

Quo Vadis: Can Indonesia survive without Pancasila?

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A question has arisen in Indonesia whether there is any paradigm shift taking place. Looking at the resistance and the violence, whether people want a new ideology to replace Pancasila. Can Indonesia exist without Pancasila? Taking *quo vadis* into account and its legal system, people doubt whether Pancasila should continue as the ideology. The entry of other ideologies or a new one is a sign of the beginning of the destruction of the life of Indonesia, including its legal system. For this reason, efforts must be made in the form of reliable consistency and commitment from all elements of the nation to remain firm in the ideology of Pancasila, because it is the identity of the Indonesian. This paper reiterates in favour of maintaining the continuity of the use of Pancasila as an ideology.

Key words: *Pancasila, ideology, nation, Indonesia, identity.*

Introduction

The word *Pancasila* is morphologically created from two Sanskrit terms, *pañca* meaning five and *śīla* meaning base. The term *Pancasila* has existed since the age of *Majapahit* (an ancient kingdom in the fourteenth century) in the book *Kertagama* and *Sutasoma* written by Empu Prapanca and Empu Tantular (Darmaputra, 1988), and is now the foundation of Indonesia, and was firstly proposed by Soekarno, the first Indonesian president. President Soekarno (1945) divided *Pancasila* into five values based on nationalism, humanity, consensus, social welfare, and God's supremacy and developed five principles translated and published by Gumilar (2006): (i) *Ketuhanan Yang Maha Esa* (Belief in the One Supreme God); (ii) *Kemanusiaan Yang Adil dan Beradab* (A Just and Civilised Humanity); (iii)



Persatuan Indonesia (The Unity of Indonesia); (iv) *Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan Perwakilan* (Democracy led by the inherent wisdom of consensus arising from deliberation among popular representatives); and (v) *Keadilan Sosial Bagi Seluruh Rakyat Indonesia* (Social Justice for all the people of Indonesia).

Since its adoption and its having become passionately immersed in the Indonesian national character, the Pancasila has succeeded in keeping a diverse nation like Indonesia as still one (Darmaputra, 1988; Efimova, 2018).). The old Javanese phrase *Bhineka Tunggal Ika* 'unity in diversity' or 'we are many but we are one' has also made it survive through decades. In this phrase also is culminated the Indonesian socio-cultural values that have grown and developed in the realm of national awareness defining the Indonesian identity or in *von Sevigny* words: "*volgeist*" (Tolib, 2008). The value of national identity is a source of inspiration in building the nation's character in realising the welfare state for all Indonesian people. Besides, in the political history of Indonesia, Pancasila has been implemented in various fields and has contributed to making various policies.

The Paradigm Shift: Problem Statement

But the question arises whether there is any paradigm shift taking place in Indonesia. Pancasila, as the ideology of Indonesia, undoubtedly has united the nation and sustained the life of the country. It is a shield from other ideological attacks that are contrary to the values of the Indonesian identity. But a question might arise when looking at the resistance and the violence whether people want a new ideology to replace Pancasila. Can Indonesia exist without Pancasila? Taking *quo vadis* into account and its legal system, people doubt whether Pancasila should continue as the ideology. Such questions have touched the nationalism, and rationality of the nation's children, who have so far enjoyed the social and cultural bliss of Indonesia, originating from the legacy of socio-cultural values of Pancasila (Efimova, 2018).

Such a thought arose in the government agenda just because it was felt that the Pancasila ideology was in danger. Incidents like the Ahok case or the Shihab case were examples to show about public intolerance for the Pancasila (Efimova, 2018). Owing to these incidents, the government decided to defend the principles of tolerance, embedded in the Pancasila ideology. The government was of the view that those socio-cultural values have become the characteristics of the Indonesians, and have become national identities that are used and maintained continuously from one generation to the next. Therefore, in its development, the values of national identity have become national agreements, and values in Pancasila, which is the ideology of Indonesia (Efimova, 2018).



