

The Ideas of Pancasila Law as the Foundation of Ontology and Epistemology of Legal Studies and Indonesian Constitutional Law

Hotma P. Sibuea, Hotmaria Hertawaty Sijabat

Article Info	Abstract
<p>Article History</p> <p>Received: May 25, 2021</p> <p>Accepted: December 30, 2021</p> <hr/> <p>Keywords : Pancasila Law ideals, Ontology, Epistemology</p> <p>DOI: 10.5281/zenodo.5810683</p>	<p><i>Law is a science with a national character. Each country (nation) has a law that has a different character. Indonesian Law is different from Dutch, French, and others. Law that develops in each country starts from the legal ideals of each nation (country). Indonesian Law as a starting point is the legal ideals of Pancasila which have different characteristics from the legal ideals of other countries. Concerning the position of Pancasila as the legal ideal of the Indonesian nation, the questions that can be raised as research problems are as follows. Can the legal ideals of Pancasila serve as the basis for the ontology and epistemology of Indonesian Law and Indonesian Constitutional Law? The research method used in this research is a philosophy of law research method assisted by juridical-normative research methods. From the results of the research, the author can propose that the legal ideals of Pancasila can serve as the basis for the ontology and epistemology of Indonesian Law and Indonesian Constitutional Law. In the context of the conclusions stated above, the author can put forward suggestions that Indonesian law scholars develop studies on the formation of Legal Studies and Constitutional Law Sciences based on the legal ideals of Pancasila.</i></p>

Introduction

The Proclamation of Independence of the Indonesian Nation on August 17th, 1945 is a legal action that contains legal consequences for the Indonesian nation. When the proclamation of the independence of the Indonesian nation was proclaimed, there was a revolutionary form of law (Bernard AriefSidharta, 1999). The proclamation of independence abolished the colonial legal order and gave birth to a new legal order on new conditions (Bernard AriefSidharta, *Ibid*). As a consequence of the proclamation of independence, the Indonesian people are expected to have a new legal order that is built on the spirit and spirit of the proclamation of independence as an ideal condition. From a scientific point of view, the formation of a new legal system for the Indonesian nation must move from a starting point that serves as the foundation. What is the starting point for the formation of a new legal system for the Indonesian nation? The starting point for the formation of the Indonesian legal system is the soul and spirit of the proclamation of independence. The soul and spirit of the proclamation of independence are crystallized in the form of Pancasila as the philosophical foundation of the Indonesian nation-state in the metaphysical realm. The basic values of the state philosophy are derived from Pancasila as the nation's view of life. Legal thought and implementation of law in Indonesia before the proclamation of independence started from the view of the life of the Indonesian people (SoedimanKartohadiprojo, 1999). The Indonesian view of life contains very abstract values that are in the metaphysical realm. As the nation's view of life, the values of Pancasila have not been systemized and unregulated.

Post-independence, the establishment and development of the legal system and Indonesian Legal Studies starts from the philosophical foundation of the Indonesian state from the point of view of science. Indonesian Law Studies and Indonesian Constitutional Law Studies object of study is law in the context of the Indonesian state (JimlyAsshiddiqie describes Constitutional Law as follows "Constitutional Law is a branch of law that specifically examines legal issues in the context of the state" (JimlyAsshiddiqie, 2006). After going through several processes of crystallization and systemization, the values of the philosophical foundation of the nation-state were separated and systematized into the values (*rechtsidee*) of the Indonesian nation's legal ideas (Abdul Hamid S. Attamimi, 1992). The ideas of Pancasila law are in a metaphysical realm with a high level of abstraction (DardjiDarmodiharjo and Sidharta, 1996). Legal ideas are not norms because legal ideas have not yet entered the realm of norms. The values of the Pancasila legal ideas are then processed and produce a more concrete set of values called the fundamental rules of the state (*staatsfundamentalnorm*) (DardjiDarmodiharjo and Sidharta, *Ibid*). The fundamental rule of the state is the specialization of the legal ideas of Pancasila with a more concrete form as a norm even though it is not an ordinary legal norm. The fundamental rule of the state is the basic norm contained in the Preamble to the 1945 Constitution as a readable text. The existence of the legal ideas of Pancasila as a fundamental rule of the state has an imperative, constitutive, and regulatory nature for the

