LEGAL PLURALISM AS PANCASILA'S REFLECTION TO REALIZE SUBSTANTIVE JUSTICE IN LAW ENFORCEMENT AND LAW-MAKING

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Abstract

The legislation and law enforcement has a causal relationship, if the law does not reflect substantive justice, then law enforcement does not produce substantive justice. There are still many laws that do not reflect substantive justice and law enforcement does not produce substantive justice and does not reflect Pancasila, due to an inappropriate approach. Then what is the fixed approach if you want the law to reflect substantive justice and Pancasila, as well as what is the right approach so that law enforcement produces substantive justice. Based on the above, the problems raised are: whether the legal pluralism approach can realize substantive justice; and how is the legal pluralism approach as a reflection of Pancasila in realizing substantive justice for the formation of laws and law enforcement. The purpose of this study is to formulate that the legal pluralism approach can realize substantive justice and to construct the idea of a legal pluralism approach as a reflection of Pancasila in realizing substantive justice for the formation of laws and law enforcement. The results of this study are that based on the development and concept of the legal pluralism approach, it is a combination of 3 approaches (natural law, state positivism, socio-legal) which will lead to the achievement of substantive justice. To produce laws that reflect substantive justice and Pancasila and law enforcement that produces substantive justice, legislators and law enforcement must use the right approach, namely the legal pluralism approach.

Keywords: *Legal Pluralism; Pancasila; Substantive Justice.*

A. Introduction

The legal pluralism approach is a reflection of Pancasila. Before describing the legal pluralism approach, the author first describes Pancasila. It is common knowledge that Pancasila is the crystallization of values that live and develop in the pluralistic life of the Indonesian people. Pancasila is also the ideology and basis of the state as well as the nation's view of life or the philosophy of the Indonesian nation, Soekarno called it philosophische grondslag which means unity. Indeed, the debate over the formulation of Pancasila among the founding fathers was quite interesting and lengthy at that time. Because the founding fathers assumed that the basis of the state (Pancasila) that they compiled was the determinant of how the state after independence was run.

Muhammad Yamin in his speech on May 29, 1945, put forward the basics of the state, namely: Nationality Fairy; Fairy of Humanity; Fairy Godhead; Folk Fairy; and Affandi People's Welfare, 2020). Seopomo stated in his speech on May 31, 1945, namely: The principle of unity in the whole country; The basis of unity and kinship; The spirit of mutual cooperation, the spirit of kinship; Unified national state; and Affandi State Socialism, 2020).

Even Seokarno in his speech on June 1, 1945 proposed the basics of the state, namely: Indonesian nationality;

Internationalism or humanity; Consensus, or democracy; Social welfare; and Divinity Affandi culture, 2020). These five formulations were what Soekarno gave the name Pancasila

While the basic formulation of the state in the Jakarta Charter, namely: Belief, with the obligation to carry out Islamic law for its adherents; Just and civilized humanity; The unity of Indonesia; Democracy led by wisdom in representative deliberation; and Social justice for all Indonesian people.

From all the ideas and proposals of Pancasila above, it can be seen that the history of the founding fathers was also colored by philosophical and interesting debates and studies so that now the Indonesian people can enjoy them.

From classical to contemporary, philosophical studies on Pancasila are indeed very comprehensive and strategically studied. By examining philosophically about Pancasila as an ideology and the basis of the state, it is a critical effort in revealing awareness of the historical journey of the Indonesian nation, namely through essential exploration to explore the principles of existence (ontology), evidence of truth (epistemology), and imperative norms (axiology).) which leads to the goal of having Pancasila as the ideology and basis of the state (Widisuseno, 2014).

Pancasila which is a reflection of the life of the Indonesian nation, must be able to become a Paradigm (set of basic beliefs) as the essence, principles, values and norms in all aspects of state administration, specifically in the way of law. As stated above, the philosophical study of Pancasila (in the radix order) is very comprehensive to be studied, for several reasons, namely:

First, because Pancasila is a staatsfundamentalnorm "in his pure theory of law, Hans Kelsen calls it Staatsgrundnorm (Kelsen, 1978), when referring to the hierarchy of Indonesian laws and regulations, he means the 1945 Constitution of the Republic of Indonesia (staatsvervassung) and so on as quoted Maria Farida in her book Science of Legislation, Hans Nawiasky calls it Staatsfundamentalnorm (Indrati, 2007), because according to Hans Nawiasky the fundamental norm of the state (Pancasila) is the basic norm as well as the highest norm in the state". So even the science of law in its development cannot be separated from the development of general science, so there is not the slightest bit of legal product that is accepted dogmatically (in the analogy: a struggle of thought arises, then a theory emerges, then the theory dims or begins to fall so that a new theory emerges until the next).

