



THE FOUNDATION OF PANCASILA IN THE FORMATION OF LEGISLATION USING THE OMNIBUS LAW METHOD

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Abstract:

This article will try to provide an analysis of the role of Pancasila in the formation of legislation using the omnibus law method. The Omnibus Law is a new method in Indonesia and has experienced various polemics in society. The research results show that Pancasila is the source of all sources of law in Indonesia. This fact has emphasized that the formation of laws and regulations in Indonesia must not conflict with the values contained in Pancasila. In addition, Pancasila is a guiding principle in national legal politics so that no regulation can contradict the values of divinity and civilization, and no regulation can contradict human values. No regulation can be born that has the potential to damage the integrity of the ideology and territory of the nation and state of Indonesia. There should be no regulations that violate the principle of popular sovereignty, and the most important thing is that these regulations do not violate the principle of popular sovereignty. The most important thing is that these regulations do not violate the values of social justice.

Keywords: Omnibus Law, Legislation, Pancasila.

Abstrak:

Artikel ini akan mencoba memberikan analisis pada bagaimana peran Pancasila dalam pembentukan perundang-undangan menggunakan metode omnibus law. Omnibus Law sendiri merupakan metode yang baru di Indonesia dan mengalami berbagai polemik di masyarakat. Hasil penelitian menunjukkan bahwa sejatinya Pancasila merupakan sumber dari segala sumber hukum di Indonesia, fakta demikian telah menegaskan bahwa pembentukan peraturan perundang-undangan di Indonesia tidak boleh bertentangan dengan nilai-nilai yang ada didalam Pancasila. Selain itu, Pancasila merupakan kaidah-kaidah penuntun dalam politik hukum nasional sehingga tidak ada peraturan yang boleh bertentangan dengan nilai-nilai ketuhanan dan keberadaban, tak boleh ada peraturan yang bertentangan dengan nilai-nilai kemanusiaan, tidak boleh lahir suatu peraturan yang mempunyai potensi merusak keutuhan ideologi dan teritori bangsa dan negara Indonesia, tak boleh ada peraturan yang melanggar prinsip kedaulatan rakyat dan yang terpenting adalah peraturan tersebut tidak melanggar prinsip kedaulatan rakyat dan yang terpenting adalah peraturan tersebut tidak melanggar nilai-nilai keadilan sosial.

Kata Kunci: Omnibus Law, Peraturan Perundang-undangan, Pancasila.

A. Introduction

Indonesia is a state of law (Sarudi, 2021). As a rule-of-law country, Indonesia has legal rules in the form of legislation (Satria, 2020). This form of legislation serves to regulate society in a better direction. Forming a statutory regulation, of course, requires a concept in the plan to form an excellent statutory regulation. Good laws and

regulations are laws and regulations that have a basis or basis, which is called *Grundnorm* (Febriansyah, 2016). The Indonesian state constitution mandates in Article 1 paragraph (3) that the Indonesian state is constitutional. An alternative sentence that is very straightforward implies that Indonesia is obedient to the law and constitution that governs it. This refers to the philosophy of the nation, namely Pancasila. Pancasila is placed as the source of all sources of law in the development of national law (Arifin & Satria, 2020).

Pancasila is a state philosophy born as a collective ideology of the entire Indonesian nation. The Indonesian nation is still building its legal system to replace the legal system left by the Dutch colonialists. The preamble of the 1945 Constitution of the Republic of Indonesia, in which the essence of Pancasila is contained as the basis of the state, is a *modus vivendi* (Rutherford, 2021) extracted from the deep soul contemplation of the founding fathers of the nation, which is then poured into an appropriate system. The expected national legal system in the future is a legal system explored from the views of the Indonesian people contained in Pancasila. The five precepts in Pancasila are a form of a value system that can be elaborated into the legal system (Bo'a, 2018).

Pancasila, as the philosophy of the nation and state of the Republic of Indonesia, implies that every aspect of national, state and social life must be based on the values of divinity, humanity, unity, and democracy, to realize social justice for all Indonesian people. This state-of-the-art philosophy departs from the view that the state is a communion of human life or a social organization, which is a legal society. All kinds of policies taken within the legal community may not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia (Saladin, 2021).

