VARIA JUSTICIA

Varia Justicia
Vol. 19 No. 2 (2023) pp. 134-152
pISSN: 1907-3216 | eISSN: 2579-5198

Reflection and Implementation of Prismatic Concept in The Indonesia Legal System

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DOI: https://doi.org/10.31603/variajusticia.v19i2.9100

Submitted: June 18, 2023 *Revised: July 23, 2023* *Accepted: August 28, 2023*

Keywords:
Prismatic Concept; National Legal System; Legal Pluralism.

ABSTRACT

Indonesia is yet to have a coherent legal theory or framework since its independence. In response to this, and influenced by Fred W. Riggs's ideas in social transformation, the concept of prismatic law evolved in the Indonesian legal system. This idea needs to be tested regarding the conceptual roots and relation to the Indonesian legal system based on Pancasila. The method used is normative-conceptual, where the construction as a legal characteristic is connected with the built-in concept. Therefore, secondary data was mostly used with qualitative-prescriptive analysis techniques. Since the social legal process was adopted, the law should be viewed from social reflection instead of an 'import' theory that is difficult to implement. The pluralistic character of law is in line with the prismatic legal paradigm, where the spirit of pluralism appears in this idea. As a suggestion, legal education should be directed at encouraging moralists for law enforcement to realize a sense of justice based on the principle of legal pluralism.

1. INTRODUCTION

Legal academics should learn about the tug-of-war between continental European legal systems and their common law, Anglo Saxons, and civil law traditions. Initially, this created a dilemma due to the inability to select between the two options, which were vastly dissimilar and frequently conflicting. On the one hand, Indonesia has Adat law which tends to the common law tradition. General Explanation I of The 1945 Constitution of the Republic of Indonesia clearly states that the constitution recognized is in written and unwritten form. However, the way law prioritizes the principle of legality has encouraged various written regulations closer to the civil law tradition. In the middle of the conversation, sometimes, to make things simpler and end the argument, it is asserted that Indonesia is a 'gado-gado' or a mix of the two. At first glance, it looks 'trivial,' but it has tremendous consequences without a clear basis of legal identity because of the two choices of civil or common law.

This debate is meaningless because at this time no country implements common or civil law entirely.[1] Each country has its characteristics according to its needs and interests. United Kingdom (UK) and United State of America (USA), which represent the common law system, have begun to issue many regulations as in the civil law tradition, and the Netherlands, which means the civil law system. Furthermore, it has begun to accommodate a lot of sociological approaches. Therefore, whether Indonesia is better served by common or civil law is a theoretical exercise without practical application.

Building the primary form of the national legal system is certainly not easy. Philosophically, Indonesia has a leitstar or legal ideal called Pancasila that needs to be concretely actualized from its abstract form.[2] However, the problem is that no model or pilot exists for actualizing Pancasila in legal life. Some sectors of legislation are internalizing this concept, but it needs to be proven in the formulation, preparation, implementation, and enforcement process. Previously, the paternalistic style of Pancasila in the Old and New Order era made various biases, allowing the pragmatism of power to erode their spiritual framework.

Moh Koesno observed that the legal model in Indonesia is unique. It assimilates continental European, Anglo-Saxon, and even Adat law traditions. This was called a hybrid model, adapted and evolved from the perspective of the Indonesian people. This term is better than a mixed term because it represents a process. From the provisions of Articles 11 Algemene Bepalingen (AB) and 131 paragraph (2) Indische Staatsregeling (IS), there is no compulsion in applying Western law to local society. There has been a reception of Western law by local society since the colonial era due to social relations.[3]

The legal exponents in the early days of independence had an extreme interest in how the law should be built in the construction of thinking on the locality and authenticity of Indonesia – especially Adat law. Khudzaifah Dimyati describes this phenomenon very nicely, and the period 1945-1960 may be the culmination point of the spirit of releasing the shackles of this tempestuous Western thought.[4] This is supported by the socio-political phenomenon that is still anti-Western. However, after the fall of the Old Order, the paradigm of thinking began to change in pragmatism. Instead of placing a diametrical perspective with Western thinkers, legal exponents in the 1960-1970 period attempted to internalize thought within the Indonesian framework while still accommodating normative legal postulates. From 1970-1990, it focused more on the aspect of development than the existing legal postulates based on Western thought. The atmosphere of development in the New Order era has also become linked to the concept of 'law as a

[1] Munir Fuady, *Perbandingan Ilmu Hukum* (Bandung: Refika Aditama, 2010).

[2] Esmi Warassih, "Peran Politik Hukum Dalam Pembangunan Nasional," *Gema Keadilan* 5, no. 1 (October 2018): 1–15, https://doi.org/10.14710/gk.2018.3592.

[3] Moh Koesnoe, "Kapita Selekta Hukum Adat: Suatu Pemikiran Baru," 2002. 147

[4] Khudzaifah Dimyati, *Teorisasi Hukum: Studi Tentang Perkembangan Pemikiran Hukum Di Indonesia 1945-1990* (Yogyakarta: Genta Publishing, 2010).

development facility which Mochtar Kusumaatmadja initiated by smoothing Roscoe Pound's language.[5] Law at this level is closer to the political configuration, hence it is a political product.[6] Even though they differ in value construction, placing the law as a product or tool is similar to Hans Kelsen's idea of 'social technique,[7] which in the New Order was framed in the spirit of 'development.' The legal style of this model tends to be easy to use in power pragmatism. Therefore, the law does not depart from 'social reflection' but is only a product of authority that should be obeyed. Once a governing body has issued a legally binding product, its value and morality are disregarded, and it is simply a matter of following the "dogma." This is the main weakness because the law seems immoral, and Hart perfected this concept without separating morals. Therefore, there would be no bias,[8] especially since the law was not biased toward the purpose.

