THE MORALITY OF THE PROSECUTOR (PANCASILA MORAL RELATIONS GUARANTEE LAW ENFORCEMENT IN POLITICAL DETERMINATION)

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ABSTRACT

The purpose of this study is to determine the form of Pancasila’s moral relationship as Indonesia’s legal ideology in defending the prosecutor’s office in the midst of political determination. In this work, a conceptual method is employed as a foundation for thinking to help answer problems that will subsequently be qualitatively investigated. The study’s findings suggest that Pancasila, as Indonesia’s legal ideology, can protect the prosecutor’s office through moral relationships, which are reflected in the prosecutor’s integrity. The consequence is that in order to achieve the objectives of justice in law enforcement, it is essential to maximize the implementation of the prosecutor’s office’s integration with a Pancasila worldview. Pancasila values can influence the prosecutor’s office’s integrity by allowing them to use their roles and powers to counter political determinism in the form of government interference.

Keywords: Moral, Pancasila, Prosecutor

Introduction

Background

Through the use of its power, the Prosecutor’s Office truly aims to uphold the rule of law in society. This is a consequence of the rule of law (rechtstaat) as a practical and successful method of achieving the supremacy of law (supremacy of law). On the other side, political determination in the form of government interference affects the prosecutor's career path structurally (which goes through the ASN career route process). State Civil Apparatus or ASN is a term for professional groups whose employees work in government agencies, both at the central and regional levels. For instance, the prosecutor's office's status as a branch of executive power creates a place for interference in the administration of law enforcement. The prosecutor's authority in law enforcement will structurally be impacted by this political decision.

It’s challenging to deal with this kind of political determination. As a result, circumstances where political elements and the prosecutor's office overlap have arisen in Indonesia due to the constitutional structure of that country. The political desire toward the interests of the bearers and other factors supporting the political level are inseparable from the government that culminates in the command, which is the outcome of political contestation. The prosecutor’s office is a dangerous target for this

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political decision because it is an executive element. It is feared that this circumstance will have an impact on the prosecutor's office's role and authority in maintaining the law.

Due to this flow, it is dangerous to use the prosecutor's office's power and role in upholding the law. This occurs because the political system generates a vortex of political currents that carries political will across all spheres. The leadership structure that binds the government vertically with the intended political decision generates a feudalistic pattern. In actuality, there are many policies in place today that diverge from the objectives of the nation. The government's policies, in instance, are only nominally economic in nature and are mostly implemented in an effort to adapt to the effects of economic globalization. However, political influence has crept into these policies, preventing them from being objective in responding to community needs and instead being more concerned with serving transient personal interests and certain groups. This marks the start of the presumption that the policy may point to a corrupt or state-harming act. Indonesia is a nation with a comparatively high index of corruption. According to data from International Corruption Watch (ICW), the state experienced damages from corruption of Rp 9.29 trillion in 2018.¹ The state has paid a heavy price for the indications of a corrupt society, including losses to public finances and mental degeneration in the form of complacency with all dishonest behavior, or, to put it another way, making corruption a tradition.

The KPK's statistical data reinforces the notion that Indonesia still has a very high level of corruption. Corruption happens in the executive, legislative, and judicial branches of government. State officials today seem to be acting corruptly more often. An official adopts a policy using the power at hand that does include elements of self-benefit.² This reality leads to the conclusion that the policy is vulnerable to being influenced by specific interests that are advantageous to specific people or groups, while on the other hand, these policies result in financial and moral losses for the state.

The Prosecutor's Office is a government institution that carries out state power in the field of prosecution.³ This is in line with the function of the prosecutor's office in protecting the interests of the state.

This condition is also supported by the substance of laws and regulations, especially in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the prosecutor's office of the Republic of Indonesia. The problem is that there are no concrete moral parameters through the code of ethics for the prosecutor's profession in the law. In fact, morals are the guide of the human mind (summum bonnum). Thus, its use is useful for guiding the moral standards of the prosecutor's profession in Indonesia.

