

# BASE TRANSCENDENTAL VALUE ON JUDGE'S DECISION (Study of Basic Perspective of Pancasila State)<sup>Q</sup>

Nurul Huda<sup>1</sup> and Khudzaifah Dimiyati<sup>2</sup>

<sup>1</sup>Faculty of Law Universitas Pekalongan - Indonesia

E-mail: nhd\_ar@yahoo.com

<sup>2</sup>Faculty of Law Universitas Muhammadiyah Surakarta - Indonesia

## Abstract

*Pancasila is the state fundamental norm that is not formed by a higher norm. The highest expectation of justice seekers is fair verdict. The criticisms addressed to the judges persist due to gap between the judge's verdict and the values of justice the public hoped for. Viewed from the philosophical perspective, the first principle is vertical dimension (hablumminallah) while the second one is horizontal dimension (hablumminnas). This paper examines transcendental value in judge's decision. This research uses qualitative approach method through inductive conceptualization approach. The research intended to investigate the judges' rulings subsequently opposed to the juridical, sociological and philosophical transcendental values found its relevance to the *rechtidee* of the Indonesian nation. The results show that in practice, there is a tendency that judges' rulings emphasize on procedural justice rather than substantial justice. Whereas, if we comprehend the State Policy and the constitution, the judges verdicts ideally cannot be separated from its base namely transcendental values.*

*Keywords: judge's verdict, Pancasila, transcendental value*

## Abstrak

Pancasila merupakan norma fundamental negara yang tidak terbentuk oleh suatu norma yang lebih tinggi. Harapan tertinggi dari para pencari keadilan adalah mendapatkan putusan yang seadil-adilnya. Kritik yang dialamatkan kepada para hakim tidak pernah berhenti karena masih terdapatnya kesenjangan antara putusan hakim dengan nilai-nilai keadilan yang menjadi harapan masyarakat. Dilihat dari perspektif filosofis sila pertama merupakan dimensi vertikal (*hablumminallah*) dan sila kedua merupakan dimensi horisontal (*hablumminnas*). Tulisan ini mengkaji nilai transedental dalam putusan hakim. Penelitian ini menggunakan metode pendekatan kualitatif melalui strategi pendekatan *induksi konseptualisasi*. Penelitian dimaksudkan untuk melakukan eksplorasi putusan hakim yang selanjutnya dipertemukan dengan nilai-nilai transedental secara yuridis, sosiologis dan filosofis menemukan relevansinya dengan *rechtidee* bangsa Indonesia. Hasil penelitian menunjukkan bahwa pada praktiknya, ada kecenderungan bahwa putusan hakim lebih menekankan keadilan prosedural, bukan keadilan substansial. Padahal kalau kita memahami dari dasar negara dan konstitusi, putusan hakim Indonesia idealnya tidak lepas dari basisnya yaitu nilai-nilai transedental.

Kata kunci: putusan hakim, Pancasila, nilai transedental

---

## Introduction

Juridically, Pancasila was approved and finalized as the basis and philosophy of the country through the trial of Preparatory Committee for Indonesian Independence (PPKI) on August 18, 1945. Actually, the state philosophy

(*philosophi sche grondslag*) has existed prior to Independence day in Soekarno era and it has already attached cultural values and the Indonesian nation unearthed from the Indonesian view of life.<sup>1</sup> Pancasila is the fundamental state norm that is not formed by a higher norm yet has the character of *presupposed* or predominated by Indonesian citizens and is the norm to

---

<sup>Q</sup> This research is part of the dissertation result titled: The Construction of Judge's Decision On Justice-Based Criminal Case Based On The Almighty God in Post Graduate School of Law UMS Surakarta and It was Funded By Grants of Disertation by Dikti 2015 Number: 164/B.07.01/LPPM/IV/2015

---

<sup>1</sup> Abdullah Taufiq, "Refleksi Atas Revitalisasi Nilai Pancasila Sebagai Ideologi dalam Mengeleminasi Kejahatan Korupsi". *UNIVERSUM*. Vol. 9, No. 1 of January 2015. p. 50

refer to norms under law.<sup>2</sup> The persistent criticisms to the judges are caused by significant gap between the judge's verdict and value of justice citizens hope for. On the other hand, the court has lost their prestige due to some judges behavior who ultimately defame the institution that was supposed to be the last bastion for justice.

The highest expectation of justice seekers is the fairest verdict. As a guardian of society, court shall always uphold justice in every decision it makes. Even in Article 2 paragraph (1) on the Judicial Power Law (Law number 48 year 2009) states: the judiciary is conducted "For the sake of Justice based on The One God Almighty". Elucidation of the article according to the Law stating: Judicature do "For the sake of justice is based on belief in the one supreme God" is in accordance with the article 29 of the Indonesia Constitution 1945 which determines that the state is based on belief in the one supreme God and the state guarantees the freedom of each citizen to embrace religion respectively and to worship according to his religion and belief. Although the State of Indonesia is not a particular religion-based country, the implementation of its legal order in essence recognizes the law of God, ethical law and natural law as stated in the preamble of Indonesian constitution 1945. God's law, ethical law and natural law are the source of material and source of value for the positive law of Indonesia.

