

Regulation of People's Economy in Regions Based on Pancasila and Reflexive Law Theory

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Abstract

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Pancasila serves as a fundamental normative framework encompassing politics, economics, and culture. Reflexive law functions as a coordination system for actions within semi-autonomous social sub-systems during transitional periods. This study aims to analyze the regulation of the populist economy within the context of Pancasila and reflexive legal theory. The research methodology is normative, employing a conceptual approach. The primary finding indicates that Pancasila must be embraced as a way of life, deeply embedded in the national consciousness, spirit, and ethos, and reflected in thoughts, attitudes, and actions related to the populist economy. Furthermore, the dissemination of Pancasila's understanding is essential, particularly in regions of Indonesia that have not yet established regulations on modern retail restrictions. It is imperative for government officials, especially those at the regional level such as members of the Regional House of Representatives, Regional Heads, and strategic policymakers, to thoroughly comprehend Pancasila grounded in a populist economy when formulating policies based on Pancasila. Additionally, the government can enhance its preparedness by aligning with Gunther Teubner's perspectives on harmonizing modern law with public interests. Teubner argues that to improve public welfare and address the crisis of formal rationality, the law needs to be rematerialized. This rematerialization of law depends on the application of reflexive law as a coordination mechanism within and among semi-autonomous social subsystems. In the Indonesian context, this approach aligns with the values of Pancasila and the concept of Economic Democracy.

1. Introduction

According to historical facts, every country is founded on a certain philosophy. Therefore, each country has a different philosophy. Because a philosophy is synonymous with the desires and character of its people and nation, it is impossible to simply adopt another country's philosophy as the philosophy of a nation. Since philosophy is a manifestation of the character and desires of a nation, every aspect of that nation's life must be in accordance with its philosophy.¹ Before delving deeper into the core values of a people-centered economy, it is necessary to first discuss the practices of obfuscating Pancasila in economic activities, as an integral part of this discussion. First, the Upstream Pattern (legal framework for economic activities that abandons the spirit of ethics/morality to achieve social welfare in favor of materialism), and second, the Downstream Pattern (domination by foreign control and high import rates leading to economic dependency).

This research interprets Pancasila as a fundamental foundation for revealing the core values of a people-centered economy based on Pancasila. Pancasila, as a system of values that mutually inspire one another, has encapsulated the diverse values upheld by its society. The

¹ Moh. Kusnardi Dan Harmaily Ibrahim, *Hukum Tata Negara Indonesia*. (Jakarta Selatan: Pd. Budi Chaniago, 1988).

great structuralist thinkers of Indonesia, Soekarno and Hatta, have not been deeply appreciated by subsequent generations for their economic thoughts. The dualistic thoughts that transcended their era deserve scholarly study to uncover the values contained within them.

Pancasila, as the spiritual foundation of the Republic of Indonesia, derives from the elements in the preamble of the 1945 Constitution in the sentence: "Based on the belief in the One and Only God, Just and Civilized humanity, the Unity of Indonesia, Democracy guided by the inner wisdom of deliberations amongst representatives, and Social Justice for all the people of Indonesia."² Pancasila is decided upon as the state's foundation. This means that every action of the Indonesian people and state must be in accordance with Pancasila, which has been established as the state's foundation. In the legal field, Pancasila is the source of material law. Therefore, every provision of legislation must not contradict it. If such a situation occurs, the regulation must be promptly revoked.³

As for the system of government, Democracy is a form of government in which the people participate in ruling (co-governance), either directly found in communities that are still simple, or indirectly because the people are represented, found in modern states. Nevertheless, the decisions made are a reflection of their individualistic society. Unlike in the democracy practiced in Indonesia, it is customary to hold a deliberation to seek consensus or agreement on every policy to be taken⁴.

The concept of a rule of law based on the principles of democracy and social justice within a united Indonesian society seems to be grounded in the perceptions of the founders of the Republic of Indonesia, shaped by the historical realities experienced by Indonesian society. The oppressive rule of feudal kings and subsequent Western colonial rulers, who also exploited the resources of Indonesian society, made the founders of the Republic of Indonesia aware of the need to establish a rule of law based on democratic principles and social justice within a united Indonesian society.⁵ On a democratic basis, a *rechtsstaat* (state of law) is said to be a "state of mutual trust," where the people's supporters trust that the power given will not be abused and the rulers trust that within the limits of their power, they expect obedience from their supporters.⁶

Concerning social justice in society, the development of a people-oriented economy requires government support through policies that are economically aware of the region. Thus, Mahfud MD argues that a modern nation today has pursued development through three levels: political unification, political industrialization, and the politics of the welfare state. At the level of unification, legal politics is about how to achieve political integration to create national unity and cohesion. The second level is industrialization, where the legal politics used

² H. Zainuddin., "Filsafat Hukum. Cetakan Keenam" (Jakarta: Sinar Grafik, 2016).