The reality of the teaching conditions of the law, legal concepts, legal principles, Legal Studies which includes Constitutional Law and positive legal system (including Constitutional Law) currently in effect in Indonesia is contrary to ideal conditions. Law, Constitutional Law and Indonesian Legal Administration (including Constitutional Law), legal doctrines, legal concepts and legal principles taught at law faculties throughout Indonesia are Dutch heritage which is guided not by the philosophical foundation of individualism-liberalism. Legal concepts, legal principles, and legal postulates as well as Dutch heritage Law and State Administration are taught in the faculties from generation to generation. Bernard AriefSidharta commented as follows: "The Legal Studies taught in the higher education environment of law in Indonesia originally came from Legal Studies developed by the Dutch whose legal order was included in the Romano-Germanic Law (Continental) environment (Bernard AriefSidharta, 1999). Other authors, OloanSitorus and DarwinsyahMinin expressed a similar view as follows:

"Although since August 17th 1945 Indonesia has been established as a sovereign country, which means since then that colonial law has been breached and the development of national law has been carried out, but until now there is still a feeling of penetration of legal values and legal postulates rooted in liberal philosophy-individualistic Western countries." (OloanSitorus and DarwinsyahMinin, 2005).

The conditions of legal life and the development of Law and Constitutional Law taught in law faculties from generation to generation based on the Dutch heritage of Legal Studies reflect a worrisome condition. After the proclamation of the independence of the Indonesian nation, the conditions of legal life and the teaching of Law and Constitutional Law inherited from the Netherlands, needed to be ended immediately, although it was carried out in stages. In the context of the realization of the ideas of the proclamation of independence and the legal ideas of Pancasila as described above, this research was conducted as a first step to reach a further stage that aims to establish a legal system that covers the fields of constitutional law and Indonesian law (including constitutional law). Indonesia) based on the ideas of Pancasila law.

Starting from the line of thought (insight) described above, the research problems that can be defined (formulated) are as follows; Can the legal ideas of Pancasila be established as the basis for the ontology and epistemology of Legal Studies and Indonesian Constitutional Law as a scientific means of processing the Indonesian nation's legal system?

Method

The discussion on research problems starts from the point of view of the Philosophy of Science and the Philosophy of Law. As a consequence, this research is philosophical research that is assisted by complementary juridical-normative research. In the context of this research, the author discusses the approach method from the perspective of Philosophy of Science, Philosophy of Law, and Legal Studies.

Finding and Discussions

A. The Ideal of Pancasila as the Foundation of the Ontology of Indonesian Law and Constitutional Law

The starting point for the formation of Indonesian Law, Constitutional Law, and Indonesian Legal Administration (including Constitutional Law) was the ideal of law (.) Pancasila. In the early stages, Indonesia's positive legal system, including constitutional law, was formed and built based on the ideas of Pancasila law. However, to form a national legal system, including constitutional law based on the ideas of Pancasila law, scientific processing facilities are needed, namely National Law Science (Bernard AriefSidharta, *Op. cit.*). Indonesian legal system and constitutional law, Indonesian law, and Indonesian constitutional law were formed based on the legal ideas of Pancasila. The legal ideas of Pancasila are the foundation of (a) the establishment of the Indonesian legal system and constitutional law and (b) the establishment of Indonesian Law and Constitutional Law. Indonesian Legal Studies and Constitutional Law are a means of scientific processing of Indonesian legal systems and Constitutional Law. This insight illustrates the position and dual function of Pancasila in the legal life of the Indonesian nation. However, the ideas of establishing the Indonesian legal system, Constitutional Law, Indonesian Legal Studies, and Constitutional Law Studies based on the legal ideas of Pancasila have not been realized until now. This gap is a challenge that must be answered by Indonesian law scholars who are interested in this issue under the fields and capacities of each law scholar.