In the context of the Pancasila-based state, there is an interrelated link among Pancasila Principles. The function of each principle is different. The first and second principle of Pancasila function as state moral. The third point functions as national principle. Then the fourth point functions as state system while the fifth functions as destination country. Analysis on the practical benefit is that the first and second point of Pancasila function as the moral foundation of the State namely the religious moral within meaning must do religious orders and humanitarian morals in meaning must be fair and civilized to fellow human in life to-

gether. While the third, fourth and fifth point imply similar function as fundamental State politics. The moral fundamentals of the country animating fundamental political country or fundamental State politics are imbued by the state policy. Fundamentals state of Indonesian state politics must be able to answer three points of Pancasila including how unite nation, how to govern and how to prosper its citizen.<sup>3</sup>

The development of Pancasila includes three aspects: *first*, nationality or national principle, law source and national ideology; *second*, platform (function) and content (substance); and *third*, progress thought about Pancasila formed by meeting and interaction among various ideological flows in Indonesia.<sup>4</sup> Based on these developments, Pancasila substantially functions as a source of law in Indonesia. Accordingly, this paper examines how the construction of judge's decisions are based on transcendental values in the perspective of National Principle of Pancasila.

## Research Method

This research used qualitative approach method through induction conceptualization approach. This is intended to investigate judge's decision that becomes tendency for the judges in judicial practice. Then it is opposed to transcendental values in which juridically, sociologically and philosophically find its relevance with *rechtidee* of the Indonesian nation. Thus, in the end of the day, there would be an unanimous voice through the dialog process. Accordingly, constructing verdict of justice and expectation as Indonesian hope for is achieved. This research can also be categorized as prescriptive research. That is a research aimed to get advice/recommendation about what to do to overcome certain problems.

## Discussion

### Transcendental Meaning

<sup>3</sup> Noor Ms Bakry, 2010, *Pendidikan Pancasila*; Yogyakarta: Pustaka Pelajar, p. 92

<sup>4</sup> Pasiol Berlian, "Hakikat Pembangunan Hukum dan Pertanggungjawaban Hukum dalam Payung Pancasila Perspektif Islam", *MIQOT*, Vol. XXXVIII, No. 1 of January-June 2014, p. 145

<sup>2</sup> *Ibid*, p. 49

Roger Garaudy interprets transcendence by three perspectives. *First*, transcendence means recognizing human dependence on the Creator. The attitude that feels content by him self claiming human as the center and the measure of everything is in contrary to transcendence. Transcendence overcomes human instincts such as greed and lust for power. *Second*, transcendence means recognizing the continuity and the common measure between God and human, meaning that transcendence views all power wealth and knowledge relatively. *Third*, transcendence means recognizing the superiority of absolute norms that transcend the human brain.<sup>5</sup>

Kuntowijoyo then added it by showing examples of transcendental works including the Indonesian literature treasures that brought spiritual issues as the Almighty as themes like those produced by Sutardji Calzoum Bachri and Abdul Hadi W.M in poetry, and Danarto in short stories.<sup>6</sup> The word transcendental is often replaced by a prophetic paradigm derived from English: *prophet*. The prophetic meaning implies the characteristics or traits like prophet, or to be predictive, to foresee. Prophetic here can be translated as 'prophet-hood'.<sup>7</sup>

Prophetic law is rooted in God's will to his creatures sent down through His prophets and apostles, the martyrs and aulia who are constantly consistent and cling to the divine line of *Ilahiyah (Sunatullah)*. *Sunatullah* is the basis of the philosophy of natural law explained through His written verses (*kitab* and *Sunnah*) as well as manifested in universe and reality of life. Prophetic law is intended for the guidance of human life to achieve the happiness of the world and afterlife. Prophetic law can only be understood by a holistic approach that sees man and his life in the form of a whole, not merely material but immaterial. Prophetic law is inseparable between physical (formal) bodies

and transcendental values. The purely prophetic justification of prophetic law is for the truth-based justice of God's power, the Almighty Power, the determinants of life and human life. Prophetic law is oriented towards human benefit as his affective manifestation. In other words, the meaning of transcendence or prophetic is the unification of essential values of law with morality.