The theoretical direction of legal thought is still unclear, and Pancasila has not made a definite offer because of the abstract characteristic. This misunderstanding captures every opportunity of thought that can be raised, and Satjipto Rahardjo offers a 'progressive law' perspective to overcome the deadlock and criminogenic characteristic of the law.[9] Kusumaatmadja presented 'law as a development facility' considering that the needs of an early independent nation were comprehensive development. Meanwhile, Anton F. Susanto placed the legal construction of chaos theory to create a non-systemic legal framework.[10]

An exciting offer came from Mahfud M.D, who tried to give the name of a prismatic legal system[11] to internalize existing values into the Pancasila legal system. This is because the legal system in Indonesia is prismatic.[12] The view seems to be inspired by Fred W. Riggs, who developed the concept of social transition that requires various kinds of knowledge and understanding.[13]

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[5] Ilham Yuli Isdiyanto, *Dekonstruksi Pemahaman Pancasila: Menggali Jati Diri Hukum Indonesia* (Yogyakarta: UGM Press, 2019). 428

[6] Mahfud Md, *Politik Hukum Di Indonesia* (Jakarta: LPE3S, 1998). 5

[7] Saepul Rochman, Kelik Wardiono, and Khudzaifah Dimyati, "The Ontology of Legal Science: Hans Kelsen's Proposal of the 'Pure Theory of Law,'" *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 5, no. 3 (January 2019): 543–57, https://doi.org/10.22304/pjih.v5n3.a8.

[8] Harison Citrawan, "A Deleuzian Reading on Hart's Internal Point of View," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 9, no. 1 (2022): 135–51, https://doi.org/10.22304/pjih.v9n1.a7. Lihat juga Atip Latipulhayat, "Khazanah: Hart," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 3, no. 3 (March 2017): 655–66, https://doi.org/10.22304/pjih.v3.n3.a12.

[9] Satjipto Raharjo, *Biarkan Hukum Mengalir* (Jakarta: Kompas, 2007). 14

[10] Anthon F. Susanto, *Ilmu Hukum Non-Sistematik: Fondasi Filsafat Pengembangan Imu Hukum Indonesia* (Yogyakarta: Genta Publishing, 2010).

[11] Mahfud MD, *Membangun Politik Hukum Menegakkan Konstitusi* (Jakarta: Rajawali Pers, 2011).

[12] Arief Hidayat, "Negara Hukum Berwatak Pancasila," *Materi Seminar Yang Disampaikan Dalam Rangka Pekan Fakultas Hukum*, 2017, 1–13. 23

[13] fred W Riggs, "The Prismatic Model: Conceptualizing Transitional Societies," in *Comparative Public Administration: The Essential Readings*, ed. Eric E Otenyo and Nancy S Lind, I (USA: Elsevier, 2006). 38

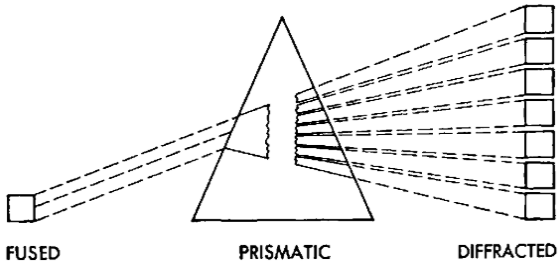

Figure 1. Prismatic Model as a Transitional Society Concept by Fred W Riggs.[14]

The spirit that Mahfud MD wants to build is similar to Riggs regarding the accommodation of the existing model in a prismatic framework. However, the main issue is the relation between prismatic law and legal culture's roots. Prismatic law has strong postulates within the framework of the national legal system.

2. RESEARCH METHOD

This research is basically normative-conceptual research, which develops normative aspects together with existing legal concepts. Every legal research basically is normative research or at least has a normative characteristic, but the term normative itself is broader than just juridical which tends to be a legislation an sich. Furthermore, with secondary data the result of this qualitative research is presented in a narrative or descriptive. Lastly, as a result, it is directed at the prescriptive side, not merely descriptive.

3. RESULTS AND DISCUSSION

3.1. Understanding Development of Legal Theory in Indonesia

The first legal thought developed can be addressed to Soepomo's concept of an 'integralistic state,' which tries to build the concept of nation and state from the local culture. Even though the concept of thought was a combination of local styles influenced by fascism, a la Nazi, and Dai Nippon at that time and framed by Hegel's thoughts, what Soepomo wanted to emphasize was the logical consequence of a holistic view of unity. However, this can reduce the principle of people's sovereignty and the democratic system.[15]

Soepomo's integralist view is more of a metaphysical approach, where the concept of the unification of the kawula-gusti (people-king) becomes the primary basis for building the country. In local history and culture, the king's existence is a symbol and part of the representation of the people who can overshadow (hold) the entire universe. This is inseparable from the cosmological perspective of the local society, devoid of subjectivism, which is the benchmark of the Western. The 1945 Constitution, which

[14] Riggs.
[15] Marsillam Simanjuntak, *Pandangan Negara Integralistik* (Jakarta: Grafiti, 1994). 253-25

Soepomo conceptualized, did not support this thesis from the beginning, instead encouraging the realization of the principle of people's sovereignty and a democratic system, especially in the form of a republic. In drafting the 1945 Constitution, Soepomo still used the basis of locality, but not in the direction of totalitarianism.[16] The 'republic of the village' as reflective of the Republic of Indonesia is none other than the spirit of village independence and determination, which persisted during the colonial era. This spirit was in line with Soekarno's hope that Indonesia would be able to stand on its feet.