On the Pancasila Day, the Indonesian President Joko Widodo too emphasised that unity in diversity was the foundation for the Indonesian society and must not be undermined by any religious or political organisations. He raised the concern that Pancasila values had been threatened by religious organisations that promote an Islamist political restructuring of Indonesian society. The President urged all Intellectuals, including Islamic priests (*ulemas*), pastors, Hindu and Buddhist monks, academicians, artists, media personnel, as well as the armed forces personnel to unite and safeguard *Pancasila* and its national goal of '*Bhinneka Tunggal Ika*' [Unity in Diversity].

Over the decades, *Pancasila* hence has been regarded as a national ideology in Indonesia as its values act as a foundation and guideline for the Indonesian people to follow a unified vision and mission. Politically and strategically, too, the ideology of *Pancasila* has contributed to unite Indonesia as a country in a single framework despite its diverse ethnicities, languages and identities. But the political pundits and other strategists failed to realize that this diversity may also endanger the unity and integrity of Indonesia. Feeling this threat, the slogan *saya Indonesia, saya Pancasila* 'I am Indonesia, I am *Pancasila*' has become viral in mass media, accurately portraying Indonesian citizens' passion for *Pancasila* as their national ideology (Tunjung 2017; Kuwado 2017; Rimadi 2017). This slogan was an answer to the anxiety of the Indonesian people over the issues of intolerance for the *Pancasila* that are increasingly strengthening in every level of Indonesian society.

Literature Review

Threat to Pancasila

A few recent studies have raised the question whether to replace or exterminate *pancasila* completely from Indonesia (Morfit, 1981; Weatherbee, 1985; Syafruddin, 2013; Efimova, 2018; Tunjung 2017; Kuwado 2017). Based on these writings, and the government law of *Mahkamah Konstitusi Nomor 100/PUU-IX/2013*, *Pancasila* cannot be changed, amended or replaced. If it has to be changed, amended or wiped off, it could be done only through legal and institutional means or by breaking and violating the law, rebelling against it and legally speaking, by dissolving the Republik of Indonesia. So *Pancasila* is in the veins of the nation. Asmawati & Hasanah (2016) state that in the event of replacing *Pancasila* with another ideology, it would require dismantling the unity in diversity of Indonesia that provides its stability. If i this happened, it would mean that the Indonesian government has horribly failed and therefore its collapse is justified.

Pancasila, together with UUD 1945, and the Flag, is a powerful unifying idea and symbol for Indonesians who provides its legitimacy. The Indonesian government undoubtedly derives its legitimacy from *Pancasila*. It is a government based on symbols of *Pancasila* and UUD 45, of the constitution (Kusuma, 2004; Manan, 2014). Thinking to replace *Pancasila* would mean

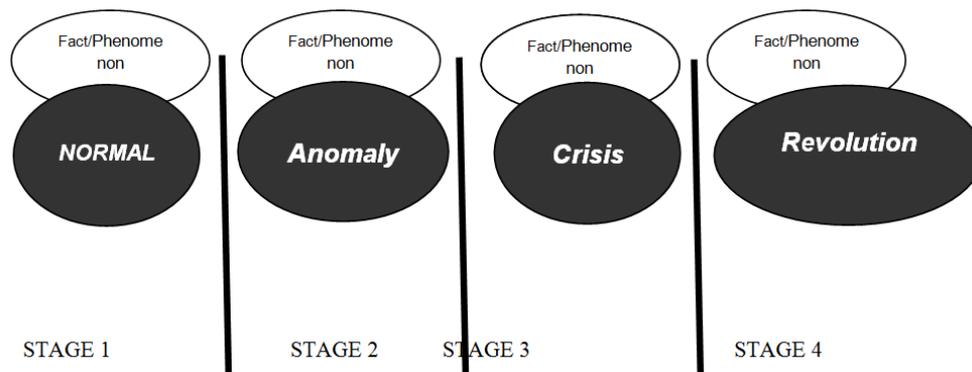
that the strength of these symbols has failed, and has also failed the Indonesian identity and its strongest belief in unity in diversity. It would also mean that the socio-political conditions in the country are so different that the existing political institutions and elites have become weak and are succumbing to the national threat.

There is also a doubt raised regarding the power and strength of the legal institutions and law enforcement agencies as well as the armed forces that could not be so weak as to prevent anti-national forces demanding the replacement of Pancasila. Does the law allow regional elites or political parties to demand whatever they want? Next, they might declare independence, since the power of Pancasila no longer arouses patriotic emotions. At this stage, it is important for the law to keep the nation united and intact and protect the nation from potential civil wars or soviet style break ups.