According to Dimiyati, this what ultimately states in the end that transcendental values are called as natural laws in which they have various positions in terms that natural law is considered as ideals that guide the development of law and its implementation, the law of nature as a basis in moral law which prevents the total separation between the "present" and the "supposed", the natural law as a method to seek perfect law and natural law as a necessary condition for the presence of the law.<sup>8</sup>

### Procedural Justice in Positivism

Positivism paradigm dominance in jurisprudence development as well as law enforcement practice in Indonesia resulting in a settlement pattern of criminal cases cannot be resolved unless a mechanism is provided by State law with a rigid and positivism criminal justice system. Whereas reality indicates that the State law is not the only mechanism in resolving a dispute in the community. Many mechanisms for Justice as the ultimate goal of law can be achieved such as through the dispute resolution mechanism-based social cultural values. This mechanism is even more grounded to some extent and satisfying not only for the parties of the dispute but also for the local citizen.<sup>9</sup>

The argument above shows that the positivism in law emphasizes more on the problem of procedural justice. It can be seen from the conclusion by Mahrus Ali who conducted a research on *carok* phenomenon in Madura. According to him, there are two important conclusions which indicate that state law see *carok*

<sup>5</sup> M. Fahmi, 2005, *Islam Transendental, Menelusuri Jejak-jejak Pemikiran Islam Kuntowijoyo*, Yogyakarta: Pilar Religia, p. 97

<sup>6</sup> *Ibid.*

<sup>7</sup> M. Syamsudin, 2013, *Ilmu Hukum Profetik, Gagasan Awal Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodernisme*, Yogyakarta: FH Ull Press, p. 25

<sup>8</sup> Khudzaifah Dimiyati, Kelik Wardiono (ed), 2014, *Pemikiran Hukum, Konstruksi Epistemologi Berbasis Budaya Hukum Indonesia*; Yogyakarta: Genta Publishing, p. 20.

<sup>9</sup> Mahrus Ali, 2013, *Melampaui Positivisme Hukum Negara*; Yogyakarta: Aswaja Pressindo, p. iii

in positivistic frame. *First*, the judge as representative of state law in deciding the case of *carok* composed an article claimed as a major reference. The articles claimed by the public prosecutor to the criminal is the foundation of judges' guidelines for the verdict. In this context story model approach is used to decide *carok* case. This approach assumes that judges will arrange a story based on the evidences and witnesses and the defendant in the court, then the judge match them with the indicted article. If the story components suit the indicted articles components, judge will confidently decide that the defendant is guilty according to the article. Otherwise, judge will decide that the defendant is innocent if the story components did not match with the article. *Second*, judge considers text as autonomous things in which every information from witnesses and defendant will be adjusted with the article. Here, the existence of cultural values were not considered and no effect on the judge's verdict. The existence of the judge, the witnesses and the defendant shall not make any effect on the meaning contained in the article because the text (of the law) is independent on the objective of its existence from a number of critics and readers in hermeneutic framework. Therefore, the correct interpretation is in accordance with the reality of autonomous text. The two things above is clearly a notion built based on law positivism.

Modern law institutions in resolving legal issues is very resting on the procedure. In other words, the important traits of modern law works procedural. If the law is considered as an institution in a society who is mandated for dispensing justice, it shall be procedural implemented. No matter how fair the verdict is, if the judge does not work according to the procedure then a good and fair verdict was vulnerable to a lawsuit. People say the judge's verdict contains disability of law. In contrast, no matter how unfair the verdict is, as long as the process is right, the verdict status more secure than "a fair verdict but flawed procedure". Then we distinguish between formal justice or procedural justice and substantial justice.

The results of other research by Syamsudin showed the existence of two tendencies of judges' mindset in dealing with the matter of corruption, those are; *first*, positivistic judges' mindset; and *second*, is the non-positivistic judges' mindset. The first judges' mindset largely emphasizes on the size of the formal rules text (rules centris) to delve the truth of law, while the second mindset is combining the text rule of law in the context of social legal to delve the truth of law.<sup>10</sup> The mindset with positivistic and non-positivistic pattern in Praxis produce a different judge tendency in conducting law or interpretation in deciding matters of corruption.<sup>11</sup>

Positivism paradigm works using reasoning system with a deductive method, with a logic closed system that requires major premise as deciding factor. The major premise is built of positive norms within the system of legislation and then juxtaposed with the fact which is the minor premise that will produce the undeniable conclusion. Since deductive logic relies on major premise, then the formulation in the major premise can be ascertained how the verdict will be given.<sup>12</sup>

Through positivism paradigm, the value of justice and implementation of law function could not get the place because the judge only uses deduction method close to other factors except the major premise and minor premise resulting in the conclusion that actually already existed in the major premise. In criminal law this is called as juridical models that have structure characteristics. Those are permanent and closed against the other fields. For the image of positivism, it can be seen in the groove overthrow of the verdict below:

