



## The urgency of renewal economic law based on *Pancasila* values

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### Abstract

The nation of Indonesia placing the *Pancasila* as the basis of the state has the juridical consequence that is every statutory regulation in Indonesia must be made and applied following the value of *Pancasila*. *Pancasila* is practised in every aspect of the Indonesian people, including economic activities. Economic Law as a set of norms regulating economic activities must be built in line with *Pancasila*, especially in globalisation and international trade liberalisation. This study aims to analyse the urgency to reform the Economic Law in Indonesia based on *Pancasila*. This research is normative juridical research with a conceptual approach. The results show that it is necessary to renew Indonesian Economic Law following international norms by keeping up with the times but still upholding the values of *Pancasila* as the basis of the state.

**Keywords:** *Pancasila*, economic law, reformation

### Introduction

The struggle of the Indonesian people in the fight for independence was so long and complex that it reached the historical moment of reading the Proclamation of Independence on August 17, 1945. Since then, Indonesia has been built concerning *Pancasila*, as stated in the fourth Preamble to the 1945 Constitution paragraph. In essence, there are two primary meanings of *Pancasila*, namely *Pancasila* as the basis of the state and *Pancasila* as the nation's view of life or ideology<sup>[1]</sup>.

*Pancasila* as an ideology is uniquely formulated for the Indonesian people. Other countries globally have their respective state ideologies such as liberalism, fascism, Marxism, and capitalism. Adopting all of these ideologies raw for the Indonesian people is impossible because of Indonesia's nature, conditions, situation, and history, different from other countries. The values of *Pancasila* have been contained in Indonesian customs and culture. The Indonesian nation life has been integrated with the values of *Pancasila* long before independence and before *Pancasila* was officially born in 1945<sup>[2]</sup>.

On the other hand, *Pancasila* as the basis of the state means that *Pancasila* is used as the basis for making regulatory norms governing the administration of the state. In this sense, *Pancasila* is often referred to as the Basic Philosophy of the State, *Philosophische Grondslag*, State Ideology, or *Staatsidee* [3]. The understanding of *Pancasila* as the basis of the state can also be seen from several characteristics based on its primary function. First, the juridical-state understanding of *Pancasila* sees *Pancasila* as the source of all sources of law or the basis of the rule of law. It is as stated in MPRS Decree No. XX/MPRS/1966 jo. MPR Decree No. V/MPR/1973 and MPR Decree No. IX/MPR/1978. Second, the sociological understanding of *Pancasila*, which sees *Pancasila* as a regulator of social life. Third, the philosophical knowledge of *Pancasila*, which sees *Pancasila* as a philosophical way of thinking of humans in seeking the truth<sup>[4]</sup>.

Based on an understandings series regarding *Pancasila* above, it can be seen that *Pancasila* as the state basis can be

used by all Indonesians and is applied in the intricacies of the nation and state life. As the basis of the state, *Pancasila* has a juridical consequence that all laws and regulations issued and enforced in Indonesia must be in harmony and harmony with *Pancasila*<sup>[5]</sup>. The various aspects of human life require the administration of the state by the government to cover the whole to ensure the creation of order and welfare for the people equally. In this case, the law in the form of statutory regulations issued by the government's legislative body acts as a behavioural guide for the community and an instrument for regulating, supervising, and controlling. The law governing the administration of the state may cover various fields, including those concerning state administration, agrarian, and economic matters.

Community economic activity is massive, occurring in all corners of the country and non-stop every day for 24 hours. Not to mention seeing the economic traffic that occurs internationally between Indonesia and abroad, where the economic network is getting broader and more complex. Regulations regarding economic traffic are contained in various laws and regulations, especially the Civil Code (*KUHPerdara*) and the Commercial Code (*KUHD*). Both are regulations that have been in effect for a long time. The community's economic conditions and activities look very different from the conditions observed today. Not infrequently, the law is left behind from values that have changed first, reacting after the need for change arises<sup>[6]</sup>.