Koesnoe and Soepomo want to develop laws based on locality as the primary stepping stone. To explain the direction of this thinking, Koesnoe then divides the development of law in Indonesia into several stages, which are:[17] 1) the theoretical-limited acceptance stage of education on legal practice (technocratic), 2) the theoretical stage, that is, theoretical legal education to natives allowing the local Western legal experts to emerge with the title 'Meester in de Rechten,' 3) the practical reception stage is the implementation of Western legal knowledge into various fields including Adat law, 4) the stage of pretending reception, where the meaning of understanding Western law has been heavily influenced by local law. Western law has altered the notion and given it a different shape, hence it is a forgery. This pseudo-Western term is not a negation of the Western concept but internalizes local values into a legal system. With this procedure, Adat law is expected to emerge with its scientific character as Western law, which has been accepted into the national legal system.

As stated by Koesnoe, the pattern of pseudo-reception has made legal developments experience uncertain things. Therefore, what is being faced and implemented may not be Western law.[18] Even though Koesno does not provide an actual explanation of this hybrid law, the direction that can be captured is that the legal process has involved various elements, such as legal elements and Western perspectives absorbed into the legal system. The hybrid concept is increasingly affecting various countries. The development of the internet of things brings communication links very quickly and makes the world a global 'village.' Therefore, exemplifying or imitating each other cannot be avoided.

Hazairin's thoughts are also interesting because they want to base legal development on the local aspect and religiosity. This is interesting because the law cannot be separated from the principles of decency and spirituality. Furthermore, discussing the law without mentioning morals is analogous to studying plants without seeing where they grow".[19] This view is more of a moralist view than a positivistic one because the

[16] A. Hamid S. Attamimi, "Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara" (Universitas Indonesia, 1990). 158-160

[17] Koesnoe, "Kapita Selekta Hukum Adat: Suatu Pemikiran Baru."

[18] Koesnoe. 160-161

[19] Hazairin, *Tujuh Serangkai Tentang Hukum* (Jakarta: Tintamas Indonesia, 1974).62

construction of values is very thick in the aspect of decency. In general, this idea is similar to Dworkin, which places morality as the basis for understanding the constitution.[20] This spiritual approach is reminiscent of the metaphysical approach, which is widely developed. "For the sake of justice based on the Belief in the Almighty God," the judge's decisions constitute a moral-transcendental rather than a legal-rational one. Some even developed a prophetic paradigm in scientific development and legal research in the context of Pancasila.[21]

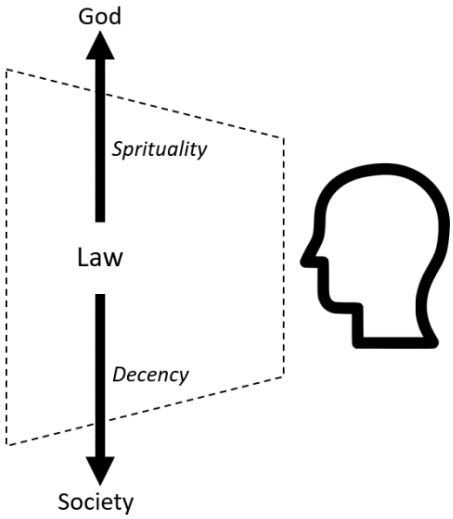

Figure 2. Legal Thinking Model by Hazairin

The construction of thinking that Hazairin wants to build is indeed close to the prophetic concept, it can be seen that the concept of morality is basically closer to the moralist paradigm than the rationalist one. In the construction of prophetic law, genuine law is nothing but a law that is full of moral content and ethical ideals at every phase.[22] Syamsudin himself sees prophetic law is inseparable from the Islamic paradigm, as the idea of prophetic science developed by Kuntowijoyo, according to him, the basic assumption of prophetic law is none other than God's will about something righteous and sourced from the Quran and Hadith.[23] However, the university values offered by prophetic law can not be negated, moreover, according to Hazairin's idea, the area of prophetic law is basically a spiritual area. Hazairin who is also a Muslim figure realizes the role of religious law, especially Islam, really influences his thinking. Although he

[20] Ronald Dworkin, "The Moral Reading of the Constitution," *The New York Review of Books*, 1996, 1–13. https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?

[21] Jawahir Thontowi, "Paradigma Profetik Dalam Pengajaran Dan Penelitian Ilmu Hukum," *Unisia* 34, no. 76 (January 2012): 86–99, https://doi.org/10.20885/unisia.vol34.iss76.art7.

[22] Ridwan, "Relasi Hukum Dan Moral: Studi Dalam Perspektif Pemikiran Hukum Kodrat, Positivisme Hukum Dan Hukum Profetik" (Universitas Muhammadiyah Surakarta, 2018).

[23] M Syamsudin, "Ilmu Hukum Profetik : Gagasan Awal Dan Kemungkinan Pengembangannya," *Perkembangan Hukum Islam Dan Permasalahan Penegakannya Di Indonesia*, 2012. https://law.uii.ac.id/wp-content/uploads/2017/08/25.-Ilmu-Hukum-Profetik-Gagasan-Awal-dan-Kemungkinan-Pengembangannya.pdf

does not explicitly mention Islamic law, but his idea is to adapt the 'face of the law' with the guidance of the Qur'an.[24]

Unlike Koesnoe and Hazairin, Satjipto Rahardjo originated from a universal understanding of sociology to develop the essential thinking from the foundation of Pancasila. Law for humans, not humans for the law, is the key to creating the idea of 'Progressive Law,' which is a response to the many regulations that do not reflect the actual direction and purpose of the law. Satjipto sees many laws are criminogenic because they encourage the creation of spaces for material violations, but formally the actions can be justified.[25] From this basic assumption, progressive law offers what is called breaking the law to realize the purpose because it is for humans, not the other way around. However, breaking the law or rule-breaking becomes absurd because the method is unclear.[26] This ambiguity departs from the basic assumption that progressive law is not yet qualified. The idea of advanced law has not provided room for actualization, especially the position in the national legal system.

