

Institutionalization of Pancasila Values in the Formation and Evaluation of Sexual Violence Regulations in University

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Abstract

The institutionalization of handling sexual violence in tertiary institutions has the authority to carry out evaluations and assessments that Permendikbudriset No. 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the University Environment is or is not in accordance with Pancasila values. To find and understand what values are contained in the Pancasila precepts which can become a guiding instrument in the formation and evaluation of Permendikbudriset No. 30 of 2021 a statutory approach is taken in normative legal research and a qualitative approach in empirical legal research, using secondary information from the legal field. The results of the study show that legal instruments can be used as a reference in the formation and evaluation of sexual violence regulations in tertiary institutions that are in accordance with Pancasila

1. Introduction

In the development of a country, there are three main factors that are inputs in obtaining national income, namely Human Resources, developing technology, and funds.¹ Indonesia is a developing country that has a large population, so it has an advantage in developing human resources. The greater the number of Human Resources, the greater the national income received so that people's welfare is guaranteed. However, having a large population is not enough. Residents who will

¹ Nurtanio Agus Purwanto, "Kontribusi Pendidikan Bagi Pembangunan Ekonomi Negara," *Jurnal Manajemen Pendidikan* 2, no. 2 (2006).

later become Human Resources must be equipped early on, one of which is by providing the best and proper education possible to avoid cases of sexual harassment.

One of the cases of sexual harassment occurred because the perpetrators did not understand the meaning of the foundation of the Indonesian state, namely Pancasila. The noble values listed in Pancasila are needed to guide everyday life in society.² If Pancasila is used as a guideline in everyday life, the perpetrator will realize that what he is doing is wrong and violates one of the Pancasila precepts, namely the second precept, namely just and civilized humanity.³ Human values listed in Pancasila teach to uphold human dignity and to do justice to others. Do not apply arbitrarily to other people. Therefore, the importance of the values of Pancasila, especially the second precept as a guide in handling cases of sexual harassment.

Providing legal protection and supporting victims to be able to be brave if cases of sexual harassment occur again. There must be social institutions that help victims recover from trauma resulting from cases of sexual harassment. This is one application of the second precept of Pancasila. Education certainly has an important role, so one form of basic human right for society is to get a decent and high education.⁴ Therefore, as a form of state accountability, in the 4th paragraph of the Preamble to the 1945 Constitution, it is stated that one of the goals of the Indonesian State is "to educate the life of the nation". According to Law no. 20 of 2003 concerning SISDIKNAS, education is a conscious and planned effort to create a learning atmosphere and learning process so that students actively develop their potential to have religious spiritual strength, self-control, personality, intelligence, noble character, and the skills needed by themselves, society, nation, and state.

² Van de Velde S, Bracke P, Levecque K. Gender differences in depression in 23 European countries. Cross-national variation in the gender gap in depression. *Soc Sci Med* 2010; 71: 305–13.

³ Robiatul Adawiyah, Reza Hilmy Luayyin, and M Nabat Ardli, "Analisis Permendikbud Ristek No 30 Tahun 2021 Dan Konstruksi Sosial Kekerasan Seksual Di Perguruan Tinggi Perspektif Sosiologis," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 19, no. 3 (2022): 781–96.

⁴ Abdul Hamid, "Perspektif Hukum Terhadap Upaya Antisipasi Dan Penyelesaian Kekerasan Seksual Di Perguruan Tinggi," *Al-Adl: Jurnal Hukum* 14, no. 1 (2022): 42–64.

Any action taken will have a positive and negative impact. This can also happen in the world of education, if we do education with good intentions and methods it will end and have good results. On the other hand, if we do bad things, we will get bad results. Until now the government has made some of its best efforts to ensure that education runs well, but if you look at it over time, there are still many educational problems that have arisen, some of the general problems are the low quality and relevance of education, educational equity, and educational efficiency. In addition, there are many other educational problems faced, one of which is the existence of sexual violence that occurs in the educational environment.⁵

