

ACTUALIZATION PANCASILA INDONESIA PERSEPECTIVE AS LEGAL REFORM LAW PROGRESSIVE

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ABSTRACT

This study aims to find out about the re-actualization of the values of Pancasila as the Indonesian Legal Reform First Step in the face of reality began waning understanding, appreciation, and practice the values of Pancasila in public life after the reform era. (i) what is the significance of re-actualization of the values of Pancasila in Indonesian law reform process? (ii) The extent to which re-actualization of the noble values of Pancasila implemented in national life by the law of progressive? Results showed that there are two characteristics that purport to why law enforcement refers to the narrow and broad textual interpretation on textual interpretation refers to the contextual interpretation just basing in addition to the law also interpretation mentioned underlying text, while the meaning broad namely conditions surrounding the incident. This interpretation is referred to as a progressive interpretation, whereas first interpretation called positivist interpretation. In the practice of law officers enforcement premises character positivist paradigm still dominates legal pressure. This study commending the importance of the presence of a progressive law enforcement in handling cases include construction law progressive way of thinking, methods and orientation panfsiran progressive law progressive legal enforcement ethic.

Keywords: Re-actualizing Pancasila, Law Enforcement, Legal Progressive

A. INTRODUCTION

My motivation in writing problem because Pancasila Pancasila as a way of life has been eroded by law is formalistic, so that the application of the law is not based only on legal certainty of justice. As one of the major agenda in the post-reform government of Indonesia is to make improvements in the field of law, both the substance of the law, the legal structure and legal culture. Legal reform is not only a means of reform legislation, but includes a reform of the legal system whole, namely reform of the material / substance of the law, the legal structure and legal culture.¹ Attempts were made in the improvement of the law, will not work with the greatest if not accompanied by improvements to the source of the law itself, namely Pancasila. Legal reform will approach the desired goal, if the values of the source of law is understood properly, to the substance, not just a mere formalistic, and is accompanied by a strong level of morality, a strong moral personality of all parties concerned with the law.

B. PROBLEMS

Based on the problematic question arises why the re-actualization of the values of Pancasila should be done. (i) what is the significance of the re-actualization of Pancasila values in the process of legal reform in Indonesia? (ii) The extent to which re-actualization of the noble values of Pancasila implemented in national life progressive legal perspective?

C. METHODS

This writing is using juridical approach to specification descriptive analytical research, selection normative legal research methods based on several reasons, among others: first, with the many problems of law faced in society, both with regard to the legal norms that until today yet progressive legal grounding. Secondary data were collected from the primary legal materials, either in the form of statutory provisions and their implementation; secondary law mauun tertiary conducted through literature study further processed and analyzed qualitative juridical.

D. RESULTS AND DISCUSSION DISCUSSION

Pancasila is the "wisdom / national genius (national wisdom / national genius) that contains within it the three main pillars, namely the pillars of divinity (religious), a pillar of humanity (humanistic), and the pillars of society (democratic, popular, and social justice). Understanding of the future generation associated with the values embodied in the four pillars of nation da state (Pancasila, the 1945 Constitution of 1945, the Homeland and Sesanti Unity in Diversity) increasingly degraded and eroded by the rush of new values that are inconsistent with national identity Ironically while new values are not yet fully understood and understandable, but the old values are already being replaced and forgotten, unnoticed generais nation's next move increasingly

¹ Hidayat, Arief. (2014). Pancasila merupakan ideologi terbuka sehingga prosesnya berkembang di masyarakat. Bahan Ajar, PDIH UNDIP Angkatan XIX. Semarang, hlm1-4.

away from Pancasila as the national identity that is characterized by mutual cooperation. The spirit of mutual cooperation which is the soul and spirit of Pancasila, ranging sidelined and ignored, a new value system is not yet fully understood and accepted by the nation of Indonesia has resulted in disharmony and horizontal vertical relationship between Indonesia's diverse society. Given the four pillars of national awareness is generated through a political decision, then the national revitalization efforts will be made to go through a political process that involves all elements within the Indonesian political system.