Second, globalization and technological developments are growing rapidly, so that the consequences of Pancasila must be able to anticipate the demands of these developments.

Third, the legal situation in Indonesia which is plural has the consequence of placing Pancasila at the central position in legal development (Sunaryo, 2013), in the formation of laws or in law enforcement. It is for the third reason that the philosophical study of Pancasila in the field of legal development is very comprehensive for each period. In the field of law, which places Pancasila as the central position, both in the formation of laws and in law enforcement.

In terms of the formation of legislation, according to the author, it is a strategic step in implementing the values of Pancasila as a source for producing legislation products that lead to substantive justice. "Pancasila is the source of all sources of state law," said the explicit in Law Number 12 of 2011 concerning the Establishment of Legislation. The placement of Pancasila as the source of all sources of state law is in accordance with the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely Belief in One Supreme God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and social justice for all. people of Indonesia. Placing Pancasila as the basis, ideology and

philosophy of the state so that any material contained in laws and regulations must not conflict with the values contained in Pancasila.

In February 2020, Politica Research and Consulting (PRC) released survey results regarding the level of public satisfaction with the performance and services of the DPR is 50.5% per 2197 respondents. Still very far from satisfactory, apart from the percentage also the number of respondents. In 2019, the DPR in a plenary session passed several bills, which the government then asked to cancel due to various criticisms and demonstrations against several problematic bills. Last October 2020, the Government also proposed a Bill on Job Creation (12 November 2020 to be passed into Law Number 11 of 2020 concerning Job Creation), the product of this bill also drew a lot of criticism and demonstrations because one of them was considered to have reduced labor rights. . Also on February 2, 2021, the Government through Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector, this Presidential Regulation is an implementation of the Job Creation Law in the Investment Sector, also this Presidential Regulation has drawn a lot of criticism and protests, because it is considered to have ignored the values of religion and belief. morals, until the President through his authority revokes Attachment 3 to the presidential regulation.

From the examples of cases above, the writer argues that the formation of laws, whether they are proposed by the DPR or the government, still ignores the values that exist in Pancasila as a staatsfundamental norm, as the source of all sources for the formation of laws. The nature of the living law to seek substantive justice is very important to note (Suteki, & Taufani, 2018). The development of national law must refer to universal ethics, as contained in Pancasila, namely: (Sunaryo, 2013) It must be in line with the principle of God Almighty, by respecting the order of religious life and a sense of diversity; Respect human rights values; National unity must be based on the concept of civic nationalism, by appreciating pluralism; Must respect the index or core values of democracy as a democracy audit tool; and; Requires the placement of legal justice in the framework of social justice and on the principles/principles of global justice.

In the order of law enforcement, there are still many implementations that are still very, very far from achieving substantive justice. In Riau Province there is a tribe or custom called Sakai, on May 19, 2020 the District Court found Bongku Sakai (name of the convict) guilty and sentenced to 1 year in prison and a fine of 200 million, because the judge's consideration was proven to have done forest destruction, namely by logging trees in the forest area without having a permit issued by the Authorized Official, the following is the chronology: Bongku Sakai reported by PT. Abadi (one of the companies in Bengkalis, Riau), who at first Bongku Sakai went to land that he felt and as far as he knew that he had rights to the land (Hak Ulayat), so he cut down trees which he then planted the land or grow yams; Upon the reporter's report, Bongku Sakai was taken to the Peripheral Police, whereupon the Police immediately issued an Investigation Order, Arrest Order and Seizure Order; Then after going through a series of investigations and investigations, Bongku Sakai was indicted by the Public Prosecutor for violating Article 92 paragraph (1) Letters a, b and c of Law Number 18 of 2013. Also on 7 May 2020 the Bogor City Police made a determination as a suspect, namely Endang Wijaya was considered to be against the officers who reprimanded him during the Large-Scale Social Application (PSBB), here is the chronology: at first Endang Wijaya protested and was angry because his wife, who was sitting next to him in the front seat of the car, was asked to move to the back seat, the officer's request to move the seat was indeed in accordance with PSBB rules (1 meter distance); then in essence Endang Wijaya said "he will not obey the officers to move his

wife to the back seat, he said he sleeps with his wife every day, why is he asked to be separated in the car, further he said that he obeyed the rules, but rather obeyed God's rules".