Various efforts that are the key to eradicating crime are acting and prevention initiated by the government. The emergence of Permendikbudristek Number 30 of 2021 has become a legal umbrella in providing protection and prevention of sexual violence that specifically occurs in tertiary institutions. Renewal of the law on the crime of sexual violence has the goal of preventing sexual violence from increasing, providing protection, and handling it effectively, giving a sense of justice to victims, and being held accountable for the actions that the perpetrators have committed. Therefore, Permendikbudristek Number 30 of 2021 regarding the Prevention and Handling of Sexual Violence in the Education Environment must be studied further so that there are no other victims and can deal with things that will lead to sexual violence. This is the responsibility of the state because the state is obliged to provide protection for its citizens, not only protection from invaders' undermining but also protection from other crimes that harm citizens. In addition, this study also provides guidelines for the institutionalization of Pancasila values in the formation and evaluation of sexual violence regulations in tertiary institutions.

2. Research Methods

⁵ Achmad Fikri Oslami, "Analisis Permendikbudristek Nomor 30 Tahun 2021 Dalam Upaya Pencegahan Kekerasan Seksual," *AL-AHKAM: Jurnal Syari'ah Dan Peradilan Islam* 1, no. 2 (2021): 101-18.

Researchers use normative research or known as doctrinal research. Research that examines law, originates from applicable laws or regulations and legal doctrine.⁶ The data in this research is secondary data. Researchers use secondary data in the form of primary legal materials in the form of laws and regulations related to the research topic; Researchers used qualitative analysis of the data in the form of laws and regulations above in the form of qualitative descriptive.⁷ Data analysis used in this research is descriptive qualitative, namely preparing data obtained through documentation and literature studies in such a way that information in the form of speech and writing can be described in words or sentences.⁸

3. Results and Discussion

Law Number 12 of 2022 concerning Crimes of Sexual Violence, prevention is all actions or efforts taken to eliminate various factors that lead to the occurrence of Crimes of Sexual Violence and the repetition of Crimes of Sexual Violence. Whereas in Permendikbudristek Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in University, sexual violence is any act that demeans, insults, harasses, and/or attacks a person's body, and/or reproductive function, due to imbalances in power relations and/or gender, which results in or may result in psychological and/or physical suffering including those that interfere with a person's reproductive health and lose the opportunity to carry out University safely and optimally.⁹

The institutionalization of sexual violence in tertiary institutions is based on Pancasila values, which are defined as values contained in the Pancasila precepts, namely divine values, internationalism/humanity values, national values,

⁶ Bambang Sunggono, *Metodologi Penelitian Hukum* (Depok: Rajawali Pers, 2015).

⁷ T Prasetyo, *Penelitian Hukum: Suatu Perspektif Teori Keadilan Bermartabat* (Bandung: Nusa Media, 2019).

⁸ Syaifuddin Azwar, *Metode Penelitian* (Yogyakarta: Pustaka Pelajar, 2004).

⁹ Badan Pembinaan dan Pengembangan Bahasa Kementerian Pendidikan dan Kebudayaan RI, "KBBI Daring, Versi 3.5.1.1-20201226171802," 2016, <http://www.kbbi.kemdikbud.go.id>.

deliberative/representative values, and welfare values.¹⁰ This value in the view of ideology becomes a guide towards a good life for the Indonesian people.¹¹ As for the formation of laws and regulations based on the provisions of Article 1 point 1 of Law Number 12 of 2011, it is defined as the making of laws and regulations which include the stages of planning, preparation, discussion, approval or determination, and promulgation. Whereas what is meant by evaluation or monitoring, and review based on the provisions of Article 1 number 14 of Law 15 of 2019 concerning Amendments to Law Number 12 of 2011 are activities to observe, record and evaluate the implementation of applicable laws so that the results achieved are known. planned, the resulting impacts, and their benefits for the Unitary State of the Republic of Indonesia. Evaluation is defined as a planned activity that evaluates an object using certain assessment instruments or methods that become benchmarks so that results that describe the object in question are obtained.¹²