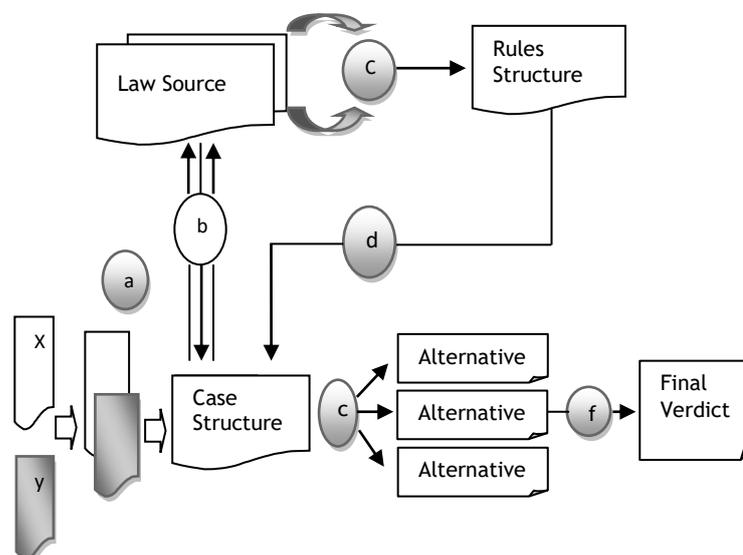
<sup>10</sup> M. Syamsudin, "Pemaknaan Hakim tentang Korupsi dan Implikasinya terhadap Putusan: Studi Perspektif Hermeneutika Hukum", *Jurnal Mimbar Hukum FH UGM*, Vol. 22. No.4. October 2010. p. 510. Compare to Al. Wisnubroto, "Upaya Mengembalikan Kemandirian Hakim Melalui Pemahaman Realitas Sosialnya", *Jurnal Hukum Pro Justitia*, Year XX No. 1 January 2003, p. 14

<sup>11</sup> M. Syamsudin, "Rekonstruksi Pola Pikir Hakim dalam Memutus Perkara Korupsi Berbasis Hukum Progresif", *Jurnal Dinamika Hukum*, Vol. 11 No. 1 January 2011, p. 12

<sup>12</sup> Umi Rozah, "Problematika Penerapan Logika Positivistik dalam Penegakan Hukum Pidana terhadap Tuntutan Keadilan Substantif", *Jurnal Masalah-Masalah Hukum*. Vol. 43 No. 1 January 2014, p. 145

<sup>22</sup> *Loc.cit*

Figure 1. The Groove Overthrow of The Verdict



Through the groove overthrow of the verdict, the judge matches the rules structure with the case structure (on the letter d). This matched mechanism is well known by using patterns of syllogisms. A major premise is derived from the rules structure, while the minor premise is gained from the case structure. The synthesis from both premises was conclusion.

#### Pancasila and Transcendental Positivism

The evolution of the Indonesia's law system dominated by positive law is described in Soetandjo Wignjosobroto's research. At first, the search for a national law model which fills the requirement of an era to be the primary bases of the establishment of national law sparks debate among the founding group that promotes the customary law in its new function as national law. It is the opposite of the historical Savignian concept that law is not possible to be made and imposed by the authorities and it faces the continuation of the tradition of colonial law which tends to be perfect with codification and unification model as derivative of civil law system originated from some parts of the continental Europe. We eventually know that it was won by civil law model.<sup>13</sup>

Standing up to the preamble of state constitution "For the mercy of God almighty", it shall be a postulate moral as part of the attempts to construct the forming of law as well as the body of upholding law. According to the first Pancasila, the desired values of deity is a positive value of deity obtained from an inclusive, liberating, royal, and brotherhood prophetic religions values, a roomy and tolerant deity that gives spirit of cooperation in filling social ethics in a life of nation and state. With the placement of deity over the other Pancasila, nation politics becomes a spiritual origin and strong moral foundation. Belief in the one and only God becomes the foundation that leads to the path of truth, justice, goodness, honesty and brotherhood.<sup>14</sup>

The judge verdict in Law judges power and decisions based on Criminal Procedure Code Article 197 stated: for a justice based on belief in the one and only God translated by the explanation of the Law judges power related to Constitution Article 29, it can then be understood that in the process of justifying and passing the verdict, the judges in their function and responsibility as well as the court are obliged to understand and implement the sense of justice in line with the requirement or religion belief. Based on those explanations, it can be

<sup>13</sup> Soetandjo Wignjosobroto, 1995, *Dari Hukum Kolonial ke Hukum Nasional, Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesia*, Jakarta: Rajagrafindo Persada, p. 241.

<sup>14</sup> Yudi Latif, 2011, *Negara Paripurna, Historisitas, Aktualitas Pancasila*, Jakarta: Gramedia, p. 111-112

concluded that the role of religion understanding from the judges is very decisive to the quality of judges' verdict that take dimensions for the justice based on the belief in one and only God.

The judge, Bismar Siregar, quotes from Qur'an, An-Nisa Verse 135: "O, the people who have faith in themselves! Let yourself become the judges, as a witness for the Gods, even though you do it to yourself or to your parents, or your friends, whether they are rich or poor, because the God can protect both, don't follow your lust so that you will not against the truth. If you turn yourself back from the truth, or take a wrong path from the justice, God truly knows what you do."<sup>15</sup>

In regards to the explanation of Article 2 Verse (1) law judges power as an implementation of Article 29 law 1945, a country based on a almighty God and a country guarantees each citizen to have religion and pray based on their belief, hence, the judges are obliged to understand and implement the sense of justice in accordance with the requirement or the religion teachings.