The development of the Pancasila legal system should lead to the ideals of the Indonesian state (*staatsidee*). As far as possible, the ideals of the state must be built uniquely according to the identity and personality of the Indonesian nation. The Pancasila legal system is not a legal system that adopts the freedom of citizens echoed by a secular liberal state. Still, it is also not a state based on certain religious teachings. It is a religious nation-state that essentially upholds divine values and freedom of religion for its adherents to carry out their respective religious teachings. (Pranoto, 2018)

The Pancasila legal system is also not synonymous with the socialism/communism system, which does not recognize individual ownership. The Pancasila legal system is a hybrid system in which all elements of the nation unite within the framework of “*gotong royong*” to realize a set of national goals and objectives. The Pancasila legal system is a happy legal system based on a prismatic spirit, the spirit to carry out combinations that create a new understanding that can prosper all Indonesian people, namely an understanding based on Pancasila (Indra Fatwa, 2021).

Philosophically, a legal product in a Pancasila legal state must reflect the value system and realize it in people's behavior. In addition, existing laws can also apply sociologically as regulations that reflect the realities that live in society. The effectiveness of this regulation is due to the legal values contained in the laws and regulations, which follow the realities that live in a society (Lubis, 2020).

The position of Pancasila as the source of all sources of state law is a *grundnorm* in the Indonesian legal system, which provides direction and soul and becomes the paradigm of norms in the articles of the 1945 Constitution. The interpretation of legal norms in the 1945 Constitution as the highest law will be based on the soul of the nation

in Pancasila, which functions as a legal ideal that will become the basis and source of the nation's view of life or philosophy of life which will guide the formation of other lower laws and regulations. The ideals of law and philosophy of life and morality of the nation, which is the source of all sources of state law, will become a critical function in assessing legal policy or can be used as a paradigm that forms the basis for policy making in the field of law and legislation as well as social, economic and political fields (Manullang, 2015).

If we relate it to the omnibus law phenomenon, it is only fitting that the omnibus law is aligned with Pancasila. The concepts and goals initiated through the omnibus law must align with the values of divinity, humanity, unity, democracy, and social justice. Alignment and harmony between the goals of the omnibus law and the values of Pancasila in a comprehensive manner is a necessity that cannot be negated. Basically, the responses regarding the Omnibus Law method to the Job Creation Bill are quite diverse, both formally and materially (Putra, 2020). Still, we need to look at it as a whole. The forerunner to the emergence of the omnibus law began when President Joko Widodo was nervous about the investment climate in Indonesia. Until now, the investment has not shown an optimistic number to achieve the expected target (Manullang, 2015).

When examined further, this is due to the many overlapping regulations related to permits and, of course, the length of investment permits and high costs that are difficult to predict. Disharmony of laws and regulations related to licensing in various sectors gave rise to the need for an omnibus law to resolve barriers to business licensing. The government must overhaul the articles related to licensing in the investment sector into 72 laws through a new law (omnibus law), which will have a broad reach. In order to overcome these licensing barriers, an effort to simplify licensing is needed to increase public participation in the national development process. Indonesia's quality and number of regulations have indeed become a problem (Muqsith, 2020). Such is the complexity of the problems associated with regulatory obesity in Indonesia. From waking up to going back to sleep, we are governed by many regulations. Marcus Tullius Cicero said, "the more law, the less justice." (Duska, 2015).

Forming laws and regulations must be carried out based on the principles of forming good laws and regulations, including clarity of purpose, appropriate forming institutions or officials and conformity between types, hierarchies, and content material that can be implemented and efficiency and effectiveness, clarity of formulation and transparency (Nurjaman, 2021). In addition, the content material contained in statutory regulations must reflect the principles of protection, humanity, and nationality as well as kinship, archipelago, unity in diversity, justice and equality in law and government, order and legal certainty as well as balance, harmony, and harmony (Soegiyono, 2020).

