



HIERARCHY RECONSTRUCTION IN REGULATION OF STATUTORY LAW 12 OF 2011 BASED ON THE VALUE OF PANCASILA'S JUSTICE

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Abstract

The hierarchy of legislation in Indonesia is regulated in Law No. 12 of 2011. In principle, lower regulations may not contradict higher laws. However, in Act No. 12 of 2011, there were weaknesses, and those weaknesses have implications for the implementation of laws and regulations in Indonesia. Hierarchy Reconstruction Reconstruction of the hierarchy of legislation based on Pancasila values of justice, all laws must be made in accordance with the values contained in Pancasila. Pancasila became the source of all sources of law as the basic norm of Indonesia in the form of legislation. Need to be harmonized and synchronous-ization of the law so as to realize the consistency of legislation with the hierarchy of governance legislation. Harmonization and synchronization of such regulations must still give priority to the values of justice. Values of justice to be realized in the rule of law is the value of justice in accordance with the principles of Pancasila. In the discussion of justice issues that arise in the community, Pancasila able to provide answers it. Pancasila is able to provide all the values of justice as legal reform in Indonesia. The value of justice contained in the Pancasila can be the basis for the establishment of a fair legal humane and civilized and social justice for all people of Indonesia.

Keywords: Hierarchy, Legislation, Pancasila Justice

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1. INTRODUCTION

Indonesia is a constitutional state based on the provisions of Article 1 (3) The amendments to the Fourth Constitution NRI In 1945, the State of Indonesia aspired as a constitutional state (*rechstaat*) is not a state based on power alone (*maachstaat*), in which this provision is affirmation of the ideals of the founding fathers. Legislation in Indonesia is implementation of state laws that have an important and strategic position particularly legislation. It can be seen from the concept of state law and the hierarchy of legislation. Currently, the sort order of hierarchy or legislation in Indonesia is still governed by Article 7 (1) of Law Number 12 Year 2011 on the Establishment Regulation Legislation, which mention the type and the hierarchy of legislation, consisting of:

1. Constitution of the Republic of Indonesia 1945;
2. People's Consultative Assembly Decree;
3. Law / Government Regulation;
4. Government regulations;
5. Presidential decree;
6. Provincial Regulation; and
7. Regulation of the Regency / City.

In the hierarchy and as a rule of law, legislation functions to further describe the rules and the basic rules contained in the Constitution of NKRI 1945. Laws and regulations in addition to those listed above, include regulations set by the People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Board, the Judicial Commission, Bank Indonesia, the minister, bodies, agencies, or commission equivalent established by legislation or government at the behest of the legislation, the House of Representatives Provincial governor, House of Representatives

District / City, regents / mayors, village heads or equivalent recognized and have the force of law binding throughout ordered by legislation that is higher or air-ity established authority.

Hierarchy of legislation as stipulated in Law No. 12 of 2011, there were some weaknesses that may affect enforcement. Some things to note are of various legislations in that order, the material content of the penal provisions can only be loaded in laws and regulations. This is due, among other things, that legislation and regulation made by the institutions that represent the people, the Parliament and Council. In addition, the implementation of legal regulations in Indonesia are severely obese are currently making a lot of overlapping regulations, to much evident confusion in applying the rules, especially should choose to use a rule which is at present in the grounds of a breach. For example, in the existing legislation, law enforcement sometimes become entry since the institutional rules are always adhere to the ministerial decree, whereas the existing regulations were first born area is not considered, while there are no laws that regulate in detail (no legislation). The ministerial regulation in Act No. 12 of 2011 is not subject to the provisions of Article paragraph (1). Nevertheless, the existence of regulation stipulated in Article 8 paragraph (1) of Law No. 12 of 2011.

The ministerial regulation is not listed in the hierarchy of legislation, but in practice, a higher position than local regulations sometimes conflict with the law are also Constitution NKRI 1945, so the need for synchronization and clarity in the application of laws invitation in order to avoid overlapping in the implementation in the field, as well as law enforcement does not become all bewildered in applying the rules. One of the main pillars in the governance of a country is the establishment of the legislation is good,

harmonious, and easy to implement in the community, for it in the establishment of legislation must be able to accommodate all the problems faced by the people and the times.

Manufacture and development of laws or regulations made professionally and logically, it will produce laws or regulations that may affect the joints and even change people's lives. Legislation not only to guarantee legal certainty, but also contains the value of expediency and fairness. In addition, each per-rule legislation should be formed in accordance with the values that live in the community, as reflected in the values of the principles of Pancasila. Fair legal regulations will be respected and upheld rather than legal regulations can only provide legal guarantee, but ignoring the value of justice. Justice for everyone or different groups, but clicking prioritizing fairness are paramount. Justice based on Pancasila as basis for the establishment of regulations, because the soul of a nation can be realized and can be seen from the laws that govern them. Pancasila as a source of supreme law is irrational and as rationality is a source of national laws Indonesian nation.

