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Political Law of The State of Indonesia as the State of Pancasila Law in the Framework of the Establishment National Law on the Establishment of Copyright Law

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Abstract. Pancasila as the source of all legal resources is determined by the politics that develop in every ruling regime. During the New Order (Orba) regime in power, Pancasila became a static dogma because it was initiated by applying Pancasila and the Constitution of the Republic of Indonesia in 1945 (abbreviated as the 1945 NRI Constitution) purely and consequently. In the reform era, the existence of Pancasila as the source of all legal resources still obtained the legal house through TAP MPR Number III /MPR/2000 on The Source of Law and The Order of Legislation. However, in this TAP MPR the position of Pancasila is no longer explicitly asserted as the source of all legal resources in the national legal system. This research is normative law research using legal approach and conceptual approach. This research is descriptive analytical using qualitative data analysis. Factors causing the emergence of pro-cons and rejection of the formulation, formation and validity of the Bill of Copyright Work into Law No. 1 of 2020 on Copyright Work, because in the establishment is not participatory, transparent. The regulation on the normative rights of workers in Law No. 11 of 2020 on Copyright work, has not accommodated the normative rights of labor. In fact, the substation of the Labor Act is perceived as ignoring the normative rights of the workforce. The establishment of the Working Copyright Law has not realized the values of Pancasila as the basis of the nation's living philosophy that becomes the main legal source in every legislator. This is known from the substance of the articles on the employment cluster that many do not conform to the values of industrial relations based on the family economic system, which reflects the principles of social justice.

Keywords: Legal Politics, Pancasila, In The Law of Copyright Work

INTRODUCTION

The state of Indonesia as a country of law is not based on the concept of the state of law or the rule of law as it developed in continental European and Anglo-Saxon countries. Rather, the State of Indonesia has a new concept of legal state, namely the concept of the state of Pancasila law, which embodiment or crystallization of the view and philosophy of life that is loaded with ethical and moral values of the noble Indonesian nation. Here Pancasila is understood as the basic norm of the Indonesian state (grundnorm) and as the legal mind of the Indonesian state (rechtsidee) in terms of belief framework that is normative and constitutive.

The existence of Pancasila as the philosophical nation of Indonesia has experienced ups and downs. The existence of the ups and downs of Pancasila is not because the values contained in Pancasila contain many weaknesses, but rather lead to inconsistencies in its application. The establishment of Pancasila as the basis of the state is the most rational compromise that can be a tool of unifying the nation, at a time when the Indonesian nation is still in various primordial bond differences.

In the legal order, the existence of Pancasila is affirmed as a source of legal order or known as the source of all legal sources. The position of Pancasila is thus affirmed through the Decree of MPR Number XX/MPRS/1966 jo Decree of MPR Number V/MPR/1973 jo Decree of MPR Number IX/MPR/1978.

Pancasila as the source of all legal resources is determined by the politics that develop in every ruling regime. During the New Order (Orba) regime in power, Pancasila became a static dogma because it was initiated by applying Pancasila and the Constitution of the Republic of Indonesia in 1945 (abbreviated as the 1945 NRI Constitution) purely and consequently. In the reform era, the existence of Pancasila as the source of all legal resources still obtained the legal house through TAP MPR Number III /MPR/2000 on The Source of Law and

The Order of Legislation. However, in this TAP MPR the position of Pancasila is no longer explicitly asserted as the source of all legal resources in the national legal system.
Its development, the position of Pancasila as the main legal source was reaffirmed in Law No. 10 of 2004 on the Establishment of Legislation. This law was then replaced by the enactment of Law No. 12 of 2011 governing the same thing, which was later revised with the enactment of Law No. 15 of 2019 on Amendments to Law No. 12 of 2011 on the Establishment of Legislation. (called Law No. 15/2019).
Law No. 15/2019 on the Establishment of Legislation re-inserts TAP MPR in the hierarchy of legislation, which is located under the 1945 NRI Constitution. The existence of this law shows that Pancasila as a source of legal order is important to be given juridical legitimacy in order to meet the element of certainty in the legal system.
The product of the law that recently caused polemic and received rejection from the public, can be seen in the formation and ratification of omnibuslaw. Omnibuslaw polemic arises due to the assumption that the substance of omnibuslaw is perceived to be contrary to the aspirations of the community, especially in the employment cluster, which is feared to cause harm to workers, because its normative rights are not represented. However, although the existence of Omnibus Law / Cipta Kerja since the beginning has received rejection from various circles, the government still insists on passing the omnibuslaw / Cipta Kerja Bill into Law No. 11 of 2020 on Copyright Work (hereinafter called the Copyright Work Law) on October 5, 2020.