³ Ni'matul Huda, "Hukum Tata Negara Indonesia" (Jakarta: Edisi Revisi. Pt Raja Grafindo Persada, 2014).

⁴ Moh. Kusnardi Dan Harmaily Ibrahim, *Hukum Tata Negara Indonesia*.

⁵ Abdul Hakim G. Nusantara, "Politik Hukum Indonesia. Cetakan Pertama. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia" (Jakarta: Cetakan Pertama. Yayasan Lembaga Bantuan Hukum Indonesia, 1988).

⁶ Ni'matul Huda, "Negara Hukum, Demokrasi Dan Judicial Review" (Yogyakarta: Cetakan Pertama. Yogyakarta: Uii Press, 2005).

refers to the struggle for economic development and political modernization. At the level of the welfare state, the legal politics used refers to the state's main task of protecting the people from the negative aspects of industrialization and correcting past mistakes. These steps are taken with a greater emphasis on creating public welfare.⁷

The government's concern for economic development as a people's economic policy towards welfare is through a universal policy from the central and regional economic conditions. Thus, the policy adopted is through the Minister of Trade Regulation No. 23 of 2021 concerning Guidelines for Development, Arrangement, and Fostering of Shopping Centers and Supermarkets. Following this regulation, several regions in Indonesia have issued similar regulations through their regional regulations, including:

1. Kulon Progo Regency, Special Region of Yogyakarta, through Regional Regulation No. 16 of 2021 concerning the Protection, Empowerment, and Arrangement of Traditional Markets as well as the Arrangement of Shopping Centers and Supermarkets;
2. Bantul Regency, Special Region of Yogyakarta, through Regional Regulation No. 9 2021 concerning the Protection, Empowerment, and Arrangement of Traditional Markets as well as the Arrangement of Shopping Centers and Supermarkets;
3. Klaten Regency, Central Java Province, through Regional Regulation No. 10 of 2019 concerning the Management of Traditional Markets, Shopping Centers, and Supermarkets;
4. Biltar Regency, East Java Province, through Regional Regulation No. 5 of 2021 concerning the Organization of Traditional Markets, Shopping Centers and Supermarkets;
5. Pati Regency, Central Java Province, through Region Regulation No. 2 of 2019 concerning the Arrangement of Traditional Markets and Supermarkets;
6. Pasuruan Regency, East Java Province, through Regional Regulation No. 5 of 2021 concerning the Empowerment of traditional Markets and the Arrangement of Shopping Centers and Modern Shops in Pasuruan Regency;
7. Magetan Regency, East Java Province, through Regional Regulation No. 3 of 2021 concerning the Protection, Development, and Arrangement of Markets;
8. Bojonegoro Regency, East Java Province, through Regional Regulation No. 48 of 2021 concerning the Arrangement and Empowerment of Traditional Markets, Supermarkets, and Shopping Centers.

Several regencies in Indonesia have enacted these policies, which, according to the author, are driven by the central government's (executive) goal to accelerate regional development. Referring to Roscoe Pound, the objectives of law include maintaining order to achieve justice, legal certainty, peace, and happiness. Jeremy Bentham asserts that the law's purpose should be to benefit society by maximizing overall happiness. In the context of Indonesia, Mochtar Kusumaatmadja interprets the function of law as a means to promote social reform. As a tool for societal renewal, the emphasis is on legislative bodies formulating

⁷ Moh. Mahfud Md., "Kontribusi Pemikiran Untuk 50 Tahun Retrospeksi Terhadap Masalah Hukum Dan Ketatanegaraan," Cetakan Pe (Yogyakarta: Program Pasasarjana Fh Uii Dengan Fh Uii Press., 2007).

laws intended to shape a new society to be realized in the future through the enactment of such legislation.⁸

In another dimension, Pancasila, as the nation's foundational philosophy, encompasses several aspects according to the author. These include the principle of divinity, where the state guarantees its citizens the freedom to practice their chosen religion. Just and civilized humanity entails freedom from all forms of colonialism and upholding human rights. The unity of Indonesia implies that every citizen values diversity and respects differences. Democracy, guided by wisdom and prudent deliberation, means that true independence lies in the hands of the people, free from colonialism and that decisions are made through a fair and civilized consensus, not merely by majority vote. Finally, social justice implies that the welfare of the people is paramount, ensuring economic prosperity across all regions and providing moral and legal justice.