Legal ideas (*rechtsidee*) have 2 (two) kinds of elements or substances. *First*, the *emotional-ideal* element of legal ideas whose rational boundaries are uncertain (Moh. Koesnoe, 1995). The element *emotional-ideal* of legal ideas (*rechtsidee*) comes from the philosophy of life of the community. The philosophy of life leads people to believe in certain values and not other values. *Second*, the rational element of legal ideas that allows a general legal understanding (*AllgemeineRechtsbegriff*) to be drawn up under the content of the *rechtsidee* concerned (Moh. Koesnoe, *Ibid.*). Pancasila fulfills these two requirements as the legal ideas of the Indonesian nation. Both the emotional element and the rational element of legal ideas (*rechtsidee*) are contained in the legal ideas of Pancasila. In the context of the two elements of legal ideas (*rechtsidee*) Pancasila, A.M.W. Pranarka stated that Pancasila is located as (a) *belief system* and (b) *knowledge system* (A.M.W. Pranarka, 1992).

The emotional-ideal element (the *belief system* element) of the legal ideas of Pancasila is the starting point for the formation of legal principles that apply in all fields of law and the principles of constitutional law in particular (SoerjonoSoekanto and Sri Mamudji, 1990). Legal principles are the joints and directions for the formation of the Indonesian legal system and legal fields such as the field of constitutional law following the legal principles of their respective fields. At the initial stage, the emotional-ideal elements of Pancasila's legal ideas were processed into legal principles with the highest level of abstraction containing universal values. These legal principles exist in the metaphysical realm as categorical and universal legal and moral principles. The categorical and universal legal principles of Pancasila's legal ideas consist of the values of independence, eternal peace, and social justice.

The three legal principles are then outlined in a more concrete form as the text of the Preamble to the 1945 Constitution with the position as a fundamental rule of the state (Abdul Hamid S. Attamimi, *PerananKeputusanPresidenRepublik Indonesia dalamPenyelenggaraanPemerintahan Negara* (Dissertation, Faculty of Postgraduate, University of Indonesia, Depok, 1990). The essence of the value of the Preamble to the 1945 Constitution as a fundamental rule of the state is none other than the legal principles of independence, eternal peace, and social justice in a more concrete form as a readable text. These three values are the basic legal principles for all the provisions of the Articles of the 1945 Constitution (Dissertation, *Ibid.*, Pg. 306). The basic legal principles in the Preamble to the 1945 Constitution as the fundamental rules of the state derive (reduce) the general legal principles contained in the constitution. The principles of general law in the constitution apply to all areas of the Indonesian national legal system. The constitutional law rules in the 1945 Constitution are the provisions of the Basic Law of the State which function as legal principles for the administration of state government. In the 1945 Constitution as provisions of the Basic Law of the State, there are 2 (two) legal principles that are the source and at the same time the foundation for the formation of the 1945 Constitution, the Indonesian Laws, and Regulations.

The two principles of general law are included in the category of general legal principles, namely legal principles that apply to all fields of law (SoerjonoSoekantodan Sri Mamudji, *Op. cit.*). The two general legal principles are (1) the principle of the rule of law in Article 1 paragraph (3) of the 1945 Constitution and (2) the principle of popular sovereignty in Article 2 of the 1945 Constitution. The principle of the rule of law and the principle of democracy is the highest legal principle in the hierarchy of legal principles. Indonesia as stated in the constitution. The two legal principles are the foundation and pillar of the Indonesian legal principles and legal system. The two legal principles are the "duo" as the foundation for the formation of laws and regulations and the foundation for the positive legal system of the Indonesian nation (Compare with SyahransBasah, *PerlindunganTerhadapSikapTindakAdministrasi Negara*, (Scientific Oration for the XXIX Anniversary of Padjadjaran University, 1986). Legal principles and principles of constitutional law as well as the legal system of the Indonesian nation "flow and originate" from the principles of the rule of law and the principles of democracy as legal principles which have the highest position in the hierarchy of Indonesian legal principles. The principle of the rule of law and the principle of democracy is the mother of all the principles of constitutional law and the legal system of the Indonesian nation. The principle of the rule of law and the principle of democracy both serve as the basis for the formation of constitutional law rules and the legal system of the Indonesian nation. In particular, in the field of constitutional law, the principle of the rule of law gave birth to the principle of power-sharing and the principle of legality.