Basically, all legal products have the goal of creating conditions for social life, both in a small or larger environment so that there is harmony, order, and legal certainty in the Regulation of the Minister of Education and Culture Number 30 of 2021 which has become an important guide for the prevention and handling of sexual violence in the environment. College. Permendikbudristek Number 30 of 2021 contains regulations that are technical in nature, so they are easy to apply. Sexual violence is the most systematic and widespread violation of human rights, so it becomes a serious issue that must be resolved. Therefore, the Government in Permendikbudristek Number 30 of 2021 formed a Task Force for Handling Sexual Violence by first forming a selection committee. The selection committee is selected strictly by the number of three to seven people. The selection committee has the task of compiling technical guidelines for the selection of Task Force members, carrying

¹⁰ Deputi Bidang Pengkajian dan Materi, *Alur Pikir Garis Besar Haluan Ideologi Pancasila (GBHIP)* (Jakarta: BPIP, 2019), 4.

¹¹ Unit Kerja Presiden Pembinaan Ideologi Pancasila (UKP-PIP), *Draf Naskah Garis-Garis Besar Haluan Pembinaan Ideologi Pancasila* (Jakarta: UKP-PIP, 2019), 8.

¹² Khopiatuziadah, *Evaluasi Dan Analisis Peraturan Perundang-Undangan Dalam Penyusunan Naskah Akademik, Jurnal Rechts Vinding (Media Pembinaan Hukum Nasional)* (Jakarta: BPHN, 2016).

out the Task Force selection for three months, and recommending Task Force members to University Leaders for the immediate inauguration.

Pancasila as the ideology and basis of the state is expected to be able to guide social transformation efforts and meet the demands of practice in all its dimensions. There are at least three ideological dimensions that must be considered, namely the dimension of belief, the dimension of knowledge, and the dimension of action. First, in the dimension of belief, ideology contains a set of beliefs containing normative-prescriptive guidelines that guide life and the order of the state. Second, in the knowledge dimension, ideology contains a kind of knowledge paradigm containing a set of principles, doctrines, and theories, which provide an interpretation framework in understanding reality. Third, in the dimension of action, ideology contains a dimension of action which is the operational level of belief and knowledge in concrete reality.¹³ These three ideological dimensions, if drawn in the interest of forming and evaluating laws and regulations, have strong relevance. First, from the dimension of belief, Pancasila contains a set of values whose truth is acknowledged and at the same time becomes a source of value in the formation of laws and regulations. This is reinforced by the provisions of Article 2 of Law Number 12 of 2011 concerning the Formation of Legislation, which states that Pancasila is the source of all sources of state law. Second, from the knowledge dimension, Pancasila has a knowledge paradigm that contains a set of principles, doctrines, and theories, which can be used as an analytical knife in preparing academic arguments for why a statutory regulation was made.

Apart from that, it can also be a framework for interpretation in understanding the reality of social and constitutional life. Third, from the action dimension, Pancasila can be used as a valuable instrument to measure/assess whether the laws and regulations that have been promulgated are effective and in accordance with Pancasila values. In addition, in the action dimension, Pancasila values can also be used as a

¹³ Menurut Pandangan Yudi Latif, dalam pembudayaan Pancasila diperlukan adanya penetrasi ideologi pada dimensi keyakinan (mitos), pengetahuan (logis), dan tindakan (etos). Lihat Yudi Latif, *Wawasan Pancasila (Bintang Penuntun Untuk Pembudayaan)* (Bandung: Mizan Media Utama (MMU), 2020), 365.

guide in behavior and citizenship (social life). This is where the importance of the role of institutionalization of Pancasila values in the formation and evaluation of laws and regulations is carried out, to ensure that the laws and regulations that are made and enforced are in accordance with Pancasila values.¹⁴ This is important to mention because since the Reformation Era began, citizens' belief in the relevance and adequacy of Pancasila is felt to have diminished, along with the flow of influences and dynamics of change internally and externally. Internally, this decline in confidence can occur when there is a wide gap between the ideals of Pancasila and the realities of life.

Meanwhile, in the long term, the three ideological layers (beliefs, knowledge, and actions) of Pancasila have not been actualized effectively.¹⁵ Even though the belief in the accuracy of Pancasila as the normative foundation of national and state life is so strongly echoed Pancasila as the fundamental principle of the state is not always followed consistently by-products of legislation and state policies. Therefore, every formation and evaluation of laws and regulations must be guided and based on Pancasila values.