As society evolves, so do its collective mindset and the laws that govern behavior. Quoting Thubner, Nonet, and Selznick to explain legal change, it heavily depends on "internal" variables within the legal system. Meanwhile, Habermas and Luhmann emphasize the "external" relationship between legal structures and society. Their strategy combines "internal" and "external" variables in their covariance model, which considers the inherent developmental potential of the current legal system (Nonet and Selznick) and the constraints and needs of the emerging post-modern society (Habermas and Luhmann). They specifically aim to explain how the internal dynamics of legal development, as described by Nonet and Selznick, will likely unfold within a transforming societal context, forming the basis of theories developed by Habermas and Luhmann. This process utilizes legal concepts while differing in significant aspects. They term this approach "reflexive law theory"⁹.

Globalization is unavoidable for all nations, and it brings with it the infiltration of capitalism into the fabric of Indonesia's economy. By examining various references and comparing with previous research, one notable study titled "Pancasila and the Existence of a People's Economy in Facing Global Capitalism" focuses on analyzing the existence and implementation of a people's economy as a sub-system of the national economy based on Pancasila, in the face of global capitalism's challenges.¹⁰ Another study, titled "The Role of the State in the People's Economic System Based on Pancasila to Achieve Social Welfare," focuses on the transplantation of liberal legal norms into the 1945 Constitution, creating a "dualism" in Indonesia's economic system. This duality leads to a state of anomie or confusion among the public about whether to follow a people's economy system or a liberal-capitalist economic system. Anomie results in a lack of legal certainty. Another similar but distinct study, titled

⁸ ' Ramlan, "Tinjauan Filosofis Aspek Kepastian Hukum Antara Pemerintah Dengan Pemerintah Daerah Dalam Implementasi Undang-Undang Penanaman Modal Di Indonesia," *Jurnal Ilmu Hukum* 3, No. 1 (March 8, 2013), <https://doi.org/10.30652/jih.v3i01.1028>.

⁹ Ghunter Thubner, "Substantive And Reflexive Elements In Modern Law" 17 (2): 24 (1983), <https://doi.org/10.2307/1410186>.

¹⁰ Anita Rinawati, "Pancasila Dan Eksistensi Ekonomi Kerakyatan Dalam Menghadapi Kapitalisme Global," *Jurnal Terapung : Ilmu - Ilmu Sosial* 2, No. 2 (December 22, 2020), <https://doi.org/10.31602/jt.v2i2.3972>.

"Transformation of Islamic Economics in the People's Economic System," focuses on the transformation of Islamic economics within the people's economic system.¹¹

From the above discussions, the issues of Pancasila democracy as the foundation of Indonesia's state system, particularly the regulation of the people's economy in regions based on Pancasila and Reflexive Law Theory, will be analyzed using Gunther Thubner's reflexive law theory and Pancasila democracy. Discussing Pancasila involves a broad and complex range of topics. Therefore, the author's focus is on how the regulation of the people's economy in regions based on Pancasila and Reflexive Law Theory can be analyzed. The current situation in Indonesia aligns with the objectives of reflexive law.

2. Methods

This research uses a normative legal research method, examining primary, secondary, and tertiary legal materials because the study focuses on Pancasila democracy and Gunther Thubner's reflexive law theory. The approach used is a conceptual approach, as the researcher prioritizes primary, secondary, and tertiary legal materials, especially secondary legal materials such as legal books, legal journals, and other scientific research results. The use of secondary legal materials guides the research direction. For practitioners, these secondary materials may serve as a guide for formulating arguments in their legal opinions¹².

3. Results and Discussion

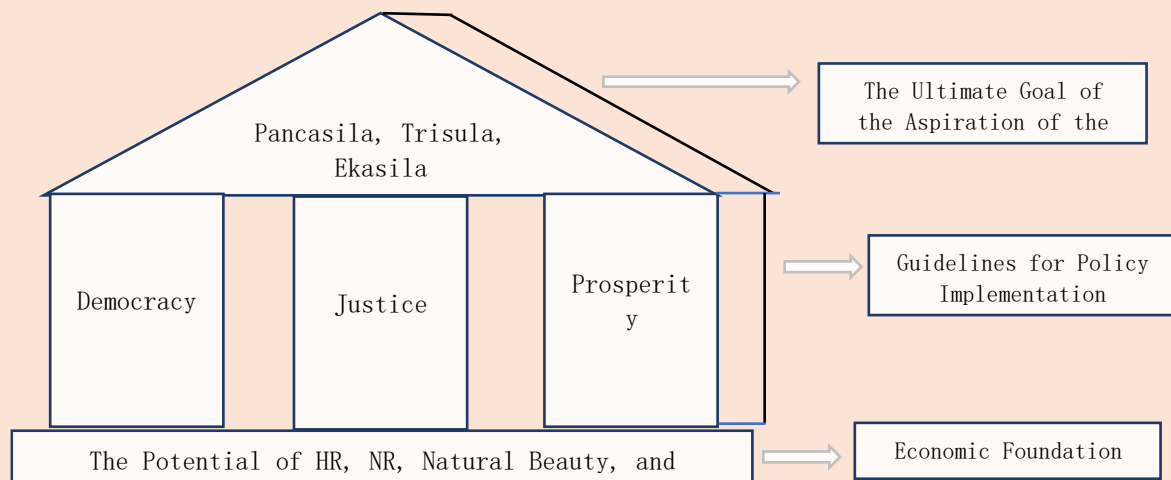
The ideology of Pancasila encompasses several elements, including its interpretation as the historical result of the Indonesian nation's experiences and as an orientation for action. Regarding its function, Pancasila serves as a solidarity-making tool and is futuristic, offering a vision of the future that should be understood as a process rather than a final form. Hence, Pancasila should always be able to highlight existing conditions, known as Pancasila ideology as a reference point.¹³

