

## The Role of Legal Philosophy in Forming the Rule of Law in Indonesia

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### Abstract

Legal philosophy in Indonesia has the biggest role in the formation of law in Indonesia. Pancasila as a source of law contains the meaning of all regulations and laws, starting from our constitution and all regulations apart from our constitution, of course, Pancasila is the basis and foundation of the law. Pancasila is the Indonesian legal system. Therefore, Pancasila is not only known as a philosophy but also known as written law in Indonesia which contains living laws. The problem is how big is the role of Legal Philosophy in influencing the formation of the legal system in Indonesia. This question must be very important to answer. The author tries to examine this problem with normative law in the legal method. The approach taken by the author is taken from several books that contain related problems.

**Keywords:** Legal Philosophy, Law Making, Legal System.



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### INTRODUCTION

Humans have a curious nature about everything, something what is known to humans is called knowledge. Knowledge divided into 4 (four), namely sensory knowledge, scientific knowledge, philosophy, religious knowledge. The term "knowledge" not the same as "science". One's knowledge that humans can come from experience or it can also come from people others while science is knowledge that has objects, methods, and certain systematics and knowledge are also universal. Development of science being many and advanced does not mean all questions can be answered, by therefore the questions that cannot be answered become portion of philosophical work.<sup>1</sup>

Talking about philosophy, philosophy is often understood as a philosophy or a general and profound outlook on life that humans live. In such an understanding, philosophy is captured as something abstract.<sup>2</sup> Philosophy studies certain problems in certain ways. These problems include the deepest and most important problems that have been discovered by philosophers. Among them are discussed about the true nature of humans, the way we think, the nature of reality, and our ability to know that reality, and a set of problems related to one another.<sup>3</sup>

Philosophy of law is a branch of philosophy. Legal philosophy has a strategic function in the formation of law in Indonesia. Its connection with the formation of law in Indonesia, at least necessary realize that law is formed because of considerations of justice (*gerechtigheit*) besides as legal certainty (*rechtssicherheit*) and expediency (*zweckmassigkeit*).<sup>4</sup> Conducting a philosophical study of a legal issue before drafting a legal code is very important. This legal

<sup>1</sup> Bakir, 2017, "Peran Filsafat Hukum dalam Pembentukan Hukum di Indonesia", *Jurnal At Turas*, Vol. 4, No. 1, p. 86.

<sup>2</sup> Antonius Cahyadi dan E. Fernando M. Manulang, 2008, *Pengantar ke Filsafat Hukum*, Penerbit Kencana, Jakarta, p. 3.

<sup>3</sup> Peter Gibson, 2020, *Segala Sesuatu Yang Perlu Anda Ketahui Tentang Filsafat*, Gramedia Pustaka Utama, Jakarta, p. 3.

<sup>4</sup> Darji Darmodiharjo dan Sidharta, 2006, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*, PT. Gramedia Pustaka Utama, Jakarta, p. 154.

philosophical study is to find meta-juridical matters that will affect law in the context of rules and law in the context of its enforcement.

## RESEARCH METHODS

This article was written using a normative legal research method with a philosophical approach. The philosophical approach is an approach used to find out the philosophical foundation which is the deepest foundation of something. Armed with a study of the philosophical basis is used to answer problems or legal issues. The legal materials used in writing this article are primary legal materials and secondary legal materials. The technique for collecting legal materials used in writing this article is a literature study, and the technique for analyzing legal materials is by means of deductive analysis.

## RESULTS OF RESEARCH AND DISCUSSION

### Research Results

Philosophy of law is part of the quest for truth presented in the scope of philosophy. Philosophy is an activity of thinking systematically that can only be satisfied to receive the results that arise of the thinking activity itself. Philosophy does not limit itself to sensory, physical, psychical or spiritual symptoms only. Neither did he just asking the "why" and "how" of these symptoms, but also the basis of the deeper symptoms, the characteristics and their essence. He seeks to reflect on the theoretical relationship, which in in which the phenomena are understood or thought about.<sup>5</sup>

Philosophy is never too soon satisfied with an answer. Every philosophical postulate must be argued or made understandable rationally. Because after all philosophy is an activity of thinking, meaning in a dialogical relationship with others he seeks to formulate arguments for review. Next according to philosophy essentially open and tolerant. Philosophy is not a belief or dogmatics, if it is no longer open to new and rigid arguments holding on to an understanding once acquired, it is not surprising that philosophy in practice will lead to rigidity.<sup>6</sup>

The opinion that says that because of legal philosophy is a special part of philosophy in general, hence meaning philosophy of law only study law in particular. Thus, non-legal matters become irrelevant in the study of legal philosophy. Conclusions like this doesn't seem quite right. Philosophy of law as a philosophy that specifically studying law is only an academic limitation and intellectual only in the business of study and not show the essence of philosophy of law itself.<sup>7</sup>

The question of what is the nature of law is at the same time legal philosophy questions as well. This question may be answered by the science of law, but the answers given turned out to be all-encompassing not satisfactory. According to Apeldorn, this is none other than knowledge. The law only gives a unilateral answer. Law science only sees legal symptoms as can be observed by human senses about human actions and social habits. Meanwhile, the consideration of the values behind the legal phenomena has been overlooked legal observations. Legal norms or rules, not included in the world of reality (*sein*), but is in the world of values (*sollen*), so that it is the norm Law is not the world of legal research.