In the formation of laws and regulations, the stages passed were planning, drafting, discussing, validating, enacting, and disseminating and these stages have been carried out by Permendikbudristek No. 30 of 2021 concerning the Prevention and Handling of Sexual Violence. Based on the process of forming the laws and regulations mentioned above, at the stages of planning, drafting, and discussing the values of Pancasila, it is necessary to pay attention to the mechanisms of harmonization, unification, and consolidation of conceptions. This is necessary to ensure that the process of planning, drafting, and discussing these laws has really paid attention to and internalized the values of Pancasila.

Likewise, after a statutory regulation has been enacted or ratified, it is very possible that the statutory regulation has not yet reflected a sense of justice, certainty,

¹⁴ Ani Purwanti, *Kekerasan Berbasis Gender*, 2nd ed. (Yogyakarta: Bildung, 2020).

¹⁵ Patalay P, Fitzsimons E. Psychological distress, self-harm and attempted suicide in UK 17-year olds: prevalence and sociodemographic inequalities. *Br J Psychiatry* 2021; 219: 437–39.

and benefit and answered the legal needs of society and government. For this reason, it is very possible that the validity of a statutory regulation can be evaluated. Evaluation of the enactment of a statutory regulation can be carried out in several ways, namely through judicial review, legislative review, or executive review/administrative review.¹⁶ However, the evaluation instruments and materials mentioned above are often more encouraged because these laws and regulations are considered not to reflect a sense of justice, certainty, or benefit, do not answer the legal needs of the community or government, or are considered to violate the constitutional rights of citizens, not because of statutory regulations. This is contrary to the values of Pancasila. Therefore, the evaluation of a statutory regulation should be based not only on sociological and juridical aspects but also on a philosophical aspect that refers to Pancasila values.

Pancasila as the emanation of the soul of the nation which contains the core values of public morality must be seen as a meta-legal form that forms the highest legal norms, which Hans Kelsen calls *Grundnorm* (basic norms) and Hans Nawiasky calls *Staatsfundamentalnorn* (state fundamental norms). *Grundnorm* is the highest rule, fundamental, and becomes the core (kern) of every legal system and state, which is based on *volksgeist* (national soul).¹⁷ As the emanation of the spirit of the nation, this basic norm is not formed by a higher norm but is "pre-supposed" by the people in a country and then becomes a place where the legal norms below depend.

To ensure that laws and regulations that are made and enforced are in line with the values of Pancasila, measurement tools (parameters/indicators) are needed to assess them. So far, both in the formation and evaluation of statutory regulation on the values of Pancasila, it has only been based on reasoning and subjective understanding of the legislators and evaluators of the statutory regulations. There are no standard standards/indicators that serve as an objective reference as to what the

¹⁶ Iskandar and Nurul Huda, "Politik Hukum Pembentukan Rancangan Undang Undang Penghapusan Kekerasan Seksual Perspektif Hukum Islam," *Jurnal Asy-Syariah* 23 (2021).

¹⁷ Lestanta Budiman and Hastangka, *Buku Ajar Pendidikan Pancasila* (Yogyakarta: LPPM UPN Veteran Yogyakarta, 2020).

values of Pancasila are that can be used as a guide in the drafting of laws and regulations as well as in their evaluation.¹⁸ The problem of instilling Pancasila values is not merely a matter of unattractive and boring methods, but also of a paradigmatic perspective in viewing and interpreting Pancasila and learning praxis.¹⁹ First, Pancasila must be seen again not as a government tool to perpetuate the status quo, but to build people's sovereignty and realize social justice. Second, the inculcation of values is not seen as a process of transferring knowledge, values and dominant culture but is understood as a process of social transformation. Third, the learning praxis is not just knowing and mastering the material, but must arrive at doing and practicing that knowledge, values, culture, and ideology. This conative aspect is often forgotten in the inculcation of Pancasila values. Society is an important entity in building the life of the nation and state. Society as one form of the smallest state unit that has roles in carrying out social and political changes in Indonesia. Society also has an important role in shaping character and culture.

