

LAW ENFORCEMENT INTELLIGENCE IN LEGAL AND PANCASILA DEVELOPMENT

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Abstract - To ensure the implementation of the state's objectives, as written in the opening of the 1945 Constitution (UUD 1945), namely to protect all Indonesian people and all Indonesian territory, as well as the evolution of the security concept which now has a broader spectrum, and to provide legal certainty for intelligence in Indonesia which has been going on for a long time, the government has passed Law Number 17 of 2011 as an instrument that regulates the implementation of intelligence in Indonesia. This paper aims to analyze the role of law enforcement in Indonesia and how law enforcement efforts are to ensure the development of law in Indonesia based on Pancasila. The results of the study explain that the role of law enforcement intelligence in Indonesia is to conduct investigations, security, and mobilization to carry out early detection and early warning to prevent, counter, and overcome threats in the implementation of law enforcement policies in the fields of Ideology, Politics, Economy, Social, Culture, Defense and Security. The efforts of law enforcement intelligence in ensuring the development of law in Indonesia based on Pancasila by making Pancasila the source of all sources of law, meaning that all regulations on state life in Indonesia must refer to Pancasila, including regulations regarding Law Number 17 of 2011 concerning State Intelligence related to the State Intelligence Law and the Attorney General's Guidelines Number 21 of 2021 concerning Law Enforcement Intelligence.

Keywords: Intelligence, Law Enforcement, Legal Development, Pancasila;

1. INTRODUCTION

Legal development is an action or activity intended to shape legal life towards a better and more conducive. As part of national development, legal development must be integrated and synergized with the development of other fields and requires a continuous process. The implementation of legal development is not only aimed at law in the positive sense, which is identical to laws and regulations, but also law in the broad sense which refers to a system, which includes the development of legal materials, the development of institutions and law enforcement, the development of legal services and the development of public legal awareness. Because these elements influence each other, law must be built simultaneously, synchronously, and in an integrated manner.

In this paper, the development of legal materials is defined as actions or activities which aimed at updating laws and regulations in supporting the implementation of governance and national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which includes legal planning, legal formation, and legal research and development. Meanwhile, the development of institutions and law enforcement is defined as actions or activities intended to maintain and defend legal order. The development of legal services is an action or activity intended to support the implementation of law enforcement, increase public legal awareness, and improve legal administration services.

In the National Long-Term Development Plan (RPJPN) 2005-2025, legal development is implemented to achieve the mission of realizing a competitive nation and a democratic society based on law. This is part of the 8 (eight) national development missions to achieve the national development vision in the period 2005-2025, namely the realization of "Independent, Advanced, Fair, and Prosperous Indonesia."

Legal development with the mission of realizing a competitive nation, is directed to support:



- 1. The realization of sustainable economic growth;
- 2. Regulation of problems related to the economy, especially in terms of business and industry;
- 3. The creation of investment certainty, especially related to the enforcement and protection of the law;
- 4. Elimination of the occurrence of criminal acts of corruption and being able to handle and completely resolve problems related to collusion, corruption, and nepotism.

Legal development with the mission of realizing a democratic society based on law, is directed on:

- 1. The realization of a solid national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which includes the development of legal materials, legal structures including legal apparatus, and legal facilities and infrastructure;
- 2. The realization of a society that has high legal awareness and culture in order to realize a state of law;
- 3. The creation of a fair and democratic society.

It is further explained in the 2005-2025 RPJPN, that the development of legal materials is directed to continue the renewal of legal products to replace colonial legacy legislation. The development of legal materials reflects the social values and interests of the Indonesian people and able to encourage the growth of creativity and involve the community to support the implementation of national governance and development based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The development of legal materials includes legal planning, legal formation, and legal research and development. Every development and development of the attitude of legal apparatus that upholds honesty, truth, openness and justice, free from corruption, collusion and nepotism, and is responsible in the form of exemplary behavior.

In addition, the 2005-2025 RPJPN highlighted that the concept of law enforcement is law enforcement which carried out firmly, straightforwardly, professionally, and non-discriminatory while still being based on respect for human rights, justice, and truth. This is completed in the stages of investigation, inquiry, and prosecution in law enforcement agencies, namely the police, prosecutors, and the Corruption Eradication Commission (KPK). In addition, law enforcement in judicial institutions is carried out through transparent and open trials to realize social order and social discipline so that it can support development and strengthen dynamic national stability. Meanwhile, increasing public legal awareness is carried out by increasing access to all information needed by the community and increasing access for the community to be involved in various decision-making processes for implementing national development. Thus, every member of society is aware of and lives their rights and obligations as citizens. Increasing public legal awareness must be supported by good service at an affordable cost, a process that is not complicated, and reflects a sense of justice.

