

# **DIVINE VALUE OF INDONESIAN JURISPRUDENCE: A REFLECTION OF PANCASILA JURISPRUDENCE**

## **ILMU HUKUM INDONESIA YANG BERKETUHANAN: SUATU REFLEKSI ILMU HUKUM PANCASILA**

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### **ABSTRACT**

This paper aims to examine divine values as a form of reflection on Pancasila values in Indonesian jurisprudence. This study is important considering that the current conditions for the establishment and enforcement of Indonesian law tend to pay little heed to divine values. Using the doctrinal writing method with a conceptual approach it is found that: Jurisprudence which believes in God is a form of reflection of Pancasila values and is part of Pancasila jurisprudence. Jurisprudence which believes in God is closely related to religious principles which in essence want humans to remain in their minds and consciences in living life. The essence of theology in theology of law focuses on strengthening aspects of morality with regard to the immunity of the legal structure, the establishment of legal substance and legal culture.

**Keywords: Law, Divine, Reflection, Indonesia.**

### **ABSTRAK**

*Tulisan ini bertujuan untuk mengkaji nilai-nilai ketuhanan sebagai bentuk refleksi nilai-nilai Pancasila dalam ilmu hukum Indonesia. Kajian ini penting mengingat kondisi penegakan dan penegakan hukum Indonesia saat ini cenderung kurang mengindahkan nilai-nilai ketuhanan. Dengan menggunakan metode penulisan doktrinal dengan pendekatan konseptual ditemukan bahwa: Ilmu hukum yang berketuhanan merupakan cerminan dari nilai-nilai Pancasila dan merupakan bagian dari ilmu hukum Pancasila. Fikih yang berketuhanan erat kaitannya dengan prinsip-prinsip agama yang pada hakekatnya menginginkan manusia tetap pada akal dan nuraninya dalam menjalani kehidupan. Esensi teologi dalam teologi hukum menitikberatkan pada penguatan aspek moralitas berkenaan dengan imunitas struktur hukum, pembentukan substansi hukum dan budaya hukum.*

**Keywords: Hukum, Ketuhanan, Refleksi, Indonesia.**

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## **I. INTRODUCTION**

The factor that fundamentally distinguishes humans from other creatures on earth is that since their birth, humans have been equipped with a mind and conscience, whose abilities develop along with the development of the human maturation process. The existence and operation of the mind and conscience causes humans to have values and the ability to judge, understand and distinguish notions: good, bad, wrong, right, etc.<sup>1</sup> However, there are times when the mind and conscience are covered with lust, so that religious rules, decency, decency and law are needed to keep people in their minds and consciences.

Law as a form of rule that lives in society, whose enforcement is forceful because it is legitimized by the authorities has a character that tends to be stronger in directing people's behavior. Therefore, the applicable law must truly reflect the values that exist in society so that problems do not occur in its implementation. In the Indonesian context, applicable law must be able to reflect the values of Pancasila.

Law as an object of study in legal science will reflect Pancasila values if its study and development is based on Pancasila. One of the problems in law enforcement that actually occurs today is that it is too "rigid and procedural" so that the essence of the law is not achieved. Law enforcers are more oriented towards statutory rules than interpreting law in a more complete and essential way. This problem will be even worse if it is related to the moral factor of law enforcers who are still carrying out various "black" practices in the world of justice.

Various legal issues that arise, to a certain degree cannot be separated from the character of the science of law which is taught in higher education in law. The existing legal education framework still does not reflect Pancasila legal science, so that the law and law enforcers do not fully reflect Pancasila values. Based on the issues relating to the reflection of Pancasila in Indonesian jurisprudence, this paper will elaborate further on the science of theology of theology as a form of reflection on the values of Pancasila in Indonesian jurisprudence.

## **II. METHOD**

This paper is in the corridor of doctrinal research, which only uses secondary data. The legal research model is a comprehensive and analytical study of secondary legal materials. The approach to the problem uses a conceptual approach.<sup>2</sup> The data were analyzed qualitatively by describing the data generated from the research into a systematic explanation form so that a clear picture of the problem under study can be obtained. The results of the data analysis were concluded deductively.

## **III. ANALYSIS AND DISCUSSION**

The days leading up to the preparations for independence were filled by the founding fathers of the nation to hold discussions and formulate the

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<sup>1</sup> B. Arief Sidharta, Indonesian Jurisprudence, Papers, Study Materials for the Master of Law at Lampung University, 2011, page 1.

<sup>2</sup> Peter Mahmud (2005). Legal Research, Kencana Prenada, Jakarta, page xx.

philosophical basis for forming a State which would become the way of life for the Indonesian nation in filling up independence. According to Notonagoro, Soekarno<sup>3</sup> who first proposed Pancasila as the philosophical basis for the establishment of the Indonesian State at the First Session of the Investigating Agency for Preparatory Work for Independence (BPUPK) held on June 1, 1945.