For Indonesian, religious life is not just about the motivation of belief or confidence. Religious life for Indonesia has become part of social life and culture. Religion becomes Indonesian characteristics. No matter how thin or far the religious life of one person, it does not mean one should remove its belief to their religion. At a certain moment, every people need and will be back to religion. The social reality even shows that how people are back to find the joy of having a religion with a simple reason. Having a religion pushes people to always try to be a more quality human individually and socially.<sup>16</sup>

The social dimension of having religion is relevant with judges job that have the responsibility to decide a case rightfully and fairly, obliged not to take sides, and obliged to say honestly. Thus, maintaining religious conscious-

ness will support one to be a good judge. This is the essence of the meaning of court decisions for a justice based on the almighty God. By paying attention to that relevance, how important it is for the judge to preserve religious awareness as a way of make religion as a grace for those who seek justice in the court of justice.

This is what the author means by the transcendental base in the judge's decision, particularly transcendental positivism-based decision. It is called as positivism because the judge's decision is based on the written legal norms even if the unwritten one is also approved based on the the existing values in the society. Meanwhile, it is called as transcendent because the justice values of the judge's decision are based on the values from the most powerful and greatest substance which can be understood in the religious thoughts as the Article 29 of Constitution implementation.

The transcendental positivism concept means that Pancasila first principle is the spiritual and moral base for Indonesian nation in their nation and state's life. In life as citizen's state, the one almighty deity principle means that as a citizen in a state, we must respect, pay attention and honor the One Almighty God's guides. In addition, it is not allowed to deviate from the conditions God decided. The regulations and the government's decisions (law products and law enforcement) must behold and respect the God's rules.

### Transcendental Dimension in Judge's Decision

Legal judgment as a process of interpretation of human reason and conscience toward the text of the law against concrete events carried out by judges, involves the perspective of individual thought and conscience.<sup>17</sup> The affirmation of the judiciary power enforcement principles stating the judicature is conducted for the justice based on the One Almighty God

<sup>15</sup> Bismar Siregar, 1991, *Islam dan Hukum*; Jakarta: Pustaka karya Grafikatama, p. 12

<sup>16</sup> Bagir Manan, "Menjadi Hakim yang Baik", *Majalah Varia Peradilan*, Year XXII No. 255 February 2007, p. 17

<sup>17</sup> Ery Satyanegara, "Kebebasan Hakim Memutus Perkara dalam Konteks Pancasila (Ditinjau Dari Keadilan "Substantif")", *Jurnal Hukum dan Pembangunan*, Year of 44, No. 4 October-December 2013. P. 465

(Article 2 Section 1 Law Number 48 Year 2009 about Judicial Power Law (Undang-undang Kekuasaan Kehakiman, hereinafter referred to as: UUKK)) and the state judiciary that applies and enforces the law and justice based on Pancasila (Article 2 Section 2 UUKK), clearly mean the enforcement of the justice values. In the context of Pancasila, it is necessary to develop Indonesian characteristics justice such as "Pancasila justice" which means "Divinity-based justice", "humanistic justice", "democratic, nationalistic, and social justice". Thus, it enforces not only the formal justice but also the substantial justice.<sup>18</sup> The substantive justice enforcement needs spiritual intelligence of the legal officers for its enforcement. Thus, they can give linear innovations and logic methods in criminal law enforcement contextually in Pancasila justice-based decision to be constructive for the substantive justice. The textual meaning is a limited interpretation that only refers to the text-applied law. Meanwhile, the contextual meaning is a wide interpretation that not only refers to the text but also relates and considers the social-legal factors.<sup>19</sup>

Modern law cannot always be applied in any situation in any countries because of ideas, cultural, and purposes construction. It is called as abstract system by Muladi. The legal adversity in Indonesia is caused by the law simplification as the rule of law and ignore the law as the rule of morality.<sup>20</sup> Consequently, the law is only considered as a regulation or procedural aspect which is closely related to the authority. In fact, the law is also full of values and ideas so that it is particular. In Indonesia, the modern law cannot be completely ignored or denied. What we can do is to give "soul", to navigate and to give character to our law system so it can be the true "*Law that is Indonesian*".<sup>21</sup>

According to Widodo, an example of "difficult" case that seems unimportant is Mbok Mi-

nah's case in his writing "Mencari kebenaran Materiil dalam Hard Case Pencurian Tiga Buah Kakao" (Look for the material truth in Hard Case of 3 Coconuts stealing). The judge's decision that reads the formal legal text and involves his conscience in trying to find out the fairest considerations is a good example for the legal practice in Indonesia if it has to choose between justice and legal certainty.<sup>22</sup> The judge's decision operation based on the transcendental values can be seen in Chart 3.

In the chart below, it can be seen that Pancasila is the moral state fundamental especially the first sila (principle). The first one shows *Habluminallah* (transcendental/vertical dimension). The second one shows *Habluminannas* (humanity/horizontal dimension). In the context of law enforcement, the function of those moral values are interpreted by law of judicial power especially on the material of judiciary principles application.

