

Pancasila Democracy to Religious Socialism and Its Chance against Law Based On Religion

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ABSTRACT: *Ideology within a country influences both law and economic policy. Economic capitalism, socialism, Islamic economy and also the economy of Pancasila has its own character in which will influence the level of welfare of the society of Indonesia with the constitution and ideology of Pancasila philosophy has led to a value order of national and state law on the foundations of economic values of Pancasila, which provides opportunities to accommodate the religious law, including the law derived from zakat which incidentally is one of the elements of the Islam religious law into legislation. It is a part of capacity in carrying out functions of the state to realize the ideals of justice and public welfare.*

Keywords: *Democracy, Law, Society, Welfare.*

I. Introduction

The process of thinking within the countries in the West in the middle ages had transcendental values, drawing a condition as follows:

1. The vacuum state concept in Christianity
2. Theory of theocracy with different variations of Augustine, Thomas Aquinas and others
3. The reaction to the theory of theocracy (the beginning of secularization)
4. Secular state

A condition with the transcendental value will be strongly influenced by human faith in God.¹

Democracy has become the system of the majority of countries in the world, has been able to change a policy direction of a country. Ideology characteristic in an atmosphere of democracy gives directions and a foothold in realizing the ideals of a democratic system of a country. The development of democracy system brings people to care for others, improves lives together towards total prosperity, so that ownership rights has been seen as people's rights so that there is a social security system; this orientation gives birth to the orientation towards the welfare state in the container of liberalism and democracy.²

With regard to democracy, **Miriam Bidihardjo** says that:

Democracy is not something that is static, and in the 20th century, especially after World War II, democratic states have already removed the view that the role of the state was limited to the care of common interests, is now considered that the state is partly responsible for the welfare of the people and therefore must be active seeks to improve the lives of its citizens. This idea is embodied in the concept of the *welfare state* (welfare state) or *social welfare state* in the 20th century. Democracy has no longer limited itself to the political aspects, such as the 19th century, but has widened to include also in economic terms, so that it becomes economic democracy.³

Along with democracy, then there are two very important factors with the degree of severe influence on human life, these two factors namely economy and law. **Sarino Mangunpranoto** stresses that the proper economics must be based on a conception of proper human philosophy, and the core of the philosophy is the achievement of a balance between the human aspect of corporal and spiritual aspects.⁴

Along with the demands of welfare state concepts, it gives birth to the modernization of the legal discourse toward the appropriate legal format that will be used as a means of state to regulate and meet the needs of its citizens, the law in question should certainly be able to be adapted to the demands and needs of the community life, as well as economic problems have changed the human perspective of the simple principles are becoming more advanced and modern so influence the human orientation relating to the law and economy.

Western view of the concept of law seems to separate law from religion and morals. Law solely related to the worldly life and therefore has properties mundane course, the capacity of law is necessary and useful only in

¹Hazairin1974.*Tujuh Serangkai Tentang Hukum*.Jakarta.Tintamas. p.72

²Deliar Noer. *Pemikiran Politik di Negara Barat*.Jakarta .Mizan. p. 244

³Miriam Budiardjo.2000*Dasar-Dasar Ilmu Politik*.Jakarta. Gramedia Pustaka Utama. p. 53

⁴Sarino mangunpranotodalam Mubyarto dan Boediono.(editor)1997.*Ekonomi Pancasila*. Yogyakarta.BPFE- Yogyakarta. p.3

human life in society and the state, thus the western concept of law has laid a secular nature, meaning free from the influence of religion and morals.⁵

However, the law is necessary to enforce the moral life, the moral life of the religion in question refers to the size and if the law is not true because (a) ignoring the good of society (b) serving the lust and vanity maker, (c) it is derived from the arbitrary power handedness, (d) it is discriminatory against the people, then the law is invalid because it is contrary to the moral law of nature and God.⁶

All the political and administration should be under the law, here are some highlights of the theory of **Aquinas** about the law, (i) the law and the legislation must be rational and reasonable as it is the rule and measure of human action (ii) the law is intended for the common good because the law is the rule for the behavior and since the purpose of any behavior that is happiness then the law must be addressed for the good of society, (iii) because the law is intended for the benefit and welfare of the public, then it can only be made by the reasoning of everyone through the legislature, (iv) the law needs to be published because it contains rules guiding human life, then the rule is that they must know in order to have the liability.⁷

In the development of modern life there is a tendency that human return on a life of civilization toward assuredness, peacefulness and stability in life as a result of the influence of the materialistic orientation that has an impact on the attitude of pragmatism. Human discomfort to the nature of happiness is only measured only by material and ignoring the other side that is immaterial, leading people to look for the right format in order to harmonize life and livelihood.