On that basis, the police determined Endang Wijaya as a suspect, a positivistic approach with rules and logic will only result in injustice. Suteki in his Professor Inauguration Speech said "policy of non enforcement of law" (Suteki, 2010), if only the police understood substantive justice, then the police should have used "the policy of not enforcing the law" and not setting Endang Wijaya as a suspect through Restorative Justice.

In its development, the achievement of justice is carried out with 3 (three) approaches, namely: First, the philosophical approach produces ideal justice; Both positivist normative approaches result in formal justice; and The three socio-legal approaches produce material justice (Menski, 2006). So it was this approach that Werner Menski then tried to combine and offered a fourth approach, namely the legal pluralism approach (Menski, 2006). It is through the legal pluralism approach that substantive justice can be achieved.

The legal pluralism approach is the right approach to the conditions of pluralistic Indonesian society. In terms of the formation of laws, legislators must be able to make laws and regulations that are in accordance with aspects of values that live in society (living law) and morals/ethics/religion. Likewise with law enforcement. Pancasila has been very qualified as an ideology and state basis for the administration of the state (specifically the way of law) with the condition of a pluralistic society. Substantive justice is already contained in every precept of Pancasila.

The formation of laws and law enforcement has a causal relationship, the success of which is an indicator of whether in its implementation it has achieved substantive justice. Substantive justice can be achieved if using the right approach, both in terms of law formation and law enforcement. In this case, the author tries to conceptualize and propose that the legal pluralism approach as a reflection of Pancasila can realize substantive justice both in terms of law formation and law enforcement. With the condition of pluralistic Indonesian society, in order to make this paper more focused, the author formulates the problem formulation into 2 (two), namely: first, whether the legal pluralism approach can realize substantive justice; and second, how is the legal pluralism approach as a reflection of Pancasila in realizing substantive justice for the formation of laws and law enforcement.

Some previous writings have discussed legal pluralism, such as in Sunaryo's 2013 research on globalization and legal pluralism in the development of the Pancasila legal system. these challenges (Sunaryo, 2013). In Fais Yonas Bo'a's 2018 research on Pancasila as a source of law in the national legal system, the research departs from the problem that the existence of Pancasila is increasingly being eroded in the national legal system, one of the causes of which is the strengthening of legal pluralism which results in contradictions or legal disharmony. , so the solution is to make Pancasila a legal school so that there will be no more legal disharmony due to the implementation of legal pluralism (Bo'a, 2018). In Endri's 2020 research on Indonesian legal pluralism for state administrative judges, this research only describes the challenges and opportunities for resolving administrative disputes by state administrative judges as executor of judicial power who are authorized to examine, decide and resolve disputes in relation to the reality of legal pluralism in Indonesia. (Endri, 2020). In Sudjito and Tatit Hariyanti's 2018 research on the Pancasila paradigm in the study of legal pluralism in Indonesia, the research departs from the proposition that there is no common perception of legal pluralism in Indonesia, seen pros and cons are still found from the theoretical and practical levels, so that pluralism and national law need to be studied based on a value system that is in the

life of the Indonesian nation, Pancasila deserves to be a scientific paradigm for studying legal pluralism in Indonesia and the values of Pancasila are believed to be true, and used as guidelines in all activities of the life of the Indonesian nation (Sudjito, & Hariyanti, 2018). In Paul Schiff Berman's 2013 research on constitutional jurisprudence as a procedural principle to regulate world legal pluralism, the research examines the problem of the consequences of legal pluralism in America which causes conflicts from various existing norm systems through the perspective of national and international legal systems. the constitutional level because it refers to the constitutive character of the community and relationships with other communities, the results of this research construct principles that can help a more jurisgenerative constitutionalism that seeks to manage and integrate a homogeneous whole system (Berman, 2013). In Laura Grenfeel's 2006 research on legal and regulatory pluralism in Timor Leste, in contrast to the other five studies, Grenfell argues that the legal pluralism approach is important for a transitional country like Timor Leste, but must be regulated in such a way that it does not eliminate the essential rule of law from constitution (Grendell, 2006).