Strengthening the Nation

Commitment was a way to preserve Pancasila as the ideology of the nation. This national commitment was absolute. It was a re-institutionalisation of the values of Pancasila as part of Indonesia's ideology, which in Paul Bohannan language was known as "*Double legitimacy*" (Habermas, 2004; Rawls, 2011; Mansyhur & Taufani, 2010; Salman, & Otje, 2009). It was important because when national commitments were made, it could be assured that other ideologies would not shift Pancasila's values. There was a tendency for some other ideologies to shift or mix Pancasila's ideology with other ideologies (*mix-ideology*). It was understandable because the social life of the Indonesians could not be separated from the association with other nations, which in this paper is proposed as the assumption for a shift in values or norms in Indonesian society by using Thomas Kuhn's theory of scientific revolution (Thomas, 1970) as illustrated in the following figure (Figure 1):

Figure 1. Process of Transformation



The above figure shows that an ideology might experience change (crisis). Facts or phenomena influence changes in ideology. The changes are affected by the facts or phenomena that follow. In this connection, it is necessary to analyse whether the ideology of



Pancasila experiences a crisis or is still within the norm. Therefore, to strengthen the ideology of Pancasila, it requires facts or phenomena in the form of commitments. It means that the need to strengthen Pancasila, as a state ideology, still needs a reliable and nationally consistent commitment to make it Indonesia's ideology.

Legal institutions

Often it is argued and alleged that the law and legal institutions have interpreted Pancasila principles narrowly (Hasan & Soehartono, 2019). The ideology of Pancasila was called Islam-oriented, and a politicisation of this discourse was made over the past decades. Incidents such as riots by Muslims against non-Muslims (e.g. the Jakarta rallies against the Christian former Jakarta governor) or the lack of willingness shown by law and police to stop non-Islam blasphemy (Tomasz, 2017). The Indonesian police also failed to curb the violence caused against minority religious communities. Such a scenario has raised doubts over the success of the Pancasila ideology, as it is also diminishing Indonesia's reputation worldwide to protect its minorities.

Legally, Pancasila states that the state allows religious freedom. Also Article 29 of the Constitution (UUD) provides that Pancasila excludes any religion (including Islam) from becoming the national religion. When the question of blasphemy or atheism arises, Indonesia's blasphemy provisions are based on the 1965 Blasphemy Law vested as Criminal Code (Tomasz, 2017). The Law specifies that the six recognized religions in Indonesia are Islam, Buddhism, Protestantism, Catholicism, Hinduism and Confucianism. Indonesian citizens are required to identify themselves as members of one of these six faiths, and they may not declare themselves as atheists.

However, the problem with the law is that it lacks clarity as to what acts constitute "blasphemy or "religious defamation." The Western media has criticised the Indonesian government often by claiming that its blasphemy law discriminates against non-Muslims – especially citing the trial of the former Jakarta governor, Basuki "Ahok" Tjahja Purnama, a Chinese Christian who was convicted for blasphemy (Tomasz, 2017). Hence, while Pancasila may be presented as a secular ideology promising equal state recognition to all major religions, the dominance of Islam as the mainstream religion is strongly visible. There are also evidences that the government authorities overprotect Islam, not for religious reasons, but for political benefits and to offer allegiance to the Islam-oriented political leaders or radical politicians (Tomasz, 2017). The law never defines blasphemy nor adjudges curbing the criticism of Pancasila as a violation of the right to freedom of expression or impeding the religious tolerance of minority groups. For this reason, Pancasila and other related laws have faced political opposition.



Legal pluralism as a solution?

In such cases, where there exists diversities, legal pluralism is seen as a legal recourse and a solution. In a nation where different groups of population and different ethnicities exist, whether religions, or other categories, legal pluralism is often justified as a technique of governance (Griffith 1986). Legal pluralism is also interpreted as a situation where two or more laws can co-exist or interact within the same nation state (Hooker 1975). This is however considered as a 'weak' alternative and is often criticised for being too state-centered (Fitzpatrick 1983) and for ignoring the interests of a few communities and other important aspects of society (Moore 1978, Griffith 1986). A 'Strong' legal pluralism should have a situation where Law is not state sponsored nor governed by any formal state institutions. Rather, law should be like a social setting, where different legal orders co-exist and do not belong to a single legal entity (Griffith 1986).