In this situation, the concept of the "sweep universe" law in the omnibus law method initiated by the government is deemed relevant for implementation in Indonesia. It is felt that regulatory obesity is the root of the problem and can be overcome simply by issuing a law using the omnibus law method. The government believes that streamlining 72 laws through the omnibus law scheme will reduce overlapping permit regulations at the central and regional levels.

B. Research Method

This research is normative juridical research with a philosophical and empirical approach. This research will analyze the facts that exist and occur in society in relation to the formation of legislation using the omnibus law method. This type of research is library research because the objects studied are secondary data documents. At the same time, the philosophical approach is used because this study is ideal by using the perspective of legal philosophy, which views law as law in ideals or *ius constituendum*. The data used is secondary data. Secondary data is not obtained by the author directly or from other parties in the form of written documents. The data collected was analyzed qualitatively. Qualitative data analysis is a form of analysis that interprets and describes data through narrative words with scientific logic.

C. Discussion

1. Debating the Omnibus Law Concept

The definition of omnibus law comes from the words omnibus and law. The word omnibus comes from the Latin *omnis*, which means “for all” or “many” when coupled with the word law, which means law, then omnibus law can be defined as law for all. Omnibus law, which means “one for everything,” allows a law to regulate one big issue by repealing or amending several laws at once to become simpler (Zahra et al., 2021).

When the omnibus law is passed, all other legal products that regulate the same issue or topic will be declared invalid. Bryan A. Garner, in *Black’s Law Dictionary*, uses the term Omnibus Bill (Frey & Black, 1934), “*relating to or dealing with numerous objects or items at once; including many things or having various.*” Where if viewed in terms of law, it can be said that the omnibus law is a law that regulates various kinds of objects, items, and purposes in one legal instrument. According to Barbara Sicclair, the omnibus bill is a process of making complex regulations. Its completion takes a long time because it contains a lot of material, even though the subjects, issues, and programs are not always related. In this case, Barbara focuses on the omnibus bill as a process of forming complex legal rules. Fachri Bachamid stated that the omnibus law is a legal product concept that consolidates various themes, materials, subjects, and laws and regulations in each different sector to become one extensive and holistic legal product (Aryani, 2021). According to Bivitri Susanti, the scope of the omnibus law usually targets major issues within a country.

If freely translated, an omnibus bill means a draft law that regulates and covers different types of content material or regulates and covers all matters regarding a particular type of content material. So, it can be said that an omnibus law is a method or concept of forming regulations that combine several rules with different regulatory substances to become an extensive regulation that functions as an umbrella act. When the regulation was promulgated, it had the consequence of revoking several regulations resulting from the merger whose substance could be declared invalid, either in part or as a whole. In short, regulation in this concept is making a new law to amend several laws simultaneously.

The academic debate regarding the omnibus bill method applied in the Job Creation Bill has become a hot topic among jurists. Not only that, some parties consider the existence of this omnibus bill only to perpetuate the marriage of interests between the authorities and businessmen. Omnibus is seen as only a tool

for the authorities to roll out the red carpet for investors/financiers to increase their influence. The licensing concessions given to investors by the government will become a scourge for the community, especially regarding environmental impacts and partiality for the underprivileged. For some others, the omnibus concept is the most appropriate way to improve national development. The background of President Joko Widodo's administration to speed up the passing of the omnibus law bill is none other than the hope that investment will later leverage the national economy and that overlapping regulations as the main factor in the decline in investment in Indonesia can be resolved soon. There are several advantages of applying the omnibus law concept in resolving regulatory disputes in Indonesia, including: (Andri Tri Haryono, n.d.)

- 1) Overcome conflicts of laws and regulations both vertically and horizontally quickly, effectively, and efficiently;
- 2) Uniforming government policies both at the central and regional levels to support the investment climate;
- 3) Trimming licensing arrangements to make them more integrated, efficient, and effective;
- 4) Able to break the chain of convoluted bureaucracy;
- 5) Increased coordination relations between related agencies because it has been regulated in an integrated omnibus regulation policy;
- 6) There is a guarantee of legal certainty and legal protection for policymakers.