METHOD

Judging by its type, this study belongs to normative normative juridical research. Normative legal research is research that is held by researching library materials (secondary data) or library legal research. The object of research on normative research includes research on legal principles, legal systematics, positive legal inventory, positive legal philosophy (dogma or dotrin), which deals with the existence of Pancasila as the basis of the nation's philosophy of life in the formation of national law.
While judging by its nature, this research can be said to be prescriptive, namely a study aimed at studying the purpose of law, the values of justice, the validity of the law, legal concepts and legal norms. Prescriptive research is a study that aims to provide an overview or formulate problems according to the circumstances or facts. In prescriptive research, abstract legal or theoretical theories (anything) can be converted or derived into measurable theories.
The approach in the research is tailored to the problems and objectives of the research. Based on the problems and objectives of this research, several approaches are used, namely: historical approach, statute approach and conceptual approach.
Data collection in this study is done by carrying out literature research, namely through the study of documents or library studies by tracing various legal materials. Data collection techniques in library research (library reseacrh), commonly done by means of document study or library study. Document study is the first step of any legal research, because legal research always departs from normative premises. Document studies for legal research include the study of legal materials, including: primary, secondary and tertiary legal materials.
Data analysis in this study using qualitative analysis method, which is a data analysis conducted by deciphering data in the form of sentence descriptions that are arranged systematically, briefly clear and firmly. The instruments used in analyzing the data, namely by using historical interpretation and grammatical interachievement, namely the interpretation of the meaning of the law according to the occurrence of the law and the substance or redactional sound of the law itself.

RESULT AND DISCUSSION

The ratification of the Copyright Work Law received a strong rejection from the public, because it was considered to be detrimental to the People of Indonesia, especially the workers. In addition to labor activists, the rejection of the Copyright Act also came from academics. This law is considered not only contains problematic articles, because it is not in accordance with the norms contained in the 1945 NRI Constitution and also the values of Pancasila, but also defects in the formation procedure.
Omnibus law is a new term in the legal system in Indonesia. This term appeared at the beginning of the inauguration of President Joko Widodo period 2019-2024, which was delivered by the President-elect of the 2019 elections in his speech before the People's Consultative Assembly of the Republic of Indonesia (MPR-RI) on October 20, 2019. In his speech, President Jokowi expressed his desire to overcome all regulatory constraints by simplifying them, namely by inviting the House of Representatives to issue two major laws. First, the Employment Copyright Act and the second the MSME Empowerment Act.
The political will of President Joko Widodo's government together with Vice President Ma'rif Amin to simplify regulation is based on considerations on various regulatory issues that are still faced. The regulatory problem occurs because of the many regulations (over regulatory) and spread in various laws and regulations, causing overlap of regulatory norms, especially related to licensing issues, especially the issue of investment improvement.

Simplification of regulations offered by the government using the omnibus law method, namely one law that simultaneously revises several laws. The concept of omnibus law is a new concept used in the legal system in Indonesia. This system is also referred to by some as the "Sapu Jagat Law", because it revises some legal norms through one law. The concept of omnibus law is considered as an efficient and effective step to revise various norms in the law that are considered no longer in accordance with the development and demands of society and are seen as detrimental to the interests of the state.

However, it must be recognized that in the process of legislation copyright work law did reap a lot of controversy and considered as a bad practice of legislation. It is said to be a poor legislative process, because in the process of legislation copyright work is not done in a transparent and participatory. In addition, the process of legislation of the Copyright Act is considered too hasty, so it is considered to have ignored the principle of democracy.

