

**IMPLEMENTATION OF HARMONIZING, FINISHING AND
STRENGTHENING THE CONCEPT OF LAW DESIGN WITH
PANCASILA VALUES**

**PELAKSANAAN PENGHARMONISASIAN, PEMBULATAN DAN
PEMANTAPAN KONSEPSI RANCANGAN UNDANG-UNDANG
DENGAN NILAI-NILAI PANCASILA**

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ABSTRACT

Harmonizing the conception of draft laws is a process that must be carried out in the formation of laws and regulations, especially at the drafting stage. The aim is to harmonize with Pancasila, the 1945 Constitution of the Republic of Indonesia and other laws and drafting techniques as well as to produce agreement on the regulated substance so that it becomes a statutory regulation which is a unified whole within the framework of the national legal system. In practice, the harmonization of the draft law concept has not been harmonized with the values of Pancasila. Whereas in terms of legal dogmatics and legal theory, the draft law must be harmonized with the values of Pancasila.

Keywords : Harmonization; Draft Law; Pancasila

ABSTRAK

Pengharmonisasian konsepsi rancangan undang-undang merupakan proses yang harus dilakukan dalam pembentukan peraturan perundang-undangan khususnya pada tahap penyusunan. Tujuannya adalah untuk menyelaraskan dengan Pancasila, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan undang-undang lain dan teknik penyusunan serta untuk menghasilkan kesepakatan terhadap substansi yang diatur sehingga menjadi peraturan perundang-undangan yang merupakan satu kesatuan yang utuh dalam kerangka sistem hukum nasional. Dalam praktek, pengharmonisasian

konsepsi rancangan undang-undang belum diselaraskan dengan nilai-nilai Pancasila. Padahal ditinjau dari dogmatika hukum dan teori hukum, rancangan undang-undang harus diselaraskan dengan nilai-nilai Pancasila. Pengabaian terhadap keharusan penyelarasan rancangan undang-undang dengan nilai-nilai Pancasila menunjukkan pengaruh aliran positivisme hukum.

Kata Kunci : Pengharmonisasian; Rancangan Undang-Undang; Pancasila

I. INTRODUCTION

Indonesia is a country that adheres to the rule of law. This has been stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One of the characteristics of a legal state is the *wetmatigheid van bestuur* or legality principle, in which all government actions must be based on valid and written laws and regulations. . The written statutory regulations must exist and apply first or precede action on administrative actions taken.¹

As a consequence of the choice to understand the rule of law, the mechanism for the formation of laws and regulations is very important, because through the process of forming laws and regulations, laws and regulations will be produced starting from laws to regional regulations which will become the legal basis for government officials and the people. .

Currently, the formation of laws and regulations in Indonesia is based on Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Regulations. Legislation and Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Establishment of Legislation.

Article 1 point 1 of Law Number 12 of 2011 concerning the Formation of Legislations contains the definition that the formation of laws and regulations is the making of laws and regulations which include the stages of planning, drafting, discussing, ratifying or determining and enacting.

At the stage of formation of laws and regulations, especially the drafting stage, a process or mechanism for harmonization, unanimity and consolidation of conceptions must be carried out as regulated in Article 51 of Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Establishment of Legislations.

Article 51 paragraph (4) of Law Number 12 of 2011 has regulated that harmonization, unanimity and consolidation of the conception of the draft law, is intended to:

- a. Aligning draft laws with:
 - 1) Pancasila, the 1945 Constitution of the Republic of Indonesia and other laws;
 - 2) Techniques for drafting laws and regulations.

¹Bayu Dwi Anggono (2020). Main Thoughts on Structuring Legislation in Indonesia, Jakarta Press (Konpress) Constitutional Publisher, xii.

- b. Produce agreement on the substance regulated in the draft law

In the practice of harmonization, unanimity and consolidation of the conception of the draft law implemented by the Ministry of Law and Human Rights, it has not yet been harmonized with the values of Pancasila. So far, the harmonization, unanimity and consolidation of the conception of the draft law is still limited to efforts to harmonize the draft law with the 1945 Constitution of the Republic of Indonesia and other laws and techniques for drafting legislation.

It should be, in the harmonization, unanimity and consolidation of the conception of the draft law in harmony with the values of Pancasila. The institution that has the task and function of aligning draft laws and regulations with Pancasila is the Pancasila Ideology Development Agency (BPIP).

Data from BPIP, in 2020 issued 2 (two) letters of alignment of draft ministerial/institutional regulations and in 2021 6 (six) letters of alignment of draft ministerial/institutional regulations have been issued.

Based on the description above, the author is interested in researching and writing in the form of a journal with the title: "The implementation of harmonization, unanimity and consolidation of the conception of the draft law with the values of Pancasila".

The issues raised in this journal are:

- 1) Why should draft laws be harmonized with Pancasila?
- 2) How is the implementation of harmonization, unanimity and consolidation of the conception of the draft law in terms of the flow in legal philosophy?

