

## THE ROLE OF POLITICAL LAWS IN LAW CODIFICATION AND UNIFICATION EFFORTS FOR THE DEVELOPMENT OF NATIONAL LAW IN ACCORDANCE WITH PANCASILA AND THE PRINCIPLES OF DIVERSITY IN INDONESIA

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### Abstract

Article aims to analyze and assessing political role of law in an effort to codification and unification of the law for the construction of national law in accordance with Pancasila and the principle of diversity of Indonesia. This research is a prescriptive normative research, using literature study. The results of the discussion concluded that the codification and unification needed in Indonesia with the condition that the plurality of the people are partial and open codification and unification.

Based on the results of the discussion it can be said that: First, the development of national law requires the reconstruction of law based on the Pancasila and the Constitution of the 1945 Constitution of the Republic of Indonesia, so that the colonial law which is still in force today must immediately be restructured based on the Ideology and the National Constitution. Second, it is necessary to realize an open unification and codification in the development of Political Laws based on Pancasila and the value of Indonesian Diversity.

Keywords: codification, Pancasila, legal development, political law.

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### INTRODUCTION

The Indonesian nation is in the determination of the nation's future in the container of the Unitary Republic of Indonesia (NKRI). As a state of law (as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945)), the Indonesian legal state is faced with problems in the development of the national legal system, which requires the formation of codification and unification in each legal sector in

accordance with the legal awareness of the community.

The codification and unification of the law are also inseparable from the spirit of legal reform. Satjipto, with the opinion of Sudargo Gautama, uses the term legal reform, because this term is closer to describing how to arrange a legal system that can adjust to changes in society.<sup>1</sup>

There are two kinds of legal development strategy has implications for the character at the same end of its legal product, namely the

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<sup>1</sup> Satjipto Rahardjo, 2009, *Hukum dan Perubahan Sosial*, Yogyakarta: Genta Publishing, p. 15.

construction of orthodox law and legal development responsive. In the orthodox legal development, the role of state institutions (government and parliament) is very dominant in determining the direction of development of the law. In contrast, in large part responsive legal development lies in the judiciary along with the widest participation by social groups or individuals in the community.<sup>2</sup>

The role of the government was then highlighted. Seeing the development of the national legal system, through codification and unification of national law, the government is expected to be able to carry out its Political Lawal role as a political will to develop national law with national and national vision to maintain "Unity in Diversity" in Indonesia.

The fact exists, there are still many legal products with various substances but one type of regulatory topic, is considered to be one of the reasons a political community called a *new nation state* wants to nationalize all forms of law as a single entity, namely by way of codification or unification of national law. History writes, during the New Order era, the basic or basic principles of national legal policy are listed in the Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR RI) IV / 1973 Concerning

the State Policy Guidelines (GBHN), regarding policies in the field of law , that state:

1. Guidance in the field of law must be able to lead and accommodate the needs of the law in accordance with the legal awareness of the people who are developing towards modernization according to the level of development progress in all fields so as to achieve order and legal certainty as infrastructure that must be shown towards increasing the development of the Unity of the Nation at the same time functioning as facilities to support the development of modernization and overall development, carried out by:
  - a. Improving and perfecting the development of National Law, among others, by carrying out renewal, unification and legal unification in certain fields by paying attention to public legal awareness.
  - b. Regulate the function of legal institutions according to their respective positions.
  - c. Increase the ability and authority of law enforcement.
2. Cultivate legal awareness in the community and foster the attitudes of the authorities and government officials towards Law

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<sup>2</sup> Taryono & Arie Purnomosidi, 2019, *Development Of National Law In Perspective Transcendental Paradigm*, Surakarta Law and Society Journal, Vol. 1, No. 2, p. 90

Enforcement, justice and protection of Human Rights and Dignity, and Order and Legal Certainty in accordance with the 1945 Constitution".

Explicitly, the development of national law at that time was also formulated in REPELITA II CHAPTER 27 Concerning Law, which reads:

Legal development must be able to direct and accommodate legal needs in accordance with the legal awareness of the people who are developing towards modernization according to the level of development progress in all fields so as to achieve order and legal certainty as infrastructure that must be aimed at increasing the fostering of national unity, as well as functioning as means to support the development of modernization and overall development. Development of the legal sector is carried out by way:

- a. Enhancing and perfecting national law development by, among others, undertaking renewal, unification and legalification in certain fields by paying attention to legal awareness in the community.
- b. Control the function of legal institutions according to their respective proportions.
- c. Increasing the ability and authority of law enforcement "

The directives for codification and legal unification were also clearly stated since the

adoption of MPR TAP Number IV / MPR / 1978 item (c), as well as listed in MPR TAP Number II / MPR / 1983 point (c) and TAP MPR No II / MPR / 1988 item (c).