In accordance with the philosophy of Indonesia, Pancasila, Satjipto stated that state laws adopted should be based on Pancasila greater emphasis on substance, not procedure in the legislation alone. In the constitutional state Pancasila underdog is "if conscience" to achieve justice. Therefore Pancasila state characterized by the rule of law or rule of moral justice. We witnessed, law enforcement bureaucracy seems to be a robot, so mechanistic and black and white look at the legal issues are handled. Text and editorial rules as if so saktinya handcuff wisdom and common sense, there was virtually no courage to make the leap from the confines of the text and editorial rules. They (the bureaucracy of law) rules position as a destination in itself, as a result of empathy and fairness only be seen from a mere formal legal issues. That is why, the idea of a formal law (read, the state law) that are monolithic comprehensive and completely as the system is not an empirical description, but many more are part of a historical ideology. Legal Positivism paradigm strong implications for modern legal saintifikasi which began to free themselves from the order of theology and metaphysics, including legal social phenomenon must be understood by the method of impersonal, neutral and objective, so that the law is promoting a rational thought. Soetandyo Wignjosebroto, asserts: Positivisasi legal norms is a political process was crucial for the development of law as an applied art. This law teachings with descriptions-descriptions were developed as a doctrine (such as neutrality, objectivity and impartiality of the law) has become standard since the early 19th century that the effort to seek justice (searching for justice) can be failed just because knock infringement procedure. Consequences of legal positivism, in substantial bring legal ideology codification which is dominated by the principles of modern law, both the level of legislation, yudikasi and execution. Therefore, preferred in the construction of the law is centered how to make regulations rational, coherent and systematic so that it can be applied by jurists through bureaucratic mechanisms. In such a context, the optics of the systemic nature of law and logic, meaning that the rule of law should be used as a reference price of death and thorough hereinafter described logically according to formal methods dogmatic by legal red tape in the form of judicial decisions. Seeing the reality that exists today, can be observed the fact that law enforcement conditions linked to the behavior of judges. Opinion of the most popular in today's society that judges in making the decision more emphasis on formal juridical aspects of the rule of law rather than trying to develop things that have substantial significance in the process of making a decision.

The decision making process by the judge to be very important, because through the process that a person involved in the case / dispute will acquire rights who fought or even otherwise be disenfranchised. In the case of Prita Mulyasari, cohesiveness between positive law in terms of this Act and the material which is used as a formal foundation in examining judge and decide the case and the values of justice in society becomes a *conditio sine qua non*. In fact judges as the law enforcement and justice, in accordance with Article 28 paragraph (1) of Law Number 4 Year 2004 on Judicial Power is now Article 5 (1) of Law Number 48 Year 2009 concerning Judicial Authority, confirmed that: "Judges shall digging, follow and understand the values of law and justice in society ". For that he (the judge) must be willing and able to explore legal values that live in the community, so a judge must be able to act as a living interpretator that captures the spirit of justice and is not bound by the rigidity procedural positivistic contained in legislation , because the judge is not just mouth the legislation.

The symbolic meaning of the case mBok Minah, coins justice Prita Mulyasari indicate or reflect that way arbitrate in Indonesia tend poor and entered the stage of acute crisis, doctrines-doctrines such as: equality in law (equity before the law), the court as the last bastion in finding justice, and so often only used as a myth that more lies.²

If we analyze the phenomenon arbitrate in Indonesian positivistic law is a replica 19th century model that thrives, and maintained a tradition in European society (Netherlands) when it is, that because of political concordance, then transplanted in the Indonesian legal system. Given the purpose of juridical positivism is the establishment of juridical systems (rules and doctrine) to be applied as positive law, then the law becomes the fruit creations experts in the field of law. Thus, in the juridical positivism cosmology, stylist orderly human life entrusted to lawyers and state authorities, legislation that comes from the state into a single measure of the legality of the order of human life.

In the development of objections to the juridical positivism understood above. Karl von Savigny with his theory deny the authenticity *volkgeist* law made by experts and state. For von Savigny, the true law is not made artificially by the state and legal experts, is the true law is a law that grows and develops from the womb of life of the people, that is the law of true life. Law between the true and the soul of the people there is an organic relationship. True law was not made, it (the law) must be found.

Next in the 20th century, the strategy shifted again. Humanization of life and social justice appear as a new power. In an atmosphere that's cosmology, orderly human life to be placed within the framework of social justice struggles. Law also addressed in cosmology, it is not a coincidence, if the majority of the theories that have sprung up in this era characterized by correction and struggle ranging from Neo-Kantian, Neo-Hegelian, Neo-Marxism, Neo-Positivism, Phenomenology, Existentialism to the Critical Legal Study (CLS). Diverse theories above, essentially containing criticism and struggle to bring

² Arief, Barda Nawawi. (2010). Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan. Jakarta. Kencana Prenada Media Group, hlm.23-25.

social justice and humanism life through a variety of ways, some are doing introduced the idea of justice as an ideal law of the entire system of law is positive, there is also a fight through pioneering judges, no through way dismantling the ideology of domination and hegemony in shackles and oppressive structures.

