

Legal Basis for the Establishment of the Interpretation of Pancasila

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Abstract

The Revocation on People's Consultative Assembly Body decree Number II/MPR/1978 concerning Guidelines regarding Reflection and Practicing of Pancasila (EkaPrasetiaPancaKarsa) by MPR decree Number XVIII/MPR/1998 causes fundamental problems related with the understanding and implementation towards values system which has embedded on Pancasila. Regarding on the matters, it should be considered to reform TAP MPR concerning Interpretation on Pancasila. The problems which has appeared there are any legal basis from MPR's authority to create different interpretation according to Republic of Indonesia's constitutional and statedevelopment in which the formulation of the law are still the same which is MPR's decree, despite those kind of MPR's decree on the short period could not be categorizes yet as the regulation but only as the convention.

1. Background

Constitutional reformation which had been happens in Indonesia in 1998 merely brought significant changes. One of the fundamental changes is the revocation of MPR's Decree Number II/MPR/1978 concerning Guidelines regarding Reflection and implementation of Pancasila (EkaPrasetiaPancaKarsa) by MPR decree Number XVIII/MPR/1998. It could said a fundamental changes because since 1978 the substance from the MPR's decree are referenced as guideline to state organ/body, citizen, political party, mass organizations etc to behalf according to the values system of the Pancasila. The MPR's decree are not only related with the revocation of MPR's Decree Number II/MPR/1978 but also has close relationship with the emphasizing of Pancasila as State Fundamental Norm.

MPR's Decree Number II could be official interpretation for guiding the people's behavior accordance with values systems of The Pancasila, even more the article 4 from the Decree stated "The guideline regarding Reflection and Implementation of Pancasilaas guide and living banister on the daily basis for citizenship life, public servants, and state organization, implemented not only in central of government but also in level of region government and the effectiveness could be affected comprehensively.²²⁷ The ultimate goals definitely to assure every single citizen in Indonesia to be able to reflected and transform the values

²²⁷See further the Manuscript of theMPR Decree Number II/MPR/1978 About Guidelines, Understanding and Practicing the Pancasila(Ekaprasetia Pancakarsa), page.4.

system of The Pancasila in order to achieve the most state ultimate goals which at the end could be realizations.

On its progress, it possible that the substance material from the Decree are assumed not appropriate with peoples advance conditions with the result on MPR's Decree which being interpretation from Pancasila should re-interpreted for basis of the implementation. On such circumstances certainly are not suitable with the reflection and implementation of Pancasila. Moreover, it wide open that MPR's Decree possibly used as a tools from the powerful authority in order to prolong their authority power, for instance, with screening reason for the people or political party and/or mass organizations which actually regards on the subjective reason could reject the persons for certain position.

This weakness should be overcome by carrying out a Political Review²²⁸ conducted by the MPR institution itself to correct which MPR tapes were deemed incompatible with the development of the community and in 1998 the MPR did this, one of which was by issuing MPR TAP Number XVIII / MPR / 1998 concerning Revocation of TAP MPR NUMBER II / MPR / 1978 concerning Guidelines for Applying and Practicing the Pancasila. With the revocation of the TAP MPR this meant an interpretation of the Pancasila to make it easier to carry out appreciation and practice to be non-existent. This situation may on the one hand make the development of the interpretation of Pancasila are quite intense because everyone can interpret the Pancasila in accordance with something that is the foundation of their respective thinking. On the other hand this development will make it difficult for those who are learning to live up the Pancasila because various opinions arise according to their perceptions of the Pancasila value system. This situation has an adverse effect on the development of understanding, appreciation and practice of the Pancasila, even more so that this nation has experienced moral degradation which is one reason because this nation has not succeeded in translating the value system in line with Pancasila for this mass while the old interpretation has been revoked.

The problems which appeared from the background is there are still needs re-interpretation regarding what kind of values that should understands, reflects, and implemented from values system of the Pancasila, based on the law there are any legal basis to create interpretation of pancasila and what exactly the form of the law which has to use? This paper will limit the scope only to describe related with legal basis and legal form from interpretation of Pancasila.