Another debate stems from a question: Is the omnibus bill method appropriate and appropriate to be applied in Indonesia, which has a civil law system pattern? According to some groups, the omnibus bill originating from the standard law style cannot be applied immediately in the Indonesian legal system, which has a civil law style. The different characteristics of the two legal systems are the cause. For some experts who uphold the principles of the civil law system, the application of the omnibus bill is considered a negation of the civil law principle itself, so it is not suitable for the application.

In the civil law system, law gains binding power because it is embodied in regulations in the form of laws and systematically arranged in codification. This basic characteristic is in line with the principal value, which is the goal of the law, namely legal certainty. Legal certainty can only be realized if written legal regulations regulate human legal actions in social life. With the aim of the law, judges cannot freely create laws with generally binding force. Judges only function to establish and interpret regulations within the limits of their authority. A judge's decision in a case is only binding on the litigants (*re judicata doctrine*) (Ferricha, 2016). Adherents of the civil law system provide great flexibility for judges to decide cases without following previous judges' decisions. The judges rely on the rules made by parliament, namely laws.

The forms of legal sources in the formal sense in the civil law legal system are in the form of statutory regulations, customs, and jurisprudence. Juries and judicial and quasi-judicial institutions refer to these sources to find justice. From these sources, the first reference in the civil law legal system tradition is statutory regulations. Civil law-adhering countries place the constitution at the highest order in the hierarchy of statutory regulations. All civil law countries have a written constitution (Al Arif, 2019).

Unlike this, the Anglo-Saxon legal system/common law system is a legal system based on jurisprudence, namely the decisions of previous judges, which then become the basis for the decisions of subsequent judges. The Anglo-Saxon legal system tends to prioritize customary law, a law that runs dynamically in line with the dynamics of society. Formation of law through the judiciary with a jurisprudential system is considered better so that the law is always in line with the sense of justice and benefits that the community feels authentic, “the doctrine of precedent/*stare decisis*.” This doctrine states that in deciding a case, a judge must base his decision on legal principles that already exist in the decisions of other judges from previous similar cases (precedents) (Chng, 2020).

The omnibus law technique, better known in common law countries such as the United States, the Philippines, Australia, and the United Kingdom, allows an omnibus bill, which contains amendments or even replacements for several laws at once, to be submitted to parliament for approval in one sitting. The advantages of this law are its multi-sectoral nature and the time it takes to review it, which can be faster than the formation of ordinary laws. This is what raises criticism if the omnibus law is applied in a democratic civil law country like Indonesia:

- 1) The omnibus law has the potential to ignore the formal provisions for the formation of laws. It is feared that it is fast and penetrates many sectors that will break through several stages in forming laws at the planning level. This violation is contrary to the principle of a rule of law state, which requires all government actions to be based on law.
- 2) The omnibus law narrows openness and public participation in the formation of laws. In several countries, omnibus laws are formed by the government or the DPR (Parliament). The material and processing time also depend on the agency. Usually, the law is attempted to be completed as quickly as possible, even in just one decision-making opportunity. As a result, the space for public participation becomes small or even disappears. At the same time, the principle of openness and participation in making laws is the main spirit of a democratic country. Violation of this principle is indeed very worrying.
- 3) Omnibus laws can increase the regulatory burden if they fail to be implemented. With its nature of covering more than one aspect combined into one law, it is feared that the discussion of the omnibus law will not be comprehensive. The discussion will focus on the omnibus law and the law to be repealed, presenting a more complex regulatory burden. For example, how the derivative impact of the repealed law, the impact on the implementing rules, and the practical implications in the field. Not to mention if this omnibus law fails to be implemented, making regulatory issues even worse. The pretext of *lex posterior derogat legi priori* (new law overrides old law) is insufficient because organizing regulations cannot be made with a one-principle approach.