Society can be defined as a group or community that is built on individuals and has social, political, educational, economic, legal, and cultural roles and functions. Government Regulation Number 45 of 2017 concerning Community Participation in the Implementation of Regional Government explains the meaning of society. Article 1 paragraph 2 of Government Regulation No. 45/2017 concerning Community Participation in the Implementation of Regional Government explains that: "The community is an individual Indonesian citizen, community group, and/or community organization". From a constitutional juridical perspective, it can be explained that society consists of individuals and groups living in a certain area. Society becomes a strategic group in building social and cultural life. Society as individuals, groups, and communities has an important role in the process of forming

¹⁸ Badan Pembinaan Ideologi Pancasila, *Materi Dasar Pembinaan Ideologi Pancasila* (Jakarta: Kedeputan Bidang Pengkajian dan Materi, 2020).

¹⁹ Eom E, Restaino S, Perkins AM, Neveln N, Harrington JW. Sexual harassment in middle and high school children and effects on physical and mental health. *Clin Pediatr (Phila)* 2015; 54: 430-38.

values.²⁰ For this reason, the process of forming a society requires fundamental values, and these values already exist in the life of the nation, namely cultural values, social values, and national values which are reflected in Pancasila.

Education has various kinds of concepts and pathways. In Indonesia, education pathways are generally divided into three categories, namely formal education, non-formal education, and informal education. In the context of informal education, this pathway consists of two components, namely family and community. Law Number 20 of 2003 concerning the National Education System article 1 paragraph 13 states that informal education is a path of family and environmental education. Informal education is an important part of the process of forming values. The form of informal education is to put Pancasila values in a general and concrete form. In its general form, the values of Pancasila as knowledge and concrete form mean that the values of Pancasila are in the practice of everyday life. Pancasila is the basis of the state philosophy and the nation's way of life. Pancasila in the context of constitutional life is defined as the basis of the state.

The learning procedure is carried out by the University led by the head of the tertiary institution by providing education in the form of a module on the prevention and handling of sexual violence issued by the ministry. The procedures for strengthening governance are carried out by tertiary institutions to compile and then establish policies and guidelines, form Task Forces, limit meetings between students and teaching staff outside of campus operating hours, provide reporting services, provide periodic outreach, provide accommodation for persons with disabilities, carry out work together with related agencies, including information on sexual violence complaint services accompanied by slogans where universities do not condone and tolerate sexual violence, train academicians on efforts to prevent and deal with sexual violence.²¹ The procedure for strengthening the culture of the Civitas

²⁰ Riyan Alpian, "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual Di Perguruan Tinggi," *Lex Renaissance* 7, no. 1 (2022): 69–83, doi:10.20885/jlr.vol7.iss1.art6.

²¹ Anugrah Andriansyah, "Komnas Perempuan: Kasus Kekerasan Seksual Di Lingkungan Pendidikan, Paling Tinggi Di Universitas," *VOA Indonesia*, 2022, <https://www.voaindonesia.com/a/komnas->

Academica community is carried out by providing information and education which is carried out at the introduction of the campus for new students, the introduction of campus organizations, and being listed on the Civitas Academica communication network.

The internalization parameters of Pancasila which are reflected in the material principles of the content of laws and regulations, for example, the principles of protection, humanity, nationality, etc. have not fully accommodated the values of Pancasila. Therefore, the values of Pancasila become a measuring tool or instrument to assess that these laws and regulations are in accordance with Pancasila values.²² Evaluation on the Pancasila Dimension is an analysis that aims to assess the extent to which a law or regulation accommodates the values contained in the Pancasila precepts. Accommodation of Pancasila values contained in a law and regulation is the basis for the implementation of the evaluation of laws and regulations on the Prevention of Sexual Violence by Educators which can be carried out by playing an active role in preventing sexual violence and limiting meetings with students individually outside of school hours. campus operations without approval from the head of the study program.

Sexual violence can occur due to imbalances in power relations, gender relations, and rape culture. Inequality in power relations related to those who have authority is seen as having the opportunity to abuse their power to commit sexual violence against people who are seen as weak or under their supervision. In the context of higher education, lecturers have power over students including in the form of mentoring, assignments, and evaluations. As a result, unscrupulous lecturers can take advantage of this authority to commit sexual violence against students while carrying out their duties. The PPKS Permendikdubristek goal is to prevent and deal

perempuan-kasus-kekerasan-seksual-di-lingkungan-pendidikan-paling-tinggi-di-universitas/6525659.html.