Principles function are the main principles with philosophical value for law and it is a universal and critical normative values statement. It is critical as it is delivered as the standard of the law justice while it is normative because it has regulation function towards government policy in law field (criminal). As fundamental matter in conducting judiciary power, the application of principles in Law of judiciary power is wide. It explains in the Article 2 until Article 17 and consists of more than 40 Paragraphs which contain formal and material principles. The principles also regulate law sources to enforce law by law officer.<sup>23</sup>

At least in the principles of judiciary power application, there are 7 basic norm of strategic principles including: *first*, for the sake of justice of divine God (Article 2 Paragraph 1 UUKK); *second*, the implementation and enforcement of law and justice based on Pancasila (Article 2 Paragraph 2 UUKK); *third*, judicial inde-

<sup>18</sup> Umi Rozah, *op.cit.*, p. 147

<sup>19</sup> M. Syamsudin, "Kecenderungan Paradigma Berpikir Hakim dalam Memutuskan Korupsi", *Jurnal Media Hukum*, Vol.15, No. 2. Des 2008. p. 188

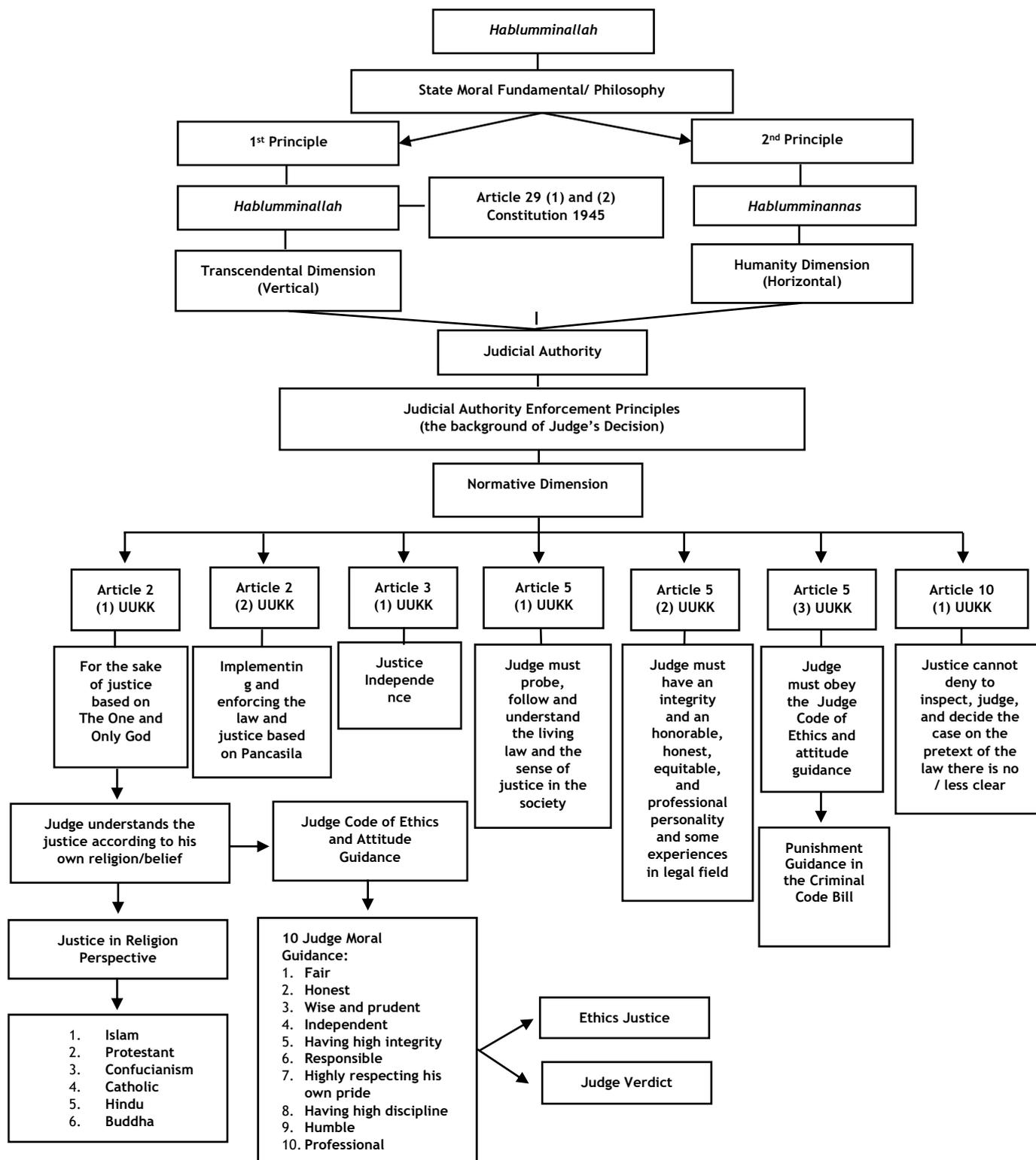
<sup>20</sup> Zuhriani, "Revitalisasi Pancasila dalam Pembangunan Hukum Nasional di Era Globalisasi", *Jurnal Pranata Hukum*, Vol. 7 No. 1 January 2012, p. 54

