

## Pancasila as The Integral Legal Paradigm Of Indonesia

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### **Abstract**

*This study aims to explain the integral legal paradigm constructed based on Pancasila values. The integral legal paradigm based on Pancasila is a legal understanding based on Divine values which are believed to be true by all people. With belief in God, humans recognize themselves as creatures created by God who have civilization with recognition of human values. Concretely, the integral legal paradigm of Pancasila is a form of a legal system that is God-given, humane, Indonesian unity, deliberative and socially just. The law must be understood that the law upholds God as the almighty substance over everything in this world. The term paradigm is used as a word that conveys enthusiasm and progress in conducting legal studies. With an integral paradigm based on Pancasila, it will provide a broader, comprehensive and interrelated view of law in a unified system. In this study, the literature study research method was used with a philosophical approach. The data in research such as; books, journals, articles and various scientific works are collected through library research, with this research showing that Pancasila as an integral legal paradigm in Indonesia is indeed important, because Pancasila has a position in the nation and state, in this case also the law still requires reform in accordance with the norms that live and develop in society and all of that is described in the Pancasila precepts, law must be extracted from the authentic values and real life of society, an integral legal paradigm based on Pancasila will always be based on the values of divinity, humanity, Indonesian unity, consensus deliberation, and social justice for all the people of Indonesia.*

**Keyword:** Pancasila, Legal Paradigm, Intergral, Indonesia

## INTRODUCTION

Indonesian law adheres to the civil law system, meaning that the positive law that applies is the law written in statutory regulations. This legal system is supported by a positivistic paradigm which results in the law becoming rigid and narrow, because the law rejects understanding of law outside of statutory regulations. The legal system adopted by Indonesia is a legacy of the Dutch colonizers, although basically Indonesia has its own legal authenticity which originates from the values of people's lives. In understanding Indonesian law, the diversity of society is an original character that cannot be simply dismissed. The need for constructive legal policies to formulate national laws that still accommodate legal values that live and develop in society <sup>1</sup>. In this legal system, it seems as if law enforcement officers only work as mouthpieces for statutory regulations. With this understanding, to judge whether it is in accordance with the law or not, it must be based on the text of the statutory regulations, even though it is often felt that this is not in accordance with the people's sense of justice. This understanding of the law eventually led to various problems. For example, the legal process against Granny Asiani who took teak branches belonging to Perhutani, while on the other hand there was a Gaius who was convicted of a tax corruption case that harmed hundreds of billions of countries are engrossed in traveling to malls and international sports entertainment venues like free people. Enforcement of the law seems to only be done to wrestle with statutory regulations. Legislation is the result of political products that cannot be separated from interests. How to realize a rule of law, if the law is only understood as a formal system in laws and regulations that ignores people's sense of justice.<sup>2</sup> A textual understanding of law creates multiple interpretations and perceptions, and often even creates legal problems. Legislation as a form of rule of law, but on the other hand can lead to counterproductive law enforcement in Indonesia. It is time for Indonesia to get out of the confines of the positivistic legal system inherited from the Dutch colonialists. Therefore, an integral legal paradigm is needed that originates from the values of people's lives as contained in Pancasila to create a better rule of law state. With an integral paradigm based on Pancasila, it will provide a perspective on law that is broader, comprehensive and interrelated in one unified system. The term paradigm is used as a word that is able to convey enthusiasm and progress in conducting legal studies. This is as stated by Thomas Khun (1970) in his work entitled "The Structure of Scientific Revolution", that paradigm is a fundamental view and a scientific discipline about what is the subject matter that should be studied (a fundamental image of a discipline has of its subject matter). The problem in this study is how the integral legal paradigm is based on Pancasila.

## RESEARCH METHODE

In this study, the literature study research method was used, namely a series of activities related to library <sup>3</sup>data collection methods, such as reading and recording and processing research materials. Meanwhile, the approach used in this study is a philosophical approach that implies reflective thinking or human intellectual activity in an effort to deeply understand everything down to its roots and as a product of pure thinking or the result of philosophical thought and investigation in the form of knowledge, teachings and ideology.<sup>4</sup>

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<sup>1</sup> Otje Salman, *Filsafat Hukum (Perkembangan & Dinamika Masalah)* (Bandung: Refika Aditama, 2010).