Long before the world community was aware of the demands of a modern constitutional state, it has laid the foundation of the state system by putting the leader or the government as the servant of the people, this happened during the reign of the Medina, thus giving pattern to the state system on a concept of the welfare state, not the state of the classical laws, commonly known with night-watchman state (*nachtwakerstaat*).⁸

Islam allows the state to regulate the issue of the economy so that the needs of society, both individually and socially fulfilled. The state's duty to protect the interests of the people of the injustice done by someone or a group of people, or from other countries as well countries is obliged to provide social security for the entire community to live decently.⁹

In the context the Indonesian, the spirit of welfare state has been possessed the Constitution of 1945, before and after the amendment, it is evident that there is a presence of several provisions in the 1945 Constitution that are infused with the desire to prosper the society through the Article 31, 33 and 34 of the 1945 Constitution.

II. Discussion

A. State Ideology and Directions Policies

Liberalism ideology, born in the West with the doctrine of freedom ideology, in turn, leads to a democracy climate. Democracy is still considered better, because with democracy, people can make their own decisions for themselves, regardless of the merits of the decision. In addition, community members have total intellectual freedom, including freedom of speech, freedom of religion and freedom of the press, besides the government's position have also limitations in regulating the life of society.

Ideally, a country should be able to meet the various needs of its citizens without exception, so that the state's paradigm changes in accordance to the concept of welfare state, where the state government organizes tasks in all aspects of life, namely in the form of implementation of the general welfare.

A form of modern country is implemented by the concept of triad politics (power sharing) so **John Lock** argues that humans are guaranteed by the Constitution and protected by the government, so that the government should use a system of representation within a democratic framework.

The Indonesian Constitution states that Indonesia is a country of law, which gives the consequences of any applicable rules must be appropriate and based on the law. The concept of a state of law contained in the 1945 Constitution are elements of law state that combines the elements contained in the concept of *rechtsstaat* and elements contained in the concept of the rule of law.

Meanwhile, one of the important elements of Pancasila philosophy in the governance of economic life is its socialistic-religious with emphasis on aspects uphold the values that led towards balance, harmony and alignment between the interests of the material and spiritual between individual interests and the interests of society and country.¹⁰

⁵Muhammad Tahir Azhary. 2010..*Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Para Periode Negara Madinah Dan Masa Kini*. Jakarta Kencana. p.49

⁶Wolfgang Friedmann. *Legal Theory*. London; Steven & Son limited. 1953 dalam Muhammad Tahir Azhary. *Negara HukumOp Cit*. p.66
⁷C.j Friedrich, *The Philosophy Of Law*....dalam Bernard L. Tanya. 2013. *Teori Hukum Strategis Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta .Genta Publishing. p.56

⁸Muhammad Alim. 2010. *Asas-Asas Negara Hukum Modern Dalam Islam Kajian Komprehensif Islam Dan Ketatanegaraan*. Yogyakarta.LKIS. p. 236

⁹Mustafa Edwin Nasution. 2000. *Pengenalan Eksklusif Ekonomi Islam*. Jakarta Kencana. p.27.

¹⁰Soetrisno PH dalam Mubyarto dan Boediono.(editor)1997.*Ekonomi Pancasila*. Yogyakarta..BPFE- Yogyakarta. p.6-7

The Islamic view with regard to the implementation of the general welfare must not conflict with Islamic law, and the public is entitled to welfare, so Islamic country puts the functions of the state as a facilitator for the implementation of the provisions of the religion of their adherents with the law as its medium.

In terms of economic system, shortly leading man to pile their money as much as possible (capitalism) regardless of others is incompatible with the concept of justice and prosperity, what is needed today is a concept which emphasizes goodness (beneficiaries) along with the concept of equitable distribution of wealth in order to avoid an imbalance of wealth by a mechanism that is able to drain the wealth of prosperous community groups (rich) to community groups who cannot afford (poor).