2. PROBLEM QUESTIONS

According to the background of the problem, the problem questions of this paper are:

- 1. What is the role of law enforcement intelligence in Indonesia?
- 2. How are the efforts of law enforcement intelligence to ensure the development of law in Indonesia based on Pancasila?

3. DATA AND METHOD

Research methodology is the methods which used to obtain scientific data or information related to a study. This study uses the normative legal research method, namely legal research that places law as a building of a normative system. The normative system is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). For legal materials here, the author uses primary legal materials consisting of several legal regulations concerning Law Number 17 of 2011 concerning State Intelligence and Law Number 11 of 2021 concerning the Attorney's Office. In addition to primary legal materials, the author also uses secondary legal materials consisting of laws and regulations, from books related to research, legal journals, articles and so on.



4. FINDINGS

In the history of the development of law in Indonesia, one of the legal theories that has attracted a lot of attention from experts and the public is the "development law theory" of **Prof. Dr. Mochtar Kusumaatmaja, S.H., LL.M.** There are several crucial arguments why the "development law theory" has attracted a lot of attention, which if described globally are as follows: First, the "development law theory" until now is a legal theory that exists in Indonesia because it was created by Indonesians by looking at the dimensions and culture of Indonesian society. Therefore, with the benchmark of the dimensions of the development law theory being born, growing and developing according to Indonesian conditions, then if it is applied in its application, it will be by the conditions and situations of pluralistic Indonesian society. Second, in terms of dimension, the "development law theory" uses a frame of reference on the way of life of the Indonesian people and nation based on the familial principles of Pancasila, so that the norms, principles, institutions and rules contained in the "development law theory" are relatively include structure, culture and substance as stated by **Lawrence W. Friedman.** Third, basically the "development law theory" provides a basis for the function of law as a "means of social renewal" (law as a tool of social engineering) and law as a system is very necessary for the Indonesian nation as a developing country.

As the nation of law, Indonesia makes law as a norm, where these laws should be formed based on Pancasila, as a tool that functions to create order in society, the law must be formed based on the nation's ideology which is the nation's ideal. As the basis of the nation, Pancasila is the basic law for everything, related to the constitutional life of the Republic of Indonesia must be based on Pancasila. This means that all regulations in force in the Republic of Indonesia must be based on Pancasila. In other words, Pancasila is the source of all sources of law for the Indonesian nation and state. Therefore, all acts of power or strength in society must be based on legal regulations that are based on Pancasila.

The application of Pancasila as the basic law in the development of national law can be viewed in the provisions below:

- 1. Law Number 1 Drt 1951 concerning Temporary Measures to Organize the Unity of the Power Structure and Procedure of Civil Courts in Article 5 Paragraph (3) sub-chapter which states as follows:
- a. An act which according to existing law must be considered a criminal act, but which has no equivalent in the Civil Criminal Code, is deemed to be punishable by a sentence of no more than three months in prison or a fine of five hundred rupiah, namely as a substitute punishment if the customary punishment imposed is not followed by the convicted party and the substitute in question is considered by the judge to be commensurate with the magnitude of the convicted party's guilt;
- b. An act which according to existing law must be considered a criminal act and for which there is a counterpart in the Civil Criminal Code, is deemed to be subject to the same punishment as the most similar counterpart to the criminal act.
- 2. Law on Judicial Power Number 14 of 1970
- a. Article 23 Paragraph (1): all court decisions must not only contain the reasons and basis for the decision, but must also contain certain articles of the relevant regulations or unwritten legal sources.
- b. Article 27 Paragraph (1): Judges as enforcers of law and justice are obliged to explore, follow and understand living legal values.
- 3. Law on Judicial Power Number 4 of 2004
- a. Article 25 Paragraph (1): all court decisions must not only contain the reasons and basis for the decision, but also contain certain articles of the relevant regulations or unwritten legal sources which are used as the basis for the trial.
- b. Article 28 Paragraph (1): Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society.
- 4. Article 5 (1) Law No.48/2009 concerning Judicial Power: Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society.