<sup>21</sup> *Ibid*

<sup>22</sup> Widodo Dwi Putro, "Mencari Kebenaran Materiil dalam "Hard Case" Pencurian Taga Buah Kakao, Kajian Putusan Nomor: 247/Pid.B/2009/PN. PWT", *Jurnal Yudisial, Pergulatan Nalar dan Nurani*, Rdisi Vil III/No. 03/December 2010, p. 227

<sup>23</sup> Syahrul Mahmud, "Pengertian Asas-Asas Hukum", *Varia Peradilan*, No. XX Edisi no. 242 December 2005, p. 20

Chart 3. The Relation of Pancasila and Judiciary Authority Principles



pendence (Article 3 Paragraph 1 UUKK); *fourth*, judges is obliged to know deeply, understand and follow law as well as living justice (Article 5 paragraph 1 UUKK); *fifth*, judges must have integrity, honest, fair, professional, good personality and experienced in Law field (Article 5 paragraph 2 UUKK); *sixth*, judges must obey code of ethics and judge guidance behaviour (Article 5 paragraph 3 UUKK); and *seventh*, justice is not allowed to refuse any request of examine, hear and decision making with non-existent law excuse/unclear (Article 10 Paragraph 1 UUKK).

From the 7 (seven) principles of judiciary power implementation it can be seen that judge decision based on transcendental values can be concluded as follows: *first*: judges must understand justice in accordance with their belief by doing integration value on the first and second principle as moral sources (*akhlaqul kari-mah*). Therefore, it suits QS al-Baqarah verses 177 that obligate human to do kind stuff as collection of kindness to Allah SWT (*hablumminal-lah*) and implementation of the first principle. Moreover, doing kindness to people (*hablumminannas*) as the implementation of the second principle. *Second*, judges must understand and internalize the meaning of justice in religion perspective. For Muslim, they must internalize justice based on Al-qur'an, specifically on QS Al-Baqoroh verses 188, QS An-nisa verses 58, QS AN-nisa verses 105 and verses 135; QA Al-Maidah verses 8 and etc. *Third*, judges must internalize code of ethics which are *kartika, cakra, candra, sari, and tirta* (panca dharma)<sup>24</sup> and code of ethics as well as judge behaviour guidance in practice that in prophetic social science perspective that is *amar makruf, and nahi munkar* in the faith to Allah, which results in the ideal law enforcement ethics. *Fourth*, judges must have integrity, honest, fair, professio-

nal, good personality and experienced in law field. *Fifth*, integration of ethics justice institutional enforcement as preventive effort to avoid any behaviour against code of ethics and judge behaviour guidance. *Sixth*, judges insert law enforcement principles "for the sake of justice of divine God" and code of ethics as well as judge behaviour guidance to be base in making decision of every issue in new concept/design of Criminal Procedure Code.

### Conclusion

Transcendental value basis in judge decision found their urgency within Pancasila based country. Even tough our country is not religion based country, the basic value of this country becomes law enforcement reference namely first and second principle. Both become country morality as foundation of country politics. According to Roger Garaudy, Transcendental means admitted human dependency to their God; relativity of every power, wealth and knowledge also admitted norms which beyond human imagination.

To realize judge decision based on transcendental values, it takes several simultaneous steps: *first*, judges must understand justice appropriate with their belief by value integration on the first and second principle as moral sources (*akhlaqul karimah*); *second*, judges must understand and internalize the meaning of justice in religion perspective; *third*, judges must internalize code of ethics *kartika, cakra, candra, sari, and tirta* (panca dharma) and code of ethics also judge behaviour guidance in practice that in prophetic social science perspective is *amar makruf nahi munkar* in the faith to Allah; *fourth*, judges must have integrity, honest, fair, professional, good-personality and experienced in law field; *fifth*, integration of ethics justice institutional enforcement as preventive effort to avoid any behaviour against code of ethics and judge behaviour guidance; and *sixth*, judges insert law enforcement principles "for the sake of justice of divine God" and code of ethics also judge behaviour guidance to be base in making decision of every issue in new concept/design of Criminal Procedure Code.

<sup>24</sup> Judge panca dharma as stated by Dudu Duswara Macmudin is: Kartika means having the character and believe in God and it suits each of their religion based on the basis of just and civilized humanity; Candra means having wise and authoritative character; Sari means virtuous and well behave and lasty Tirta means being honest. Look at Dudu Duswara Macmudin, "Peranan Keyakinan Hakim dalam Memutus Suatu Perkara di Pengadilan", *Varia Peradilan*, Year XXI No. 251 October 2006, p. 54-55

### Suggestion

*First*, national criminal law (material/formal criminal law) shall pay attention to religious values as one of law sources since the first and second principle are national ideology. *Second*, *irah-irah* (vow) court decision for the sake of justice of divine God obligate all judges to understand and applied religious values (illahiyyah demand) in order to make quality decision and raise national quality. *Third*, maintain curriculum material for judge candidate education and training appropriate with the needs, especially to increase understanding of judiciary power implementation principles; thus it can be operational/implementation. *Fourth*, ethics judiciary implementation becomes the authority of independent party, accountable, open and access able by public.