2. RESEARCH METHODS

This research using normative juridical approach, using the approach of law (statute approach) and the approach of the case (case approach). The nature of research is descriptive analysis, which revealed a regulation of law relating to the legal theory which is the object of research. The data source of this research focused on secondary data obtained through library research.

3. RESULTS AND DISCUSSION

Hans Kelsen argues that: "The state is identical with the law, where there are countries there is rule of law or otherwise,

where there is rule of law there must be a state". Thus, countries in principle is a legal order coercive. In general, the law can be defined as the set of rules made by the authorities, with the aim to arrange the social life that have the feature commanding and forbidding, and have a nature-forcing me to sanction penalties for those who violate them. In a state of law, the state system or system-rintahan peme governed by the applicable law and justice are arranged in a constitution. Basically, the law aims to achieve certainty (certainty), fairness and usefulness (utility). Legal certainty is important to ensure predictability of economic activity, it is important to guarantee equal justice, and usability is important to ensure that the freedom enjoyed by the measured and orderly by all contingencies agreed.

One form of legal norms are rules or regulations. The only source of legitimacy of the state organs to establish something legal norms that are air-form of regulation (Regeling) is an organ that works in the branch of the legislative power. That law is valid (valid) if made by the institution or the competent authority to shape as well sourced and based on the norms of a higher, so in this case the norm lower (inferior) can be formed by the norm of higher (superior), and the law the step-by-step and multi-layered form a hierarchy. Lawmaking is done intentionally by the competent body is the source of a legal nature that is most important. The activities of the agency called the legislation activities which generate subs militancy which no doubt kesahannya, which ipso jure.

In the knowledge of the science of law, especially the parts that are closely related to the law-making (law making) and implementation (law enforcement), the issue of the source of law is a matter that needs to always be understood, analyzed and posed problems-problems and solutions, so it can be expected to be No harmony with the development of law in

accordance with the needs of the community. An legislation usually only pitch-limit on the principle that says for example: "Rule lower should not conflict with the laws of a higher order" or in terms of the Constitution there is a saying "the supreme law of the land" , Partly because it has consequences sort order, not even any legislation must have a legal basis in the legislation of a higher order.

Legislation that the lower level should not conflict with the laws and regulations that higher level. If it turns out the legislation inferior air-opposition to legislation that is higher, then the legislation lower levels can be expected to be canceled even null and void (van rechtswege nietig). The state is an order rule (nomenordening), which is a state order (staatsorde). The state is a regular system. Law also is a regular system. Therefore, the order of this country is the same thing with the rule of law. A legal system is a system of legal norms in the hierarchy, the validity of the rule of law from the lower level classes dependent or determined by rules that belonged to a higher level. Indonesia is a country of law, then to re-achieve the necessary law states that an orderly arrangement, including the formation of legislation.

Previously, the hierarchy of laws and regulations stipulated in the Assembly Decree No. : XX / MPR / 1996, then set up the Legislative Act No. : III / MPR / 2000 were regulated in Law Number 10 of 2004 and the last regulated in Law Number 12 of 2011, in this case has given rise to the complexity of problems in the field of rule by laws and regulations due to the alternation of the rules governing the hierarchy legislation. In Article 7 of Law No. 12 of 2011, states: Types and hierarchy of legislation consists of Constitution of the Republic of Indonesia 1945

The legal force of legislation in accordance with the hierarchy as referred to in paragraph (1). Intention

hierarchy in this Act described in the explanation of Article 7 (2) of Law No. 12 of 2011, which is a hierarchy every kind of legislation based on the principle that legislation lesser should not be contrary to the rules legislation is higher. Type of legislation other than as in-intent in Article 7 paragraph (1) includes rules by the People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Board, the Judicial Commission, Minister, agency, or commission equivalent established by legislation or government at the behest of the legislation, the House of Representatives Provincial governor, House of Representatives District / City, Regent / Mayor, Village Head or the equivalent, it is stipulated in Article 8 paragraph (1) of Law No. 12 of 2011. Binding power of a legislation described in Article 8 (2), that the legislation referred to in paragraph (1) recognized its existence and have binding legal force throughout magnified intahkan by legislation that is higher or established by the authority. Constitution of the Republic of Indonesia Year 1945 is the basis for legislation.