The aforementioned provisions are a manifestation of the political ideals of the law of that period to determine the clarity of the direction of national law development during the New Order era. All things that become the starting point of the advantages over the codification and legal unification, namely the unity of national legal products so that they are simpler and legitimate as a whole, become the nation's spirit to create national legal development. However, this spirit has not become a reality of the realization of the ideals to date. The political will of the future law can not be realized, seeing that the national law that te rkodifi cation in Indonesia is now the law of "heritage" and the "composition" of the law remains of the Colonial Dutch. This condition is reinforced by the absence of clear guidelines for the direction and development objectives of national law which requires immediate in codification and unification national law, in the era of the Reformation.

## **DISCUSSION**

### **Pancasila and the Constitution as the Basis for Renewal of National Law in terms of the Possibility of Unification of National Law**

In order construction's national law, codification and unification of laws needed to pemb aharuan national law. The law which will later be codified and unmatched is the original law made in Indonesia, adjusted to the ideology of Pancasila as the source of all sources of law. Automatically, the law which is a Dutch colonial legacy should no longer be used as a reference or basis for the administration of law in Indonesia.

Codification is an appropriate means to increase legal certainty which is the goal of a legal system. So that the codification is a must and must contain laws that can meet the legal awareness and sense of justice of the community, meaning that the codification must reflect the law that lives in the community. But the impact of the written legal system, that the codification is static so that it cannot follow developments that occur in society.<sup>3</sup>

Furthermore Rachmadi Usman,<sup>4</sup> also wrote that, the main objective in the codification of law is to achieve legal unity for all Indonesian people and provide legal certainty and constitute legal reform to adjust to developments in society. Another goal of codification is the formation of a collection of legislation in a simple, logical, harmonious, and certain way, so that it is easy to master.

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<sup>3</sup> Racmadi Usman, 2003, *Perkembangan Hukum Perdata*, Jakarta: Pustaka Sinar Harapan, p. 275.

Likewise legal verification. As interpreted in the KBBI dictionary, legal unification is a matter of uniting; unification; uniformity or improvement. Thus, the codification and unification of the law may have the same purpose, may also be different. The same is for the purpose of legal unity for certainty, but it is different when viewed from the codification does not necessarily want uniformity, whereas unification can be interpreted as uniformity,

Enactment of MPR Decree No. IV / MPR / 1999 in 1999, directing the different political Indonesian law with Political Lawal legal development nat ional earlier era (which is set in the MPR before 1999). National legal development by TAP MPR Number IV / MPR / 1999, had not constitute a lawyer kodifik ation late and unification of the law, but (1) the establishment of a national legal system should be comprehensive and integrated; (2) the established national legal system still recognizes and respects the existence of religious law and customary law; (3) reforming the legacy of colonial law and national law which is discriminatory and not in accordance with the objectives of reform.

Then, Broad Outlines of State Policy (furthermore GBHN) which was previously always stipulated in the MPR TAP as a national legal development directive, the state

<sup>4</sup> *Ibid.*, 280.

administrators agreed to establish a national development planning system through Law Number 25 of 2004 concerning the National Development Planning System in which regulates planning long-term development (20 years), medium-term (5 years), and annual development. Based on the mandate of the SPPN Law, arrangements regarding long-term development plans by *lex specialis* are regulated in Law Number 17 of 2007 concerning the National Long-Term Development Plan of 2005-2025.

In the attachment of Law Number 17 of 2007 concerning the National Long-Term Development Plan of 2005-2025 also explains the direction of long-term development in 2005-2025, one of which is legal and bureaucratic reform. It is said that :

"... law development is carried out through legal material renewal while taking into account the plurality of applicable legal orders and the effect of globalization in an effort to increase legal certainty and protection, law enforcement and human rights (human rights), legal awareness, and legal services that core of justice and truth, order and prosperity in the context of running an increasingly orderly, orderly, smoothly and globally competitive country.

Also mentioned : "Legal development is directed at the realization of a solid national legal system originating from the Pancasila and

the 1945 Constitution of the Republic of Indonesia, which includes the development of legal material, legal structures including legal apparatus, legal facilities and infrastructure; the realization of a society that has a high awareness and legal culture in the context of realizing a rule of law; and the creation of a just and democratic society. "

Looking at the direction of Political Laws in the development of national law, it has actually shown that national Political Laws no longer explicitly mentions the order to conduct codification and unification of law in the development of national law, even expressly mandating to pay attention to the diversity of the legal order by looking at the conditions of the community in order just and democratic social life . The juridical basis can be used to study based on the most basic legal source in Indonesia, namely Pancasila, which in its principles respects the existence of diversity, including about the diversity of the national community up to the existing legal order.