Even particular criticism was made by Maria Farida Indrati, who stated that she had never heard of the term omnibus law. The tradition of forming statutory regulations in Indonesia has used the civil law system (Continental Europe), while the omnibus law has developed in the common law legal tradition. In this tradition, there is a hierarchical attachment to the highest source of law, namely Pancasila and the 1945 Constitution of the Republic of Indonesia. The process of forming

laws and regulations in Indonesia has so far been regulated further and is subject to the regime of Law no. 12 of 2011 concerning the Formation of Legislation. In theory, the legislation in Indonesia, the position of the law from the omnibus law concept, has not been regulated. In theory, the legislation in Indonesia, the position of the law from the omnibus law concept, has not been regulated. Look at the legal system in Indonesia. The law resulting from the omnibus law concept can lead to an umbrella law because it regulates thoroughly and then has power over other regulations (Syuhada, 2020).

Maria Farida explained that the umbrella law (*raamwet, basiswet, moederwet*) is the 'parent' of other laws, so its position is higher than the "child" law. In addition, the umbrella or parent law existed earlier than the "child" law. Meanwhile, according to Farida, the omnibus law that is currently rolling is interpreted as a new law that regulates a variety of materials and subjects to simplify the various laws that are still in effect. According to her, omnibus law differs from codification, the systematic arrangement and stipulation of legal regulations in the statute book regarding a broader field of law, for example, civil, criminal, and commercial law.

Maria Farida noted at least five things that need attention regarding the omnibus law plan. First, the principles of openness, prudence, and community participation are fulfilled. Second, broader socialization is needed, especially for officials and parties related to the substance of the bill, the legal profession, and academics. Third, discussions in the DPR must be transparent and pay attention to input from parties related to the bill, and not be hasty. Fourth, consider the effective period for the enactment of the law. Fifth, consider the enactment of the affected laws.

Even though there has been much debate and struggle in the minds of jurists regarding this omnibus law discourse, bearing in mind that the drafting of laws is a product of a political agreement between the government and the DPR, it is clear that the omnibus law scheme will be implemented in future legislation processes. However, no matter how many pros and cons occur when we talk about forming legal products, it also involves developing national laws to realize a national goal. All laws and regulations in Indonesia must inevitably reflect the Pancasila Legal System as the Indonesian nation's national legal system, which protects all citizens. To realize this protection, a media or justice institution is needed, which can be used as access for the community to get this sense of justice. The institution of justice in today's modern legal system is embodied in one container, namely the court body.

2. Omnibus Law in the Pancasila Legal System

On the one hand, the law is expected to create order and stability in the community's way of life. On the other hand, development itself creates new social phenomena that affect the joints of the community's life itself. From this point on, law and development efforts seem to contain elements that contradict each other. Even so, the law should not become a *hekkenskluit* (door closing) but rather be an opening for development. Thus, the legal orientation should be directed to the future and no longer to the past.

The era of democracy caused considerable changes, especially concerning the relationship between society and the government as a representation of the state.

The purpose of democracy which causes the position of “state” and “people” an equal position between “executive” and “legislative,” is to create a welfare state. To realize a welfare state that aspires to social welfare, tools are needed to make it happen, namely legal development based on Pancasila (Lismanto & Utama, 2020).

At the empirical level, Sunaryati Hartono said that Indonesian law completely ignores the formation and development of national law and is still unresponsive to increasingly complex business practices. Not only because these forms of business are new activities supported by high-tech facilities and infrastructure but also because the scope of their business has become transnational or transcends national boundaries. Therefore, in developing a modern national law, the new law must not only follow the aspirations and feelings of justice of the people experiencing modernization, but the new law must also be in harmony with the needs of legal traffic at the international level. Thus, a nation’s national law may not be misplaced in the world legal network. For Savigny, in *volkgeist* theory, existing law is not that made artificially by the state and jurists. The existing law is a law that grows and develops from the womb of people’s lives. Legislation is only essential if it is declarative to existing law (Aulia, 2020).

Even so, with the true law of Indonesia, it must have the characteristics and characteristics of the Indonesian nation that can distinguish it from other nations. This characteristic is the embodiment of national identity so that it can reflect the complete personality of the Indonesian nation.