The update in this paper is to position legal pluralism as an approach and at the same time as a reflection of Pancasila to realize substantive justice in the formation of laws and law enforcement. Why the formation of laws and law enforcement? Because the formation of laws and law enforcement have a causal relationship, through the law will also relate to law enforcement. The legal pluralism approach used in the formation of laws will result in substantive justice resulting in substantive justice enforcement through legal pluralism approaches, the authors will initiate a concept that the legal pluralism approach as a reflection of Pancasila will produce substantive justice in law formation and enforcement.

B. Discussion

1. Legal Pluralism and Substantive Justice

Before formulating that the legal pluralism approach can realize substantive justice, the author first describes the development of legal pluralism in general. Modern law enforcement (modernism), namely in the 19th century brought a great influence on the way of law in Asia, especially Indonesia. Modern law emerged starting with the poor social order and provided space for the emergence of a new order until finally a socio-political order emerged which became the basis for the emergence of modern law. The development of modern law has spread to all corners of the world which is European-centric and characterized by liberals, why liberal because indeed the socio-political direction in Europe at that time had the principles of individualism and independence. With European society formed in an individualistic and liberal manner, the state can only protect and protect society, it cannot intervene too far and be left to all the players in the economic and social markets.

In its development, post-19th century legal science developed into postmodern law (postmodernism). Postmodern law is based on nihilism, skepticism, and relativism, it is believed that law cannot produce justice (Suteki, & Taufani, 2018). Modern law which in its development has drawn criticism from postmodern law schools. The criticisms are: First, that modernism has failed to realize improvements for the future; Second, that modernism in science cannot be avoided from the abuse of scientific power for the benefit of the authorities; Third, that there is a big gap between das sein and das sollen (between theory and fact); Fourth, that the excessive belief in modernism is believed to be able to answer all problems, even though this belief is wrong, which gives rise to social pathology; Fifth, that modernism science has not paid attention to the mystical and

metaphysical dimensions of humans because they only emphasize individual physical images.

That is what then influences the thinking of legal science, especially legal pluralism, to transform in a direction that is not in accordance with modernism. Legal pluralism in its development experienced ups and downs for its existence, many experts debated to use this legal pluralism approach. Acceptance of the term legal pluralism in the academic world in 1975, just after the publication of Barry Hooker's book on legal pluralism (Menski, 2006). Barry Hooker was the first scientist to discuss legal pluralism, but he is faced with caution, also closely associated with positivist jurisprudence. The basic distinction between strong and weak legal pluralism, which seemed so attractive at the time, then drew criticism as a meaningless effort, because strong or weak still depended on state law from official state law (positivists).

If traced further, Jean Bodin, a French philosopher, can be said to be the first pioneer of substantial legal pluralism, because in 1576, he had a great influence on legal thought which led to an emphasis on the cultural aspects of law. Why is it said substantially, because legal pluralism recognizes and accepts pluralism is a situation that cannot be equated with a positivistic approach.

The complex thoughts of Hans Kelsen and John Rawls (A Theory of Justice), Amartya Sen (The Idea of Justice) and Michael Sandel (Justice: What's The Right Thing to Do) are a reflection of the challenge to the complexity of justice problems in the 20th century. and in the 21st century (Kusumohamidjojo, 2019). As a result of developments after the 10th century and revolutions in the 20th century, modern society tends to become increasingly pluralist and heterogeneous. That is what is called the transformation from a monofacet legal system to a multifaceted legal system. The domination of a centralized law kills the character of the living law that lives and develops in society, such domination will only dim or even kill the characteristics of a pluralist law. Eugen Ehrlich, an adherent of legal pluralism, once introduced the concept of the living law, he argues that living law comes from the people or relevant laws according to the people's will (Nugroho, 2013). So that legal pluralism can be defined in a broad sense as a situation where a society adheres to more than one legal system, especially in sociology and legal anthropology and in legal theory (Shahar, 2008).