Bad precedent and misocesance in the process of egislasi Bill Cipta Kerja, has occurred since the beginning of the discussion of the Bill cipta Kerja, namely when the first Working Meeting discussion of the Bill Cipta Kerja. At that time the House of Representatives immediately formed a Working Committee, whereas at that time the factions in the House of Representatives had not finished completing the Inventory List of Problems (DIM). Supposedly, if it refers to Article 151 paragraph (1) of The House of Representatives Regulation No. 1 of 2020 on Discipline, then the establishment of a Working Committee (Panja) is conducted after the Working Meeting is completed. Similarly, if referring to Article 154 paragraph (1), explains that the Working Meeting discusses all the materials of the Bill must be in accordance with the DIM of each faction in the DPR or DPD, if the bill is related to its authority. This stage is not seen in the discussion process of the Bill of Copyright Work in the House of Representatives. In addition, the establishment of the Working Committee (Panja) also seemed rushed, because at that time there had not been a Public Hearing Meeting that should have been conducted at the level of the Working Meeting in cooperation with Article 156 paragraph (1) of the House of Representatives.

The closing of the democratic space in the discussion of the Copyright Work Bill is due to the lack of participation space. Open spaces are just a formality with no meaning. Meetings that are broadcast live are only exposure, not decision making. In addition, the meaning of participation is not felt because the public is not given enough information related to the substance of the bill being discussed and the notes or minutes of previous meetings, making it difficult to monitor the meeting properly.

Whereas the dissemination of minutes of the meeting is an obligation for the House of Representatives written in Article 302 paragraph (2) Tatib DPR, as long as it is not confidential and closed. In the article stated that the minutes of the meeting are openly published through electronic media and accessible to the public. The dissemination of the draft bill to the public is the obligation of the legislator listed in Article 96 paragraph (4) of Law No. 15/2019. In addition, the number of articles are too many and the format of writing the Bill cipta Kerja with omnibus law method is very difficult to understand, especially for the lay people who are not used to reading the format of regulations.

Furthermore, the decision-making of the ratification of the Copyright Work Bill in the Plenary Session of the House of Representatives is also questionable. The flow of ratification of the Bill copyright work from the beginning, as if by all factions have agreed and there is no dissent. Whereas dissent is clearly seen when the Democratic Party Faction forces the Chairman of the Council to give an opportunity to each Faction to express their final opinion one by one. At that time the Democratic Party Faction and the Prosperous Justice Party Faction firmly rejected the Copyright Work Bill to be passed. In this situation should be done by the Chairman of the Plenary Session is referring to Article 308 paragraph (2) which states that: "if decision making by means of consensus deliberation is not achieved, then it is done based on the most votes". In this context, the votes of individual members of the House of Representatives should be taken into account, so that it is not automatically considered as a single factional unit, because a member of the House of Representatives is a representation of his constituents and that responsibility must be respected.

The validity of decision-making at the Plenary Session of the House of Representatives the ratification of the Bill cipta Kerja was questionable seeing the number of members of the House of Representatives who were not present in the Plenary Session of the House to decide regulations as important as the Bill cipta Kerja. In this case the House of Representatives must be able to prove that its decision in the Plenary Session of the House to take the decision on the ratification of the Copyright Work Bill has fulfilled the quorum that has been set.

Not to mention the announcement of the ratification of this law which is considered unethical, because it is done at night. In addition, after the ratification of the Copyright Work Bill, there appeared 4 (four) versions of the Draft Work Copyright Law. The first version, 905 pages thick, was circulated on October 5, 2020 (at the time of ratification); 1,052 pages in circulation on October 9, 1 p.m. 035 pages circulated October 12 night; and 812 pages thick recognized as the official and final draft. The government claims that changes to the draft are limited to redactional and paper formats only, not on substance. However, because the difference in the number of pages is too much, which is as much as 93 pieces, it should be expected that the change does not only occur in the redactional articles and format of the paper.