The principle of democracy gives birth to the principle of representation and the principles that apply in the legal rules of political parties, elections, and representative institutions. The more concrete legal principles derived from the three legal principles mentioned above are the principle of legality, the principle of separation of powers, the principle of representation, the principle of equality before the law, and others. These legal principles serve as the foundation and starting point for the formation of constitutional law rules. In the position and function as described above, the legal ideas of Pancasila can serve as the basis for the ontology of Indonesian Law and Indonesian Constitutional Law. Starting from the insights presented above, the order of Indonesian positive legal norms, including constitutional law, is the object of study (ontology) of Indonesian Law and Indonesian Constitutional Law (Compare with SudiknoMertokusumo, *PenemuanHukum*(Yogyakarta, Atmajaya University, 2010)..

B. The Ideas of Pancasila Law as the Epistemological Foundation of Indonesian Law and Indonesian Constitutional Law

The rational element of legal ideas (*rechtsidee*) comes from the reason that makes a group of community members make decisions to choose and believe in certain values and not other values according to community conditions, the physical natural environment, philosophical values, and others. The rational element of Pancasila's legal ideas serves as the starting point (foundation) for the formation of Indonesian Law and Constitutional Law. In the context of the development of Indonesian Law and Indonesian Constitutional Law based on the legal ideas (*rechtsidee*) Pancasila, Bernard AriefSidharta commented as follows "In line with that, Legal Studies which studies the legal order as an intellectual means to understand and implement the legal

order, in its development should also rely on and refer to the ideas of the law (meaning: the legal ideas of Pancasila - - - pen.) (Moh. Koesnoe, *Perumusan dan Pembinaan Cita Hukum dan Asas-asas Hukum Nasional ditinjau dari Hukum Adat* (Jakarta, Varia Judicial Law Magazine Year X No. 120, 1995). The same principles as stated above can be applied in the field of constitutional law. Indonesian Constitutional Law is a science that studies the rules of constitutional law as an intellectual means to understand and implement constitutional law by relying on and referring to the ideas of Pancasila law in both theoretical and practical development. Cultivating the rational elements of Pancasila's legal ideas is in contact with the activities of Philosophy of Science, Philosophy of Science, and Philosophy of Law. Philosophy of Law forms a general understanding of law by starting from the rational element of the legal ideas of Pancasila. The elements of the understanding of general law (*Allgemeine Rechtsbegriff*) as the starting point for the formation of Legal Studies and Indonesian Constitutional Law are rational (Moh. Koesnoe, *Ibid.*).

The general understanding of law derived from the rational element of Pancasila legal ideas is a general understanding of idealistic law. The general understanding of idealistic law views law from the aspect of substance, namely law as justice. Moh. Koesnoe describes the general understanding of Indonesian law which is derived from the rational element of Pancasila legal ideas as follows: "The general understanding of the law that we mentioned above is categorical, and therefore *a priori metaphysics* and precedes science. It is precisely this understanding that makes it possible to build Legal studies" (Moh. Koesnoe, *Ibid.*). The general understanding of law derived from the rational element of the legal ideas of Pancasila serves as the starting point (foundation) for the formation of Indonesian Law and Indonesian Constitutional Law. If based on the First Paragraph of the Preamble to the 1945 Constitution, the general understanding/concept of law based on the legal ideas of Pancasila is an idealistic general understanding (concept) of law (Bernard Arief Sidharta, *Refleksi tentang Struktur Ilmu Hukum, Op. cit.*). The law is not merely an order but the law is social justice. Understanding (draft) common law of Indonesia which contains substances idealistic values of freedom, lasting peace, and social justice (Bernard Arief Sidharta, *Ibid.*). The three values in the general sense of law are sourced from the values of the Pancasila legal ideas (*rechtsidee*) which still need to be developed. The general understanding of idealistic Indonesian law differs from the general understanding of functional-instrumental law which views law as a mere tool as stated by John Austin, Hans Kelsen, Hart, legal positivism figures who have had a strong influence in Indonesia until now. The general understanding of Indonesian law is also different from the functional law school. One of the pioneers of the functional law school is Roscoe Pound who is famous for the idea of "law as a tool of social engineering". Roscoe Pound views law from the point of view of its function and not from the point of view of its substance.