There is no one universally accepted legal definition yet. Each legal expert adheres to a different school, thus providing a legal understanding of each from a different perspective. However, from the many available legal definitions, several elements can be drawn about what law is. First, the law is a rule or guideline that regulates human attitudes or behaviour in society. Second, the law as regulation has a binding and coercive nature. Third, the regulation in question is made or enforced by an official body. Fourth, in the event of a violation of the applicable law, some sanctions are strictly enforced. Fifth, there are no specific provisions regarding the form of law; namely, the law can be in the form of written or unwritten, as is

customary in social interaction. Sixth, the law aims to provide safety, order and happiness in people's lives <sup>[7]</sup>.

In contrast to law, economics is concerned with the actions or activities of society to meet its needs <sup>[8]</sup>. Law and economics in the perspective of development cannot be seen separately. Legal development and economic development are interrelated and influence each other. Both must run parallel and simultaneously because if one is left behind, the other cannot develop. It is often proven that economic efficiency is supported by the legal system, although there are often complaints that the applicable legal provisions are an obstacle to economic development <sup>[9]</sup>. In responding to this, we can see that economic analysis will be a valuable reference to carry out legal reforms <sup>[10]</sup>.

In economics, money is used as a measuring tool that provides the ability to perform accurate analysis. Money is one of the most critical determinants of human attitudes in modern society, so an analysis using money as a reference can provide a clear explanation. Using economic methods to analyse law can explain how the law affects the distribution and allocation of wealth in society, and vice versa also explains the influence of the economic system on law <sup>[11]</sup>.

As with the law in general, the Economic Law understanding has also become a debate that has given several schools. Three streams can be found regarding the definition and material of Economic Law, namely <sup>[12]</sup>: a) The view of Economic Law as an independent branch of law consisting of regulations regarding the relationship between the state and economic factors such as production, distribution, and consumption; b) The view of Economic Law as the law that regulates economic planning and development, including regulations related to private law, commercial law, public law, tax law, criminal law, and relevant economic management; and c) The view of Economic Law as not a new and independent branch of law, but a legal method as an approach to economic activity. In this view, economic law consists of legal regulations originating from various factors that apply to the economic activities of the state, companies, and individuals.

In Indonesia itself, there is an Economic Law understanding as "a part of the overall norms made by the government or authorities as a personification of the community that regulates the lives of people's economic interests that are facing each other". This understanding approaches the third view related to Economic Law above that Economic Law is not a branch of law but an interdisciplinary and multidimensional study <sup>[13]</sup>. Apart from the various understandings above, the Economic Law applied in Indonesia must follow *Pancasila* as the state's basis. Law has no small influence on economic development, whether it is a good or bad influence. As mentioned earlier, economics is concerned with human efforts to fulfil their needs and achieve prosperity. The fulfilment of needs and prosperity must be accepted by all levels of society, not only certain groups. The applicable economic law should make this happen, as long as it is made and implemented following the mandate of *Pancasila* and the 1945 Constitution.

The discussion of Economic Law cannot be separated from the global community's economic network and international trade. Indonesia is a member of various international organisations and follows international trade agreements, including the World Trade Organization (WTO) and ASEAN. The main objective of these organisations is essential to remove barriers to international trade. The

provisions of international agreements in the trade sector approved by Indonesia certainly significantly impact the Indonesian economy and the community's economic activities. In this era of globalisation, the urgency of reforming Economic Law is increasingly prominent.

Based on the explanation above, it is necessary to have a study on the importance of the Economic Law reconstruction in Indonesia, with a focus on the Economic Law formation based on *Pancasila*, so that the problem formulation in this paper is "How is the reconstruction of Economic Law in Indonesia based on *Pancasila*?"

## Research Method

This research is normative juridical research, which is legal research conducted based on norms. This research was conducted using a conceptual approach, namely analysing the problem based on the legal concepts. The research data used is library data obtained by digging into legislation and legal books to find the opinions of legal experts. The research materials used include primary legal materials (in the form of statutory regulations, official minutes or court decisions, and official state documents), secondary legal materials (in the form of legal books and journals containing doctrines and opinions of previous legal scholars), and tertiary legal material (in the form of a legal dictionary). In addition to legal materials, there are also several non-legal materials, such as books and journals from other disciplines, as support.