<sup>2</sup> Ria Cas ml Arrsa, 'Rekonstruksi Paradigmatik Negara Hukum Pancasila (Antitesis Terhadap Diskursus Pemikiran Negara Hukum Dalam Konstitusi Indonesia)', *Jurnal Konstitusi*, 10.3 (2013), 486–87.

<sup>3</sup> Kaelan, *Pendidikan Pancasila* (Yogyakarta: Paradigma, 2004).

<sup>4</sup> Busro Muqadas, *Nilai Dan Berbagai Aspek Dalam Hukum Suatu Pengantar Studi Filsafat Hukum* (Bhratara Niaga Media, 1989).

## RESULT AND DISCUSSION

### *The Integral Legal Paradigm Based on Pancasila*

Position of Pancasila in the Life of the Indonesian Nation and State Pancasila for the Indonesian people has a very important and strategic position in determining life. The various dimensions and scope of life that exist must refer to the values of Pancasila. The implementation of national and state life must be carried out based on Pancasila. In fact, the early history of the birth of the State of Indonesia began with the agreement on the formation of Pancasila as the only principle that guides all aspects of life. Therefore, Pancasila in essence has a very broad and complex position for the Indonesian nation, as has been explained by the nobles and scholars as well as national figures. However, when grouped into several fields of study, there are several positions of Pancasila in the life of the nation and state in Indonesia, such as Pancasila as the basis of the state, as the state ideology, as a way of life, as the basis of philosophy, and as the source of all sources of law. The understanding of Pancasila as the basis of the state means that all state administration must be based on Pancasila. Indonesia as a state organization in regulating and managing the running of the country must have guidelines in the form of the Pancasila state foundation.<sup>5</sup>

The basis of the Indonesian state Pancasila is the main basic guideline in carrying out all state government affairs. Normatively and technically applicable, various state policy products must be in accordance with the values contained in Pancasila. Arrangements regarding the position of a state institutional organization and officials of its implementing apparatus must adhere to Pancasila. Even though there is legal politics from every government organ in carrying out its duties and functions, it must still be within the basic corridors of the Pancasila state. It does not rule out the existence of an interest in a country, because the state is part of a political organization formed from the results of a political process that is not easy. However, it has been mutually agreed in the praxis of life to be guided by one Pancasila principle. Through a comprehensive understanding, Pancasila is expected to be the main support in every activity and activity in the life of the nation and state in Indonesia.<sup>6</sup>

An understanding of the integral legal paradigm based on Pancasila in simple terms can be interpreted as a series of thoughts from the values contained in Pancasila which are interrelated and connected which form a complete and comprehensive legal system to answer all problems that exist in the midst of the social diversity of Indonesian society. Laws with the Pancasila paradigm essentially contain ideals and practical values from the norms of life for the Indonesian nation, because philosophically Pancasila is extracted from the noble values of the <sup>7</sup>. Concretely, the integral legal paradigm of Pancasila is a form of a legal system that is God-given, humane, Indonesian unity, deliberative and socially just. The law must be understood that the law upholds God as the almighty substance over everything in this world. As servants of God, humans must submit and obey God. As stated by Thomas Aquines, a natural law figure, that law basically comes from God which is then elaborated in the form of statutory regulations. God's law is essentially the highest basis for forming positive law in force in the country, so that the applicable law must recognize and respect the enactment of God's law. The law recognizes and treats humans according to their dignity and worth as God's creatures. Law as a rule has the essence of creating the goodness of life, so that the recognition of equality among human beings as God's creatures is guaranteed by law as an instrument to regulate human life. The law

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<sup>5</sup> Anis Ibrahim, 'Hukum Progresif: Solusi Atas Keterpurukan Hukum Indonesia', *Jurnal Hukum Progresif*, 2.1 (2006), 48.

<sup>6</sup> Muhammad Khambali, 'Fungsi Filsafat Hukum Dalam Pembentukan Hukum Di Indonesia.', *Jurnal Supremasi Hukum*, 3.1 (2014), 1.

<sup>7</sup> Fokky Fuad, 'Filsafat Hukum Pancasila; Antara Cita Ideal Hukum Dan Nilai Praksis', *Jurnal Ilmiah Mimbar Demokrasi Universitas Negeri Jakarta*, 13.1 (2013), 2.

recognizes equality, equal rights and basic obligations of every human being, without discriminating against ethnicity, descent, religion, belief, gender, social position, skin color and so on. Before the law all people have the same positions. Meanwhile, the differences that exist in society are the reality of diversity that must be grateful for and managed properly. So that the law is able to show a just and civilized attitude. In enforcing the law, it is mandatory to place unity, unity and the interests and safety of the nation and state as common interests above personal and group interests.