Each periodization development of the theory above, reflect on the human struggle in establishing an orderly life, according to the challenge and his era. Then the legal theory in the history of human beings is a paradigmatic development in lawless. Satjipto Rahardjo, said: "That the legal theory is a gigantic document human (a great Anthropological document) which contains the human struggle in building a legal order. Observing from the model arbitrate in Indonesia and the historical record of legal theory above, then it is necessary for a new paradigm of how to arbitrate a more pro-justice and pro-people according to the social base of Indonesian society. The idea of such a law, initiated by Satjipto Rahardjo with a term known as progressive law. In a progressive law, we are required to understand the law as a whole or a comprehensive, on ways of understanding.³

Given that the law is not a linear, even in exact science that supposedly is logical-mechanistic whose methods dominate jurisprudence, it turns out as it says Capra, that the structure of the physical world is no longer like a machine, but has become a reality that is non-mechanical. Cosmic web is understood as something that is *interinsik* is dynamic. Every description of natural phenomena must take into account the theory of relativity, there is stability but stability that are in dynamic equilibrium. In line with observations Capra, Charles Stamford states that the law should be built by the theories of legal disorder (irregularity of the law), so that it will develop into a non-systematic legal theory.

Observing the phenomenon, then the law must be changed development orientation towards the basic idea of progressive law, as a form of a new paradigm in the way arbitrate. The idea of a progressive law is to put the law as an institution that aims to deliver humans to life fair, prosperous, and make people happy or may be called the law of pro-people and pro-justice. In line with this, then the law needs to be changed the development paradigm of the paradigm of power into a moral paradigm that has a set value of egalitarian, democratic, pluralistic and professional to build civil society (civil society). The future development of the legal framework should be a new paradigm, which is based on mutual fairness, shared prosperity, emancipatory, participatory, local independence and vision of human rights. understanding, appreciation, loyalty, and the practice of the values of Pancasila In connection with efforts to reform the law, so that the result can be a maximum, then re-actualization of improvement within the legal source of Indonesia, Pancasila, a step or process that is very important.

E. CONCLUSION

Re-actualizing values of Pancasila is a step or process that is very important and absolutely necessary in the process of legal reform. This is because Pancasila Indonesia is a source of legal order, which means that the values of Pancasila is a guideline once the parameters for the rule of law throughout Indonesia. In order for law reform relatively easy to do and can approach the desired goal, the rule of law Indonesiapun sources needs to be seen, checked again, if correctly understood, whether it should be realized by the public. Such efforts can be reached by turning, repair and rejuvenate the values of Pancasila as the source of the rule of law in Indonesia. Optimal Satjipto Raharjo that way still arbitrate dominance "rule by rule" rather than "rule by common sense is a minimalist way arbitrate is simply enforcing the law, what is written in the text. Approach progressive law enforcement in the concrete in the face of the rigidity of the law to create legal certainty, usefulness and fairness. Approach progressive law gives the criticism of law enforcement who are stuck in a monolithic view of perspective in law enforcement that are based on Pancasila arbitrate way to break the ice at the same time build a bridge over the ravine of law through legal discovery.

References

- Azra, Azyumardi. (2004). *Rejuvenasi dan Kepemimpinan Nasional*, Kompas.
- Arief, Barda Nawawi. (2010). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta. Kencana Prenada Media Group.
- Darji Darmodiharjo. (1996). *Penjabaran Nilai-Nilai Pancasila Dalam Sistem Hukum Indonesia*. Jakarta. PT. Raja Grafindo Persada.
- Hidayat, Arief. (2014). *Pancasila merupakan ideologi terbuka sehingga prosesnya berkembang di masyarakat*. Bahan Ajar, PDIH UNDIP Angkatan XIX. Semarang.
- Koento Wibisono. (1996). *Hubungan Filsafat Pancasila dengan Ideologi*, Makalah disampaikan pada Dialog Para Dosen Filsafat Pancasila dan Pancasila, Yogyakarta.

³ Koento Wibisono. (1996). *Hubungan Filsafat Pancasila dengan Ideologi*, Makalah disampaikan pada Dialog Para Dosen Filsafat Pancasila dan Pancasila, Yogyakarta.hlm.5