## Result and Discussion

### A. *Pancasila* as the state foundation

#### 1. History of *Pancasila* implementation

At the beginning of independence, the Indonesian people had not had time to think in detail and technically how *Pancasila* could be implemented in the life of the nation and state. Maintaining the existence and unity of the nation is an effort that the nations must carry out until now. However, in the early days of independence, the Dutch's desire to regain control of Indonesia through violence and divisions divided the Indonesian nation. There is a gap between the ideologies adopted by each community group. Not to mention the existence of the cold war tug-of-war between the superpowers to influence newly independent countries like Indonesia at that time <sup>[14]</sup>. Seeing the situation that resulted in the nation's division, President Soekarno began to rethink *Pancasila* and implement it in various aspects of life, whether political, economic, or socio-cultural. Finally, President Soekarno reached a concept of implementing *Pancasila*, which he conveyed on February 21, 1957, at the State Palace and in front of party leaders and community leaders. President Soekarno again delivered a speech called *Manipol-USDEK* on the anniversary of Indonesia's independence, August 17, 1959. *Manipol-USDEK* is a political manifesto in which *Pancasila* elaborates on political, economic, and socio-cultural life. This form of implementation of *Pancasila* received a positive response from the People's Representative Council (MPR). Even during the reform era, various MPR Decrees were issued containing multiple provisions regarding the implementation of *Pancasila*.

#### 2. The importance of implementing *Pancasila* as the State's basis

It is necessary to explore the principles contained in

*Pancasila* to strengthen awareness of the importance of the need for *Pancasila* as a unifying nation. The leading position of *Pancasila* was as the basis of the state, namely that *Pancasila* was formed to accommodate and absorb various views that developed democratically from members of *BPUPKI* and *PPKI* as representatives of the Indonesian nation at that time. If the state basis of *Pancasila* is connected with the ideals and goals of a country, then a state ideology or national ideology is formed, namely *Pancasila* [15]. In this context, national ideology can be interpreted as a system of national life that includes political, economic, social, cultural, and defence and security aspects [16].

Placing *Pancasila* as the basis of the state is meaningless without proper implementation of the appointment. *Pancasila* must be implemented consistently in the life of the nation and state [17]. *Pancasila*, which is the source of all sources of law in our country, views of life, awareness, legal ideals, and moral ideals, including an atmosphere of obligation and the character of the Indonesian nation. Thus, the juridical consequence is that starting from the formation of legal provisions to their implementation and enforcement, they must be operational from the values of *Pancasila*. Law enforcement, taking into account the values contained in the formulation of *Pancasila*, will realise these values during people's lives so that such law enforcement will radiate the importance of the One Godhead, Just and Civilised Humanity, Indonesian Unity, and Democracy. Led by the Wisdom of Wisdom in Representative Deliberations and Social Justice for all Indonesian People [18].

Including *Pancasila* in the Preamble to the 1945 Constitution is to regulate and administer the Indonesian state governance. The importance of implementing *Pancasila* as the basis of the state can be explained [19]: a) *Pancasila* is the spiritual principle of Indonesian legal order contained in the Preamble to the 1945 Constitution, so it is necessary to implement the values contained in *Pancasila* to serve as the basis of the Indonesian state; b) Following what is contained therein, *Pancasila* as the state philosophy (*philosofische gronslag*) has the aim of realising the ideals of the law that exist and are contained in the legal basis and constitution of the State of Indonesia; c) Upholding the noble moral ideals of the people is one of the reasons for the importance of implementing *Pancasila* as the basis of the state, and d) A source of enthusiasm for the 1945 Constitution in the implementation and administration of the government.