5. Article 18 B (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945 (4th Amendment): The State recognizes and respects customary law communities and their traditional rights as long as they are still exist and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

From these rules, the dimension of the "theory of legal development" is one of the legal theories that was born from the pluralistic conditions of Indonesian society based on Pancasila. This "theory of legal development" was born, grew and developed and was created by Indonesians so that it is relatively appropriate when applied to Indonesian society. The theory of legal development able to be used as the main and crucial foundation that places that law actively and dynamically role as a catalyst or dynamic as a means of renewing Indonesian society.

5. DISCUSSION

5.1 The Role of Law Enforcement Intelligence in Indonesia

In order to ensure the implementation of the state's objectives, as written in the opening of the 1945 Constitution (UUD 1945), namely to protect all Indonesian people and all Indonesian territory, as well as the evolution of the security concept which now has a broader spectrum, and to provide legal certainty for the implementation of intelligence in Indonesia which has been going on for a long time. On November 7, 2011, the government passed Law Number 17 of 2011 as an instrument that regulates the implementation of intelligence in Indonesia.

State Intelligence has a role in carrying out efforts, work, activities, and actions for early detection and early warning to prevent, deter, and overcome any nature of threats that may arise and threaten national interests and security. The purpose of State Intelligence is to detect, identify, assess, analyze, interpret, and present Intelligence to provide early warnings to anticipate various possible forms and natures of potential and real threats to the safety and existence of the nation and state as well as opportunities that exist for national interests and security.

The functions of State Intelligence are:

- a. State Intelligence carries out investigative, security and mobilization functions.
- b. Investigations as referred to in paragraph (1) are a series of efforts, work, activities and actions carried out in a planned and directed manner to seek, find, collect and process information into Intelligence Information and present it as material for formulating policies and making decisions.
- c. Security as referred to in Paragraph (1) consists of a series of activities carried out in a planned and directed manner to prevent and/or counter efforts, work, intelligence activities and/or opposing parties that are detrimental to national interests and security.
- d. Mobilization as referred to in Paragraph (1) consists of a series of efforts, work, activities and actions carried out in a planned and directed manner to influence the target in order to benefit national interests and security.
- e. In carrying out the functions as referred to in Paragraph (1), Paragraph (2), Paragraph (3), and Paragraph (4), the law, democratic values, and human rights must be respected.

 Regarding the organizers of state intelligence in the realm of law enforcement, one of them is The

Regarding the organizers of state intelligence in the realm of law enforcement, one of them is The Intelligence of the Republic of Indonesia Attorney General's Office, as regulated in Article 14 of Law Number 17 of 2011 concerning State Intelligence, which explains that:

- a. The Intelligence of the Republic of Indonesia Attorney General's Office as referred to in Article 9 letter d carries out the function of law enforcement intelligence.
- b. The intelligence function as referred to in paragraph (1) is carried out by the provisions of statutory regulations.

With the enactment of the State Intelligence Law, the Intelligence of Attorney General's has experienced a strengthening of the formal legal basis and a reorientation of the expansion of the scope from institutional interests to national interests, namely the interests of the Nation and State. The Attorney General's Office is recognized as one of the organizers of State Intelligence where the position of the Intelligence of Attorney General's is as a state apparatus that carries out the function of law enforcement intelligence which is carried out in accordance with the provisions of laws and

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regulations. What is meant by Law Enforcement Intelligence is part of State Intelligence organized by the Attorney General's Office in the context of law enforcement. This is stated in the State Intelligence Law and Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General's Office and the Attorney General's Guidelines Number 21 of 2021 concerning Law Enforcement Intelligence.

Although the State Intelligence Law and the Law on the Attorney General's Office and the Attorney General's Guidelines have provided an understanding of what is meant by Law Enforcement Intelligence, it seems that a more functional explanation is still needed regarding the meaning of Law Enforcement Intelligence so that it is easier to understand at the implementation level, especially for intelligence personnel themselves. To make it easier to understand Law Enforcement Intelligence, it is necessary to first break down the words and then give meaning to each word or sentence, namely first; the meaning of Intelligence and second; the meaning of Law Enforcement. The definition of Intelligence can be found in the State Intelligence Law, namely Intelligence is knowledge, organization, and activities related to the formulation of policies, national strategies, and decision-making based on analysis of information and facts collected through work methods for early detection and warning to prevent, deter, and overcome any threats to national security. This definition is the same as that contained in the Attorney General's Guidelines Number 21 of 2021 concerning Law Enforcement Intelligence, but at the end of the sentence there is an additional sentence "in the context of law enforcement".