Yudi Latief, in his book *Negara Paripurna*, tries to imply how the basis of the Indonesian state must come from within the nation itself. The basic principles of the Indonesian state itself. The Basic Principles of an independent Indonesian State formulated by the nation’s founding fathers were not picked up from the air but dug up from the earth of Indonesian history (The et al., 2014). In line with this, Soekarno even stated that he was digging up his memories and fantasies about what was hidden in the Indonesian soil to offer as the basis for an independent Indonesian State, “... *I feel clued up. I feel inspired. The inspiration that said: Dig up what you want to answer from Indonesia itself. So that night, I dug, dug in my memory, dug in my creation, dug in my imagination, what was hidden in the earth of Indonesia so that as a result of the digging, it could be used as the basis of the state of the future Independent Indonesia.*”

From a historical point of view, Pancasila as the foundation of the state was first proposed by Ir. Soekarno at the Indonesian Independence Preparatory Investigation Agency (BPUPKI) meeting on 1 June 1945 when discussing Pancasila as the basis of the state. Since then, Pancasila has been used as the name of the state’s basic philosophy and the Indonesian nation’s way of life, even though there are several different sequences and formulations. If anyone disagrees with the number being five, Pancasila can be compressed into Trisila. If there are still those who disagree, the three can still be squeezed into “ekasila.” That is *gotong royong*, a spirit of togetherness and national unification excavated from within Indonesia itself. This is also Indonesia’s identity, which always upholds deliberation for consensus, an understanding that shows the characteristics of the original Indonesian nation.

Pancasila is a prismatic concept. The Prismatic concept is a concept that takes the good aspects of two contradictory concepts, which are then put together as a separate concept so that it can always be actualized with the reality of Indonesian

society in every development. The state with the Pancasila concept recognizes humans as individuals who have freedom but at the same time recognizes that human nature is also a social being. Humans are *zoon politicon*s that need community in their relationships. In a concept of balance like this, Pancasila is not an adherent of the concept of individualism, which is individual rights and freedoms that the West always echoes, but also not an adherent of the concept of extreme collectivism as in socialist/communist countries, which want to equate all human beings without respecting individual rights and freedoms. Both the legal and social systems within the Pancasila State always reflect the uniqueness of the Indonesian nation, which is full of kinship and mutual cooperation, which is why it is different from various other systems in the world.

The values of Pancasila are universal, so they must be internalized in the life of the nation and state, including the development of law. In relation to development, the law has the function of maintaining order and security, means of development, upholding justice, and public education. The formation of laws and regulations as part of legal development directed at achieving state goals must be based on the values of Pancasila. As the *Staatfundamentalnorm* of the Indonesian nation, Pancasila must always animate and underlie all life of the nation and state and become a guiding star (*leitstar*) for national direction and policy, including in the development of national law.

Juridically and constitutionally, Pancasila is the basis of the Republic of Indonesia. The process of the birth of Pancasila was forged in the Indonesian national struggle, so it must be maintained and actualized. In addition, Pancasila needs to cover the entire reform process to be directed at the development of Indonesia based on Pancasila as the basis of the state. The Formation of Law No. 12 of 2011 concerning the Formation of Legislation, as contained in Article 2 of Law No. 12 of 2011, states that Pancasila is the source of all sources of state law.

This article explicitly states Pancasila as the source of all sources of law with the following meaning: “Placement of Pancasila as the source of all sources of state law is following the Preamble to the 1945 Constitution which places Pancasila as the basis of state ideology as well as the philosophical basis of the nation and state, so that any content material in laws and regulations may not conflict with the values contained in Pancasila.” It is clear that this article confirms that Pancasila is a legal umbrella that covers the existing legal system in Indonesia. So that all types of laws and regulations in Indonesia may not conflict with Pancasila as the “*staatfundamentalumnorm*” in Indonesia.