Related to the substance of Government Regulation Peng changing the Act together with the substance of the Act set out in Article 11. Article 12 of Law No. 12 of 2011, determining the substance of the Government Regulation contains material to carry out the Act accordingly. Furthermore, Article 13 of Law No. 12 of 2011, regulating the substance of the Presidential Decree contains material which is commanded by the Act, the material for the implementation of Government Regulation, or materials to carry out penye-lenggaraan governmental power. While Article 14 of Law No. 12 of 2011, As for the substance of the criminal provisions can only be loaded in the Act, Rules or Regulations Provincial District / City. However, the criminal provisions in the Regulations Provincial or Regional

Regulation Kabu-patent / City in the form of the threat of imprisonment of 6 (six) months or a maximum fine of Rp50,000,000.00 (fifty million rupiah). The weakness of the legislation at this time;

Principle, legislation in Indonesia, was constructed in phases with all the legal consequences. At least, this is reflected in the provisions of Article 7 and Article 8 of Law No. 12 of 2011. Reception theory tiered legal norms in Indonesiaberdasarkan at reception principle of *lex superior derogat legi inferior* in the legal system and laws and regulations in Indonesia. The hierarchy of legislation adopted in the legal system and law in Indonesia is based on the principle that a provision of law should not be opposition with provisions of the legislation are higher. In this case, Mochtar Kusumaatmadja said that the hierarchy of legislation based on the principle of *lex superior derogat legi inferior* is essential for legal certainty. Alignment of legislation need to be attentive because in practice it's often arise feud between one legislation to another.

According to Kelsen, there is no absolute guarantee that within a unitary legal order there is no contradiction between the rule of law norms of each other. This can occur because of the legal organ authorized to make legal norms (*wetgever*) creates norms conflicting so that conflicts between legal norms of varying degrees of late.

The law will always lag behind the developments that were so in the community, in addition to the legislation is sometimes at odds with each other and not in accordance with the values of justice, so that if the law is not adapted to the development of society and do not correspond to the sense community justice, it will cause problems. While there are some issues that can be seen in issues related to the hierarchy of legislation, namely: Situation sort order for the legislation in Indonesia is still not completely raw. MPR, for example, is still

debated whether or not, and whether he goes into the legislation the group or outside it; Ambiguity was often compounded by the inconsistent actions of forming per-rule itself. Although the existing provisions, it remains just emerging types *dikreasikan* regulation itself by forming rules. This adds all the public puzzled;

The substance for each type of legislation is not always right. There is the substance that should be accommodated in the legislation, it is loaded into the lower regulation, or otherwise. Reconstruction of the hierarchy of legislation based on values of justice Pancasila. Every design on a law, means the design is being done on a change in society. If not so, certainly do not need a design of the new legislation. Officials implementing the legislation concerned must ensure that the legal norms are drawn up further in the framework of the implementation of the legislation (executive acts) are not opposition with provisions of the law (legislative acts), and even the constitution (constitutional as the highest legal norms). Prevention efforts is very important that all systems complete body of legal norms really are in a single unit based on the Constitution of the Republic of Indonesia 1945. Awareness of the values of Pancasila and the Constitution of the Republic of Indonesia 1945 among members of people's representative institutions (especially the DPR, provincial DPRD regency / city)

The entire rule of law must be made in accordance with the values contained in Pancasila. Pancasila became the source of all sources of law as the basic norm of Indonesia in the form of legislation, and Indonesia is the Pancasila. Pancasila is the concept of Indonesian law states that became *staatfundamental-norm* Indonesia. Characteristic of the concept of Pancasila state law puts the protection of citizens. The law, which created not only be power, regulate, and coerce the public or its

citizens. However, legislation is made should be *me-nertibkan*, give peace and happiness of life for the community. The law of a nation is not a set of a large number of regulations, but a building's air and meaningful character. Then studied law required to come to the knowledge of the nature and meaning, the nature and meaning of the laws of Indonesia can be seen from the values contained in Pancasila containing the noble values of the nation. Gustav Radbruch said that the law is when the law contains the values of justice, legal certainty and usability. In the event of disagreement between law certainty, expediency and justice then justice preferred.

Thus, all regulations made by government instructions should be appropriate and must not conflict with the regulations on it, and in harmony with other laws and regulations to achieve legal certainty, beneficial and fairness. Legislation issued as a product of the state administration quantitatively increasing trend in line with public demand for Implementing the tasks of government in the welfare state. The problems that may arise in connection with the increasing quantity of product legislation the government is a big difference and lack of coordination of legislation (*de grote verschei-denheid en het aan gebrek coördinatie van de wetgeving*).