Plurality is a condition that must be realized by all Indonesian people. Pluralism as understanding, is expected to deliver to the United Nations of Indonesia by upholding the slogan "Unity in Diversity". Pluralistic and *kebhinekaan* nation of Indonesia, is a real thing that can not be denied once dammed. Diversity from ethnicity, race, and religion is something that is ready to be borne since the

independence of the archipelago and plocamamasized as an independent Indonesian State. This condition then directs the implementation of government and the sovereignty of the people in each state institution to think about how to create conditions for the administration of government with all policies taken in accordance with the wishes and conditions of the Nusantara community.

The issue of plurality is also clearly realized by the "*Founding Father*", who then plans to form a strong, solid state foundation and reflect real social conditions and in accordance with the people of his nation. He, who is called Pancasila, is the basis of the state as well as the view of life of the Indonesian nation which is used as the basis for guidelines for community, nation and state on a cultural principle that is owned and attached to the nation. The state and social values contained in the Pancasila precepts are not only a conceptual outcome of a person but are a great work of the Indonesian people themselves, through the process of sociological reflection of the founders of the country.<sup>5</sup>

The formulation of Pancasila which is reflected in the five precepts is hierarchical and pyramid shaped. This means that each precept covers or is encompassed and animates the other precepts. In the life of the nation as a state, including the development of national law, must be based on every precept. Unification of national law must also pay attention to the principles of Pancasila

1. First principle of Pancasila (Godhead), which ensures the existence of a plurality of the nation. This first principle contain the transcendental value.<sup>6</sup> Therefore, all matters relating to the implementation and administration of the state even the state morals, state administration morals, state politics, state governance, state laws and regulations, citizens' freedom and human rights must be imbued with the values of the Almighty God.<sup>7</sup>

The concept of Godhead, is a concept that shows that the Indonesian state is not a country that bases its ideology on a particular religion. Seeing that the condition of national plurality also refers to the diversity of religions in Indonesia. For the protection of the religions that are allowed to grow in Indonesia, it has been

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<sup>5</sup> Kaelan, 2010, *Pendidikan Pancasila*, Yogyakarta: Paradigma, p. 13.

<sup>6</sup> Related to the discussion of the transcendental value of Pancasila, see Arie Purnomosidi, 2019, *Transcendental*

*Paradigm in Pancasila*, Journal of Trancendental Law, Vol. 1, No. 2. P. 147-158.

<sup>7</sup> *Ibid.*, p. 79

accommodated by statutory provisions. But of course this has become one of the complex problems, when the provisions of the laws of certain religions, of course, also affect the lives of every people who are also Indonesian citizens. This is a consideration to form a national law as well as legislation that can accommodate the interests of citizens relating to their religion. For example, the provisions of inheritance in Islam cannot be equated with national inheritance provisions that apply to non-Muslim citizens, as well as the provisions regarding divorce to the Religious Courts. This shows that there are still fundamental problems when it comes to legal unification with the aim of creating legal certainty, simplification in one legal entity. In fact this is based on the spirit of the First Precepts which does not require the imposition of a law on the diversity of religious provisions that are recognized in Indonesia.

2. Second principle of Pancasila (Justice and Civilized Humanity) that ensures the existence of a plurality of the nation.

The precepts of humanity as a fundamental basis in the life of the state, nationality, and society. These human values are rooted in the anthropological

philosophical basis that human nature is the natural composition of individual beings and as God's creatures. In the precepts of humanity contained values that the state must uphold human dignity and dignity as a civilized creature. Therefore, in the state life chiefly a in laws und a n gan countries should realize the achievement of objectives height of human dignity, especially the rights of human nature as a fundamental right guaranteed by the legislation of the country. Fair human values implies that humans as civilized and civilized creatures must be equal; in relations with oneself, other human beings, the people of the nation and state. uphold human rights, respect for equality and degree without distinction of ethnicity, race, ancestry, and social or religious status.<sup>8</sup>

The elucidation of the precepts, very much respects the plurality of the Indonesian people. It is hoped that each state's legislation represents respect for humanity that is fair to the entire community without exception, without discrimination.