The problem is that the regulations in the prosecutor's office do not provide an open space for prosecutors to operate the law, which in this case limits the space for carrying out their functions and authorities.⁴ In this function, the prosecutor's office is prone to intervention related to political determination in law enforcement affairs. This requires the formulation of a problem solving that is not easy. Pancasila moral reflection is needed as a role model to build the integrity of the prosecutor's office in guarding law enforcement.

**The Subject of the Problem**

a. How is the logical reflection of Pancasila as a means of moral development of the prosecutor's office?

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³ Article 2 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

b. How can the Prosecutor’s Office with Pancasila moral insight be able to oversee the law enforcement?

**Purpose and Benefits**

The study’s findings should provide light on how to implement Pancasila’s moral philosophy as the country’s legal doctrine and how to integrate the prosecutor’s office in protecting law enforcement in the midst of political upheaval. The establishment of the prosecutor’s office with Pancasila moral insight has given the law the ability to defend itself against political determinism, interests masquerading as policy corruption, and the building of social justice as the nation of Indonesia’s aim.

**Method of the Study**

This study employs a conceptual framework to investigate Pancasila’s moral ideals as the prosecutor’s moral relationship in law enforcement. This study is a doctrinal legal study. When the researcher does not deviate from the established legal rules, the conceptual approach is used. When utilizing a conceptual approach, researchers must investigate legal principles that can be found in the ideas of scholars or legal doctrines.

**Discussion**

**The Logical Reflection of Pancasila as a Means of Prosecution’s Moral Development**

Pancasila must be a first step towards resolving the country’s issues. Pancasila is used in this situation as a philosophy that aids in problem-solving. Pancasila as a viewpoint of problem-solving promotes Pancasila as the solution to issues of nation-building, order, and serves as the cornerstone for Indonesia’s diversity and unification. As a result, Pancasila serves as a framework for resolving difficulties at the federal and state levels. Placing Pancasila as the moral compass is how Pancasila is actualized in terms of enhancing the prosecutor’s office’s integrity.

In fact, the role and power of the prosecutor’s office are intimately tied to the use of wisdom, which can be expressed in moral principles. The author’s attempt to examine how morality and law interact leads to this paper’s conclusion that the prosecutor’s office’s use of its role and power is wise. Hart also muses on how morality affects the rule of law. On modern state’s laws represent thousands of points of acceptable morality as well as broader moral notions. This impact then permeates the law in practice. Many examples demonstrate how the law mirrors morality. This is a fact, which means that the legal system’s stability is dependent in part on its moral compliance, and its existence must be acknowledged. Then, it is required to evaluate how this result is related to the theory that distinguishes between law and morality. The language of the law is classified as law, whereas moral refers to the highest ideals of good or ill human action or behavior. Then, it is also necessary to criticize how this conclusion is related to the theory that separates law from morality. Law and morals are different, law is defined as the text of the law, while moral refers to the highest principles of good or bad human action or behavior. The pattern of the relationship between law and morals is largely determined from the view of the sources of law, including the adoption of morals into positive law.

Due to its susceptibility to political whim and government meddling, the prosecutor’s office’s exercise of its authority and functions must include a method of control. In light of this, it is vital to reconsider Pancasila’s role as Indonesia’s legal ideology. The following conceptualization will enable Pancasila’s function to be realized: Pancasila must first assert its status as a legal doctrine. Pancasila serves as the legal philosophy that protects the Indonesian legal system. A nation’s philosophy reflects its aspirations and its character. Because every part of a nation’s life must conform to its phi-

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5 Hendar Putranto, Pancasila Ideology Based on Multiculturalism, Jakarta: Mitra Wacana Media, 2016, Page. 56.
8 Ibid,
plosophy, it is impossible to simply adopt another country's philosophy as the philosophy of its own nation. Savigny develops a theory concerning the existence of a natural link between the character of the law and the character of the nation. The soul of the people or nation must contain the genuine law because it cannot be created (volkgeist). Finding principles and doctrines in live legal values by probing the very essence of people’s souls is the solution to controlling the law, not creating them artificially.