II. METHOD

This research used normative juridical research type. This is a consequence of choosing the topic of the problem to be studied. The purpose of this type of research will be to concentrate on the rules or norms that exist in positive law or the law that is currently in effect and in Indonesia. Thus, there is a conformity of will or a correlation between all the problems contained in the formulation of the problem that has been determined from legal issues with ongoing legal norms. The legal research is carried out to solve legal issues that arise, while the results to be achieved from legal research are prescriptions on what should be on the legal issues proposed.²

III. ANALYSIS AND DISCUSSION

a. Hierarchical Theory of Legislation

Hans Kelsen as quoted by Maria Farida Indrati S., put forward a theory about the level of norms (Stufentheori). Hans Kelsen argues that legal norms

² Peter Mahmud Marzuki (2008). *Legal Research*, Jakarta: Kencana, 41.

are tiered and layered in a hierarchy (organization). A lower norm applies, originates and is based on a higher norm, a higher norm applies, originates and is based on a higher norm, and so on until a norm that cannot be traced further and is hypothetical and fictitious, namely Basic Norms (Grundnorms).³

Starting from his pure legal theory, Hans Kelsen teaches the existence of a grundnorm which is the parent that gives birth to legal regulations in a certain legal system order.⁴

Hans Nawiasky, one of Hans Kelsen's students, developed the theory of level norms in relation to a country. Hans Nawiasky argues that according to Hans Kelsen's theory, a legal norm of any country is always layered and tiered. The norms below are valid, sourced and based on higher norms, higher norms apply, sourced and based on even higher norms, until a higher norm is called the Basic Norm.⁵

Hans Nawiasky also argues that in addition to the norms that are layered and tiered, the legal norms of a country are also grouped, and the grouping of legal norms in a country consists of four major groups, namely:

Group I	<i>Staats fundamental norm (State Fundamental Norms)</i>
Group II	Staatsgrundgesets (Basic Rules of the State/Basic Rules of the State)
Group III	Formell Gesetz (Formal Act),
Group IV	Verordnung & Autonome Satzung (Implementing Rules & Autonomous Rules). ⁶

According to Nawiasky, Staatsfundamentalnorm is a norm that is the basis for the formation of a constitution or constitution (staatsverfassung) of a country. The legal position of a Staatsfundamentalnorm is a condition for the enactment of a constitution. Staatsfundamentalnorm exists before the constitution of a country.⁷

Based on Nawiasky's theory, A. Hamid S. Attamimi compares it with Kelsen's theory and applies it to the structure of the legal system in Indonesia. Attamimi shows the hierarchical structure of the Indonesian legal system using Nawiasky's theory. Based on this theory, the structure of the Indonesian legal system is:

- 1) *Staatsfundamentalnorm: Pancasila (Preamble to the 1945 Constitution).*
- 2) *Staatsgrundgesetz: Body of the 1945 Constitution, and the Constitutional Convention.*

³Maria Farida Indrati S. (2007). Types of Legislation, Functions and Content 1, Kanisius Publishers Yogyakarta, 41.

⁴Yunus PS Buren and Rudy Hendra Pakpahan (2021). Regional Regulations with Substantive Justice for the Concept of Formation and Implementation in the Indonesian Legal System, Setara Press Publisher, Malang, 14.

⁵*Ibid*, 44.

⁶*Ibid*, 45.

⁷Teguh Prasetyo and Abdul Halim Barkatullah. (2014). Philosophy, Theory & Legal Studies Thought Towards a Just and Dignified Society, Publisher PT RajaGrafindo Persada, Jakarta, 383.

- 3) *gesetz . formal*: Constitution,
- 4) *Verordnung en Autonome Satzung*: hierarchically starting from PP to Regent or Mayor Regulation.⁸

b. Pancasila as the Source of All Sources of Law

The source of the orderliness of a country or commonly referred to as “the source of all sources of law” is the view of life, awareness and ideals of the law as well as moral ideals which include the psychological atmosphere and character of the people of the country concerned.⁹

The sources of the legal order of the Republic of Indonesia are the view of life, awareness and legal ideals as well as ideals regarding individual independence, national independence, humanity, social justice, national and international peace, political ideals regarding the nature of the form and purpose of the state, ideals and aspirations. moral ideals regarding social and religious life as the embodiment of Human Conscience.¹⁰

On August 18, 1945, the Preparatory Committee for Indonesian Independence, on behalf of the Indonesian people, had purified and condensed the Preparatory Committee for Indonesian Independence on behalf of the Indonesian people, becoming the basis of the Republic of Indonesia. namely Pancasila: Belief in One Supreme God, just and civilized humanity, Indonesian Unity, Democracy led by wisdom in deliberation/representation, and Social Justice.¹¹

In positive law in Indonesia, the stipulation that Pancasila is the source of all sources of state law is contained in the provisions of Article 2 of Law Number 12 of 2011 concerning the Establishment of Legislation.