To facilitate the understanding of the core values of a people-centered economy based on Pancasila, this study analogizes it as the embodiment of a "house." This house has an ideal construction consisting of a foundation, supporting pillars, and a roof. The independent state of Indonesia, which embodies the values of Pancasila (the core values of a people-centered economy based on Pancasila), is likened to the construction of a house that provides security and happiness, both physically and spiritually, to the hundreds of millions of people within it. This means that the policies of an independent Indonesian government are the tools used to achieve the development of a just and prosperous society in accordance with Pancasila in practice.

¹¹ Sugeng Riyadi And Dewi Laela Hilyatin, "Transformasi Ekonomi Islam Dalam Sistem Ekonomi Kerakyatan," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 6, No. 1 (June 29, 2021): 43, <https://doi.org/10.24235/Jm.V6i1.8100>.

¹² Peter Mahmud Marzuki.

¹³ Ibrahim, "Sengketa Timah Dan Gagapnya Ideologi Pancasila.," Cetakan Pe (Yogyakarta: Penerbit Imperium, 2013).



Picture 1: Home Analogy of the Core Values of the People's Economy

When the Investigatory Body for the Preparation of Indonesian Independence (BPUPKI) held meetings to find a philosophical foundation for the soon-to-be-independent Indonesia, it decided on Pancasila as the foundation of the state. This means that every action by the people and the state of Indonesia must align with Pancasila, which has been established as the state foundation¹⁴. Pancasila as the principle of Indonesian Constitutional Law can be seen as follows:

a. Principle of Belief in One Supreme God

In the executive domain, the realization of the Principle of Belief in One Supreme God can be observed through the existence of the Ministry of Religious Affairs and its various departments that regulate all matters related to religion in Indonesia. In the legislative field, the implementation of this principle is reflected, for example, in the enactment of the Marriage Law No. 1 of 1974. Similarly, in the judicial field, as stated in Law No. 14 of 1970, Article 4, Paragraph (1), "Justice is conducted 'For the sake of Justice based on the Belief in One Supreme God'," which is reflected in every decision of the general judiciary in Indonesia. Additionally, the existence of religious courts, specifically established for those of the Islamic faith, is also a realization of this principle.

b. Principle of Humanity

In the legislative sector, this principle can be seen in the enactment of Labor Laws that eliminate the exploitation of humans by other humans. In the executive domain, it is evident through the existence of the Ministry of Social Affairs, which also strives to address issues related to humanity, such as the Directorate of Natural Disasters, which actively provides and channels aid from the community to areas affected by natural disasters.

c. Principle of Nationalism

In the legislative field, this principle is evident with the enactment of the Citizenship Law and the Agrarian Law, which are closely related to the lives of the Indonesian people. This principle is also upheld by the courts, for example, in their decisions involving disputes between Indonesian citizens and foreigners within Indonesian territory, where Indonesian laws are applied.

d. Principle of Popular Sovereignty

¹⁴ Ni'matul Huda, "Hukum Tata Negara Indonesia."

In the legislative field, the realization of this principle is evident in the authority vested in the House of Representatives. In the judicial domain, this principle is also visible in the fact that Supreme Court judges can only be appointed after being proposed by the members of the House of Representatives to the President.

e. Principle of Social Justice

In the legislative field, the implementation of this principle is embodied in the enactment of laws concerning social security. In the judicial domain, every judge's decision always adheres to the principle of social justice. This is particularly pertinent with the emergence of industrial centers, which may lead to disputes. In such cases, decisions are always guided by social justice, taking into account the welfare of the people.¹⁵

3.1. Analysis of Regional People's Economy Regulation Based on Pancasila and Reflexive Law Theory

The term "reflexive law" was first reintroduced in 1982 by Gunther Teubner. Reflexive law is defined as a system of law that functions to coordinate actions within and between semi-autonomous social subsystems as a process of transition. From this definition, several characteristics and features of reflexive law can be identified, namely: a new type of approach to legal control itself; as a replacement for the takeover of regulatory responsibilities; aimed at the outcomes of social processes; limiting rather than imposing corrections; redefining democratic self-regulation mechanisms¹⁶.