### 3. Challenges of *Pancasila* implementation

Implementation of *Pancasila* must come and arise from the community. However, several aspects become challenges in implementing *Pancasila* as the basis of the Indonesian state, namely [20]:

**Making Laws and Regulations:** In making laws and regulations, it is essential to note that these regulations have the value of justice (philosophical), are made by the authorities (juridical), and can be accepted and meet the needs of the community (sociological). If the regulation is not made based on three basic things, namely philosophical, juridical, and sociological, then there may be obstacles in its implementation. So this will be a challenge to form legislation based on *Pancasila*'s values to become a rule that provides justice, benefit, and certainty for the entire Indonesian nation.

**Law Enforcers:** In carrying out their duties, obligations, and

authorities, law enforcers must, of course, be based on *Pancasila*. Law enforcers do not only colour law enforcement but also as the last agency in the field to determine the success or failure of a law being enforced based on *Pancasila*. Therefore, it becomes a challenge as well as an introductory note in terms of recruiting law enforcers so that in the future, they can provide legal benefits following the values contained in *Pancasila*.

**Community Awareness:** A large number of people in Indonesia results in many variations, ranging from ways (usage), traditions, customs, habits, behaviour, understanding or understanding, language, belief and religion, profession, and even many more variations that can be found among Indonesian people. With the human group consisting of many differences, the willingness of each person to implement the meaning of *Pancasila* is also different. So it is also a challenge for each individual to carry out every action in everyday life based on the values contained in *Pancasila*.

## B. Application of economic law in Indonesia

### 1. Indonesian economic system

The combined factors of production such as natural resources, labour, capital and skills determine the rate of economic development. The economic system is how society regulates the aspects of production in an institutional structure for economic growth [21]. Each country has an applied economic system following its ideals [22]. There are three economic problems that an economic system must solve. First, an economic system must explain what a country must produce and how much of it must be produced both goods and services. In this case, the economic system must answer what goods and services should be provided and how much to provide benefits for improving people's welfare. Second, an economic system must solve the problem of how the goods and services that must be provided will be produced. A production process takes time and costs. The hope is that the prevailing economic system can provide goods and services efficiently through specific methods and technologies in the production process. Third, the goods and services that have been produced are determined to be delivered to any party [23]. It depends on the circumstances and needs of the community.

In general, three economic systems can answer the three main problems above, namely [24]: a) A free-market economic system, namely an economic system in which the decision to use resources is determined by individuals or producers, based on what consumers want and what consumers want and what the manufacturer wants to provide; b) Guided economic system (command), namely an economic system in which there is a central authority or highest agency that regulates the production process so that prices reflect what the central authority views need to be dammed or that production and consumption need to be encouraged; and c) a Mixed economic system, namely an economic system that has elements of the two economic systems above, both from a free-market economic system and a command economy system and is usually found in developed and developing countries.

The economic system adopted by a country affects the limits of Economic Law [25]. It is often found that there are countries with economic systems which are a mixture of various elements of the system (mixed economy) or are a mixture of two extreme poles, capitalism and socialism [26].

The economic system of a country is influenced by various factors such as historical factors (pre-capitalist, colonial or industrial), belief factors (religion or ideology) and economic geography factors (continental or island regions) [27]. In the development of looking for an economic system that is most suitable for it, a country can take turns adopting a different economic system. Changes in economic systems such as pendulums also occur in Indonesia, moving from a market economy system to a guided economic system and back again until a balance point is needed in the *Pancasila* economic system [28].

The characteristics of the *Pancasila* economic system have the characteristics of a market economic system with planning elements. The Indonesian economic system cannot swing to the extreme in only one economic system. Still, it must harmonise and balance both the command economy and the liberal market economy [29]. *Pancasila* Economy has the following characteristics: a) The wheels of the economy are driven by various kinds of stimuli such as economic, social, and moral stimuli; b) The strong will of the whole community towards social equality (egalitarianism) following the principles of humanity; c) The priority of economic policy is the creation of a responsible national economy, which means that nationalism animates every economic policy; d) Cooperatives are the central pillar of the economy and are the most concrete form of joint efforts to build the economy, and e) There is a clear and firm balance between planning carried out at the national level and the decentralisation program in the implementation of economic activities to ensure social justice.