So that in integral law it is important to mean deliberation in order to obtain good legal decisions. This is in accordance with the philosophical meaning of law, which places truth not in numbers, but in the essence of truth itself, because what is right according to many people, is not necessarily right according to law. Indonesia is not a socialist or liberal country that determines the majority vote as the winner/ruler, but rather on the benefit and common good. After going through various processes, the law in its final stage must be able to realize a sense of justice for all Indonesian people. Legal justice must be given to all Indonesian people without discrimination and sentimental discrimination, because legal justice belongs to all Indonesian people. Integral law is a law that provides justice that can be accepted by all parties. Because justice is the main basic principle that is a necessity of human life. Indonesia is in a diverse and vulnerable condition to conflicts due to many differences, so a complete and comprehensive integral legal paradigm is needed that is able to accommodate all the interests of society. So that the law can provide social justice for all Indonesian people<sup>9</sup>.

An integral legal paradigm based on Pancasila is a real thought, attitude and behavior in providing positive changes to legal praxis in Indonesia. Laws with a positivistic paradigm must be adjusted and harmonized with laws extracted from the values of Indonesian people's lives as contained in Pancasila. Law in practice can provide the benefits of justice for all people. The positivistic legal paradigm must be updated with laws that have broad and deep dimensions. So that a comprehensive legal application method will be obtained that guarantees the achievement of the goodness of living together. Changes in integral legal praxis are carried out by applying law in accordance with the principles of the values of God, humanity, unity, deliberation and justice. That is, in the process of law enforcement it does not only fulfill the formal requirements of laws and regulations, but more than that it must concern all the principles and values contained in Pancasila<sup>10</sup>.

The process of law enforcement can run well, if the law is practiced in accordance with the principles of the values contained in Pancasila. It is impossible that the law will only prioritize certain elements or elements and ignore the others<sup>11</sup>. Pancasila as an integral legal paradigm must be a reference in all thoughts, attitudes and legal behavior carried out in Indonesia. If you look at the position of Pancasila, then Pancasila is the "grundnorm" for every applicable law and regulation in Indonesia, so that legally Pancasila is the support for all forms of applicable laws and regulations. Thus the law must base its logical ratio on the values contained in Pancasila and may not conflict with it.

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<sup>8</sup> Iwan Nugroho, 'Nilai-Nilai Pancasila Sebagai Falsafah Pandangan Hidup Bangsa Untuk Peningkatan Kualitas Sumber Daya Manusia Dan Pembangunan Lingkungan Hidup', *Jurnal Konstitusi*, 2010, 107 <<https://doi.org/No.1829-7706>>.

<sup>9</sup> Hendra. Nurtjahyo, 'Negara Hukum Dan Konstitusi: Reaktualisasi Nilai-Nilai Pancasila', *Jurnal Hukum Panta Rei*, 1.1 (2007), 88.

<sup>10</sup> La Ode Angga, 'Pembangunan Hukum Yang Mengakomodir Pluralis Me Di Indonesia', *Jurnal Supremasi Hukum*, 1.1 (2012), 49.

<sup>11</sup> Ahmad Calam and Sobirin, 'Pancasila Sebagai Paradigma Kehidupan Dalam Bermasyarakat, Berbangsa Dan Bernegara.', *Jurnal Saindikom*, 4.1 (2008), 146.

## CONCLUSION

The integral legal paradigm based on Pancasila can be interpreted as a series of thoughts from the values contained in Pancasila which are interrelated and related which form a complete and comprehensive legal system to answer all problems that exist in society, and here legally Pancasila is the support for all forms of applicable laws and regulations, thus the law must base its logical ratio on the values contained in Pancasila and may not conflict with it.

In conclusion, Pancasila has a very important and strategic position in the life of the nation and state in Indonesia, including in the field of law. Pancasila extracted from the values of people's lives can be an authentic source of law. Legal problems that occur as a result of the application of a legal system that is not in accordance with legal values that live and develop in society, so that it is not uncommon to injure the sense of justice.

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