“Your Excellency, for the first time, gave birth to and proposed Pancasila as the basis for the Philosophy of an independent and sovereign Indonesian State on June 1, 1945 at the meeting of the Investigative Body for Preparatory Work for Independence, citing Dr. Radjiman Wedyodiningrat, Chairman of the Agency, in the foreword of the book *The Birth of Pancasila*, is a *Beginsel* that became the Foundation of our State, which became the *Rechtsideology* of our Country; a beginning that has permeated and deeply rooted in Bung Karno's soul”. Your Excellency himself named it “the foundations”, “*philosofische grondslag*”, ‘*Weltanschauung*’, on which the State of Indonesia was founded.<sup>4</sup>

Pancasila excavated from the original values of the Indonesian Nation have been agreed to be the basis of the state by the founding fathers of the nation. Therefore, all aspects of national and state life must refer to the reflection of Pancasila values, including the study and development of Indonesian legal science, which must also reflect Pancasila values. According to the author, Pancasila which consists of five precepts as an inseparable unit whose essence lies in its first precept which declares the belief and acknowledgment of the Indonesian people in the power of God. Regarding the first principle of Pancasila, Soediman Kartohadiprojo explained it as follows:

“The first precept of our Pancasila is Belief in the One and Only God, which means that the Indonesian people believe in God; The Almighty; which has no *Samanya*, so One, Single. Also implies, the entire Universe is His creation. His creations are different: inanimate objects (planets, rocks, water, fire, etc.) and living things (plants and animals, including humans)”.<sup>5</sup>

In line with the explanation above, the first precepts are essential because by acknowledging the existence and power of God who is born in all forms of behavior in the life of the nation and state, the following precepts related to issues of humanity, unity, deliberation and social justice will automatically be realized properly. This godly aspect is actually embodied in religious principles.

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<sup>3</sup> Soekarno stated "In my opinion, what the Honorable Excellency the Chairman asked for was, in Dutch: "Philosofische grondslag" instead of an independent Indonesia. *Philosofische grondslag* is the foundation, the philosophy, the deepest thoughts, the soul, the deepest desire for the eternal and everlasting building of an independent Indonesia to be built. Soekarno, *Speech on the Birth of Pancasila in the First Session of BPUPK*, June 1, 1945, p. 1. (Spelling adjustments and some words by B. Arief Sidharta).

<sup>4</sup> Notonagoro, *Pancasila Basic Philosophy of the Republic of Indonesia*, *Speech on the promotion of doctor honoris causa in law by the Senate of Gadjah Mada University (by promoter Prof. Mr. Drs. Notonagoro) on Bung Karno's promovendus on September 19, 1951 in Yogyakarta*, p. 3. (Adjustment spelling and some sayings by B. Arief Sidharta).

<sup>5</sup> Soediman Kartohadiprojo, *Pancasila and Law*, Paper, p. 8. (Adjustment of spelling and some words by B. Arief Sidharta).

With regard to religious principles, regarding the possibility of human understanding of religious principles, even though humans are not involved in the process of their formation, it also originates from the human mind and conscience. Therefore, the development of the human mind and conscience to develop good morals in humans is very important, namely so that humans can understand well the teachings and principles of religion.<sup>6</sup>

As has been explained the essential side of the first precepts of Pancasila which is closely related to religious principles which will have implications for human moral behavior, in the study and development of Indonesian jurisprudence it must believe in God as a form of reflection on the values of Pancasila in Indonesian jurisprudence.

According to Barda Nawawi Arief, the science of Pancasila law is the science of law that is oriented towards the three pillars/balance values of Pancasila, namely: the science of law is valued/pillared/divinely oriented (religious moral), the science of law is valued/pillared/humanistic oriented (humanistic), and science law is valued/pillared/socially oriented (nationalistic; democratic; social justice).<sup>7</sup> Moeljatno once stated that "In our country which is based on Pancasila, with its divine precepts, any knowledge (including law) that is not accompanied by divine knowledge is incomplete".<sup>8</sup>

Therefore, education and development of legal knowledge in Indonesia should not be secular, because it is very ironic in a country where the YME Godhead and the judiciary are conducted "For the sake of Justice based on YME Godhead", but law students and law enforcement officers only know about justice based on "guidelines of the Law", but do not know about justice based on "God's guidance".<sup>9</sup>

Jurisprudence that believes in God as a reflection of Pancasila values is an urgent need to improve the legal condition (structure, substance and culture) in Indonesia. According to the author, theology of theology as part of the law science of Pancasila puts more emphasis on the inculcation of moral values in higher education in law. The goal of this theology of law is directed at humans, by strengthening the side of human morality which can provide immunity from "black" behavior in upholding legal authority, so that justice based on YME Godhead can be realized. With the knowledge of theology that believes in the law, it is hoped that the immunity of the legal structure, the formation of legal substance and culture can be based on religious values so that a just legal condition can be achieved.

#### **IV. CONCLUSION**

As a closing of what has been discussed, it can be concluded that the science of God-based law is a form of reflection of the values of Pancasila and is part of the science of Pancasila law. Jurisprudence which believes in God is closely related to religious principles which in essence want humans to remain in their minds and consciences in living life. The essence of theology in theology of law focuses on strengthening aspects of morality with regard to

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<sup>6</sup> Op, Cit, B. Arief Sidharta, Indonesian Legal Studies, page 5.

<sup>7</sup> Barda Nawawi Arief, Development of the National Legal System (Indonesia), Masters Library, Semarang, 2012, p. 31.

<sup>8</sup> Ibid., p. 32.

<sup>9</sup> Ibid., p. 34.

the immunity of the legal structure, the establishment of legal substance and legal culture.

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