A strong legal pluralism is also identified by the impact that it makes on the society, or if it conceptualises an interaction between formal and informal laws (Merry 1988, Santos 1987). In the context of Indonesia, studies have however refrained from calling Pancasila a weak or strong law, but definitely owing to its legal sanctity and its impact on the formal legal system, a state of legal pluralism could be envisaged as existing in Indonesia. If Pancasila is seen as an expression of a binary opposition, for example a formal vs informal, official vs unofficial, juristic vs. sociological, and state law, its plural character can be accepted.

Woodman argues that "the only difference between the two types of legal pluralism is that the different bodies of law in 'state law pluralism' are branches of one larger body of norms, whereas in the case of 'deep legal pluralism,' state law and the other law or laws have separate and distinct sources of content and legitimacy" (Woodman 1999: 10). Following Woodman's argument, this research would also analyse the idea of legal pluralism to judge whether it can be used as an analytical tool or an explanatory theory. The purpose is only to understand and distinguish variations between the complexities of Pancasila and the existing Indonesian laws in the light of the politicisation and radicalisation of Pancasila's ideology.

Discussion and Analysis

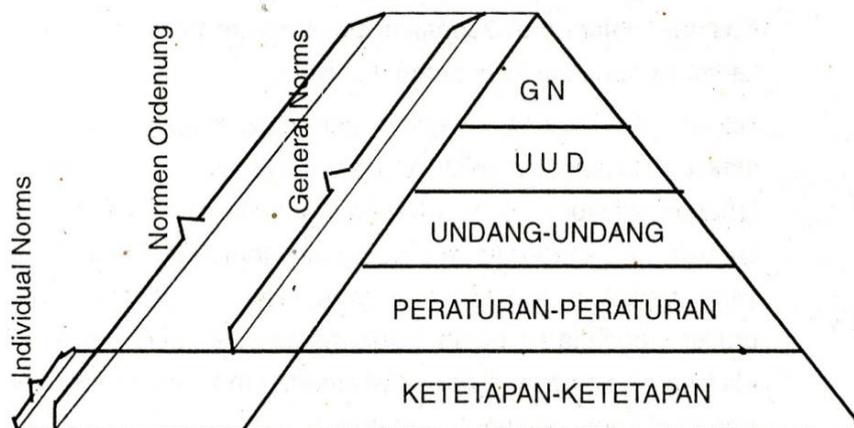
Making Pancasila Remain the Basic Norm

The legal literature shows that there are legal systems that are classified as "legal major systems" or the largest legal system in the world. One of the legal systems included in it is the Continental Europe legal system, which is also adopted by the Indonesian legal system. Indonesia was colonised by the Dutch for 300 years due to which the Dutch legal products were used in Indonesia (KUHP and KUH Perdata). Dutch legal products acted as references in the formulation and enforcement of the law in Indonesia. Unfortunately, if we look at the material and substance of Dutch legal products, there were differences, because the Dutch

legal products used by this set were not derived from the values of Pancasila (ground norm). As a result, there was substantially an antinomy value in its enforcement.

Hence the question arises, why the law enforcement agencies in Indonesia should refer to fundamental norms. Every legal system has a basic model as a source of formulation and establishment of rules and regulations. The basic norms in a legal system enjoy the highest position next to the constitution. In the theory of Stufen, the theory of Hans Kelsen (1961; 2012) it was postulated that the basic norm position (GN) is placed above the top of the pyramid, as shown below:

Figure 2. Theory of Hans Kelsen



It is clear from the above figure and the theoretical rationale that, based on the basic norms of legal theories, the formation of laws and regulations in Indonesia's legal system should be subject to Pancasila (value) as the basic norm (GN), whose contents are the values of the Indonesian. Therefore, it was necessary to make a commitment and a consistent effort to make Pancasila a reference in the formation of constitutions (UUD) and all legislative products in Indonesia. It meant that all legal products in Indonesia must use Pancasila as a filter of all legislative products. Although at present the judicial review of the law is carried out by the Constitutional Court, as a material testing body of laws and regulations in Indonesia, the Constitutional Court uses the 1945 Constitution of the Republic of Indonesia as a reference in the judicial review of the law.