Mochtar Kusumaatmadja's idea had the most vital relationship with the government. In contrast, the Theory of Development Law was formed when Suharto, in the New Order regime was incessantly pushing the development discourse. This theory has a postulate of law as a 'facility' of development, and this concept is similar to what Roscoe Pound called the law a tool of social engineering.[27] The term 'tool' by Mochtar Kusumaatmadja was later refined into 'facility.'

These theoretical ideas have not succeeded, as Satjipto Rahardjo complained that Indonesia does not have the construction of Indonesian Legal Theory to build the Pancasila Legal System. Various models for developing theories have always emerged, such as Esmi Warrasih, who created the law of spirituality and prophetic law, Anton F. Susanto with non-systemic law, and Ilham Yuli Isdiyanto with legal genes with the principle of legal proportionality. This research was motivated by Prismatic Law, a concept taken from Fred W. Riggs on the transition between traditional and modern society. Furthermore, it was inspired by Mahfud M.D to lay the foundation of his thinking in the legal framework in Indonesia.

According to Munir Fuady, the development of legal theory as an entry point for the development of the national legal system is facing a missing link, especially motivation in developing the legal theory. In the West, the development of various new theories as a result of relations with various sciences, such as sociology, is accompanied

[24] Wahidah, Wahidah, "Pemikiran Hukum Hazairin," Syariah Jurnal Hukum Dan Pemikiran 15, no. 1 (August 9, 2015): 37–50, https://doi.org/10.18592/syariah.v15i1.542.

[25] Raharjo, *Biarkan Hukum Mengalir*. 14

[26] Ilham Yuli Isdiyanto, "Prinsip Hukum Proporsionalitas: Membangun Paradigma Dasar Teori Hukum Indonesia," 2021. 137

[27] Lili Rasjidi and Ira Thania Rasjidi, *Dasar-Dasar Filsafat Dan Teori Hukum* (Bandung: Citra Aditya Bakti, 2007). 79

by the development of a more pragmatic - implementation of legal theories. In Indonesia, the main problem is that the paradigm in law is used for the benefit of the authorities; thus, the law tends to be a mere tool of power. Therefore, discussions on legal theory were not developed after the 1960s.[28]

3.2. Prismatic Law or Hybrid

The term Prismatic Law is relatively new, and this idea was expressed first by Mahfud M.D; and until now, many academics have tried to develop the concept. The term prismatic is inspired by the concept of a transitional society which Fred W. Riggs initiated to describe a form of society in which there is a mixing between the patterns of traditional and modern society.[29] Riggs's concept contains weaknesses, and wen-shien Peng's criticism of Riggs's thinking is that many neglects substantial aspects, especially in building a correlation between social change and public administration, not only seen in ecological construction but must be seen in substance.[30] However, the idea of prismatic law is undoubtedly different from that of a prismatic society, as Riggs presents.

Placing prismatic law as an amalgamation of common and civil law traditions is too hasty.[31] It will result in weak basic assumptions of this idea, making any postulates unacceptable. The term used by Mahfud M.D by carrying out Riggs's view is none other than the prismatic spirit, which is seen as a framework to absorb various existing concepts. Even though there are conflicting concepts, good things can be taken from them to build the basis for new concepts.[32]

Mahfud MD, as quoted by Hamzani, places 4 (four) things in Pancasila from a prismatic law perspective, such as 1) Pancasila contains elements of individualism and collectivism, 2) Pancasila integrates civil law style with its legal certainty and common law with the justice, 3) Pancasila accepts the law as a tool of social reform (law as a tool of social engineering) as well as a mirror of the sense of justice in society (living law), and 4) Pancasila believe in the notion of a religious nation-state, not a religious state.[33] The four points above try to 'reconcile' many contradictions, reminiscent of Soekarno's writings in Suluh Indonesia Muda when trying to reconcile the various political currents. Syncretism has become one of the characteristics of Nusantara's people. It can be seen in

[28] Munir Fuady, *Dinamika Teori Hukum*, II (Bogor: Ghalia Indonesia, 2010). 164-165

[29] Riggs, "The Prismatic Model: Conceptualizing Transitional Societies."

[30] Wen-shien Peng, "A Critique of Fred W Riggs' Ecology of Public Administration," *International Public Management Review* 9, no. 1 (2008): 213–26. https://journals.sfu.ca/ipmr/index.php/ipmr/article/view/51

[31] Danggur Konradus, "Politik Hukum Berdasarkan Konstitusi," *Masalah-Masalah Hukum* 45, no. 3 (July 2016): 198, https://doi.org/10.14710/mmh.45.3.2016.198-206.

[32] Achmad Irwan Hamzani, "Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya," *Yustisia* 3, no. 3 (2014), https://doi.org/https://doi.org/10.20961/yustisia.v3i3.29562. This way of thinking has been known in Indonesian culture since long time ago as syncretism, but not for combining everything without any filtering process, thus however culture is the main filter.

[33] Hamzani.

the Sutasoma Book how Empu Tantular tried to syncretize the teachings of Shiva and Buddha hence developing the phrase Bhinneka Tunggal Ika.[34] This syncretism method is basically part of a cosmological thinking style that departs from an understanding of universality. This idea is then translated as Indonesian philosophy which has an integralistic character, namely combining the available facts to create universality.[35] If explored deeply, it turns out that integralistic ideas are the roots of various legal ideas in Indonesia. Soepomo said integralistic thinking is the base in the reconstruction of the state administration, Hazairin integrated religious Islamic ideas and rationalist laws, Koesnoe with hybrid concepts, Satjipto with progressive law, lastly the idea of a prophetic legal paradigm rooted in Kuntowijoyo's prophetic paradigm which is also based on an integralistic style.[36]

The prismatic law design that attempts to integrate many current legal concepts at a glance appears too forceful without a clear historical examination as a process of balance. To support this understanding, Koesnoe's thoughts regarding the stages of legal reception can be explained in more detail, thus giving rise to a pseudo-reception. Therefore, the concept of prismatic law does not have a base on the Pancasila framework and a strong legal history. The prismatic point of view itself if observed also has a similar framework to the integralistic paradigm style, but it seems that this opinion has not yet emerged. If the prismatic framework is based on the construction of a strong historical and cultural study, this concept could be a syncretic of various previous ideas to build the basis of Indonesian legal theory.