In legal issues relating to the economy in order to improve the welfare and poverty reduction, then Islam makes *zakat* (charity) as economic instrument which will provide an alternative to the inequality of public welfare with the justice system distribution with a mechanism for conveying to the beneficiary so that the implementation of the obligation of *zakat* will be able to provide guarantees social security of the society.

As a comparison to the explanation of four Economic Concepts, here below will be presented a table to the characteristics and differences Economic Concepts of of Capitalism, Socialism, Islamic Economics and Economics of Pancasila.

No	Concept	Capitalism	Socialism	Islamic Economy	Pancasila Economy
1.	Source of wealth	Source of wealth is very rare (scarcity of resources)	Source of wealth is very rare of (Scarcity of resources)	Source of wealth is very spacious	Source of wealth is very spacious
2.	Ownership	Each person is freed to have all the wealth he earned	Source of wealth obtained from empowering labor (workers)	Each person is entitled to have the wealth with the obligation to issue the rights of others (Islamic philanthropy)	Private ownership is limited by laws
3.	Individual lifestyle goals	Private decision	Income equality among the workers	Justice, equity income	Brotherhood, justice and welfare as one

Taken from:

<https://dianangraeni51.wordpress.com> and writer's analysis

B. Pancasila Democracy and socialism Religious

The basic constitution of a country plays a very important in the formation of a sovereign, dignified and recognized country by others. Constitutional is used as a compass or direction of a country. Indonesia, with the Constitution of 1945 in its economic sector, has made leaders aware of their nation's commitments to the goals and ideals of the nation, through Article 33 of the constitution of 1945, which authorizes the state to regulate economy as a reflection of the ideals and beliefs firmly held by the leaders.

The core of Indonesian constitution is not on capitalism economic system, but a system that is based on familial-togetherness economy, where prosperity for the people is a top priority.¹¹ Indonesian democracy economy which is based on Article 33 of the 1945 Constitution, it is the economic system of Indonesia by **Muhammad Hatta** referred to as a religious socialism, or Indonesian socialism, arising from three factors as follows:

First, Indonesian socialism arises because the messengers of religion, for their religion ethics that calls for a sense of brotherhood and mutual help among people in social life, people are driven to socialism. To build God's kingdom on earth is the goal. Then, a sense of justice that moves the soul rebelling against the miseries of life in society to a state that is not the same and the difference in the salient between rich and poor, cause in the hearts of people has different conceptions of socialism. Social demands and humanism caught by the soul of Islam that requires an implementation in an imperfect world, the command of Allah the Most Gracious and Merciful and Just, so that people living in harmony and in an atmosphere of brotherhood and mutual help and be fair. So socialism Indonesia emerged from religious values, regardless of Marxism (the entry into Indonesia as a result of the revolution of October in Russia in 1917), meaning that there is only the encounter of social ideals-Western democracy with socialism-religious (Islamic) where Marxism as worldview of materialism is rejected. Socialism does not need a Marxism which is defined as a result of the law of dialectics, but as the demands of conscience, as a social life that guarantees prosperity for all people, giving equitable prosperity, free from all oppressions.

Second, socialism Indonesia is an expression of the rebelling soul rather than nation of Indonesia who obtained very unfair of colonization. Indonesia socialism was born out of the movement toward freedom from insult and colonization, which itself bound also by social demands and humanism that are scattered by the movement of socialism in the West. It is strongly emerging as the determination of the Indonesian nation to declare its

¹¹Elli Ruslina. *Pasal 33 UUD 1945 Sebagai Dasar Perekonomian Indonesia : Terjadi Penyimpangan Terhadap Konstitusi*. Litigasi jurnal ilmu hukum. Vol. 12 No. 1 Bandung, April 2011. ISSN 0853-7100. p. 814

independence: that one real freedom is the right of every nation and therefore, the occupation over the world should be abolished, since it is incompatible with humanity and justice. Indonesia's struggle for independence reached the moment of joyous safely, guiding the people of Indonesia to the independence gate of Indonesia, independent, united, sovereign, prosperous and fair.