Legal recourse and Pancasila

Since independence, Pancasila had become a state ideology and the ideological basis of the Indonesian legal system for two reasons: first, it was a multicultural and multi-ethnic entity facing the challenge to build a nation that was neither a theocratic Islamic state nor a secular state under potential conflicts due to its multicultural and multi-religious character (Boland,



1982; Bowen, 2003); second, it wanted to stabilise a newly independent country by recognising all its monotheistic religions and allowing them to co-exist. Pancasila was the ideology that offered Indonesia a theistic-secular character.

Another criticism of Pancasila is that it has no provision to guide or direct a government which is afraid of taking action against violation of a law under the influence of radical groups, thus allowing religious intolerance to grow. The criticism grew when both Islam and Pancasila were politicalised by the opportunistic politicians and when they closed all doors of dialogue to resolve intra-religious conflicts and dispel fear among religious minorities. Hence, it is seen as the failure of Pancasila to stabilise a multicultural society; instead, it has fostered a climate of intolerance and allowed the law to be used to justify an extra-legal discrimination of minorities.

The post-independence Indonesia witnessed the colonial legacy of legal pluralism. The *adat* legal institutions (*peradilan desa*) though were eliminated in the 1950s for the sake of Indonesian unity and judicial integrity, *adat* norms were retained and continued to be applied by the state civil courts (*pengadilan negeri*). At the same time, some particular areas of Islamic law were applied by an Indonesian system of state religious courts (*pengadilan agama*). With such arrangements, Indonesia developed a complex system of legal pluralism that allowed a variety of legal sub-systems to be operative in the realm of a single sovereign state power (Lubis 2003). Paradoxically, these plural legal orders were founded along with the adoption of Pancasila ideology, which talked about religious intolerance and secularism.

At the time of independence, the focus was on the modernisation of Indonesian Law and such legal policies were designed that promoted both legal centralism and legal positivism. Cammack's (1999) study seems to be advocating Pancasila when it stated that any legal authority of a state can reject any law from an external source unless it is introduced by the force of the state law. This paradox exists in the adoption of Pancasila, not only as a formal legal ideology but also observable in Indonesian national legislations. For instance, The Basic Agrarian Law (UU 5/1960) and the Marriage Law (UU 1/1974) are examples of such legal pluralism.

In the 21st century, when people started doubting the success of Pancasila, it was also observed that the Indonesian legal system is shifting to a somewhat 'legal distinction,' where particular sects of the population would demand and implement certain specific laws applicable exclusively to them (Salim and Azra 2003). Has this situation arisen in Indonesia? Is Indonesia developing a parallel or a plural legal system once again that segregates citizens based on their respective religious backgrounds, thus paving the way for a deepened legal pluralism? If this is true, legal pluralism would once again threaten the national unity and integrity and sovereignty of Indonesia.



Establishment of Special Institutions to Guard the Ideology of Pancasila

To make Pancasila the only ideology of the state and the nation that can be maintained sustainably, a special institution was needed to act as the guardian of Pancasila. The institution had to be independent of the intervention of state power or other powers that threatened the ideology of Pancasila. The right institution here was the People's Consultative Assembly (MPR) as one of the state institutions that can be given special authority to guard the state ideology (*the guardian of ideology*). It was important considering that MPR historically had a record as a high-rank state institution whose membership had proven supremacy, and had no legal (corruption) problems. MPR had never been hit by a crisis of public trust, which made it a suitable institution, to make Pancasila an ideology for the life of the nation and state of Indonesia.

Conclusion

Based on the above descriptions, it could be concluded that to maintain Pancasila as the basis of the state and the ideology of the nation, continuous commitment and effort is needed by each person and component of the country. The entry of other ideologies or a new one is a sign of the beginning of the destruction of the life of Indonesia, including its legal system. For this reason, efforts must be made in the form of reliable consistency and commitment from all elements of the nation to remain firm in the ideology of Pancasila, because it is the identity of Indonesia as a united nation.



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