On the other hand, the perspective of Pancasila democracy explains that all legal regulations form a unified structure and thus constitute a system. From this explanation, an example can be presented: Pancasila as the foundational principle of national law in the Republic of Indonesia, mandates that the 1945 Constitution, laws, and other regulations must align with or not contradict Pancasila as the fundamental principle. Similarly, laws and other regulations must not contradict the 1945 Constitution. Based on this example, it can be stated that the Indonesian legal system is based on Pancasila and the 1945 Constitution.¹⁷

In discussing the Indonesian legal system, it is essential to understand that it is based on Pancasila. Pancasila serves as the guideline and guiding star for the 1945 Constitution, laws, and other regulations. As the fundamental norm of the state, Pancasila forms subordinate legal norms in a hierarchical manner. Pancasila, as the legal ideal (*rechtsidee*) in the legal life of the Indonesian nation and, on the other hand, as a system of legal norms that becomes the fundamental state norm, has its written rules in the preamble and body of the 1945 Constitution of the Republic of Indonesia. This shows that the legal ideal becomes the guiding star, and the system of legal norms consists of various levels of legal norms that regulate the real and concrete legal behavior of the Indonesian people. Both were conceived simultaneously from a single source, namely the consensus of the founders of the Republic of Indonesia on August 17, 1945.¹⁸

Regarding regional authority in maintaining a people's economy based on Pancasila Democracy, the flexibility of Regional Governments in conducting their activities can be formulated into five aspects:

1. *Self-regulating power*, which is the ability to regulate and implement regional autonomy;
2. *Self-modifying power*, which is the ability to adjust the national normative legal order to regional conditions;

¹⁵ Moh. Kusnardi Dan Harmaily Ibrahim, *Hukum Tata Negara Indonesia*.

¹⁶ Aswiwin Hirua, "Perspektif Hukum Refleksif Terhadap Hubungan Kewenangan Antar Pemerintah Daerah," *Jurnal Ilmu Hukum* 20 (1): 94 (2012), <https://Adoc.Pub/Jurnal-Ilmu-Hukum-Amanna-Gappa>.

¹⁷ Zainuddin, "Filsafat Hukum. Cetakan Keenam."

¹⁸ Zainuddin.

3. *Local political support*, which is the administration of government activities with broad legitimacy from both the executive and legislative branches;
4. *Financial resources*, which is the development of the ability to manage regional revenue sources as funding for government activities;
5. *Developing brain power*, which is the development of human resources within the government apparatus, focuses on intellectual capabilities.

Thus, the readiness of the government can be expanded from the thoughts of Gunther Teubner as mentioned above. The readiness of the government to modern law can be aligned with the interests of the people so that any policies to be implemented can be consistent with the state's goal of providing welfare to the people living in all regions of Indonesia, including those in the regional areas.

Mastery of the concept of law as both a norm and a definitional fact must be undertaken integrally, not partially. Parliamentary knowledge of positive law is necessary. It is only in this way that jurists, through study and juridical argumentation, can construct and scientifically verify the relevance of facts, as written by Gr. Van der Burgh. All of this underscores the urgent need for a study capable of freeing law from both normative impressions and practical appearances. Thus, the use of Pancasila as a benchmark for legal science in examining the existence of law can be affirmed as the right choice with clear justification. Law in Indonesia is oriented (*fardhu ain*) towards the spirit of Divinity, Humanity, Unity, Democracy, and Justice.¹⁹

The Indonesian economy, which elevates small business actors such as economic drivers in traditional markets, small shops, and Small and Medium Enterprises (SMEs), especially in the regions, is crucial for raising the income of the community. In the field of economics, there is a term "the strong win," so economic development typically leads to free competition and rarely prioritizes humanistic morality. This is inconsistent with Pancasila, which is more directed towards a people's economy, that is, an economy that is humanistic and based on the goal of widespread public welfare. Economic development should not only pursue growth but also aim for humanity and the well-being of the entire society. Therefore, the Indonesian economic system is based on the familial principle of the entire nation.²⁰

Through the planting, development, and strengthening of Pancasila national values from an early age through the education of school children to lifelong education, it is expected that a sense of nationalism will grow, reflected in thoughts, attitudes, and actions based on strong nationalism. In order to realize this national outlook, various policy steps need to be taken, including the reinforcement of national values, which must also be re-instilled in business/economic actors, covering large, medium, and small private entrepreneurs, state-owned enterprises, and cooperatives²¹.