The development of legal pluralism can be divided into 4 (four) stages, namely: (Safitri, 2011).

a. Stage in 1960 – 1970's

The stage where the study of legal pluralism focuses on research on several legal systems that exist simultaneously in a social field and determines the boundaries between these legal systems. At that time, the serious interest of experts conducting studies of legal pluralism was only to map the state legal system and the legal system outside of state law (moral/ethic/religion).

b. Stages in the 1970s – 1990s

At this stage, the study of legal pluralism develops further by examining the adaptation, competition, carried out by community members to several legal systems. The studies carried out are no longer just mapping, but also try to see what happens in society if in one social field there are several legal systems that regulate it. Sally Falk Moore at this stage also developed a study of semi-autonomous social fields.

c. Stage in the early 1990s to the end

At this stage, the study of legal pluralism examines the choices of individual community members in determining the legal system and dispute resolution method used.

d. Stage in the early 2000s

At this stage, the study of legal pluralism has arrived at the study of the influence between the legal system and international policy on the context of national and local legal systems and legal policies. The study of legal pluralism here is also called legal pluralism with a global perspective. Through this study, many things related to the relationship between law and society that are changing due to the globalization process can be explained.

Legal pluralism is an ideological conflict with legal centralism. The ideology of legal centralism is an ideology that wants state law to be the only law for the whole society, and overrides the values and systems that live and develop in society (living law), such as religious law and customary law (Tamanaha, 1993). Legal centralism can ignore living law and legal norms that have long developed in society (Griffiths, 1986).

Initially, legal pluralism was interpreted as coexistence with many legal systems in certain social fields, studied and demonstrated the resistance between state law and pluralistic society. Tamanha argues that morality/reason is "culture is the symbolic aspect of social life, including the expression of what is true, good beautiful. It includes about the nature of reality (theoretical and practically), supernatural, metaphysical or empirical), conceptions of what ought to be (right or wrong, proper and technology, religion, magic or folkore). Values, ideology, morality and law have a symbolic aspect of this kind (Griffiths, 1986). So there is an attachment between the state (positive law), society (custom) and natural law (morality/religion). That's what Menski then in his research on comparative law in Asia and Africa, he argues that law enforcement in Asia and Africa is very different from modern law enforcement (Europe centric).

In the results of Menski's research that he wrote, he said that Europe is bound and comfortable with state law, in contrast to Asia and Africa, it is usually influenced by culture, morals, religion and ethics in its laws. So the approach to understanding the way of law in Asia and Africa should no longer be based on the 3 classic approaches, such as philosophical, normative and socio-legal. This is where Werner Menski proposes a fourth approach, namely the legal pluralism approach. Legal pluralism approach by combining (mixed) 3 (three) classical approaches by emphasizing the relationship between state law (positive law), social side (socio-legal) and natural law (moral, ethical, religion), thus what is expected by the seeker justice in the law will be achieved (substantive justice) (Menski, 2006).

Ruling by only using state law with rule and logic and its rule bound only results in a dead end in the search for substantive justice (Suteki, & Taufani, 2018), Non-enforcement of Law for search for substantive justice is perfect if through a legal pluralism approach (Suteki , 2010). Thus legal pluralism as an approach can produce substantive justice. In relation to Pancasila, that Pancasila expects that substantive justice is a priority both in terms of law formation and law enforcement, that is the reason that the legal pluralism approach is a reflection of Pancasila which can realize substantive justice.

In its development the legal pluralism approach is not an approach that can also be accepted subjectively, quite a lot of people criticize this approach. Tom De Boer said "legal pluralism that overtly abandons constitutionalism, in the sense of both (electoral) accountability and the aspect of hierarchy. In a sense, it even leaves behind 'legality' as we have come to know that concept" that sometimes this approach ignores the principle of hierarchy from the constitution and tends to ignore the principle of legality as well (Boer, 2012). Russell Sandberg also in his research says that paradoxically the uncontroversial legal pluralism approach is politically and academically shallow, the biggest failure of this approach is the inability to classify legal norms from the form of social control (Sandberg, 2016). In contrast to other studies,

Laura Grenfell said that the role of legal pluralism is indeed important for a transitional country like Timor Leste, but there must still be certain limits so that the supremacy of constitutional law and checks and balances can be maintained. : inconsistency in the openness of law enforcement; practices not in accordance with international human rights standards; and disadvantages for women (Grenfell, 2006).