The general understanding of law based on the idealistic ideas of Pancasila law as stated above is a benchmark for limiting the elements that must and can be called law in the perspective of Pancasila legal ideals (*rechtsidee*) The general understanding of idealistic law is a fundamental element in the formation of Indonesian Law and Indonesian Constitutional Law. The reason is, without the presence of a general understanding of the law something cannot be called a law in the perspective of the legal ideals of Pancasila. In this context, Moh. Koesnoe expressed the opinion as follows "These elements are elements that show that there is a content that is decisive (constitutive) for what the law can say" (Bernard Arief Sidharta, *Ibid.*). The general understanding of law becomes the benchmark (touchstone) for something called law in perspective. The general understanding of the law is at the same time the starting point for the formation of the paradigm of Indonesian Legal Studies and Indonesian Constitutional Law. The paradigm of Indonesian Law and Constitutional Law is a general understanding of idealistic law which is derived from the rational element of Pancasila legal ideas. The Legal Studies Paradigm is an essential part of legal scientific activities because it functions as a starting point for all legal scientific activities. In general, the scientific paradigm is dynamic because it is always changing and developing along with the development of science, technology, and the times. Widodo Dwi Putro put forward the notion of paradigm in a simple way as follows; "Paradigm is a foothold in seeing a reality, how we see things, what we consider a problem, and what methods to solve it" (Widodo Dwi Putro, 2011). Paradigms cover all philosophical aspects of science. Asmak UI Hosmah, Dwi Seno Widjanarko, and Hotma P. Sibuea commented on paradigms related to all aspects and facets of science, including aspects of ontology, epistemology, and axiology (Asmak UI Hosmah, Dwi Seno Widjanarko, and Hotma P. Sibuea, 2021).

In the context of Legal Studies, the Legal Studies paradigm is a philosophical view of the deepest nature of law. The philosophical view regarding the nature of law is deeply related to the various schools of Philosophy of Law known in the literature. Sidharta suggested several schools of legal philosophy, namely the Natural Law School, Legal Positivism, Utilitarianism, School of History, Sociological Jurisprudence, and Legal Realism (Sidharta, 2006). Each of these schools of legal philosophy has its philosophical views regarding aspects of ontology, epistemology, and axiology about the law (Sidharta, *Ibid.*). The view of the Indonesian people regarding the deepest nature of law does not follow the views of the schools of legal philosophy stated above because the Indonesian people have their views that start from the legal ideas of Pancasila. The essence of law in the perspective of a nation is determined by the philosophy and legal ideas of the nation concerned. As a branch of science, Legal Studies has a paradigm similar to other sciences. However, Legal Studies is a science