In addition, Article 7 paragraph (1) of Law No. 12 of 2011 has also explained that the types and hierarchies of the legal norm system adopted by the Indonesian people are:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) MPR (People’s Consultative Assembly) decree;
- 3) Laws/Government Regulations in Lieu of Laws;
- 4) Government Regulations;
- 5) Presidential Regulations;
- 6) Provincial Regulations;
- 7) Regency/City Regional Regulations.

The hierarchy or sequence of laws and regulations has an essential meaning in terms of the legal strength of these laws and regulations. This is regulated in the

provisions of Article 7, paragraph (5), which reads, “The legal force of Legislation is following the hierarchy as referred to in paragraph (1).” With this provision, each statutory regulation’s legal force and binding force have been clearly regulated.

The hierarchy or sequence of laws and regulations has an essential meaning in terms of the legal strength of these laws and regulations. This is regulated in the provisions of Article 7, paragraph (5), which reads, “The legal force of Legislation is following the hierarchy as referred to in paragraph (1).” With this provision, each statutory regulation’s legal force and binding force have been clearly regulated.

Materials of statutory regulations may not contain substances that conflict with higher regulations. Materials of laws and regulations can only make detailed rules and implement the laws and regulations above them. In this case, the principle of *lex superiori derogat legi inferiori* applies. This means that higher laws and regulations override/beat lower laws and regulations. So that in its preparation, the legislators must ensure that the material regulated in the statutory regulations does not conflict with the statutory regulations above it. For example, the provisions of articles in a law, the provisions of articles in a presidential regulation may not conflict with the provisions of articles in a government regulation, and so on.

The legislators are obligated to draw up a statutory regulation in harmony with the articles in the higher statutory regulations, which are the articles that form the basis for the formation of said statutory regulations. This is called the vertical harmonization of laws and regulations, namely the harmonization of laws and regulations with other laws and regulations in a different hierarchy.

On that basis, Pancasila has given birth to a unique system, and the Indonesian legal system is generally referred to as the Pancasila legal system. A legal system based on Pancasila will give birth to guiding principles in national legal politics. The most common sign is the prohibition of the emergence of legal regulations that are contrary to the values of Pancasila. There should be no regulations that contradict the values of divinity and civilization, no regulations that contradict human values, no regulations that have the potential to damage the ideological and territorial integrity of the Indonesian nation and state, no regulations that violate the principle of popular sovereignty and most importantly the regulations do not violate the values of social justice.

The values contained in Pancasila are transformed into legal ideals and principles, which are then formulated in the concept of Indonesian national law to realize the value of justice and protect the entire Indonesian nation and all of Indonesia’s bloodshed. The Pancasila legal state contains collective, personal, and religious characteristics. The implementation of these traits is balance, harmony, and harmony. State law is a human value, so its dignity is maintained, and state law must be adjusted if it disturbs the harmony of life. Indonesia, as a constitutional state from the perspective of Pancasila, requires the willingness of all components of the nation to foster a culture of deliberation. The historical trajectory of human life has provided empirical evidence that through deliberation, a nation can achieve whatever is best for its people (Patittingi et al., 2021).

The Pancasila legal state has the same elements as the elements of a rule of law state in the *rechtsstaat* and the rule of law. On the other hand, the Pancasila legal state has specific elements that make the Indonesian legal state different from the commonly known concept of a rule of law state. The difference lies in the values of Belief in the One and Only God, the absence of separation between state and

religion, the principle of deliberation in the exercise of state government power, the principles of social justice, kinship, and cooperation and laws serving the integrity of the unitary state of Indonesia (Soelistyo, 2019).

In line with this, the characteristics of the omnibus law must be in harmony with the characteristics of the Pancasila legal system. Mohammad Koesno said that the characteristic of Indonesian law is that it has the character of protecting, not just giving orders. The protection referred to in this case is to protect the entire Indonesian nation and all of its bloodshed. Related to this, two ideas are the fundamental references, convinced as follows: a) Protection is based on unity, and b) in realizing unity, there is an idea that becomes a reference for unity, namely the realization of social justice for all Indonesian people.