Muzakir gave the most reasonable illustration regarding the legal pattern of Pancasila, which is the basis. It was stated that the mention of legal terms outside of Pancasila should be ignored because the concept should be a source and a place to accommodate various forms of legal thought.[37] Pancasila is used as a filtering process and methodological to apply various thoughts and laws from outside. As a filter, it is a part of the function of Pancasila as the basis of Indonesian legal philosophy. This filtering process is difficult, especially since Pancasila is an 'open ideology.' Everyone can have their version, and the limits of interpretation depend on the point of view. Pancasila has a connection to the past dating back to the kingdom's era due to its tenets' universality.

[34] *"It said that the forms of Buddha and Shiva are different. They are indeed different, but how can we recognize the differences at a glance. Because the truth taught by Buddha and Shiva is actually one. They are indeed different. However, it is essentially the same. Because there is no ambiguous truth. (Bhineka Tunggal Ika tan Hana Dharma Mangrwa)."* Look at Mpu Tantular, *Kakawin Sutasoma*, ed. Dwi Woro Retno Mastuti and Hastho Bramantyo (Jakarta: Komunitas Bambu, 2009). 505

[35] Fitri Alfariz, Rr Yudiswara, and Ayu Permatasari, "Eksplorasi Pemikiran M. Nasroen, Soenoto, Dan R. Parmono Dalam Perkembangan," *Jurnal Filsafat Indonesia* 5, no. 2 (2022): 103–11, https://doi.org/https://doi.org/10.23887/jfi.v5i2.40458.

[36] Muhammad Zainal Abidin, "Filsafat Ilmu-Ilmu Keislaman Integralistik: Studi Pemikiran Kuntowijoyo," *Jurnal Ilmiah Ilmu Ushuluddin* 13, no. 2 (April 2016): 119, https://doi.org/10.18592/jiu.v13i2.726.

[37] Perkulihan Magister Hukum Fakultas Hukum Universitas Islam Indonesia, tahun 2012.

Therefore, the function of a filter cannot be separated from reading the history and culture of the nation.

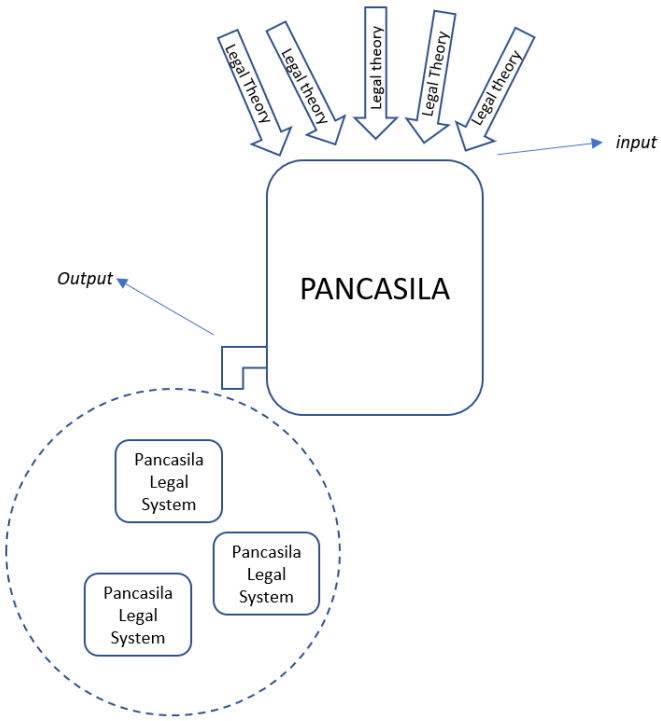

Figure 3. Pancasila Legal Thinking Model by Muzakkir

The figure above appears to illustrate the legal notion of Pancasila better. It can be applied within a prismatic legal framework, which also places Pancasila as its basis. A more concrete approach to prismatic law is needed to be actualized in the national legal system. For example, how the prismatic method parses the fundamental problem of law in Indonesia, such as the distortion and alienation between law and society. People's understanding of the law is distorted thus the law is not understandable resulting in the law being alienated from the society and the society being alienated from the law.[38] The reason is none other than that the development and implementation of national law is not based on Indonesian legal genes but is more penetrated by Western legal thought.[39]

A more comprehensive prismatic legal thought was developed by Nurhasan Ismail, outlined in the inauguration of the professor at the Faculty of Law, Gajah Mada University, with the title "Prismatic Law: The Needs of Multiple Society, An Initial Thought." In contrast to Mahfud M.D, who originated from Pancasila, Nurhasan did not mention Pancasila in the understanding of prismatic law, which originated from

[38] Ilham Yuli Isdiyanto, "Problematika Teori Hukum, Konstruksi Hukum, Dan Kesadaran Sosial," *Jurnal Hukum Novelty* 9, no. 1 (2018): 54, https://doi.org/10.26555/novelty.v9i1.a8035.