2. Legal Basis Formation of interpretation of Pancasila and its legal form

²²⁸Mauro Cappelletti. *Judicial Review in The Contemporary World*, The Bobbs – Merrill Company, INC., Newyork, 1971, page.1.

The title of this section is the basic interpretation of the Pancasila law and its legal form, from this title it is implied that the author argues that the interpretation of Pancasila is needed. Such a conclusion is certainly not wrong, indeed the author believes that until now the interpretation of Pancasila as the basis of the state to be used as a guideline is still very necessary. It needs to be understood that the values system in Pancasila is still abstract in nature so as to facilitate understanding it requires concretization in the form of interpretation. Of course, their impermeability can be reevaluated whether this interpretation is needed or not. This evaluation was carried out after the understanding, appreciation, and practice of Pancasila by all levels of society and state administrators so that the Pancasila values system had indeed been implemented.

The author assumes the right institution to make this interpretation is the MPR. The basis stated that the institution that was right for the MPR was 1998 when the MPR Decree Number II / MPR / 1978 revoked the positive law governing the forms of legislation still using Tap. MPRS No. XX/MPRS/1966 concerning the DPR-GR Memorandum. One form of legislation is the TAP MPR consequently at that time the MPR could issue a legal product in the form of the MPR TAP. The content of the MPR Tap according to the author further elaborates on the value system that exists in Pancasila. The legal basis for declaring the authority of the MPR to regulate the material of this content is in Article 1 paragraph (2) of the 1945 Constitution which states "Sovereignty is in the hands of the people and carried out entirely by the People's Consultative Assembly". With the provisions of this article the MPR certainly has the authority to interpret the Pancasila to be guided by other state institutions and also by society. Especially if the formation of the MPR Tap is connected with the function of legislation that refers to the legal function that SjachranBasah presented, which states that there are five legal functions so that he mentions the five legal functions.²²⁹ The five legal functions are the first directive, meaning that the law as a guide in building to form a society that is to be achieved in accordance with the objectives of state life The second is integrative, as the builder of national unity. Thirdly Stabilitative as a keeper and maintain harmony, harmony and balance in the life of the state and society. The fourth is perfective, as a complement to both the attitude of the state administration and the attitude of citizens when there is conflict in the life of the state and society. And the fifth corrective as a correction for the attitude of the actions of both the state administration and citizens if there are conflicts of rights and obligations to obtain justice. Of course the interpretation of Pancasila in the form of the MPR Tap is in line with the five functions of the law.

From 1999 to 2002 there was a formal change to the 1945 Constitution. This alteration have changed the patterns and institutional format and also the mechanism of relations between

²²⁹Sjachran Basah, *Perlindungan Hukum Terhadap Sikap Tindak Administrasi negara*, Alumni, Bandung, 1992, page. 13-14. See Further Sjachran Basah, *Tiga Tulisan Tentang Hukum*, Alumni, Bandung, 1990, page. 23-24.

state institutions. The provisions of Article 1 paragraph (2) of the 1945 Constitution as mentioned above through the third change in 2001 changed to "Sovereignty is in the hands of the people and carried out according to the Constitution". With the change in this provision, the people's sovereignty is carried out by all state institutions in accordance with the rules in the Constitution, for example in the form of legislative legislation the People's sovereignty is carried out according to the Constitution to make laws, the MPR changes and establishes the Constitution. Related to the laws and regulations at that time applies the TAP MPR (MPR Decree) Number III/MPR/2000 concerning the Source of Law and Order of Legislation. In this MPR Decree, one form of legislation is the TAP MPR so that the MPR certainly has the authority to make the TAP MPR on this.