In the formation of laws made by the state, it is certain that the law has a target or achievement to be achieved in the sense that there is not a single statutory regulation that is

<sup>5</sup> Arief Sidharta, 2007, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*, Refika Aditama, Bandung, p. 1.

<sup>6</sup> *Ibid.*

<sup>7</sup> Sugiyanto Darmadi, 1998, *Kedudukan Ilmu Hukum dalam Ilmu dan Filsafat*, Mandar Maju, Bandung, p. 18.

formed with no goal to be achieved by the law. The formation of a mandatory legal system is based on the values of Pancasila, where we know that Pancasila is the basis of the thinking of the Indonesian nation. The definition of the formation of the law is to trace the basic rules that apply to society. In Law No. 12 of 2011 concerning the formation of laws and regulations, the types of hierarchies for legal formation in Indonesia have been regulated. In the formation of law where one of them discusses the theory of legal philosophy.<sup>8</sup>

The rearranged hierarchical arrangement of laws and regulations is considered to be very appropriate, because during the New Order era it was initially trying to purify the philosophy of Pancasila and the implementation of the 1945 Constitution by rearranging the sources of legal order and the order of laws and regulations, which in reality during 32 years have not produced results to build a statutory order that can be used as a benchmark for efforts to decide on the final outcome for a future statutory system.<sup>9</sup>

The philosophy of national law must be developed so that the legal philosophy of Pancasila is formed. Pancasila is the foundation of the state which is also the basis of the imperative national legal philosophy which guides the preparation of the development of a legal philosophy that is in harmony with and related to the values contained in Pancasila itself. Which each of the basic values contained in Pancasila must also be contained in the legal formation system in Indonesia later and also affect the legal development system in Indonesia.<sup>10</sup>

In the formation of law in Indonesia, legal philosophy plays a role in making the formation of laws that are very much needed by the people of Indonesia. In addition, legal philosophy has also replaced several legal systems in Indonesia. The philosophy of law replaced several laws and regulations starting from Tap XX/MPRS/1966 to the order of laws and regulations based on the Law of the Republic of Indonesia No. 12 of 2011. Philosophy of law can guide and realize legal needs in accordance with the level of progress of development in all fields, for this reason it is very necessary to examine more deeply and more deeply the philosophy of law more specifically by the whole nation, especially to the holders of power and interests in this country. That way in the future it will be better able to understand and know the content contained in the philosophy of law both in terms of the law itself or its positive impact on the life of this nation.<sup>11</sup>

Philosophy examines all the philosophical values of law. Then the law is all norms or rules and regulations written or not consisting of orders or prohibitions and sanctions for those who violate them. In other words, the law can be a tool or guide in social life. Laws were created to create some important values in society such as justice, happiness and prosperity. Philosophy is called a science because philosophy has an object of study. The object of study from the science of law itself is the norm. To understand law as a rule, one must also recognize that law as a science. If the law is recognized as the norm, then the law must be obeyed. Legal theory teaches that law is a set of principles or rules that make society maintain order and freedom.

Indonesia has Pancasila as a philosophical basis that guides the nation's life. Pancasila can be said to be a philosophy of law because it fulfills the qualifications to be called a

<sup>8</sup> Muhammad Khambali, 2014, "Fungsi Filsafat Hukum Dalam Pembentukan Hukum Di Indonesia," *Supremasi Hukum*, Vol. 3, No. 1, p. 9.

<sup>9</sup> Kurnia Parluhutan Hutapea, 2016, "Peranan Filsafat Hukum Dalam Pembentukan Hukum Di Indonesia", *Jurnal Ilmiah Dunia Ilmu*, Vol. 2, No. 4, p. 11.

<sup>10</sup> Any Ismayawati, 2017, "Pancasila Sebagai Dasar Pembangunan Hukum Di Indonesia," *Jurnal Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam*, Vol 8, No. 1, p. 56.

<sup>11</sup> Febby Lestari, "Peranan Filsafat Hukum Terhadap Hukum Di Indonesia," *Kumparan*, last modified 2020, <https://kumparan.com/febylestari026/peranan-filsafat-hukum-terhadap-hukumdi-indonesia-1uqrXdrs6Er/full>, accessed June 17<sup>th</sup>, 2023.

philosophical system which includes several things, namely the existence of a unitary value, regularity of interrelationships and dependencies between precepts, the existence of a common goal between Pancasila and the 1945 Constitution, and so on.<sup>12</sup> The formation of laws or regulations in Indonesia must be based on or must be in accordance with Pancasila as the basis of the state. Legal philosophy plays a role as a direction for the formation of law in Indonesia and also as something that is very much needed in Indonesia.