## 2. Economic law concept

The government makes Economic Law a part of the prevailing norms that govern economic life. In economic life, the interests of individuals and the community's interests face each other, where Economic Law plays a role in buying the community's interests as a whole in everyday economic life. However, it must impose restrictions on individual interests. The models of Economic Law applied in Indonesia are [30]: a) Economic Development Law, namely the regulation and legal thought on how to improve and develop economic life as a whole, so that Economic Law regulates economic development efforts intending to improve national economic life; and b) Social Economic Law, namely legal arrangements related to methods or methods so that the results of national economic development can be distributed fairly and equitably to the community so that Economic Law regulates efforts to share the results of economic development so that it can reach all levels of society.

There are several different views regarding the position of Economic Law in the structure of legal science. Some experts see Economic Law as limited to civil law only, while some other expert views place Economic Law as a mixture of civil law and public law because of the many factors that must be taken into account in providing the boundaries of Economic Law. The difference in views can be called a "narrow" view and a "broad" view regarding the limitations of Economic Law [31].

Regarding this, it can refer to market laws that apply in market economic activities. The law of the market is a price formation mechanism that is determined by supply and demand factors. Economic Law has the main task of supervising and ensuring that market failures do not occur.

Seeing the main task of Economic Law, it can be said that Economic Law is part of public law [32]. Economic Law relates to the life of the wider community, where the background of the development of Economic Law itself is to regulate and limit economic activities so that their implementation and economic development follow the objectives of the state and do not ignore the rights and interests of the community.

## 3. The contribution of law to economic development

The relationship between law and economics is reciprocal. Law affects economic activity and vice versa, and both influence and depend on each other. Adequate laws support orderly economic activities and safeguard the interests of all parties. On the other hand, the economic system also affects the law, where the applicable law follows and adapts to the community's needs that arise due to their daily economic activities. The legal contributions to economic development are as follows [33]: a) Law as a tool of social engineering, namely that law is a driving tool for changes in society for the better; b) Law as a tool of social control, namely that law is a tool to control humans as social beings with their respective interests and desires; c) Law as a development control tool, namely that the law becomes a tool to control the course of national development, which is usually focused on economic development; d) Law as a means of upholding justice, namely that the law is realised in the form of laws and regulations that contain high values of justice and must be implemented in a fair and non-discriminatory manner; that all people are equal and equal before the law; e) Law as a means of public education, namely that the formation of law must be able to create patterns of behaviour in society that support the course of development, namely by providing awareness and education to the community. It can be achieved through dynamic laws, which are not bound by time and place, and are socialised in advance.

Good economic development is significant in the administration of a country because the economy is closely related to how a nation can meet its needs. Economic development creates a conducive environment for people to control their natural surroundings to benefit and prosper themselves and their surroundings.

Based on the contribution of law to economic development as described above, it can be concluded that the law has a significant influence on the economy. Then seeing how important it is for smooth economic growth, Economic Law, as a set of norms that regulate economic activity, becomes an instrumental factor in ensuring the welfare of the people.

## C. Reconstruction of economic law based on *Pancasila*

### 1. Economic Law in the Era of Globalisation

Globalisation is a phenomenon that enters every aspect of human life, whether political, economic, to cultural. Economic globalisation has caused the economies of the world's countries to be increasingly intertwined and dependent on one another, which creates various benefits and disadvantages. To regulate increasingly complex global economic relations, there have been various international and regional organisations in the trade sector that seek to establish norms in economic activity to maintain order.

One of the international organisations in Indonesia's trade sector is a member of the World Trade Organization (WTO). Economic globalisation, in turn, has an impact on



legal globalisation<sup>[34]</sup>. The consequence of Indonesia joining the WTO is that Indonesia also participates in international agreements made by the WTO, including the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). The main objectives of GATT and GATS are trade liberalisation and the elimination of international trade barriers as much as possible. Likewise, in the Southeast Asian region, the ASEAN Economic Community (AEC) exists.