After understanding Intelligence, it is also necessary to understand what is meant by Law Enforcement. According to **Satjipto Rahardjo**, law enforcement is an effort to realize ideas and concepts into reality. Meanwhile, according to **Soerjono Soekanto**, conceptually, the core of the meaning of law enforcement lies in the activity of harmonizing the relationship of values. Another opinion comes from **Prof. Barda Nawawi**, where he said that law enforcement is the process of making efforts to uphold or function legal norms in real terms as guidelines for behavior in traffic or legal relations in community and state life. **Prof. Barda Nawawi**'s opinion is relevant to use, considering that the function of the Intelligence of Attorney General's is as a preventive institution against all threats that can disrupt or hinder the Government's efforts in enforcing legal policies in various aspects of national and state life.

By examining the State Intelligence Law and the Attorney General's Guidelines Number 21 of 2021 concerning Law Enforcement Intelligence and a brief explanation of the meaning of Intelligence and the meaning of Law Enforcement above, it can be defined what is meant by Law Enforcement Intelligence. Law enforcement intelligence is a state apparatus that plays a role in carrying out investigative, security and mobilization activities and/or operations to carry out early detection and early warning to prevent, counter and overcome the emergence of threats in the implementation of law enforcement policies in the fields of Ideology, Politics, Economy, Social, Culture, Defense and Security.

Referring to the definition above, the main task of Law Enforcement Intelligence is to collect data and information/statements in order to conduct early detection and early warning so that users can make strategic and tactical decisions for the interests of law and the interests of the state as an effort to prevent, counter and overcome all efforts from opposing parties who intend to thwart or obstruct the Government's law enforcement policies in the fields of ideology, politics, economy, finance, social, culture and defense and security (IPOLEKSOSBUD HANKAM). One example of a problem in the financial and economic sectors, namely the authority of the Intelligence of Attorney General's in implementing the prevention of corruption, collusion, nepotism, namely efforts in the field of Law Enforcement Intelligence to conduct early detection and warnings against corruption, collusion, and nepotism. This is clearly stated in the Law on the Attorney General's Office of the Republic of Indonesia.

Law enforcement intelligence must be continuously encouraged to carry out early warning system efforts to prevent violations of all existing law enforcement policies. Intelligence always plays at the prevention level, namely before violations occur, so it is irrelevant if law enforcement intelligence will only work if there are reports of public complaints, because the most important thing is that



intelligence personnel must have sensitivity and the ability to read developing situations that can be a serious threat from opposing parties who intend to undermine the authority of the law and the authority of the state.

5.2 Law Enforcement Intelligence Efforts to ensure legal developments in Indonesia based on Pancasila.

Regarding the background of the formation of the State Intelligence Law, it is inseparable from the journey of this nation, during the reign of the New Order regime led by the 2nd President of the Republic of Indonesia, namely President Soeharto, the New Order regime built a state structure with intelligence as a security actor besides the military, thus forming a new paradigm of thinking besides the Pancasila State, the Intelligence State. This Intelligence State together with the military forces maintains and guarantees national development and national stability. National development and national stability are very necessary for the New Order to accelerate achieving the goals of the state that have been confirmed in the 1945 Constitution (UUD 1945).

In upholding justice, the law must provide protection for human rights. Human rights are rights that are given to all humans regardless of race, religion, or gender. The state must recognize and protect human rights and provide protection and justice for all citizens. To achieve the goal of fair law can be seen as follows:

- a. Strict and fair law enforcement to maintain justice in society. This can be done by taking firm action against lawbreakers regardless of the social, economic and political status of the perpetrators of the crime. Fair law enforcement also means providing equal protection to all without discrimination.
- b. An independent and transparent judicial system is key to upholding justice, meaning the judicial system must be free from political interference and pressure from certain interests. Decisions taken must be based on clear laws and evidence, without any influence from external factors.
- c. Protection of human rights must be protected by law to ensure that everyone has equal rights before the law. Human rights include the right to freedom, the right to economic well-being, and the right to protection from discrimination. Protection of human rights also includes upholding justice for minority or vulnerable groups in society.
- d. Legal education is very important in upholding justice, meaning that with good legal education, people will better understand their rights and obligations in living the life of the nation and state. The public will also understand more about the legal process and procedures that must be followed if a law violation occurs.
- e. Law enforcement in international conflicts that international law can be used to resolve conflicts between different countries. This is done by resolving disputes through international courts or other international forums that are internationally recognized.