The legal objective paradigm is based on the doctrine that the law must reflect the basic values of the law, then legal certainty is the main feature that must be harmonized. Pancasila must enter and inspire all the rule of law in this country, therefore it is called a legal ideology (legal ideology). Cotterrell defines ideology as an idea that influences action or behavior. “Legal ideology can be thought of, then, not as legal doctrine itself but as forms of social consciousness-system of values and cognitive assumption-reflected in and expressed through legal doctrine.” Ketut Rinjin, stated that Pancasila as the basis of the Indonesian state has three meanings and three levels, namely: (i) as an abstract-universal state basis as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia; (ii) as a guideline for the administration of the state of a collective general nature as stated in the Body of the 1945 Constitution of the Republic of Indonesia; and, (iii) as guidelines for specific-concrete state administration policies such as those contained in laws, government regulations, presidential regulations, and so on.

Second, Pancasila must motivate the application of the prosecutor's function and authority because of the repercussions as a legal doctrine. This indicates that, in a factual and comprehensive sense, Pancasila is the main moral reference for the role and authority of the public prosecutor's office. Moral standards derived from Pancasila are mirrored in the practical regulations for carrying out the prosecutor's functions and authorities. The moral values of Pancasila are the basis for the function and authority of the prosecutor's office and are embodied in the principle of morality. Legal principles are not always contained in laws and regulations, because of their abstract nature. The idea of the principle of law as a fundamental rule of judgment in a legal system is found again in the works of many legal theorists. Paul Scholten for example, describes (providing a definition) the principle of law as:

“Individual laws and judgements can be considered as developing the essential principles included inside and behind the respective legal systems, which are contained within and behind the respective legal systems.”

Since Pancasila's moral principles are positioned as an abstract foundational underpinning that supports the legal system from within and behind, they always go hand in hand with the law itself. As a function of control over the execution of the duties and powers of the prosecutor's office, Pancasila's moral principles also apply. Its application as a standard of evaluation (waarderingsnormen). The adoption of Pancasila moral principles will result in a reflection on the prosecutor's office's morality, which is supposed to serve as a guide for the execution of its duties and legal authority. With Pancasila's moral insight, the prosecutor's office will reflect Pancasila's principles in how it exercises its powers.

The Prosecutor’s Office with Pancasila Moral Insights in Overseeing Law Enforcement

Presidential Instruction of the Republic of Indonesia Number 1 of 2016, dated January 9, 2016, regarding the Acceleration of the Implementation of National Strategy Projects, the President of the Republic of Indonesia instructs: (1) the Ministers of the Working

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Cabinet; (2) Attorney General of the Republic of Indonesia; (3) The National Police Chief of the Republic of Indonesia; (4) Cabinet Secretary; (5) Chief of Staff to the President; (6) Heads of Non-Ministerial Institutions; (7) Governors; (8) Regents/Mayors, to provide support for accelerating the implementation of National Strategic Projects in the following forms: a. Improving governance and improve the function of the Government’s Internal Supervisory Apparatus in the context of supervising the development of National Strategic Projects; b. Prioritizing the government administration process in examining and resolving reports of abuse of authority in the implementation of National Strategic Projects; c. The Attorney General of the Republic of Indonesia prioritizes the government administration process in accordance with the provisions of Law Number 30 of 2014 concerning Government Administration before conducting investigations on public reports concerning abuse of authority in the implementation of National Strategic Projects.