[39] Ilham Yuli Isdiyanto, "Menakar 'Gen'' Hukum Indonesia Sebagai Dasar Pembangunan Hukum Nasional,'" *Jurnal Hukum & Pembangunan* 48, no. 3 (December 2018): 589, https://doi.org/10.21143/jhp.vol48.no3.1747.

responsive (Philippe Nonet and Philip Selznick) and reflective law[40] (Gunther Teubner).[41] This point of view is certainly interesting because Nurhasan wants to unite the two theoretical conceptions. Gunther stated that the theoretical conception originated from Nonet's and Selznick's thoughts and even tried to be more comprehensive.[42] Nurhasan emphasized that prismatic law is already in the constitution. This is in line with the provisions of the 1945 Constitution, especially Article 18B paragraph (2), which is the basis for recognition of Adat law society, and Article 28H paragraph (2), which emphasize impartiality. These two articles seem to refer to prismatic law thinking, as Gunther talks about traditional society, one of which accommodates legal pluralism between national and Adat law. Nurhasan places 4 (four) main principles in prismatic law, they are:[43] 1) The principle of legal diversity in unity, 2) The principle of equality before the law based on inequality, 3) The principle of prioritizing justice and the benefit of legal certainty, and 4) The principle of differentiation of functions in cohesiveness.

The principles from Mahfud M.D and Nurhasan are different, but both have some similarities, such as reconciling conflicting aspects within the framework of harmonization and filtering. Mahfud M.D's point of view emerged to resolve conflicts of legal thought, while Nurhasan's perspective emerged as the direction of prismatic law implementation. Besides these two legal exponents, Arief Hidayat's thought is the same as the four characteristics of Mahfud M.D's prismatic law. The making and formation of national law should be based on neutral and universal legal principles.[44] Therefore, the legal framework can fulfill the components of Pancasila.

3.3. Prismatic Law and National Legal System Development

Many kinds of literature always place the term' legal development' as having the same acronym as 'legal reform.' Every change in the law is met with calls for reform since the two were interchangeable. The term 'legal development' should be closely related to Mochtar Kusumaatmadja. Therefore, it is difficult to broadly separate 'legal development' from Mochtar Kusumaatmadja's theory. Legal development should be understood in a broader realm or more comprehensive form. In the national scope, legal development includes substantive formulation, legal formalities, and legal instruments. Meanwhile, the understanding of legal reform is more partial because legal reform is often

[40] Referring to Gunther Teubner's opinion, he calls it 'Reflexive Law' instead of 'Reflective Law', thus in Indonesian language point of view it might be better to use the term 'reflexive law' instead of 'reflective law'. More clearly can be seen at Gunther Teubner, "Substantive and Reflexive Elements in Modern Law," Law & Society Review 17, no. 2 (1983): 239, https://doi.org/10.2307/3053348. https://doi.org/10.2307/3053348

[41] Nurhasan Ismail, "Hukum Prismatik : Kebutuhan Masyarakat Majemuk Sebuah Pemikiran" (Yogyakarta, 2011).

[42] Teubner, "Substantive and Reflexive Elements in Modern Law."

[43] Ismail, "Hukum Prismatik : Kebutuhan Masyarakat Majemuk Sebuah Pemikiran."

[44] Hidayat, "Negara Hukum Berwatak Pancasila."

identified with certain ‘legal system reforms’ such as criminal, civil and state administration.

The terms legal development and reform in the 2020 National Legal Development Document are also not highly debated and are understood the same way.[45] Many scholars do not debate the meaning of the two since legal reform is more on a partial aspect, such as in specific fields of law. In the development process, the consequences of legal reform were also understood.

Legal development in a prismatic law framework is a process of accommodating various aspects and theories that are related. Therefore, there is a filter by taking good and implementable variables into the national legal system. This assumption should be realized as part of the actualization of Pancasila to ‘hold’ various legal ideas and accommodate them into national legal thought without any conflict. Like it or not, the prismatic thinking style can not be separated from the integralistic thinking style. On the one hand, this will be an advantage because of the thought process inherent in Indonesian philosophy. If the basic assumptions of prismatic law are strengthened in the Indonesian framework, then there is a possibility that it will be able to become the most representative paradigm of the national legal system.

The keyword for realizing such a harmonious relationship is communication, and the current legal system cannot be denied as a product of communication between humans and nations.[46] This communication should also be based on existing social realities, such as culture and multiculturalism, as well as on the development of information technology. The direction of legal development that ignores the aspect of reality can trigger legal and societal distortions. However, this reality should be understood in a reflective, not reactive framework. With the development is a national legal system, various complexities will arise and need to be accommodated as a logical consequence of social heterogeneity. This should be accepted as an advantage, not as a weakness.

Within the framework of Pancasila, the prismatic technique is a way to parse, such as selecting the best, most effective, and implementable elements from various existent concepts. Law in a prismatic framework should become an instrument for welfare, equality, distribution of control over resources, and a driving force for national unity and integrity.[47] Nurhasan emphasized that the development of the legal system should be based on the values of modernity and traditionality or local craftsmanship selectively taken,[48] which are the essence of prismatic legal understanding. This understanding is

[45] Pokja Penyusunan DPHN 2020, *Dokumen Pembangunan Hukum Nasional Tahun 2020* (Jakarta: BPHN Kemenkuham, 2020).

[46] H.R. Benny Riyanto, “Pembaruan Hukum Nasional Era 4.0,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (August 2020): 161, https://doi.org/10.33331/rechtsvinding.v9i2.455.

[47] Ismail, “Hukum Prismatik : Kebutuhan Masyarakat Majemuk Sebuah Pemikiran.”

[48] Ismail.

very similar to the idea of a prismatic society, a la Fred W. Riggs, where the relationship between traditional and modern society is in a transitional pattern.[49]

The traditional and modern relations cannot be separated when the understanding of prismatic law wants to take the construction of Fred W. Riggs's thinking. Mahfud M.D and Arief Hidayat's concept emphasizes contradictory understanding, while Nurhasan still places traditional and contemporary aspects as the primary reality. Furthermore, there is an effort to raise the existence of Adat law as one of the foundations for developing a national legal system through prismatic law. However, the problem in traditional vis a vis modern is a social reality and the legal view between unwritten (traditional) and written law (modern). Prismatic law was born to overcome this problem, hence the existence of unwritten law can still exist in the national legal system.