The joining of Indonesia in the WTO and MEA means that Indonesia joins to be part of the world economy and trade liberalisation. International agreements in trade made by international organisations reflect a liberal economic system imposed by a free market with the abolition of protectionism policies. One of the characteristics of a liberal economy is that individuals control all production sources, and the government does not intervene directly in economic activities. Such a liberal economy can produce an exploitative economic system because each individual as an economic actor tries to reap the maximum profit and kills the small economy<sup>[35]</sup>. It is certainly not in the spirit of *Pancasila*.

As part of the global community, Indonesia must follow the current development of globalisation and adapt to international cooperation. For this reason, the government has adopted various international legal instruments to be applied in Indonesia. On the other hand, Indonesia must also stick to the values of *Pancasila*, which are unique to the Indonesian nation<sup>[36]</sup>. In this case, several tasks of Economic Law are: a) Establishing and providing legal facilities and infrastructure; b) Supporting economic development activities; c) Protecting the economic interests of the community; d) Improving the welfare of the Indonesian people; e) Determine and impose sanctions for parties who violate the norms of Economic Law, and f) Supporting that a new international economic order can be realised through legal means and institutions.

As emphasised in Article 1 paragraph (2) of the 1945 Constitution, Indonesia is a state of law. The rule of law protects its people based on applicable law. The function of laws and regulations is to provide values and norms that the community must obey to maintain existing order and direct society in a better direction, which is aspired to in the nation's life. *Pancasila* becomes a guideline or acts as a dividing line that shows the legal framework to make this happen. According to Satjipto Rahardjo, a legal system based on *Pancasila* reflects the characteristics of the Indonesian nation, namely attitudes such as kinship and cooperation<sup>[39]</sup>.

## 2. National economic law development

Economic Law has the characteristic that there is a State or Government involved in regulating economic activities so that industrial, trade, and financial activities achieve the goals of justice and prosperity [40]. The Economic Law essence is that the policies made must be made in such a way by considering the community interests and the state ideals as a whole. In connection with the era of globalisation, the need to increase Indonesia's competitiveness, several efforts need to be made by Indonesia in this regard, namely [41]: a) Increasing the sense of nationalism in Indonesian society as consumers use domestic products; b) Support and provide facilities for Indonesian workers to have the ability to master the

technology; c) Provide support for professional associations and experts in various disciplines so that their interests are protected; d) Strengthening the domestic market for local products; and e) Carry out legal reforms that protect the interests of the Indonesian people while at the same time following the demands of globalisation.

One of the efforts that Indonesia can make, as mentioned above, is to reform the law. In this case, Indonesia needs an Economic Law that does not violate the provisions of international agreements agreed with other countries but still protects national interests. Thus, in the development of the national economic law system, it must refer to all the values contained in *Pancasila* and the 1945 Constitution so that the state goals formulated in the Preamble to the 1945 Constitution can be realised, namely: 1) protecting the entire nation and all of Indonesia's bloodshed; 2) the intellectual life of the nation; 3) promote the general welfare; and 4) participate in carrying out world order.

Based on the explanation above, the updated national Economic Law should have the following characteristics<sup>[42]</sup>: a) Cooperatives as the pillars of the economy; b) Not only economic stimuli, other stimuli such as social and moral considerations, together become the driving force of the Indonesian economy; c) The attitude of solidarity and nationalism is realised through equal distribution, both in terms of income, employment opportunities, and the scope of development; d) There is a precise balance of duties and authorities between the central and regional governments in the spirit of decentralisation to carry out domestic economic activities.

## Conclusion

As a sovereign country, Indonesia has full power to determine the economic system and legal system following the character of its nation. However, in this era of globalisation, Indonesia is required to adapt to developments as part of a global society. Economic globalisation causes legal globalisation by joining countries in international organisations, which then enter into international agreements. The thing that must be a concern, in this case, is how the global legal system is not always following the values adopted by the Indonesian people. A national economic law system is needed that follows the flow of globalisation but still protects the interests of the Indonesian people, namely by still referring to the values of *Pancasila* and the goals of the state as stated in the constitution.

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