From a legal perspective, no less than 242 laws, 11 government regulations in lieu of laws, 608 government regulations, 1003 presidential decrees, and 82 presidential instructions have been enacted since the 1998 reform in the fields of politics, economics, and social affairs.

¹⁹ Setya Arianto, "Memahami Hukum Dari Konstruksi Sampai Implementasi" (Jakarta: Pt Rajagrafindo Persada, 2012).

²⁰ Dan Rahayu Fery Anitasari, Muhammad Azil Maskur, Ridwan Arifin, Aprilia Niravita, Ayup Suran Ningsih, "Revitalisasi Ideologi Pancasila Dalam Aras Global Perspektif Negara Hukum," In *Pdf - I Prosiding Seminar Nasional Fakultas Hukum Universitas Negeri Course Hero*, 2016, <https://www.coursehero.com/file/42478925/Revitalisasi-Ideologi-Pancasila-Dalam-Aras-Global-Perspektif-Negara-Hukumpdf/>.

²¹ Muhammad Azil Maskur, Ridwan Arifin, Aprilia Niravita, Ayup Suran Ningsih.

These laws and regulations aim to unify the Unitary State of the Republic of Indonesia, overcome the economic crisis, and simultaneously develop social welfare.²²

A developing country like Indonesia undoubtedly needs investment from both domestic and foreign sources. Foreign investment is also expected to foster the emergence of world-class domestic entrepreneurs through intense direct competition, thereby promoting economic advancement within the country. However, the responsibility for the lower-middle economy must be borne by both the central and regional governments²³. However, the responsibility for the lower-middle economy must be borne by both the central and regional governments. Given the rapid development of modern retail, whether owned by companies or individuals, regulation regarding the protection, empowerment, and organization of local markets, as well as the arrangement of shopping centers and supermarkets in the regions, is essential.

Currently, there is a phenomenon of restricting modern retail in various regions. Modern retailers are choosing to adapt to the policies of certain regions that limit the number of outlets for this industry, although this is seen as hindering expansion efforts. According to data from Aprindo, the number of modern retail outlets in Indonesia reached 45,972 in 2018. This total includes 263 hypermarkets, 1,283 supermarkets, and 44,626 minimarkets. The Corporate Affairs Director of PT Sumber Alfaria Trijaya Tbk. stated that regional policies related to limiting modern retail outlets present a unique challenge for the company. These policies add to the burden on the company and its franchise partners, who have already faced the complexities of obtaining business establishment permits.²⁴

This aligns with Thubner's statements that, first, the state's dominance as a regulator on one hand and as a promoter of public welfare on the other has given rise to the concepts of the welfare state and the regulatory state. Secondly, one of the issues faced by modern law today is the "crisis" of formal rationality. Therefore, rematerialization of the law is necessary. Thirdly, the emergence of legal rematerialization is due to the crisis of formal rationality in modern law.²⁵ The systematic and massive internalization of Pancasila values is also necessary to embed these values in the soul and reflect them in behavior. Pancasila not only functions as the state foundation and the nation's philosophy of life but also as the legal ideal (*rechtsidee*), which should be the basis and guideline for legal development. In relation to the politics of national legal development, building social justice is essential. Laws that encourage or allow the existence of socio-economic gaps due to the exploitation by the strong over the weak without state protection are not justified. Law must be able to ensure that the weak are not left to face the strong alone, who will inevitably always prevail.²⁶

Referring to the Minister of Trade Regulation No. 18 of 2022 concerning Guidelines for the Development, Arrangement, and Supervision of Shopping Centers and Supermarkets, which has been revised, it is noted that prior to this regulation, there was the Minister of Trade Regulation No. 23 of 2021 concerning Guidelines for the Development, Arrangement, and Supervision of Shopping Centers and Supermarkets. This change was broadly made due to Government Regulation No. 7 of 2021 on the Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises. The implementation of this

²² Moh. Mahfud Md., "Kontribusi Pemikiran Untuk 50 Tahun Retrospeksi Terhadap Masalah Hukum Dan Ketatanegaraan."

²³ Endang Sri. Suwarni, "Dampak Perundang-Undangan Penanaman Modal Perekonomian," In *Probank* 1 (7): 161503., 2011.

²⁴ Yustinus Andri Dp, "Ritel Modern Makin Sulit Ekspansi Di Daerah, Bagaimana Manuver Pengusaha," 2019.

²⁵ Ghunter Thubner, "Substantive And Reflexive Elements In Modern Law."

²⁶ Muhammad Azil Maskur, Ridwan Arifin, Aprilia Niravita, Ayup Suran Ningsih, "Revitalisasi Ideologi Pancasila Dalam Aras Global Perspektif Negara Hukum."

regulation has also extended to the regions through local regulations, embodying the spirit of providing welfare to their communities²⁷.