Third, Indonesia's leaders are unable to accept Marxism as a philosophy of life, to find sources of socialism in the society itself. For them, socialism is a soul demand, a will wanting to establish a just and prosperous society, free from all oppressions. Socialism is understood as institutional demands, which originated in the depths of a pure heart, based on humanity and social justice. Religion, thus, enlightens. However, how to subdue and what is it in social base? It was answered by **Muhammad Hatta** properly. But in short: the basis for socialism Indonesia is found in small rural communities, collective, which is more or less still surviving until now. In a critique of the foundations of this axis without guard and not be ignored anyway in a discussion of the emergence of the individualization process that emerged by the modern economy, but the process does not eliminate nature individualism communalism (collectivity) in custom (customary law) of Indonesia. Individualism process will continue as the antithesis to collectivism in indigenous communities, but the ideals of socialism Indonesia requires maintaining the collective spirit as the joints of the building, and this is the root of social life in Indonesia.¹²

According **Oemar Senoadji** that Indonesian law states has the characteristic of the hallmark of Indonesian, because Pancasila should be appointed as the principal basis and source of law, the rule of law in Indonesia could also called Pancasila-law state. One of the fundamental characteristics of the Pancasila state law is the guarantee of the freedom of religion or freedom of religion, however religious freedom and does not give a positive connotation for atheism or anti-religious propaganda in Indonesia.¹³ It is born from a concept of a Pancasila-law state is a concept of prismatic state.¹⁴

Related to the concept of prismatic, **Kirdi Dipoyudo** states that:

"Pancasila brings two opinions and desires. Pancasila state is not a religious state, nor anti-religious country, but a country that maintains godhead, noble humanitarian character and uphold the moral ideals of noble people. Islamic groups were initially unhappy with the proposal to establish an independent Indonesia based on Pancasila, but finally accepted it. They reject the state's anti-religious, but can accept Pancasila state that based on God, while the nationality groups reject the religious state, but can accept a state that based on God".

Constitution and Pancasila state ideologies are inseparable from the idea of Indonesian Islam, which is very closely bound up with the culture of Indonesia – based on the idea of Islam that gives an opportunity to interpret the laws (except laws of worship). God commanded people to respect life and living, humans are commanded to create prosperity of the earth, humans are commanded to work, to do with full awareness of the reason why he was created and knowledge derived by him as a human fittings in the aim to cultivate, fertilize, and prosperity of the earth.¹⁵

C. A State Policy Impact in Formulating Law Based on Religion.

Policy of a country in both a matter of law and economics also influenced by political law, and in each country has legal policies and economic ideology adapted to each country.

Bagir Manan argued that to determine legal policy in the future must be considered some of the main things. First, the law is as an instrument to form and organize the organizers state or government and democratic society, in other words, the law as an instrument of democracy. Second, the law is as an instrument of state officials and the government as well as society, based on law. The law should not become a tool of power. Third, law is an instrument of empowerment in the political, economic, social or cultural. Fourth, law is as an instrument to realize the general welfare social justice for all Indonesian people.¹⁶

In order to realize the policy direction of law and economics, basically the state with authority authority may develop legal policy and economy in accordance with the objectives and ideals of his country, then, the position of the country has the potential to develop the concept of promoting the general welfare. Indonesia with the ideology of Pancasila assigns responsibility to state authorities as a statement of the will of applicable law in its region and the direction in which the law will be developed.¹⁷

¹²Muhammad Hatta.1963.*Persoalan Ekonomi Sosialis Indonesia*. Jakarta. Jambatan.Hlm. 1-29 dalam Elli Ruslina.*Op Cit*. Litigasi jurnal ilmu hukum. Vol. 12 No. 1 Bandung, April 2011. ISSN 0853-7100.Hlm. 845-847

¹³Oemar Senoadji dalam Muhammad Tahir Azhary. *Op. Cit*. p. 93

¹⁴Concept of Pancasila-law state is a state concept which combines elements contained in various concepts of state law (the rule of law or *rechtsstaat*), which is different to the one united of (Indonesia-law state) that implementation is tailored to the demands of the development times Moh. Mahfud, MD. 2011. *Membangun Politik Hukum, Menegakkan Konstitusi*.Jakarta. Rajawali Press. p. 24