In 2003 the MPR Decree Number I/MPR/2003 issued concerning the Review of the Material and Legal Status of the MPRS Decree and MPRS Decree of the Republic of Indonesia from 1960 to 2002. With the stipulation of the MPR Decree, 139 MPRS Decrees and 139 MPR Decrees were grouped into 6 Article (category) in accordance with the material and legal status. The substance of the MPR Decree is:

1. Category I: TAP MPRS/TAP MPR revoked and declared invalid (8 Provisions)
2. Category II: TAP MPRS/TAP MPR which is declared to remain valid with the provisions (3 Provisions)
3. Category III: TAP MPRS/TAP MPR which is declared to remain valid until the establishment of the 2004 Election Results Government (8 Provisions)
4. Category IV: TAP MPRS/TAP MPR which is declared to remain valid until the establishment of the Act (11 Provisions)
5. Category V: TAP MPRS/TAP MPR which is declared still valid until the enactment of the New Rules of Procedure by the MPR Results of the 2004 Elections (5 Provisions)
6. Category VI: TAP MPRS/TAP MPR which is stated as not necessary to carry out further legal action, either because it is final (einmalig), has been revoked, or has already been completed (104 Provisions)

MPR Decree Number III/MPR/2000 which entered in category IV means that it still remains valid until the issuance of legislation in the form of Law. In 2004, Law Number 10 of 2004 which became the issue of this Law came out, which contradicted the MPR Decree Number I of 2003. Where was the conflict? In the MPR Decree, it is stated that there is a MPR Decree that is still valid but Law Number 10 of 2004 concerning the form of legislation does not include the MPR Decree as a statutory regulation, so what does the MPR Decree enter to? What becomes an unwritten law or convention born of an agreement. When the MPR Tap was categorized as a convention, the MPR was able to make the MPR Decree related to the interpretation of the Pancasila and categorized into constitutional conventions born of agreement.

In 2011 Law Number 12 of 2011 came out which replaced Law Number 10 of 2004, in this Law, the MPR Decree became one of the forms of legislation, so that since 2011 the MPR Decree according to the MPR Decree Number I/MPR/2003 still valid is considered as a re-regulation. The problem is whether with the enactment of this Law the MPR can make provisions regarding interpretations or guidelines or concretization of the Pancasila values system? Of course the answer can be, the reason is that the MPR has the authority to form legislation called the Constitution and TAP MPR, even this is recognized by Law Number 12 of 2011. If anyone asks all forms of legislation stipulated in this Act the contents of the material are also regulated, why is the content of the Constitution and TAP MPR not regulated? Does this not mean that the TAP MPR cannot be made in addition to the existing MPR TAP. Related to this, in the general explanation of this Law, it is stated that the Law on the Establishment of Legislation Regulations is the implementation of Article 22A of the 1945 Constitution of the Republic of Indonesia which states that "Further provisions regarding the procedure for establishing laws are further regulated by law (legislation). "However, the material scope of the content of this Act was extended not only to the Law but also included other Legislation, in addition to the 1945 Constitution of the Republic of Indonesia and the Decree of the People's Consultative Assembly. From this statement in general explanation, it can be concluded that indeed from the outset this law will not discuss what constitutes the contents of the Constitution and TAP MPR, not intended to state that the existing Constitution cannot be changed, or may not make the MPR TAP again. And this becomes rational because the material of the Constitution and TAP of the MPR must not be regulated by law. This means that the MPR can create a new MPR TAP. But Law No. 12 even this there is inconsistency, namely in the Explanation of Article 7 paragraph (1) letter b stating "" The meaning of "Decree of the People's Consultative Assembly" is the Provision of the Provisional People's Consultative Assembly and the Provisions of the People's Consultative Assembly which are still valid as referred to in Article 2 and Article 4 of the Decree Republic of Indonesia People's Consultative Assembly Number: I/MPR/2003 concerning Review of Legal Material and Status of Provisions of Provisional People's Consultative Assembly and Decree of the People's Consultative Assembly of 1960 until 2002, August 7, 2003. Explanation of Article 7 seems to limit provisions The MPR, that which is recognized as legislation is only meant by this explanation.

3. Closing

The MPR's decree that interpreted or concrete the value system that existed in the Pancasila until now is still needed until this value system is applied in an integrated manner in the entire life order of the Indonesian people. Moral degradation that occurs at this time is one reason is the lack of understanding of the Pancasila value system which can be done as a reference for behavior patterns.

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