the formation of a national and state life according to Pancasila ideals. Second, it is a state of law characterised by predictability and fairness.

Along with its colourful nature, the concept of a constitutional state of Pancasila in legal activities, both in the process of formation and implementation, is undertaken by combining disparate good elements contained in the concept of Rechtsstaat and the Rule of Law, in particular by combining the principles of legal certainty and justice, as well as concepts and systems. Other legal systems, such as customary law and religious law, exist in this archipelago; therefore, it is a prerequisite that legal certainty is upheld in order to uphold justice in a society based on the Pancasila principles. In his book titled "Building legal politics to uphold the constitution," Mahfud MD stated that Indonesia does not adhere to the concept of rechtstaat or the concept of the rule of law but rather forms a state based on the Pancasila law [11]. It is a religious nation-state, thirdly. Regarding the relationship between the state and religion, the Pancasila state of the law neither adheres to secularism nor is it a religious state, as in the concepts of theocracy and Islamic nomocracy. Pancasila, a divine state, represents a state of law. The deity signifies that the nation and state of Indonesia are based on belief in the One Divinity, allowing citizens to embrace religion and faith according to their respective beliefs. This follows logically from this prismatic decision.

2.3 Emancipatory Law

The Emancipatory Rule of Law requires the following characteristics:

1. Giving a place for the sovereign people to decide and determine what is best for themselves but indeed within the constitution framework/UUD.
2. Sovereign law is the law that is desired through ethical democratic procedures and contains fair substance.
3. aw must be able to become a means of social integration in a pluralistic society; it becomes a kind of medium in which the creation of moral values is made possible through official relations and respect for even strangers; the law must provide a kind of framework; people have the ability to fight for their respective interests legally and responsibly.
4. Laws in countries that uphold people's sovereignty must guarantee the implementation of life in a country that strengthens pluralism (recognition of diversity) and tolerance (appreciation of diversity) and the majority as democratic principles.
5. The Indonesian legal state is a dialectical product between the rule of law and the sovereignty of the people. Therefore, the Indonesian legal state is a state that places law as a positive rule of law that is realized and enforced by the authorities, is aimed at the embodiment of legal principles and seeks to meet or satisfy the needs and interests of society [3].

3 Conclusion

The relationship between people's sovereignty and the law is a dialectical correlation, particularly because Article 1 number (3) of the amendment states that Indonesia is the State of Law. This can be proven by considering the discussion that has been described. While doing so, Indonesia is steadfast in its adherence to the principle of popular sovereignty (article

1, paragraph 2). Therefore, sovereignty resides with the people, as required by the Constitution, which can be found in article 1, paragraph 2 of the 1945 Constitution. However, this must be weighed against the affirmation that the Indonesian state is a legal state that practises either democracy or people's sovereignty in order to maintain a healthy equilibrium.

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