2. Legal Substantive and Pancasila

The issue of justice is a complex study in its problems and debates. Aristotle is probably the first initiator who has tried to dissect the idea of justice in the second chapter of his book Ethikon Nikomacheion, he divides the moderation of justice into iustitia generalis and iustitia particularis. In contrast to Hans Kelsen, Kelsen relies on the rationality basis of the norm of justice in one of the oldest teachings about what is justice from the jurist Domitus Ulpanius "Iustitia est constans et perpetua voluntas ius suum quique tribuendi. Ius praecepta sunt haec: honeste vivere, alterum non laedere suum quique tribuere" (Kusumohamidjojo, 2016). John Rawls in his book A Theory of Justice also gives an opinion about justice, with the concept of justice as fairness. This means that Rawls distinguishes the concept of justice from the concept of fairness.

In contrast to Werner Menski, he divides justice by looking at how justice is achieved (using what approach), namely: First, a philosophical approach (natural law) produces ideal justice; Second, the positivist approach (state law) produces formal justice; and Third, the socio-legal approach (society socio-legal) produces material results. Then Menski proposed a fourth approach (way to achieve justice), namely the pluralism legal approach which leads to perfect justice (Menski, 2006), perfect justice which in this case the author calls substantive justice.

The legal pluralism approach, in his book Werner Menski makes an outline showing that the legal world includes a very large plurality of triangles in space and time (Menski, 2006). The law is so plural that it is impossible to absorb it in a theoretical whole, let itself be configured in a simple model (Menski, 2006). Legal pluralism is a perfect integration to understand and enforce the law in a pluralistic society (Menski, 2006).

Legal pluralism refers to the co-existence de jure or de facto of different normative legal orders within the same geographical and temporal space (Quane, 2013). Through a legal pluralism approach, Pancasila as a legal ideal can make the product of the formation of laws lead to substantive justice. Pancasila must be seen as a fundamental idea and norm in the formation of legislation. Mahfud MD said that in the development of a responsive national law, Pancasila must have a paradigm (set basic belief) in every legal reform (Rahayu, 2015).

In people's lives, there are always various norms that directly or indirectly influence a person to behave and act (Indrati, 2007). In Indonesia, the norms that are strongly felt are custom norms, religious norms, moral norms and legal norms (Indrati, 2007). Even Indonesia, with the condition of its pluralistic society and nation, has consequences for every formation of its laws and regulations, which must have the Pancasila law aspiration, starting from the content of norms (material), hierarchies, and the process of formation must reflect or reflect the values of the Pancasila precepts.

In the Indonesian legal norm system, Pancasila is the staatsfundamentalnorm, meaning the highest law, then followed successively from the Body of the 1945 Constitution of the Republic of Indonesia, the TAP MPR RI and the constitutional convention as a basic rule (Staatsgrundgesetz), Formell Gesetz as well as Verordnung & Autonome Satzung which starting from PP, Presidential Decree, Kepmen, and other implementing regulations (Indrati, 2007). Indonesia also adheres to the legal politics of pluralism, which means that it is based on enforcement more than the legal system (Dewi, 2014).

Then is the legal pluralism approach with Pancasila as the staatsfundamental norm, the state basis and the state's philosophical basis, is it appropriate to be used as a source and paradigm in terms of law formation? According to the author, with the condition of a pluralistic society and nation, Pancasila can be used as a set of basic beliefs (paradigms) or a fundamental source in the formation of laws to accommodate the conditions of a pluralist society. Pancasila which is a reflection of the condition of a pluralist (heterogeneous) Indonesian society can answer the need for the formation of laws to produce laws and regulations that lead to substantive justice through a legal pluralism approach. Pluralism requires that various pluralistic entities must be maintained by recognizing each other's rights, but also must simultaneously develop the normative spirit of pluralism which is underlined by a dialectical open self ethic (Avbelj, 2020).