¹⁵Fokky Fuad. *Islam Dalam Dinamika Filsafat Hukum, Antara Pemaknaan Nilai Konstruktif Dan Destruktif*. Dalam Lex Jurnalica.Vol.10 No. 2, Agustus 2013.Jakarta. ISSN 1858-0262.Hlm.75

¹⁶Bagir manan.1999.*Reorientasi Politik Hukum Nasional*.makalah disampaikan pada diskusi IKAPTISI UGM. Yogyakarta..p. 5-6

¹⁷Teuku Moh. Radie.1973.*Politik Hukum*, artikel dalam majalah Prisma. No. 6 Jakarta. p. 4

For Indonesia with Pancasila-law state as its axis, it has prismatic character with legal politics developed quite possibly to transform elements of religious law entered to be the first national legal policy orientation and the law has the same goal as the law states, such as the purpose of *zakat*.

Relationships in religious law in a country would be highly relevant to the concept of **Friedrich Julius Stahl**, acknowledging the influence of religion against the law, as well as obtain the binding force of Godhead ordinance against law which is the country's axis. Even if the law is a human product, but the law is used to help maintain Godhead world order.¹⁸

Furthermore, according **Muhammad Tahir Azhary**, that the principle of welfare for economic and social justice for the people of a country includes addressing the needs of material and spiritual needs for all people. The task is assigned to the organizer of the state and society and to make it happen, the government is responsible on the enforcement of other principles as prerequisites such as the principles of justice, equality, free judiciary and protection of human rights.¹⁹

Reflecting on some of the countries with capitalism ideology and socialism provides direction for the obligations arising from religious teachings, by providing a policy on the permissibility for the religious believer to implement religious law, applying in the individual and the state does not interfere in religious matters so that the legal nature of its form of option and voluntary.

While the paradigm developed in Islamic nomocracy system, putting the power is a gift from God to man to be maintained and implemented in accordance with the basic principles, as a gift of power it will have to be accountable to Allah.²⁰ Islamic state puts the State as an institution receiving the mandate to implement the law that comes from religion so that there will be sanctions against acts of violation of the law.²¹

For those countries having Pancasila democracy ideology with socialism-religious characters such as Indonesia, the law which is derived from religious law is set out in the legislation as a logical consequence of the Pancasila state law. Law derived from religious teachings transformed into a regulation and instituted in a rule, yet it does not have the power to force.

In the capacity of religious laws that give effect to the welfare factors, such as the law of *zakat*, it is very likely be transformed in the form of legal regulations. It is a form of execution of a country's welfare with the help of government against its people's aspects in a form of controlling rules for creating public welfare.²²

III. Conclusion

The concept of ideology is affecting law and political economy of a country through developed law, every country will find an appropriate legal format to organize society. For Indonesia, Pancasila Democracy has affected the legal system that leads to worshiping the concept of family, solidarity and justice values.

The specificity concept of socialism-religious provides influx opportunities of legal and moral values and religious law in the legal system of the country through political law, especially when the law in question has in common with the objectives of the state and in order to enhance the role of the state to provide welfare to society. Among the religion law instruments having economic value, the one is the law of *zakat*, then the provisions of *zakat* in Indonesia is formulated to support the state's goals.

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¹⁸L.J. Van Apeldoorn. 1980.*Pengantar Ilmu Hukum*.Jakarta.Pradnya Paramita. p.445

¹⁹Muhammad Tahir Azhary.1992. *Negara Hukum*.Jakarta. Bulan Bintang. p. 107

²⁰Muhammad Alim.*Of Cit*. p. 61

²¹Cucu Solihah. The paper is presented at Discourse of *Zakat* Management Based on the Natures of States. The first international conference on comparative law of various law system in the world, Faculty of law sultan agung Islamic university.Semarang.21-22 December 2015.

²²Cucu Solihah. "Properous Country by Empowering Zakat through Functionalizing Islamic System and State Administration Law," *Jurnal Hukum Mimbar Justitia*, Vol.VI No.01 January-June Edition, 2014, Cianjur: Faculty of Law, Universitas Suryakencana. p. 250.

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