According to Erman Radjagukguk, conducive law for development must encompass at least five qualities: "stability," "predictability," "fairness," "education," and the ability to forecast. Predictability is especially crucial in countries where society is engaging in economic relationships beyond their traditional social environment for the first time. Stability also implies that the law has the potential to maintain balance and accommodate competing interests²⁸. In principle, real autonomy is a principle wherein the handling of governmental affairs is executed based on actual duties, authorities, and obligations that exist and have the potential to grow, live, and develop according to the region's potential and uniqueness. Responsible autonomy means that in its implementation, it must truly align with the purposes and objectives of granting autonomy, which fundamentally aims to empower the region, including improving the welfare of the people, which is a main part of the national goals.²⁹

According to Gunther Teubner regarding his reflexive law theory, it attempts to identify "types" of laws, show the development from one type to another, and explain the transitional processes. Despite substantial differences among them, these theories address a common issue: the crisis of formal rationality. They treat formal rationality as a dominant feature of modern law (at least until recently), asserting that phenomena such as the "rematerialization of law" are manifestations of this crisis and strive to explain the situation. Formal legal rationality is oriented towards adherence to formal legal rules, whereas substantive legal rationality focuses on outcomes and goals. Reflexive legal rationality, on the other hand, is oriented toward the process and the motives behind those processes.³⁰ In relation to the above, Gunther Teubner states that in the modern era, a legal crisis has occurred due to the law's inability to respond to the need for system integration and the existence of a legitimacy crisis. This can be observed in the performance of institutions (government), as we know that at the implementation level, it reflects the poor state of an unintegrated system, leading to a legitimacy crisis.³¹

Furthermore, according to Gunther Teubner, the legal crisis that occurs is partly due to one of the problems experienced by modern law today, which is the "crisis" of formal rationality. Formal rationality, which is oriented towards adherence to formal legal rules, should consider substantive rationality, which is oriented towards results or goals, and indeed, a reflexive rationality oriented towards processes and the motives behind them is needed.³² In the context of administering legal life, we indeed see that the role of the state and government is far greater than that of society. Therefore, it is imperative for government administrators, especially those in the regions such as DPRD members, regional heads, and

²⁷ "Peraturan Pemerintah Nomor 7 Tahun 2021 Tentang Kemudahan, Pelindungan, Dan Pemberdayaan Koperasi Dan Usaha Mikro, Kecil, Dan Menengah" (N.D.).

²⁸ Erman. 1997. Radjagukguk, "Peranan Hukum Dalam Pembangunan Pada Era Globalisasi : Implikasinya Bagi Pendidikan Hukum Di Indonesia.," In *Universitas Indonesia Library*. (Jakarta: Ui-Pres, 1997).

²⁹ M. Satria, ""Implementasi Undang-Undang Pemerintahan Daerah Serta Prinsip-Prinsip Good Governance Oleh Kepala Daerah Dalam Penyelenggaraan Hak Otonomi," 2007.

³⁰ Hm. Soerya Respationo And M. Guntur Hamzah, "Putusan Hakim: Menuju Rasionalitas Hukum Refleksif Dalam Penegakan Hukum," *Yustisia Jurnal Hukum* 2, No. 2 (May 1, 2013), <https://doi.org/10.20961/Yustisia.V2i2.10194>.

³¹ Adam. Setiawan, "Perspektif Hukum Refleksif Terhadap Peran Mahkamah Konstitusi Dalam Menjamin Hak-Hak Konstitusional Penghayat Kepercayaan," *Jurnal Hukum Ekonomi Syariah* 1 (1): 81- (2018), <https://doi.org/10.30595/Jhes.V1i1.3715>.

³² Setiawan.

holders of strategic positions in policy-making, to be inspired by and fully understand Pancasila, which is based on a people's economy, when issuing policies.

Regarding the issue raised by the author, many regions in Indonesia have not yet implemented regulations concerning the restriction of modern retail. According to Satjipto Rahadjo, Indonesia is currently in the midst of a social transformation towards a modern-industrial society, and such a context and format inevitably imprint their own marks on forms of justice within society. The challenge we face is: can Pancasila answer the challenges of the times, such as those posed by a modern-industrial society? Does Pancasila have sufficient capability to serve as a foundation for building justice in social life now and in the future? The idea that Pancasila is an open ideology is indeed beneficial, because it demands that we always use it as a guiding principle that will provide direction in the life of the nation, state, and society in this rapidly changing world.³³