The explanation of Article 2 of Law Number 12 of 2011 is as follows:

“The placement of Pancasila as the source of all sources of state law is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia in the fourth paragraph, namely Belief in One God, just and civilized humanity, Indonesian Unity, Democracy led by wisdom in Deliberation/Representation. , and social justice for all Indonesian people”.

“Placing Pancasila as the basis and ideology of the state as well as the philosophical basis of the state so that any material contained in laws and regulations must not conflict with the values contained in Pancasila”.

c. Theory of Positivism

There are two major schools or schools in legal philosophy, namely the flow of natural law and the flow of positive law or positivism. The teachings of legal positivism are about existing legal beliefs, current laws, at certain times and at certain places. The positive law school sees the need for a strict separation between law and morals (between the applicable law and the law

⁸*Ibid*, 383-384

⁹Soehino (2005). Constitutional Law Sources of Indonesian Constitutional Law, Liberty Publisher, Yogyakarta, 195.

¹⁰*Ibid*, 195.

¹¹Soehino, *Loc. cit.*

that should be, between *das sein* and *das sollen*).¹² Legal positivism can be distinguished in two forms, namely:

1) The analytical positive law school pioneered by John Austin.

According to Austin, the only source of law is the supreme power in a country. Austin reduces the law by explaining that the law is a sovereign order by placing superior institutions is an attempt to reduce forces other than the state, especially the forces that live in diverse societies.

2) Pure law school pioneered by Hans Kelsen.

According to Kelsen, the law of applying the concept of law must use a juridical normative method approach that is clean from non-juridical elements such as sociological, political, historical, and ethical. The rule of law is always positive law. The positive law conception is a law in reality (*sollen* categories) and not a law that should be or aspired to (*sein* categories).¹³

d. Alignment of Draft Laws with Pancasila

The stages in the formation of laws and regulations as regulated in Law Number 12 of 2011 include the stages of planning, drafting, discussing, ratifying or determining and enacting.

At the drafting stage, a draft legislation must be harmonized, finalized and consolidated the conception. The definition of harmonization, unification and consolidation of conceptions has not been regulated in Law Number 12 of 2011 and Presidential Regulation Number 87 of 2014. The definition of harmonization, unification and consolidation of the conception of draft laws and regulations can be found in the Regulation of the Minister of Law and Human Rights Number 20 of 2015 concerning Procedures and Procedures for Harmonization, Finalization and Consolidation of the Conception of Draft Laws and Regulations.

Article 1 point 1 Regulation of the Minister of Law and Human Rights Number 20 of 2015 stipulates:

“Harmonization, Unification and Consolidation of the Conception of Draft Laws and Regulations, hereinafter referred to as Harmonization of the Conception of Draft Laws and Regulations, is the process of harmonizing the substance of the Draft Law and Regulations and the technique of drafting the Legislation so that it becomes a Legislation which is a single unit that is intact within the framework of the national legal system”.

Furthermore, Article 3 of the Regulation of the Minister of Law and Human Rights Number 20 of 2015 stipulates:

“Harmonization of the Conception of Draft Laws and Regulations is carried out with the aim of:

a) Align with:

- 1) Pancasila, the 1945 Constitution of the Republic of Indonesia and other laws; and
- 2) techniques for drafting laws and regulations.

¹² Teguh Prasetyo and Abdul Halim Barkatullah, *Op. Cit*, 201.

¹³*Ibid*, 202-205.

b) produce agreement on the substance regulated.

In practice, the harmonization of draft law conceptions carried out by the Directorate General of Legislation, Ministry of Law and Human Rights only harmonizes draft laws with the 1945 Constitution of the Republic of Indonesia and other laws and regulations drafting techniques. legislation as regulated in the Attachment of Law Number 12 of 2011 concerning the Establishment of Legislation.

This condition shows that the harmonization of the new draft law conception is limited to alignment with higher laws and regulations (the 1945 Constitution of the Republic of Indonesia) and parallel laws and regulations (other laws). alignment with the basic or philosophical values of the Pancasila state.

Associated with schools or schools in legal philosophy, the neglect of alignment of draft laws with the basic or philosophical values of the state Pancasila shows the strong influence of positive legal schools (positivism).

The positive law school sees the need for a strict separation between law and morals (between the applicable law and the law that should be, between *das sein* and *das sollen*). Even for adherents of the legislature school, they argue more firmly that the law is a law.¹⁴

IV. CONCLUSION

Draft laws must be harmonized with Pancasila because Pancasila is the source of all sources of law (*grundnorm*). Pancasila as the basis and ideology of the state as well as the philosophical basis of the state so that the material of the draft law must not conflict with the values contained in Pancasila. The practice of harmonization, unanimity and consolidation of the conception of draft laws is still in harmony with the laws and regulations, namely the 1945 Constitution of the Republic of Indonesia and other laws. This shows the influence of the flow of legal positivism which puts forward the law.

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¹⁴Teguh Prasetyo and Abdul Halim Barkatullah, *Op.Cit*, 201.

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