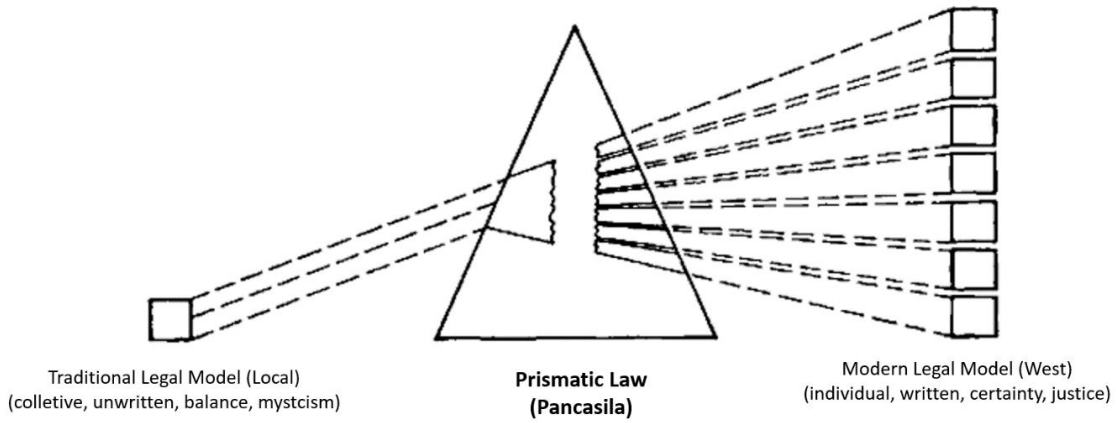

Figure 4. Prismatic Law Model Adopting Prismatic Society Model

The traditional legal model represents a more superficial and communal-collective traditional society. Therefore, the situation will be more homogeneous than heterogeneous in a traditional society because individuals are understood in the context of their togetherness. In contrast to the Western legal model that encourages individual and complex accountability, the situation is more heterogeneous because individuals are not understood. This is why the form of sanction in the traditional legal model can be shared, but it is more personal in modern law.

The five basic principles should be internalized from every law-making process and make them local genius in countering ideologies that are not in harmony with the Indonesian nation when prismatic law is a reflection of Pancasila.[50] The prismatic principles of Pancasila are hoped to give birth to a national legal system capable of realizing the state's goals as stated in the preamble to the 1945 Constitution.[51] As a result,

[49] Riggs, "The Prismatic Model: Conceptualizing Transitional Societies."

[50] Achmad Hariri, "Dekonstruksi Ideologi Pancasila Sebagai Bentuk Sistem Hukum Di Indonesia," *Ajudikasi : Jurnal Ilmu Hukum* 3, no. 1 (July 2019): 1, https://doi.org/10.30656/ajudikasi.v3i1.1055.

[51] Hidayat, "Negara Hukum Berwatak Pancasila."

the legal system takes or combines various values of interest, social values, and the concept of justice into one prismatic legal bond by selecting various good elements (filtering).[52]

The term 'prismatic law' or 'Pancasila law' has not been seriously discussed. Arief Hidayat firmly placed prismaticism as the characteristic of the 'state of Pancasila law.' In addition, the terms prismatic and integrative can coexist, leading to a selective process of the value of the rechtsaat element and the rule of law.[53] Placing prismatic as a trait does seem easier to avoid the difficulty of understanding to distinguish 'Pancasila law' and 'Prismatic law.' However, Pancasila as an ideology is open to interpretation within the framework for state development.

In another understanding, the correlation of 'prismatic law' with 'legal pluralism' is similar. Referring to the legal reality in Indonesia, legal pluralism is at least an initial condition that should be realized in the dynamics between civil and common law with the existence of religious and Adat law.[54] This is a consequence of social pluralism in Indonesia, as stated by John Griffiths 'Legal pluralism is a concomitant of social pluralism'.[55] The issue of legal pluralism that leads to the recognition of Adat and national law is similar to the idea of prismatic law conveyed by Nurhasan Ismail.[56] In this case, when prismatic is a trait, this can be in harmony. The term used is still Pancasila law with a prismatic style in a pluralistic Indonesian society.[57]

The main difference between prismaticism and pluralism is at the origination point. Prismaticism originates from the idea of a selective process or filtering of various conceptions and theories, while pluralism originates from the existing reality.

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[52] J J J Kalalo, "Politik Hukum Perlindungan Hak Ulayat Masyarakat Hukum Adat Di Daerah Perbatasan," *Program Pacasarjana Fakultas Hukum Universitas Hasanuddin* (Universitas Hasanuddin, 2018). http://digilib.unhas.ac.id/uploaded_files/temporary/DigitalCollection/OTkwMDQ5YTg5MTZmN2VhYTAxYmM0YjljYWQzN2VhMjVjYTU1ZGEyNw==.pdf

[53] Arief Hidayat, "Bernegara Itu Tidak Mudah: Dalam Perspektif Politik Dan Hukum," *Pidato Pengukuhan, Guru Besar Ilmu Hukum UNDIP* 4 (2010): 1–62.

[54] Catur Yunianto and Arie Purnomosidi, "Paradigma Transendental Perdagangan Bebas Dalam Perspektif Sistem Hukum Pancasila," *Hukum Transendental: Pengembangan dan Penegakan Hukum di Indonesia* (2017): 295–312. https://publikasiilmiah.ums.ac.id/handle/11617/9705

[55] John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–56. https://www.tandfonline.com/doi/abs/10.1080/07329113.1986.10756387. Said by John Griffiths : *Legal pluralism is a concomitant of social plurallism: the legal organization of society is congruent with its social organtization. 'Legal pluralism' refers to the normative hetergoneity attendant upon the fact that social action always takes place i a contextt of multiple, overlapping 'semi-outonmous social fields', whicih, it may be added, is in practice a dynamic condition.*

[56] Ismail, "Hukum Prismatik : Kebutuhan Masyarakat Majemuk Sebuah Pemikiran."