Instructions are addressed to law enforcement officers not to criminalize discretion. The government recorded that many officials were convicted of corruption cases, including 8 Ministers, 19 Governors, 2 Governors of Bank Indonesia, 5 Deputy Governors of Indonesia, 40 Members of the DPR RI, 150 DPRD Members, and around 200 Regents/Mayors. The President claims that the data has implications for officials’ fear in making decisions and/or taking actions due to the ambiguous definition of corruption as well as the widespread criminalization of government administration policies and procedures that are less clear and transparent. As a result, the costs to be borne by the government are very high, namely the slow development due to officials’ fear, and make choices. Only 20% of the state budget is spent on capital projects by the government, while 283 trillion in regional funds have been put in banks. The President believes it’s critical to use discretion to hasten the implementation of development to get around this.15

One can look at Presidential Instruction Number 1 of 2016 from two angles: (i) The purpose of the Presidential Instruction is to advance national strategic project implementation by safeguarding and prioritizing the state’s interests. In this instance, it calls for the government to exercise flexibility in carrying out its duties, including the use of discretion, in order to make an appeal to law enforcement officials to refrain from criminalizing discretion. (ii) The Presidential Instruction is a tangible example of political commitment to the law; in this case, political interests merge and take on the significance of the President’s cause, who believes it is crucial to exercise discretion to hasten the implementation of change during his administration. Beginning with the positivist perspective that law is the ruler’s command and its confrontation with historical schools that see law as more than just a rule of law but also as a reality in society, the relationship between politics and law can be seen to have existed for a very long time. According to Mahfud M.D., the law is actually a political product, and as a result, it is rife with political interests. In keeping with Satjipto Rahardjo’s assertion that the law is the outcome of a political process.16 Thus, the legal position always goes hand in hand with politics, because the relationship is mutually influencing.

Article 34A of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor’s Office of the Republic of Indonesia does explicitly include that in the interest of law enforcement, the Prosecutor and/or Public Prosecutor in carrying out their duties and authorities may act according to their judgment by taking into account statutory provisions and code of ethics. However, it has not been implicitly regulated regarding the parameters of the code of ethics as referred to in the law. Regardless of the statutory regulations under it as procedural technical rules, ideally the moral foundations are normative in a concrete way in the law.


The law is not self-sufficient; it cannot stand alone without any outside influences or variables, such as ethical, economic, political, social, or cultural aspects. Parsons considers the legal system to be a smaller social structure.\(^\text{17}\) Aside from law, there are additional subsystems with distinct logics and functions. Political, economic, and cultural subsystems are present. The different factors beyond the law are to maintain a society’s ideal patterns. Law is positioned as a medium that serves as a game rule. The purpose of these factors beyond the law is therefore to sustain, coordinate, and govern all types of deviation from the game’s rules. In Talcott Parsons Cybernetics, political factors are closely related to power and authority, so that they are transformed into a means of utilizing power and authority to achieve a goal.\(^\text{18}\) Interestingly, political factors are also influenced by economic factors as a means of utilization which refers to the material resources needed to sustain the life of the entire system. Cultural factors reflect the acceptance or elasticity of society and control over the rules of the game.

Culture of intervention and power culture in the Attorney General’s Office must be minimized by concretizing the code of ethics. Thus, the code of ethics becomes a moral parameter for the prosecutor’s profession. Ideally this concretization is carried out by reflecting on the values of Pancasila as staatsfundamentalnorm.

Interventions can clearly be carried out with the aim of the prosecutor’s agency. Article 2 paragraph (1) of Law no. 16 of 2004, explains the position of the prosecutor as a government agency. The mention of the prosecutor’s office as a government institution shows that the prosecutor’s office is part of the executive branch of power. The main consequence of this position is that the prosecutor’s office is not an independent institution. The position of the Attorney General as a State Official who is appointed and dismissed by the President emphasizes that the prosecutor’s office is not independent. Integrity with moral insight is needed in overcoming the limitations of the substance of the regulation.