The Republic of Indonesia is a country based on law so that all aspects of state life must always be based on positive law. All activities that are to be and must be carried out in state life can only be carried out if there is law. In relation to this, law is a filter that must be passed by the concept and system to be implemented or realized. And this is where the importance of Pancasila lies in the development of law in Indonesia.

Pancasila as the norm or basic rule (grundnorm, basic norm) of the State of Indonesia which is based on Pancasila automatically becomes the source of material law or the source of legal content of written law which includes laws and regulations in Indonesia, from the highest to the lowest level. According to Law of the Republic of Indonesia Number 10 of 2004 concerning the Formation of Laws and Regulations, in general it includes six types/forms of regulations, namely:

- 1) Constitution;
- 2) Law;
- 3) Government Regulation in Lieu of Law (Perpu);
- 4) Government Regulation;
- 5) Presidential Regulation;
- 6) Regional Regulation.



The six types/forms of regulations, from the level of statutory regulations into five levels, namely:

- 1) Constitution;
- 2) Law/Government Regulation in Lieu of Law,
- 3) Government Regulation,
- 4) Presidential Regulation;
- 5) Regional Regulation.

Pancasila is also a source of material law or a source of other written legal content, namely jurisprudence law and treaty law. In addition, Pancasila is also a source of material law or a source of unwritten legal content in the form of customary law and customary law. As long as the basic norms/rules of a nation have not become the content of national law, then during that time a nation-state building will face difficulties in various aspects of life and in time the country will have difficulty developing. Therefore, whatever the reason and whatever the condition, the Law in Indonesia must be enforced in line with the Pancasila Ideology. Law as a norm has special characteristics, namely, to protect, regulate, and provide balance in maintaining public interests. The legal regulations are obeyed according to their legal awareness, of course in the formation of national law with codification and a unification character, the community's need for law will be considered in addition to which legal system will be used as a reference.

The State Intelligence Law must be able to become a legal protection for intelligence operations throughout the territory of the Republic of Indonesia, so that the operations carried out have a clear legal basis or have clear and measurable authority. In addition, through the State Intelligence Law, in the future it will be able to form a modern intelligence organization and activities that are in accordance with the principles of a democratic state of law and have abandoned the traditions of a post-colonial or authoritarian state, where in this tradition intelligence functions as a safeguard of power, not serving the public interest. the Intelligence of Attorney General's carries out intelligence activities of investigation, security and mobilization to prevent criminal acts to support law enforcement both preventively and repressively in the fields of ideology, politics, economy, finance, socio-culture, defense and security, carry out prevention and deterrence against certain people and/or participate in organizing public order and security.

In enforcing the law, three things that must be considered, namely legal certainty, benefit and justice. Law enforcement is an effort to realize ideas about justice, legal certainty and social benefit into reality. The process of implemented these ideas is the essence of law enforcement. The law must be implemented and enforced. Everyone want the law to be enacted for concrete events that occur. How the law is, that is what must be applied to every event that occurs. So, there is no deviation, "even though tomorrow is the doomsday, the law must still be enforced". This is what legal certainty wants. With legal certainty, agreement in society is achieved.

The law that is implemented and enforced must be a law that contains the values of justice as taught by Pancasila in the fifth principle. Therefore, the true essence of law enforcement, said Soerjono Soekanto, lies in the activity of harmonizing the relationship of values that are outlined in solid and embodied rules and attitudes as a series of final stage value explanations, to create, maintain, and defend peaceful social interactions. Disruptions to law enforcement may occur if there is a disharmony between the trinity of values, legal rules, and behavior. Law enforcement in Indonesia must mean law enforcement that contains values that are in accordance with Pancasila and the 1945 Constitution.

6. CONCLUSION

Based on the results of the discussion above, the author concludes:

- 1. The role of law enforcement intelligence in Indonesia is to conduct investigations, security and mobilization to carry out early detection and early warning to prevent, deter and overcome the emergence of threats in the implementation of law enforcement policies in the fields of Ideology, Politics, Economics, Finance, Social, Culture, Defense and Security.
- 2. Law enforcement intelligence efforts in order to guarantee the development of law in Indonesia based on Pancasila by making Pancasila the source of all sources of law, meaning that all

regulations for the implementation of state life must refer to Pancasila, including regulations regarding Law Number 17 of 2011 concerning State Intelligence and Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office and Attorney General's Guidelines Number 21 of 2021 concerning Law Enforcement Intelligence.

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