²² Rifki Elindawati, "Perspektif Feminis Dalam Kasus Perempuan Sebagai Korban Kekerasan Seksual Di Perguruan Tinggi," *AL-WARDAH: Jurnal Kajian Perempuan, Gender Dan Agama* 15, no. 2 (2021): 181–93.

with incidents of sexual violence that befall relationships between students, educators, education staff, campus residents, and the public who interact with students, educators, and education staff. The existence of this regulation is expected to protect victims of sexual violence.²³ The TPKS Law is a complete, fair, and formal basis for victims of sexual violence. The presence of the Law on Sexual Violence is a concrete manifestation of efforts to prevent all forms of sexual violence, handle, protect and recover victims, implement law enforcement, rehabilitate perpetrators, create an environment without sexual violence, and ensure that sexual violence does not recur.

The TPKS Law is the basis for strengthening the prevention and handling of sexual violence that is rife in Indonesia. This law takes sides and has a perspective on the victim and provides a legal umbrella for law enforcement officials, which so far has not existed for every type of sexual violence case. The TPKS Law, among other things, regulates the qualification of types of sexual crimes, along with other crimes that are expressly stated as crimes of sexual violence as stipulated in other provisions of laws and regulations. Comprehensive legal arrangements, starting from the stages of investigation, prosecution, and examination at court hearings while still paying attention to and upholding human rights, honor and without intimidation. Recognition and guarantee of the victim's right to handling, protecting, and recovering, since the crime of sexual violence occurred, which is the obligation of the state and carried out in accordance with the conditions and needs of the victim, and cases of sexual violence cannot be resolved outside the judicial process, except for child offender. Switching to Permendikbud, according to Permendikbud No. 30 of 2021 Sexual violence is any act of humiliating, humiliating, harassing, and/or attacking a person's body, and/or reproductive function, due to unequal power relations and/or gender, which results in or can result in psychological and/or physical suffering including those that disturb one's reproductive health and lost the opportunity to carry out higher education safely and optimally.²⁴ The increasing cases of sexual violence in the realm of the University community will have an impact on the lack of optimization of the implementation of the Tridharma of the University and reduce the quality of the University. In this ministerial regulation, what is meant by sexual violence is any act that is demeaning, humiliating, harassing, and attacking a person's reproductive function which is based on an imbalance in power and gender relations and results in physical and psychological suffering and disrupts a person's reproductive health and eliminates the right to obtain safe and optimal education. The

²³ Istiadah Istiadah et al., "Strategies for Combating Sexual Harassment in Islamic Higher Education," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (2020): 257–80.

²⁴ Utami Zahirah Noviani P et al., "Mengatasi Dan Mencegah Tindak Kekerasan Seksual Pada Perempuan Dengan Pelatihan Asertif," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 5, no. 1 (2018): 48–55.

purpose of this regulation is to serve as a guide in formulating policies as well as acting as a form of prevention and handling by the implementation of the University Tridharma towards the institutionalization of Pancasila values.

4. Conclusion

In every formation of laws and regulations must be based on the values of Pancasila. In this regard, an indicator instrument for Pancasila values is needed which can be used as a guide for all legislators and evaluators of laws and regulations so that every statutory regulation that is made and applied is in line with Pancasila values. Therefore, indicators of Pancasila values should be harmonized and developed to become indicators in the formation of all laws and regulations, including the regulation of sexual violence in universities. The indicators of Pancasila values should be included/outlined in the annex to regulations, so that they can become a common reference for all parties, especially for the former and evaluators. Institutionalization of Pancasila values in the formation and evaluation of regulations requires institutions that have strong and clear main tasks and functions that play a role in conducting studies and providing recommendations on regulations that conflict with Pancasila values in addition to other functions they have, namely aligning regulations with values - Pancasila values. It needs to be strengthened both at the institutional level as well as its functions and authorities through laws so that it can oversee every legal product that is enforced in line with Pancasila values.

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