Likewise, law enforcement in Indonesia cannot rely solely on state law. Legal pluralism usually consists of non-state forms of justice and social regulation as law, but often coexists with state law. In other words, a normative order does not need to be legalized or enforced by the state to have legal force (Dunn, 2018). In other words, that understanding the plurality of systems, practices and institutions that are parallel to state law, the legal pluralism approach understands that various legal systems can work the same and also contradict.

With the condition of a pluralist society, law enforcement should not be swayed by rule and logic, which only relies on state law as the only existing law (Suteki, 2010). In this regard, the legal pluralism approach is an approach that leads to substantive justice (Menski, 2006), morals, ethics and religion should be a law or source for law enforcement. Pancasila is a constitution, which means it is the result of the nation's agreement to be willing to pledge to unite in the Indonesian state, so Pancasila is a symbol and a reflection of that unity. So Pancasila should also be used as the basis and source of law as well as in law enforcement.

The legal pluralism approach is very different from the positivistic approach which will only lead to injustice for justice seekers. One example of a real form of legal pluralism approach to law enforcement is to reflect on Progressive Law thinking, which rejects the status a quo in law enforcement, which means rejecting domatic laws. Non-enforcement of law policies can be a solution in law enforcement in Indonesia (Suteki, 2010), through restorative justice it can also be an alternative for every law enforcement.

Werner Menski in his research in Asia and Africa as a comparison that the way of law in Asia and Africa is not the same as in Europe (Menski, 2006). The influence of positivistic modernism's way of law brings a great influence to the world, especially Asia and Africa. Countries in Asia, especially in Indonesia, are not liberal (individualist) like in Europe, or in Indonesia there are values that have existed and developed in society (customs) that are used to regulate certain customary behavior, and of course there are moral and religious values that are adhered to by the Indonesian people who are also to regulate the behavior of life. That is the reason why Indonesia is said to be a pluralist (heterogeneous) society, so state law (state law) should not be the only regulation used in law enforcement, but should be able to use laws or values that have developed and that already exist can also be used as a source of law.

In this regard, the police must have the courage to break out of state law if the a quo regulations cannot achieve substantive justice. The police should be able to prioritize the choice of substantive justice, which is in accordance with the conscience and sense of community justice (Setyanegara, 2013). For example, through restorative justice, this has actually been strictly regulated in the National Police Chief Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Retorative Justice. The a quo regulation provides conditions for settlement

through restorative justice with peace for both parties, either through fulfilling the rights of the victim, returning goods or compensating for losses. In relation to the example of the Bongku Sakai theft case which has been fully explained in the introduction, the Police should be able to prioritize substantive justice through restorative justice, rather than being fixated on regulations that require that Bongku Sakai must be prosecuted based on faults that can actually be resolved by restorative. So only in casuistic and very exceptional cases, namely there is a conflict between procedural justice and substantive justice, so that procedural justice can be ignored (Setyanegara, 2013). Thus the police as law enforcers reflect Pancasila in law enforcement with a legal pluralism approach as a reflection of Pancasila, resulting in law enforcement with substantive justice.

C. Conclusion

Approaches in law affect what justice is obtained by justice seekers. The philosophical approach (natural law) results in ideal justice; positivist approach (state law) the result is formal justice; and the socio-legal approach (society socio-legal) the results are material. So to obtain substantive justice, Werner Menski offers a fourth approach, the legal pluralism approach. Legal pluralism as an approach can produce substantive justice. In relation to Pancasila, that Pancasila expects that substantive justice is a priority both in terms of law formation and law enforcement, that is the reason that the legal pluralism approach is a reflection of Pancasila which can realize substantive justice.

Pancasila is the basis and philosophy in the administration of the state, especially the way of law. The pluralism (heterogeneous) of Indonesian society has the consequence that state law is not the only law in Indonesia, but there are values and norms that have developed and have existed in society, such as religion, customs and morals. Then Pancasila must be the fundamental norm (statesfundamentalnorm) and the source of all sources for legislators in the formation of legislation. And also Pancasila must be a source of fundamental norms for law enforcement in law enforcement. The value of each of the precepts of Pancasila if an inappropriate approach is used, it is impossible to obtain substantive justice. Through a legal pluralism approach, Pancasila embodies substantive justice both in the context of the formation of laws and law enforcement in Indonesia.

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