The sequence of the legislation process up to the ratification of the law, there are many that are not in accordance with the provisions of the formation of the law as stipulated in Law No. 15/2019, Dpr Regulation No. 1 of 2020 on The Code of Conduct and Regulation of the House of Representatives No. 2 of 2020 on the Establishment of Law. This condition is what causes the existence of this law remains a controversy in the community, although currently the law has been passed by the government.

Judging from its substance, a number of articles in Chapter IV of the Copyright Act on Employment Clusters, which are considered problematic by a number of academics and activists, especially workers, causing controversy, among others can be described as follows:

1. Unlimited Contracts.

The provisions of Article 81 number 15 paragraph (1) letter b of the Copyright Act, states that work for a certain time can only be made for certain jobs that according to the type and nature or activities of the work will be completed within a certain time, i.e. work that is estimated to be completed not too long. While in the provisions of Article 59 paragraph (1) letter b of Law No. 13 of 2003 on Employment (hereinafter referred to as the Employment Law), mentions that "the work is estimated to be completed in a not too long time and a maximum of 3 (three) years.

Previously, the Labor Law governing PKWT could be held for a maximum of two years and could only be extended once for a period of at least one year. This new provision has the potential to give employers the power and flexibility to maintain the status of contract workers indefinitely and not provide legal certainty for workers in their status as contract workers.

2. Provisions on Wages.

The provisions of Article 81 number 24, change the provisions of Article 88 of the Employment Law. The wage policy in Article 88 of the Copyright Work Act has changed the policy related to the wages of workers from the previous provisions. In Article 88 Paragraph (3) listed in the Employment Chapter mentions 7 (seven) wage policies, which previously in the Labor Law govern 11 (eleven) workers' wage policies. The seven policies are:

a) minimum wage;
b) wage structure and scale;
c) overtime wages;
d) wages do not enter work and/or do not do work for some reason;
e) form and method of payment of wages;
f) things that can be taken into account by wages; Dan
g) wages as the basis for the calculation or payment of rights and other obligations.

Some policies related to wages eliminated through the Copyright Act, including wages for exercising the right to rest, wages for severance payments, and wages for the calculation of income tax. In the provisions of Article 88 Paragraph (4) then states that further provisions on wage policy are regulated by a Government Regulation".

3. Sanctions do not pay wages removed

The rules on sanctions for employers who do not pay wages in accordance with the provisions are removed through the Copyright Act. Article 91 paragraph (1) of the Labor Law governs wages stipulated by agreement between employers and workers/workers or trade unions/trade unions shall not be lower than the wage provisions stipulated by applicable laws and regulations.

Then Article 91 paragraph (2) states, in the event that the agreement as referred to in paragraph (1) is lower or contrary to the laws and regulations, the agreement is null and void, and the employer is obliged to pay the wages of workers according to the prevailing laws and regulations. In addition to being listed in Article 91, the rules on the prohibition of paying wages under the provisions are also described in Article 90 of the Employment Law. However, in the Copyright Act, the provision of two articles in the Employment Law was abolished entirely.

4. The right to apply for layoffs is removed

Previously, in the Labor Law regulates the right to apply for layoffs to PHI institutions in the event that employers perform the following actions:

a. persecute, abusively insult or threaten workers;
b. persuade and/or instruct workers/workers to perform acts contrary to the laws and regulations;
c. not pay wages on a predetermined time for 3 (three) consecutive months or more;
d. not perform the obligations that have been promised to workers / workers; instruct workers to carry out work outside the promised; Or
e. provide jobs that endanger the life, safety, health, and decency of workers / workers while the work is not listed in the employment agreement.

In the Copyright Act the provisions on the right to apply for termination of employment (layoffs) are removed in its entirety. The right of workers / workers to apply for layoffs, if they feel harmed by the company followed by the provisions of paragraph (2) that states workers will get severance money twice, award money for one-time employment, and reimbursement of rights as stipulated in Article 156.

Some of the changes to the Labor Act clauses in the Employment Copyright Act do not appear to attempt to resolve crucial issues that were previously legal polemics in the Employment Act, such as the absence of informal workers such as domestic workers, domestic workers, or workers in non-standard employment relationships, and many other shortcomings.