For example, one of the regencies in Indonesia that has implemented regulations regarding traditional markets and modern retail is Kulon Progo Regency through Kulon Progo Regency Regulation No. 16 of 2021 concerning the Protection, Empowerment, and Regulation of Public Markets as well as the Regulation of Shopping Centers and Supermarkets. Kulon Progo has had a similar regional regulation since 2011, namely Kulon Progo Regency Regulation No. 11 of 2011 concerning the Protection, Empowerment, and Regulation of Public Markets as well as the Regulation of Shopping Centers and Supermarkets.³⁴ The above regional regulation ensures protection for the community, especially traditional markets (public markets). This is briefly mentioned in its article, namely Article 5 of Regional Regulation No. 16 of 2021:

- (1) The Regional Government is obliged to provide protection to Public Markets and the Business Actors within them, including clarity and legal certainty regarding the land rights status of the Public Markets.
- (2) The Regional Government provides protection to Public Markets by regulating:
 - a. Limiting the number of Shopping Centers and Supermarkets; and
 - b. Establishing the distance between Shopping Centers and Supermarkets from Public Markets.
- (3) The Regional Government determines the distance between Shopping Centers and Supermarkets and Public Markets as referred to in paragraph (2) point (b) by considering:
 - a. The population density and growth rate in the region according to the latest Central Statistics Agency census data;
 - b. The economic potential of the region;
 - c. Accessibility (traffic flow);
 - d. Security support and infrastructure availability;
 - e. The development of new settlements;
 - f. The lifestyle of the community; and/or
 - g. The operating hours of Supermarkets that synergize and
 - h. Do not undermine the surrounding Public Markets.
- (4) In providing protection to Public Markets and the Business Actors within them as referred to in paragraph (1), the Regional Government is obliged to provide protection in the aspects:

³³ Rahardjo.

³⁴ "Peraturan Daerah Kabupaten Kulon Progo Nomor 16 Tahun 2021 Tentang Pelindungan, Pemberdayaan, Dan Penataan Pasar Rakyat Serta Penataan Pusat Perbelanjaan Dan Toko Swalayan" (N.D.).

- a. Legal certainty in the status of utilization or lease rights, to ensure business continuity for traders, especially in the event of disasters that destroy traded assets; and
 - b. Prioritizing the opportunity to obtain business premises for Public Market traders who were already there before the renovation or relocation of the Public Market.
- (5) Further provisions regarding the protection of Public Markets as referred to in paragraph (1) are regulated in a Regent Regulation.

Based on the above, it is commendable that regions consistently prioritize the perspective of Indonesia's economic democracy principles, which are rooted in collectivism. The collectivist culture of Indonesian society is a reflection of the deeply ingrained values of mutual cooperation within the sociological framework of Indonesian communities. The collectivist values of Indonesian society are noble values that form the foundational basis of the life of the Indonesian nation and state. Pancasila, as enshrined in the Preamble to the Constitution, serves as the culture and soul of the Indonesian people to live together in society³⁵.

4. Conclusions

Pancasila, as a guiding principle and star for the Constitution of 1945, laws, and other regulations, is closely related to the Indonesian economy, which supports small business actors such as those driving the economy in traditional markets, small shops, and small and medium enterprises (SMEs), especially in the regions. This is due to the rapid proliferation of modern stores in the regions, where people often prefer shopping at modern (supermarket) stores. Pancasila should also be a way of life that fosters a sense of nationalism in thoughts, attitudes, and actions, especially related to the people's economy. The understanding of Pancasila should also be instilled in other regions where many areas in Indonesia have not yet implemented regulations regarding the restriction of modern retail outlets. Therefore, it is imperative for government officials, particularly in the regions such as members of the Regional House of Representatives (DPRD), regional heads, and other strategic policymakers to truly understand and embody Pancasila, which emphasizes the people's economy when issuing policies. Regrettably, there are still regions that have not limited modern retail outlets based in Pancasila. Although the Ministerial regulation is not mandatory for regions to adapt into their local regulations, at the very least, the ideals of Pancasila to promote general welfare in the people's economy can be realized.

Government preparedness can be expanded based on Gunther Teubner's thought that modern law can be aligned with the people's interests so that policies can be implemented in line with the state's goal of providing welfare to the people of Indonesia. Teubner stated that, first, the state's dominance as a regulator and the enhancement of public welfare has led to the concepts of the welfare state and the regulatory state. Secondly, one of the issues faced by modern law today is the "crisis" of formal rationality. Therefore, rematerialization of the law is necessary. Thirdly, the emergence of legal rematerialization is due to the crisis of formal rationality in modern law. The use of reflexive law at this stage, where the law becomes a system for coordinating actions within and between semi-autonomous social subsystems.

³⁵ Muhammad Azil Maskur, Ridwan Arifin, Aprilia Niravita, Ayup Suran Ningsih, "Revitalisasi Ideologi Pancasila Dalam Aras Global Perspektif Negara Hukum."

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