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<sup>8</sup> Darji Darmodiharjo, 1996, *Penjabaran Nilai-Nilai Pancasila dalam Sistem Hukum Indonesia*. Jakarta: Rajawali Pers, p. 67,

3. Third principle of Pancasila (the Unity of Indonesia) which guarantees the existence of a plurality of the nation.

In this precept contained the value that the state is as the embodiment of the nature of monodualist human nature that is as an individual and social creature. The state is an alliance in the form of ethnicity, race, group, class or religious group. Therefore differences are innate to human nature and are also characteristic of the elements that make up the state. Consequently the state is diverse but one, binding itself in a union that is described in a Unity in Diversity. The difference is not to be sharpened into conflict and hostility, but rather directed at a mutually beneficial synthesis that is unity in shared life to realize a common goal.<sup>9</sup>

Plurality is fully contained in this principle, the sole diversity of diversity. Unite the nation even though diversity is diverse and inevitable. By forcing the frames of unity political unity in a united context, by manifesting the spirit of unitary nationalism in political development, this is clearly not in accordance with the principle of Unity as promoted by the fourth principle of the Pancasila. Unity cannot be equated with the principle of Unity.

Imposing any differences in one entity, it is not the right thing to see the condition of the diversity of Indonesian society must be accommodated with provisions in accordance with the conditions of each view of respect for SARA (Ethnic, religious, racial and inter-ethnic). The form of unification that also leads to legal unity, becomes the basis for the consideration of the unification of national law is enforced, seeing the juridical content of the fourth precepts of the Pancasila.

4. The reason is based on the principle of the Fourth Pancasila (Democracy Led by Understanding Wisdom among Honorable Representative From the Representative House) which guarantees the existence of national plurality.

This precept implies that the nature of the state as the embodiment of the nature of monodualist human nature. The nature of the people is a group of people as God's creatures who are united in a national territory. The people are the main supporting subjects of the state, while the state is from, by, and for the people. So that in the people's precept contained democratic values that absolutely must be implemented in state life.<sup>10</sup>

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<sup>9</sup> Kaelan, *Op.Cit.*, p. 81.

<sup>10</sup> *Ibid.*, p. 182.



Democracy which is a government of by and for the people, is not only intended for some groups of the people. Representing the interests of the people of Indonesia, means representing all the interests of the community from Sabang to Merauke. Menyatukan national law in the rough uan, felt may injure to h endak diverse society.

5. The reason is based on the Five Principles of Pancasila (Social Justice for All Indonesian People) which guarantees the existence of national plurality.

In the fifth precept contained values which are the goals of the state as the goal of living together. So in the fifth precept contained the value of justice that must be realized in a shared life (social justice). Justice is based on and imbued with the nature of human justice, namely justice in human relations with the community, nation and country and human relations with their Lord.

Consequently, the values of justice that must be realized in living together include (1) distributive justice, namely a relationship of justice between the state and its citizens, in the sense that the state must fulfill justice in the form of equitable justice, in the form of welfare. (2) legal justice (obedient justice), in this case the

citizens are obliged to fulfill justice in the form of obeying the applicable laws and regulations in the country. (3) commutative justice, that is a reciprocal justice relationship between citizens. The values of justice must be a basis that must be realized in living together to realize the goals of the country.<sup>11</sup>.

The social justice referred to in this precepts, clearly directs both the state and its citizens to respect a sense of justice for all Indonesian people, not certain groups. The existence of legal unification allegedly would unite the legal unity regardless of the pluralist Indonesian social justice.

See Pancasila as " *groundnorm* " basic norms of juridical provisions of Indonesian law, actually laden upholds the values pluralita s , as stated on every meaning of the precepts that has, as a reference for the author to make Pancasila as juridical reasons cause of the republic of Indonesia Until now, there is no unified National Law. In addition, the author also refers to the juridical review of Article II of the Transitional Rules which was later amended to Article I of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia, as additional juridical reasons. With the sound of the article "All existing laws and regulations are still valid as long as no new provisions have

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<sup>11</sup> *Ibid.*, p. 183.

been made according to this Basic Law", showing that all the provisions of the colonial law that existed before the new one will remain in force. This was then interpreted not only to fill the legal vacuum, but rather to slow the development of national law, so that it was still guided by the provisions of colonial law which were actually less progressive and dynamic, adjusting Indonesia's current conditions.

### **The Politics of Codification and Open Unification Law as an Effort to Develop National Law in accordance with Pancasila and the Principles of Diversity in Indonesia.**

The existence of different legal provisions during the Dutch Colonial era was due to the Political Laws of the Dutch Colonial Government which at that time understood clearly the plurality and pluralism of the Indonesian people. Soetandyo stated,<sup>12</sup> is Van Vollenhoven and Ter Har, who recorded every legal customs customs of Indonesian society as a whole, and then use a reference to the Dutch colonial government to integrate the legal unification of BW and WvK with the law that grow in the community.