Legal harmonization and synchronization is required so as to realize the consistency of legislation with the hierarchy of governance legislation. Presented by LM Ghandi that the harmonization of the laws are covering the adjustment of legislation, decision of government instructions, the judge's decision, the legal system and legal principles with the aim of increasing the unity of law, rule of law, fairness and proportionality, usability and legal clarity without blurring and expense of legal pluralism. Harmonization of law is an attempt or process to put any differences with regard to irregularities and contrary to

law. While synchronization of law, can be divided into vertical and horizontal synchronization. Vertical synchronization reviewing law positive law is written that there was mismatched, or whether the law that applies to a particular area of life do not contradict each other, when viewed from the angle of the hierarchy of legislation. Synchronization horizontally law, *me-ninjau* whether legislation has been equal to the legislation governing the same field.

Harmonization and synchronization of called rule of law should remain priority to justice. Thus, a fair legal regulations will be accepted and implemented by all components of the nation. Justice can only be understood if it is positioned as an all Circumstances to be realized by the law. Efforts to re-achieve fairness in the law is a dynamic process that takes a lot of time. These efforts are often too dominated by forces that fought in the general framework of the political order to actualize. Se law-like carrier of the values of justice according to a measure of fair Radbruch unfair legal system. Not only that, justice is also the basis of the law as law.

Values of justice to be realized in the rule of law is the value of justice in accordance with the principles of Pancasila. Therefore, not only Pancasila as the basic norms, but also the outlook of the nation, the ideology of the nation, and it contains the noble values of the Indonesia. Pancasila has the character or nature of the flexible and able to follow the spirit of the age of globalization changing times. In the discussion of justice issues that arise in the community, Pancasila's able to give answer to the problems. Pancasila is able to provide the values of justice as legal reform in Indonesia. The renewal of the law in Indonesia is very necessary because there are many new issues that have not been reachable by law.

Pancasila is the ideology of the nation that is open. Pancasila does not cover the

changes that occur goodness' as a result of globalization. But Pancasila is a filter for the impact of globalization, so that the negative impact of globalization does not affect the people's lives. These problems seyogyakan solved with one vision, mission, goals and perceptions of Pancasila legal reform in Indonesia. In addition to new issues unresolved, old issues is also a problem which is also considered urgent to be resolved, remember the law is always present in people's lives to provide certainty, fairness and benefits.

Justice in Pancasila contained in the Fifth Precept, namely Social justice for the whole of the people of Indonesia, who is also imbued with the precepts of the other, so that the precepts that one always associated with other precepts. Substance contained in the Pancasila positive values that can provide change for the nation. Positive values are able to provide the foundation for the creation of a justice for the people of Indonesia. Relevance to justice, then the value of justice contained in the Pancasila can be the basis for the establishment of a fair legal humane and civilized and social justice for all Indonesian people. Characteristics of Pancasila justice requires an understanding of a common vision, mission, goals and perceptions in creating a just-right law. Pancasila is flexible to change according to the demands of the times. Within the meaning of the values in the substance of Pancasila, the decision should be able to put all Pancasila's Justice at a certain time and a certain place with the development of the existing era. Therefore, as the basic norms of the most high, the Pancasila may be truth in the overall legal system in Indonesia.

Construction system of legislation regulated hierarchy or tiered. This shows the power of enforceability or legally holding capacity of each product the relevant law. The higher legal norms should be the juridical basis for the rule of

law norms of lower status. Therefore, laws that lower levels, it should not deviate especially in contrast with the rule of law that has a higher position. Enforcement of the rule of law will be able to run properly if the hierarchical system of legislation as reflected in the Law No. 12 of 2011 as a reference for policy makers (decision maker) or any law enforcement in Indonesia.

4. CONCLUSION

The hierarchy of legislation according to Law No. 12 of 2011 in Indonesia is regulated in Article 7. The purpose of the hierarchy is a hierarchy every kind of legislation based on the principle that legislation should not be lower against the rules regulations will be higher, while the binding power of a legislation described in Article 8 (2) of Law Number 12 of 2011; The weakness of the legislation at this time, because in practice often conflict arises between one legislation to another. There is no absolute guarantee that within a unitary legal order there is no contradiction between the rule of law norms of each other. This can occur because of the legal organ authorized to make legal norms create norms conflicting so that conflicts between legal norms of various levels. In addition, the legislation will always lag behind the developments taking place in the community and not in accordance with the values of justice. While there are some issues that can be seen in issues related to the hierarchy of legislation, Reconstruction of the hierarchy of legislation based on Pancasila values of justice, all laws must be made in accordance with the values contained in Pancasila. Pancasila became the source of all sources of law as the basic norm of Indonesia in the form of legislation. Need to be harmonized and synchronous-ization of the law so as to realize the consistency of legislation with the hierarchy of governance legislation. Harmonization and

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