with a national character so that the paradigm of Legal Studies of each nation depends on the philosophical views of the nation concerned regarding the deepest nature of law. The Legal Studies Paradigm is the starting point for all activities of Law and Constitutional Law in the context of theoretical and practical legal praxis. The paradigm that determines all matters relating to the activity of Legal Studies as a science that offers solutions to every legal problem. In addition to these aspects, the paradigm determines the scope of the area to take part in scientific activities and determines the validity of legal issues which are the boundaries of the field for taking part in Legal Studies. Following its position and function, the Legal Studies paradigm has a normative function for the development of Legal Studies (Bernard AriefSidharta, *Op. cit.*). Paradigm also functions as a starting point for all legal activities in the context of problem-solving. Paradigm is the basis as well as a means of justifying all the results of scientific activities in Law and Constitutional Law. Bernard AriefSidharta put forward comments regarding the paradigm as a starting point for the activities of legal scientists as follows; "... Legal scientists in their scientific activities start from several assumptions and work within a certain *basic framework* that guides scientific activities and allows discourse (rational communication and discussion) within the legal scientist community" (Bernard AriefSidharta, *Op. cit.*). Stating in a different sentence, Bernard AriefSidharta put forward the following comments; "In its development, Legal Science is realized or not always takes part within the framework of a certain paradigm that sets the boundaries of its scientific activities and determines the validity of the problems that are the object of its research" (Bernard AriefSidharta, *Ibid.*). However, as a science with a national character, Indonesian Law and Constitutional Law of each nation are not guided by the paradigm of Law of other nations. National Law Science and Indonesian Constitutional Law are based on the Indonesian legal paradigm which is derived from the legal ideas of the Indonesian nation. Indonesian Law and Indonesian Constitutional Law have their paradigms following the character of the Indonesian nation's legal ideas, Pancasila.

The Paradigm of Indonesian Law and Indonesian Constitutional Law is the starting point for the formation of Indonesian legal concepts. These legal concepts are the smallest unit of Indonesian Law and Indonesian Constitutional Law. Various kinds of legal concepts can be developed by the Indonesian nation based on the paradigm of Indonesian Law and Indonesian Constitutional Law following the ideas of Pancasila law. These legal concepts contain the taste of the Indonesian nation as a result of the thinking of the Indonesian nation which starts from a certain factoring point, namely the Indonesian Legal Science paradigm and the legal ideas of Pancasila. The Indonesian version of the concept of human rights law contains a different meaning from the other nation's version of the concept of human rights law. The concept of property rights law in Law Number 5 of 1960 concerning Agrarian Principles contains a different meaning from the concept of property rights in the Civil Code of Dutch colonial heritage. The same way of working in the formation of legal concepts of Human Rights and Property Rights as stated above can also be applied in the formation of other legal concepts such as the concept of Intellectual Property Rights, concepts in criminal law, concepts in civil law, and others according to Indonesian version. These legal concepts are used as a starting point for those who carry authority such as the DPR, the President, the Court (Judges), and others to form positive legal norms in general and constitutional law norms. These positive legal norms are the object of study or aspects of the ontology of Indonesian Law and Indonesian Constitutional Law. All positive legal norms in Indonesia are the object of study (ontology) of Indonesian Law and Indonesian Constitutional Law. Thus, the relationship of Pancasila legal ideas with aspects of ontology and epistemology (the formation of legal concepts is one aspect (epistemology) of Indonesian Law) can be explained. The explanation presented above illustrates the function of the paradigm of Indonesian Law and Indonesian Constitutional Law in the formation, development, and development of legal concepts and Indonesian Legal Studies. The formation of legal concepts containing legal meanings as the starting point for the formation of Indonesian Legal Studies and Indonesian Constitutional Law Sciences becomes the basis for drawing conclusions regarding the function of the legal ideas of Pancasila as the epistemological foundation of Indonesian Legal Studies.

Conclusion

As the legal ideas of the Indonesian nation, Pancasila contains an emotional-ideas element and a rational element. Each element has a different function in the context of the formation of the Indonesian legal system, Indonesian Law, and Indonesian Constitutional Law. The emotional-ideas element is the starting point for the formation of the Indonesian legal system and the Indonesian constitutional law. The rational element is the starting point for the formation of Indonesian Legal Studies and Indonesian Constitutional Law, starting from the legal ideas of Pancasila. The formation of the aspects of law and jurisprudence stated above proves the legal ideas of Pancasila can serve as the basis for the ontology and epistemology of Indonesian Law and Indonesian Constitutional Law.

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Author Information

Hotma P. Sibuea

Master's Program in Law University of Bhayangkara
Jakarta Raya

Hotmaria Hertawaty Sijabat

Doctor of Law Program Faculty of Law University of
Krisnadwipayana Jakarta