### References

- Ali, Mahrus. 2013. *Melampaui Positivisme Hukum Negara*. Yogyakarta: Aswaja Pressindo;
- Bakry, Noor Ms. 2010. *Pendidikan Pancasila*. Yogyakarta: Pustaka Pelajar;
- Berlian, Pasiol. "Hakikat Pembangunan Hukum dan Pertanggungjawaban Hukum dalam Payung Pancasila Perspektif Islam". *MI-QOT*. Vol. XXXVIII. No. 1 January-June 2014. Pp. 143-16;
- Dimiyati, Khudzaifah & Kelik Wardiono (eds). 2014. *Pemikiran Hukum, Konstruksi Epistemologi Berbasis Budaya Hukum Indonesia*. Yogyakarta: Genta Publishing;
- Fahmi, M. 2005. *Islam Transendental, Menelusuri Jejak-Jejak Pemikiran Islam Kuntowijoyo*. Yogyakarta: Pilar Religia;
- Latif, Yudi. 2011. *Negara Paripurna, Historisitas, Aktua-litas Pancasila*. Jakarta: Gramedia;
- Machmudin, Dudu Duswara. "Peranan Keyakinan Hakim dalam Memutus Suatu Perkara di Pengadilan". *Majalah Varia Peradilan*. XXI No. 251 October 2006. Pp. 47-64;
- Mahmud, Syahrul. "Pengertian Asas-Asas Hukum". *Varia Peradilan*. No. 242 December 2005, Pp. 18-31;
- Manan, Bagir. "Menjadi Hakim yang Baik". *Majalah Varia Peradilan*. No. 255 Pebruari 2007. Pp. 1-18;
- Putro, Widodo Dwi. "Mencari Kebenaran Materil dalam "Hard Case" Pencurian Taga Buah Kakao, Kajian Putusan Nomor: 247/Pid.B/2009/PN. PWT". *Jurnal Yudisial*. Pergulatan Nalar dan Nurani. Edition Vil III/No. 03/December 2010. Pp. 220-237;
- Rozah, Umi. "Problematika Penerapan Logika Positivistik dalam Penegakan Hukum Pidana terhadap Tuntutan Keadilan Substantif". *Jurnal Masalah-Masalah*. Vol. 43 No. 1 January 2014. Pp. 140-148. DOI: 10.14710/mmh.43.1.2014.140-148;
- Satyanegara, Ery. "Kebebasan Hakim Memutus Perkara dalam Konteks Pancasila (Ditinjau Dari Keadilan "Substantif")". *Jurnal Hukum dan Pembangunan*. Year of 44. No. 4 October-December 2013. Pp. 434-468. DOI: 10.21143/jhp.vol43.no4.1499;
- Siregar, Bismar. 1991. *Islam dan Hukum*, Jakarta: Pustakakarya Grafikatama;
- Syamsudin, M. "Kecenderungan Paradigma Berpikir Hakim dalam Memutuskan Korupsi". *Jurnal Media Hukum*. Vol.15 No. 2. December 2008. Pp.186-204;
- , "Pemaknaan Hakim tentang Korupsi dan Implikasinya terhadap Putusan: Studi Perspektif Hermeneutika Hukum". *Jurnal Mimbar Hukum*. Vol. 22. No. 4. October 2010. Pp. 499-519, DOI: 10.22146/jmh.16241;
- , "Rekonstruksi Pola Pikir Hakim dalam Memutus Perkara Korupsi Berbasis Hukum Progresif". *Jurnal Dinamika Hukum*. Vol. 11 No 1. January 2011. Pp. 11-21. DOI: 10.20884/1.jdh.2011.11.1.11;
- , 2013. *Ilmu Hukum Profetik, Gagasan Awal Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodernisme*. Yogyakarta: FH UII Press;
- Taufiq, Abdullah. "Refleksi atas Revitalisasi Nilai Pancasila Sebagai Ideologi Dalam Mengeleminasi Kejahatan Korupsi". *UNIVERSUM*. Vol 9 No 1 January 2015. Pp. 49-55;
- Wignyosobroto, Soetandjo. 1995. *Dari Hukum Kolonial ke Hukum Nasional, Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesia*. Jakarta: Rajagrafindo Persada;
- Wisnubroto, Al. "Upaya Mengembalikan Kemandirian Hakim Melalui Pemahaman Realitas Sosialnya", *Jurnal Hukum Pro Justitia*, Year XX No. 1 January 2003, p. 14-20;
- Zuhraini. "Revitalisasi Pancasila dalam Pembangunan Hukum Nasional di Era Globalisasi". *Jurnal Pranata Hukum*. Vol. 7 No. 1. January 2012. Pp. 51-66.