Whatever is presented in the omnibus law must reflect these two characteristics. It must have the character of protecting, not merely an order from the ruler to his people. This character ultimately becomes a trigger for the spirit of unity, which leads to the values of social justice. What we see at the moment with the current debates regarding the concept of the omnibus law should be focused on the gaps in the internalization and implementation of the philosophy of Pancasila so that it should not be allowed to gape further. The philosophical meaning of Pancasila, which is so harmonious, should not only be used as a jargon but must permeate the existing one cannot be denied, but what we must do now is to focus on the material substance of the omnibus law, not deviate from Pancasila.

The primary debate in omnibus law does not lie in the formal matters of statutory regulation, whether it is suitable or not to be applied and transplanted in a particular legal system. The absence of state borders (borderless) in the current era of globalization has led to the conventional legal system with its divisions into a more pluralist modern legal system. However, there are several different characteristics between civil law legal systems and common law. However, due to the current legal flexibility, there is a lot of acculturation of the legal system between the two major world legal systems. Of course, this is a process of developing a culture of positivistic legal thought which is very rigid and static in keeping up with the dynamic development of societal problems. The tendency of static nature in positivistic legal thinking results in complicated administrative flows in the aspects of justice and law formation that are solutive.

The genealogy of the development of modern law is based on the legal tradition that developed in England, which characterizes the Common Law legal system. From the perspective of Prof. Sajipto Rahardjo, the development of law in the common law tradition goes further than France's positivistic law. The common law legal system is considered more dynamic and can accommodate the growing interests of justice in society. As a prismatic concept, what the government is doing through the omnibus law policy can be considered a responsive legal effort if only there is compatibility between the *das sein* and the *das sollen*. However, when there is a discrepancy in the interpretation and implementation, it will become a legal problem. The criteria used to make these rules (in this case, the omnibus law) are recognized as legal rules or not depending on whether these rules follow the fundamental values of our "ideal law."

Further, Sajipto Rahardjo said that law is not merely rules and logic but social structure and behavior. This means that law cannot be understood narrowly from the perspective of rules and logic but also involves social structure and behavior.

Therefore, the law is not only a matter of justice, politics, and economics. Thus, the formation of an omnibus law in the Indonesian legal system, which is thick with civil law, is not a grave sin for the sake of upholding law and justice.

Omnibus law must reflect the nature of law that is responsive to the social needs of society. Responsiveness can be interpreted as serving social needs and interests experienced and found by officials and the people. Satjipto Rahadjo called responsive law something more sensitive to society. The salient characteristic of the responsive legal concept is a shift in emphasis from rules to principles and objectives. Besides that, responsive law is more concerned with the people as a legal goal and a way to achieve it. Responsive law becomes the legitimacy of substantive justice subject to the principle of wisdom.

Thus, in the end, the emphasis that we should do on deepening the concept of omnibus law no longer lies in the rigidity of formal, legalistic thinking that is often shown by positivism in the civil law legal system, in finding the values of justice we must be able to go beyond the rule and find a substantive justice. Even Gustav Radbruch himself, as a pioneer of the three fundamental values of justice, once argued that if there is a conflict between the three basic values of law, the thing that takes priority is the principle of justice itself, not the benefits of law or even legal certainty.

D. Closing

Pancasila is the philosophical foundation and the basis of the Indonesian nation-state, which must always animate and underlie all national and state life and become a guiding star (*leitstar*) for the direction of national policy, including in the development of national law. Pancasila has given birth to a unique Indonesian legal system, generally referred to as the Pancasila legal system. The legal system based on Pancasila will give birth to guiding principles in national legal politics. The most common sign is the prohibition of the emergence of legal regulations that are contrary to the values of Pancasila. No regulation can contradict the values of divinity and civilization, no regulation can contradict human values, no regulation can be born that has the potential to damage the ideological and territorial integrity of the Indonesian nation and state, no regulation can violate the principle of people's sovereignty, and most importantly the regulation does not violate the principle of people's sovereignty. Most importantly, the regulation does not violate the values of social justice.

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