The desire to codify and unify national law in Indonesia is, in fact, a political desire to create a mature law, and create legal certainty.

However, looking at the previous discussion, the process of codification and unification of the law must be done very carefully by paying attention to the concept of diversity and what is carried out by Pancasila. Especially regarding legal unification, of course, it must pay attention to the diversity of the community including culture. Based on what was written by Rachmadi :<sup>13</sup>

In an effort to foster national law is to find the basis, nature, form and principles of national law. Unification of law is the nature of national law to be realized, while codification relates to the form of national law. This means that the codification of national law is not at the same time the unification of national law in it. Because there are several legal systems that have their own social structure which naturally illustrates the style of the community concerned, the diversity of the community structure concerned is seen in a pluralistic, religious and custom region, so that unification efforts are not easy to implement.

Likewise in the effort of codifying the law which seeks to gather all the provisions in a book of laws in a systematic, straightforward, complete and complete manner, certainly not easy to realize. Considering the limited ability,

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<sup>12</sup> Soetandyo Wignjosoebroto, *Pembaruan Hukum Masyarakat Indonesia Baru*, dalam : Donny Donardono, 2007, *Wacana Pembaharuan Hukum di Indonesia*. Jakarta: Ford Foundation & HuMa, p. 27.

<sup>13</sup> Racmadi Usman, *Op.Cit.*, p. 252-253.

manpower, funds, and time, meanwhile the legal needs and development of the community are so fast that there is a need for political policies and programs to achieve national legal ideals.

In fact, the experience of "reconciling" the content of the legal content between the law which was sanctioned by the state and the law of the people (or call it social norms that were socialized and believed by the citizens of local communities) as obtained in the colonial era, turned out to be difficult to implement in the era of independence. The plurality of folk law which is recognized as *living law* based on the understanding of particularism in the colonial era does not seem to be continued at the time of independence.

National ideals to "unite" Indonesia as a political and governmental entity have tended to ignore the fact of the plurality of local-form people's laws. Instead, what strengthens is the codification and unification policy, with the effect of replacing the diverse folk law with one national law, which applies from Sabang to Merauke, from Miangas Island to Rote Island.<sup>14</sup>

Codification and unification like this is undesirable, the national legal policy faced with the challenge to do the codification and unification of the law of rice o nal with restrictions remain cognizant of the plurality of

Indonesian society. The role of Political Laws in this case is needed. Political Laws has a role to determine the direction of the authorized apparatus in forming a legal product.

The role of a country's Political Laws is highly expected in the context of national law development to form an ideal legal system. Such a legal system is a legal order that can guarantee the achievement of the aspirations of the Indonesian nation as stipulated in the Preamble of the 1945 Constitution of the Republic of Indonesia, namely:

" Protect all Indonesian people and all Indonesian bloodshed, and to advance public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice. "

Political law as a government policy, and is realized in the context of the development of national law is also concerned with the development of public legal awareness. There must be a reciprocal relationship between the authorities and citizens, as social contracts are formed between the two, the discourse of a law unification policy that is full of benefits in realizing legal certainty must also be based on socio -community considerations. Teuku Mohammad Radhie in Artidjo Alkautsar,<sup>15</sup> suggest, a sovereign, when it is the codification

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<sup>14</sup> *Ibid.*, p.4.

<sup>15</sup> Artijo Alkotsar, 1997, *Identitas Hukum Nasional*, Yogyakarta: Fakultas Hukum UII, p. 216.

policy is deemed necessary, Political Laws should embrace the principle of open and principle of codification partially.

Codification and unification that is open, more or less can reflect the application of the ideology of the Pancasila nation which is also open in accommodating the dynamics of the development of society globally. Open codification and unification can enable the formation of new legal regulations by observing the dynamics of national law development.

### **CLOSING**

The development of Political Laws in the context of national legal development leads from the Old Order Era which requires the codification and unification of the law, then it shifts in the reform era by respecting the plurality of the legal order. The non-implementation of the codification and unification of national law is also influenced by the spirit of plurality brought by *Grundnorm*, namely Pancasila, which does not want a "unity" in the midst of a diverse national unity. The analysis knife is also based on Article 1 of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia which still enforces the previous legal rules.

The role of political law becomes very important in the context of the codification and unification of national law. The understanding of the government of state administrators of

the conditions of society and the development of national law must be harmonized, so that if implemented, the codification and unification of national law is directed at open codification and unification, which still provides an opportunity for the plurality of legal arrangements in a plural society.

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