A partial revision of Law No. 13 on Employment through the Copyright Act thus raises a number of new issues that will adversely affect labor protection. The existence of the Copyright Act does not indicate the role and presence of the state in protecting the basic rights of citizens, so it is considered to deviate from the conception of industrial relations stipulated in the 1945 NRI Constitution and the concept of industrial relations in accordance with the values of Pancasila.

The legal substance of the legislation, contains rules about the necessity for people in certain situations to do certain acts or prohibitions on doing certain acts, which are based on the demands of justice. Therefore, the main requirement of good legislation is the existence of justice, which is then followed by certainty and benefit.

In the context of the state of Indonesia as a country of law, legal justice is closely related to the principle of legality. In this context, it is said to be fair, if the rules made apply equally, equally and without legal discrimination applied to all cases that according to the rules must be applied. The legality of the regulations imposed has the same implications for all actions carried out in principle referring to the content of the act itself.

In addition to the requirements of fairness and legal certainty, another important requirement to be said to be a good law is that the law must be based on the principle of benefit, which Bentham called "maximing happiness and minimizing pains". The principle of benefits, means that a statutory that has been established must be known by everyone, consistent in its implementation, clear, simple and firmly enforced. In other words, the creation of a law must consistently aim to protect the interests of the community and to realize order in public life.

According to the system of legal norms in Indonesia, the prevailing legal norms are in a multi-layered and tiered system at once in groups, where a norm is always applicable, sourced and based on a higher norm, so on until a basic norm of the state or so-called staats fundamental norm, namely Pancasila.

As a consequence, then in the system of legislation in Indonesia there is a hierarchical system (hierarchies). The existence of hierarchical provisions of legislation, then any material content or legal norms of the type of legislation that will be poured in the form of legislation must be based on higher legislation, in this case the 1945 NRI Constitution. Furthermore, the material content in each legislation formed must also pay attention and at the same time reflect the values of Pancasila as the philosophical basis of national and state life.

Controversy of the formulation, formation and validity of the Bill of Copyright work into Law No. 11 of 2020 on Copyright Work, because in the formulation, formation and legalization is not in accordance with the consideration of philosophical, sociological and juridical aspects in the formation of a legislation.

Judging from the philosophical aspect, the establishment of the Copyright Act is not in accordance with the objectives and ideals of the Indonesian nation, namely protecting the entire nation of Indonesia. The protection of all Indonesians is the responsibility of the government as a representation of the country. Efforts to realize such protection, one of the faults through the establishment of legislation in accordance with the values of Pancasila.

Judging from the sociological aspect, the establishment of the Work Copyright Law should get acceptance from all Indonesians (people). Although the pros- cons in any formation of legislation is common, but the rejection does not come to a form of total rejection of the existence of the law, but only limited to the material content that is considered not appropriate or the absence of harmonization of the law. Related to the rejection of the Copyright Act, judging from the sociological aspect can be said to have not considered the values of justice and benefits for the community, especially in realizing the welfare of the community.

In view of the juridical aspects, the process of legislation, the formulation of substance and discipline, as well as the process of legalization is still not in accordance with the provisions of Law No. 15/2019, DPR Regulation No. 1 of 2020 on Discipline and Regulation of the House of Representatives No. 2 of 2020 on the Establishment of Law.

CONCLUSION

1. Factors causing the emergence of pro-cons and rejection of the formulation, formation and validity of the Bill of Copyright Work into Law No. 1 of 2020 on Copyright Work, because in the establishment is not participatory, transparent. In addition, the substance of the law, especially the cluster of employment fields has not led to the protection of normative rights of labor, it is also assumed to violate the laws and regulations, especially the provisions of Law No. 15/2019.
2. Regulation on the normative rights of workers in Law No. 11 of 2020 on Copyright, has not accommodated the normative rights of labor. In fact, the substation of the Labor Act is perceived as ignoring the normative rights of the workforce.
3. The establishment of the Copyright Act has not realized the values of Pancasila as the basis of the nation's living philosophy that becomes the main legal source in every legislator. This is known from the substance

of the articles on the employment cluster that many do not conform to the values of industrial relations based on the family economic system, which reflects the principles of social justice.

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