Pancasila provides an outline of the boundaries that are utilized as references to keep law enforcement on course because it serves as the moral and substantive underpinning of the state. These boundaries represent the upper and lower bounds. The goal of the upper limit in this situation is to let people comprehend Pancasila’s role as the moral and political underpinning. By analogy adopting the roles and powers of the prosecutor’s office to prioritize moral obligation to God Almighty, the moral foundation in question is the manifestation of the One Godhead’s teachings. In essence, morality and law are related since Hart’s opinion illustrates how morality affects law (the influence of morality on Law). Every modern state’s laws embody thousands of socially accepted moral principles as well as more general moral concepts. This impact then actually permeates the law. There are numerous examples that demonstrate how morality is reflected in law. This is a fact, which means that the legal system’s stability is dependent in part on its moral compliance, and its existence must be acknowledged.\(^\text{19}\)

In accordance with this, the law must be morally guided, and its relationship to the implementation of the prosecutor’s function and authority in law enforcement must be established on the axis of morality as a guide. In other words, morality serve as a guideline for the law as it is executed by legal subjects. Moral is a human guide in all aspects of his life, providing the truth in proportion. According to Aristotle, the essence of a human being is rational morality, which regards truth (theoria, contemplation) as the virtue of life (summum bonum).\(^\text{20}\)

The prosecutor’s office must be able to uphold morally upright and refined human ideals, according to the following thought. A standard that the prosecutor must meet in the context of law enforcement is justice, which serves as the foundation of the civilized sense of humanity. As a result, the ensuing legal system must uphold a concept of justice that is truly directed at the populace. Justice itself has multiple connotations. The definition of justice provided by

\(^{17}\) Bernard L. Tanya, et. al., Op. Cit,

\(^{18}\) Ibid,


\(^{20}\) Ibid,
Gustav Radbruch is the most intriguing because it places justice in the same position as Grundnorm Kelsen's description, which both assume the presence of norms or values that transcend and are superior to the positive legal system. The distinction in this case is that Rechtsidee chose to define its contents in a restrictive way, emphasizing improving human life, which is a gauge of how just or unfair a legal system is.\(^{21}\)

Human worth and dignity are emphasized in the Precepts of Just and Civilized Humanity as well. God Almighty endowed mankind with a set of rights that ensure their status as humans and are enumerated in the Human Rights Declaration. In this instance, the concept of a legal state (rechtstaat) is accepted as a framework for regulation that protects human rights by ensuring the interests of justice for all. Everyone has the right to get justice. Thus, the developed state of law is not absolute rechtstaat but demokratische rechtstaat.\(^{22}\) As a means of recognizing human dignity within the context of a just and civilized humanity, the prosecutor's office is required to be able to open up space to enforce the rule of law while still preserving human rights.

The Prosecutor's Office must uphold the principles of integrity and unity in the performance of its duties. The public interest must still serve as the prosecutor's office's primary consideration in this paradigm. To have the power of behavior and legitimacy in the form of community recognition, law enforcement must put the needs of the people first and accept social norms. One part of law enforcement is the prosecutor. As members of the law enforcement community, prosecutors are required to conduct their work with honesty and professionalism.\(^{23}\)

**Conclusion**

a. The position of Pancasila as a legal ideology permits the moral values of Pancasila to be the foundation for the function and authority of the prosecutor's office and are embodied in the principle of morality, which is the logical reflection of Pancasila as a method of moral development for the prosecutor's office.

b. By carrying out the prosecutor's duties and exercising his or her legal authority in accordance with moral principles, the prosecutor's office can supervise law enforcement. Law enforcement that takes into account the principles of justice, unity, and integrity is the reflection.

**Suggestion**

a. To the Prosecutor's Office to conduct guidance on the moral values of Pancasila in the education of prospective prosecutors as the realization of the development of the integrity of the Prosecutor's Office with a Pancasila perspective.

b. To all members of the Prosecutor's Office to inspire the moral values of Pancasila as the building of the integrity of the Prosecutor's Office in dealing with interventions framed by political determination in law enforcement.

**References**

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\(^{21}\) Bernard L. Tanya, *et. al., Op. Cit.,