Legal philosophy is also influential in changing aspects of the formation of laws and statutes in Indonesia. Law No. 12 of 2011 concerning the hierarchy of laws and regulations explains several things in all written regulations that apply in Indonesia. In their definition, most experts define law in a broader and more numerous domain. Indonesia has a legal system which applies to all citizens without exception. This is because it has been mandated in our constitution which states that Indonesia is a constitutional state. Therefore, every person who is an Indonesian citizen must comply with the laws that apply and are made in Indonesia.

All laws formed in Indonesia must actually be guided by the state ideology and also the 1945 Constitution. Pancasila is the principle and is the basis of the state philosophy which is the determining element for the enactment of the legal order in Indonesia. Pancasila also contains several principles of normality which consist of several norms that must be obeyed and which are positive in nature. The meaning of positive law here can be in the form of the 1945 Constitution, Laws, Perppu, PP Regulations, Presidential Regulations, and also Regional Regulations. Which all of these regulations are written regulations (Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation).

Pancasila as the source of all sources of law implies that all sources of law or regulations, starting from the 1945 Constitution and all other implementations, must be based on Pancasila as the foundation and not a single legal product may deviate from it. The existence of Pancasila as a legal philosophy is very influential and plays a major role in the formation of law in Indonesia. This is because Pancasila is a pillar of great achievement in a circle for a legal state like Indonesia. If a law is formed without being guided by Pancasila, it will give birth to several legal problems and the emergence of an unstructured legal structure. The legal system of Pancasila is the legal system of Indonesia. Therefore, Pancasila is not only known as the State Philosophy and Ideology, but Pancasila is also known as a written regulation in Indonesia which contains living laws, which are desired by the Indonesian people.<sup>13</sup> The law recognizes the value of belief in God, humanity, unity, social values and the value of justice for all Indonesian people.

## CONCLUSION

Legal philosophy plays a role as a direction for the formation of law in Indonesia and also as something that is very much needed in Indonesia. Playing a role in explaining the basic philosophical legal values which are able to realize the ideals of justice, order in society related to the reality of applicable law. In the formation of law in Indonesia, legal philosophy plays a role in making the formation of laws that are needed by Indonesian society. Legal philosophy is also influential in changing aspects of law formation and legislation in Indonesia. The existence of Pancasila as a legal philosophy is very influential and plays a major role in the formation of law in Indonesia. This is because Pancasila is a pillar of great achievement in a circle for a legal state like Indonesia. The legal system of Pancasila is the legal system of Indonesia. Pancasila is a spiritual principle and a philosophical basis for the state which is an element of the emergence of the legal system in Indonesia.

<sup>12</sup> Ali Imran, 2017, *Pendidikan Pancasila Di Perguruan Tinggi*, Rajawali Pers, Depok, p. 20.

<sup>13</sup> Amran Suadi, 2019, *Filsafat Hukum: Refleksi Filsafat Pancasila, Hak Asasi Manusia, Dan Etika*, Kencana Prenada Media, Jakarta, p. 7.

## BIBLIOGRAPHY

- Ali Imran, 2017, Pendidikan Pancasila Di Perguruan Tinggi, Rajawali Pers, Depok.
- Amran Suadi, 2019, Filsafat Hukum: Refleksi Filsafat Pancasila, Hak Asasi Manusia, Dan Etika, Kencana Prenada Media, Jakarta.
- Antonius Cahyadi dan E. Fernando M. Manulang, 2008, Pengantar ke Filsafat Hukum, Penerbit Kencana, Jakarta
- Any Ismayawati, 2017, "Pancasila Sebagai Dasar Pembangunan Hukum Di Indonesia," Jurnal Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam, Vol 8, No. 1.
- Arief Sidharta, 2007, Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum, Refika Aditama, Bandung.
- Bakir, 2017, "Peran Filsafat Hukum dalam Pembentukan Hukum di Indonesia", Jurnal At Turas, Vol. 4, No. 1.
- Darji Darmodiharjo dan Sidharta, 2006, Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia, PT. Gramedia Pustaka Utama, Jakarta.
- Febby Lestari, "Peranan Filsafat Hukum Terhadap Hukum Di Indonesia," Kumparan, last modified 2020, <https://kumparan.com/febylestari026/peranan-filsafat-hukum-terhadap-hukumdi-indonesia-1uqrXdrs6Er/full>, accessed June 17<sup>th</sup>, 2023.
- Kurnia Parluhutan Hutapea, 2016, "Peranan Filsafat Hukum Dalam Pembentukan Hukum Di Indonesia", Jurnal Ilmiah Dunia Ilmu, Vol. 2, No. 4.
- Muhammad Khambali, 2014, "Fungsi Filsafat Hukum Dalam Pembentukan Hukum Di Indonesia," Supremasi Hukum, Vol. 3, No. 1.
- Peter Gibson, 2020, Segala Sesuatu Yang Perlu Anda Ketahui Tentang Filsafat, Gramedia Pustaka Utama, Jakarta.
- Sugiyanto Darmadi, 1998, Kedudukan Ilmu Hukum dalam Ilmu dan Filsafat, Mandar Maju, Bandung.