[57] Hariri, "Dekonstruksi Ideologi Pancasila Sebagai Bentuk Sistem Hukum Di Indonesia."

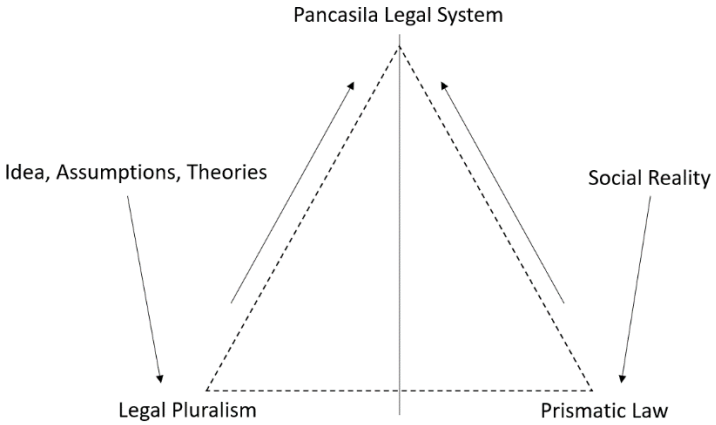

Figure 5. The Difference Model of Legal Pluralism with Prismatic Law

In the Indonesian context, legal pluralism is a condition (reality) that requires the state's recognition. From the existing situation, the relationship between national and Adat law fluctuates. The early days of independence may have been marked by the emergence of many legal ideas that encouraged the most effective legal direction. However, Adat law also experienced the most massive and systematic regression through the juridical basis. Emergency Law Number 1 of 1951 (hereinafter referred to as Law No. 1/1951) may be one of the regulations leading to the abolition of all forms of local legal institutions, such as the Adat justice institution. The result is the negation of Adat law because of how it can develop without a judicial institution. This is exacerbated by the emergence of Law Number 5 of 1979 (hereinafter referred to as Law No. 5/1979) concerning Villages that 'uniform' all administrative aspects and destroy social institutions. According to Robert Chambers, the village is the victim of outsiders turning over and creating various biases that do not benefit the village society. The emergence of Law Number 6 of 1979 (hereinafter referred to as Law No. 6/2014) concerning Villages systematically wants to restore village autonomy rights, especially in government, politics, and administration. The quo law also opens up opportunities for village governments to have a "its own sovereignty" legal sovereignty, including:

1. The recognition of the existence of a traditional village with all the formal institutions, including the Adat justice institution. However, the legal politics related to this is left to the local government,
2. village regulations are recognized as statutory regulations,
3. The Village Head is obliged to facilitate and resolve disputes between village society, and the government can create a Village Mediation.58
4. The Village Head is obliged to carry out quasi-law enforcement because it is clearly stated that the Village Head is obliged to enforce laws and regulations; and

[58] Ilham Yuli Isdiyanto, "Village Sovereignty in Dispute Resolution after Law No 6 of 2014 Concerning Village," *Jurnal Media Hukum* 26, no. 2 (2019): 223–39, https://doi.org/10.18196/jmh.20190136.

5. the village government maintains the peace and order of the village society

The results of the reality of legal pluralism are accommodated through the prismatic paradigm, which means that diversity in any case, including law, is not seen as a problem. This should be seen as a strength, especially the implementation of local laws, not suppressing national laws but encouraging the establishment of order and security at the local level.

This has been adequately accommodated within the framework of the development of national law. From the provisions of Article 5 paragraph (2) of Law Number 48 of 2009 (hereinafter referred to as Law No. 48/2009) concerning Judicial Power, it is clearly stated that the position of Judges and Constitutional Justices who are 'obligated' to explore the values of justice is the entrance to a prismatic paradigm based on legal pluralism. Furthermore, every judge's ruling states: "For the sake of justice based on the Belief in the Almighty God, transcendental meaning is more juridical than legal meaning." The juridical nomenclature in Indonesia did not mention the term 'justice based on the law.' Therefore, the concept of justice as an embodiment of law perceived by society is an understanding of 'substantial,' not procedural. Mahfud M.D, as the Chairman of the Constitutional Court, pushed for many decisions that led to substantial justice, where material aspects are often prioritized over formal aspects to realize this sense of justice.[59]

4. CONCLUSION

The judicial process is a discourse that cannot be tiresome but should continue with the social process. Understanding the law should reflect social reflection, which is how social reality is used as the primary basis. The prismatic law paradigm was born from the reality of legal pluralism, which is directed to create the Pancasila law. Therefore, the development of the legal system encourages the renewal of the Pancasila law. Substantially, the emphasis on law must not negate the legal pluralism aspect, therefore a doelmategheid legal approach can be an alternative as long as it is in accordance with Pancasila. The emphasis on legal structure and culture aspect must be supported, especially in the process of implementing this idea.

The existing regulations support the implementation of the prismatic law paradigm, where legal understanding does not dwell on the juridical perspective but pays attention to the substantial aspect. The concept of justice that may be difficult to translate is important, primarily because of the domain of philosophy. However, the 'sense of justice is an intangible value that becomes the grip and perspective on the morality of every law enforcer.

[59] Miftakhul Huda, "Pola Pelanggaran Pemilukada Dan Perluasan Keadilan Substantif," *Jurnal Konstitusi* 8, no. 2 (May 2016): 113, https://doi.org/10.31078/jk826.

AUTHOR DECLARATION

Author contributions and responsibilities - The authors made substantial contributions to the conception and design of the study. The authors took responsibility for data analysis, interpretation, and discussion of results. The authors read and approved the final manuscript.

Funding - No funding information from the author.

Availability of data and materials - All data are available from the authors.

Competing interests - The authors declare no competing interest.

Additional information - No additional information from the author.

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