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# The Position of Pancasila in the Development of Legal Theory (From Legal Formality to Legal Realism): A Case Approach

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## Abstract

This article aims to analyze the position of Pancasila in the legal context in Indonesia and analyze the judge's decision with the Pancasila corridor. The judge's decision has considerations and a legal basis in it. The legal basis used by judges is the applicable laws and regulations. Meanwhile, we have Pancasila as the source of all legal sources, which means that the position of Pancasila is above the laws and regulations. Pancasila has values that are used as a guideline for community life. Then, how is the position of Pancasila in the development of legal theory and how Pancasila becomes a legal ideal and is used as a basis for deciding a case in court. One of the decisions used in this paper is a

decision related to the exoneration clause. The analysis of Decision No. 400/Pdt/2019/PT SBY was conducted using the view of legal formality and the view of legal realism. The analysis was conducted using doctrinal research methods. This article has a novelty, namely criticizing positivism in Indonesia and offering Pancasila as a living law and integrating Pancasila in the case approach in the judge's decision. This article has theoretical implications as an enrichment of legal theory in Indonesia, making Pancasila the basis for the development of Indonesian state legal theory, and strengthening the legal paradigm. The practical implication is that there is an analysis of Pancasila's views in the judge's decision No. 400/Pdt/2019/PT SBY.

**Keywords:** *Pancasila, Legal Theory, Legal Formality, Legal Realism, Exoneration Clause*

## A. Introduction

In Indonesia, Pancasila is the source of all sources of state law, with the placement of Pancasila as the source of state law, Pancasila has a function as a guiding star in the formation of national legal products. The position of Pancasila in this case makes it a guideline and direction for every Indonesian nation in compiling and improving legal conditions in Indonesia. Remembering, that the law continues to change and follows the development of society, every change that occurs will always be adjusted to the ideals of the Indonesian nation which refers to Pancasila<sup>1</sup>. Every legal product made by Indonesia should be based on Pancasila.

The position of Pancasila as the source of all sources of state law in the Indonesian legal system provides direction and soul and becomes the norms in the article of the 1945 Constitution<sup>2</sup>. In practice in Indonesia, interpreting Pancasila into a law regulates all lines of life of the nation and state, ranging from state affairs, political affairs, economic affairs, religious affairs, and legal affairs to social affairs, all these affairs must not contradict Pancasila.

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<sup>1</sup> Wawan Fransisco, "Pancasila Sebagai Landasan Hukum Di Indonesia," *Jurnal Hukum Progresif* XI, no. 1 (2017): 1828–37, <https://doi.org/https://doi.org/10.33019/progresif.v11i1.196>.

<sup>2</sup> Rifa Daullah et al., "Pancasila Sumber Dari Segala Sumber Hukum," *Gema Keadilan* 9, no. 2 (2022), <https://doi.org/https://doi.org/10.14710/gk.2022.16268>.

Pancasila as a source of values and norms, which then becomes the normative regulation of society and is tried to become a common consensus. Internalized moral values can have a powerful impact on determining goals and means to achieve them. The institutionalization of Pancasila in society through a centralized value system. Pancasila, which is understood as a comprehensive doctrine in the sense of complete teaching on how members of society should behave, is very problematic. Understanding values and norms in such a way that it seems as if they must be managed centrally to maintain social cohesion contains three limitations of Pancasila's position which are often normative-symbolic but have not been optimal in law enforcement practice<sup>3</sup>.

Every rule of law is reflected in Pancasila because Pancasila is the ideal of law. Not only the rule of law, but the judge's decision must at least be based on the values in Pancasila. The analysis of Pancasila in a decision can be seen in court decision No. 400/Pdt/2019/PT SBY. This ruling is quite interesting to analyze because it still tends to be legal formalism and is still far from legal realism. The verdict produces legal certainty, but not necessarily substantive justice.

Court decision No. 400/Pdt/2019/PT SBY which has a position case, namely the Sidoarjo District Court (Judex Facti), **insufficient evidence of unlawful acts** (allegations of intimidation without witnesses, recordings, or medical examinations; the Plaintiff's posita is ambiguous lines 11-12). The clause is not illegal because the bilateral agreement was signed consciously, not the offer of mass trading services (unlike the Consumer Protection Law). The plaintiff defaulted first (6x late, self-admitted posita), the right to bail was valid. Refusal of provision (non-urgent), rejection of principal, cost of Rp504,000 borne by the Plaintiff. Surabaya High Court (Judex Appellatio), formal appeal accepted (grace period is appropriate). The appeal memorandum (24/6/2019) claimed a misinterpretation of the Unlawful Act, but there was no novum/new thing. The Defendant's memory counter is correct. Research the complete file (lawsuit, answers, minutes of hearing, evidence, District Court decision): the District Court's consideration is based on the exact legal facts from the evidence of both parties, there is no mistake. Adoption of the District Court's consideration as its own

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<sup>3</sup> Agus Wahyudi, "Ideologi Pancasila: Doktrin Yang Komprehensif Atau Konsepsi Politis?," *Jurnal Filsafat* 16, no. 1 (2006): 94–115, <https://doi.org/https://doi.org/10.22146/jf.31325>.

consideration. Affirm the integral, the Plaintiff bears the costs of both levels.

This paper will focus on three issues, namely: (1) How is the position of Pancasila in the development of legal theory; (2) How is the actualization of Pancasila in the shift from legal formality to legal realism; (3) How Pancasila is reflected in the case in the decision Decision Number: 400/Pdt/2019/PT SBY.

## B. The Position of Pancasila in the Development of Legal Theory

The essence of Pancasila in the Indonesian context occupies a position as the political foundation of national law, where the philosophy of Pancasila provides a complete and comprehensive life guidance for all people. Pancasila can also be understood as a social contract, which is a set of norms that are mutually agreed upon as the basis for social life. In relation to law, Pancasila tends to be placed as the highest norm in the legal structure or pyramid. In addition, Pancasila functions as a paradigm, which is a set of values that form a framework of thinking and determine the direction and goals of development in various fields, including national development. Pancasila is also the basis of the state that contains the values of local wisdom that are actualized and formulated into five precepts<sup>4</sup>.

Pancasila contains basic values that are fixed and universal. These values are arranged hierarchically and in a pyramidal shape and contain certain qualities that must be realized by the Indonesian nation and then realized in social life. Pancasila is a fundamental value that has a position as a legal ideal. However, as a legal ideal, Pancasila is not yet concrete so it cannot be used directly as a source of formal law because it is still at the level of values. Therefore, a process of concretization is needed into positive legal norms. The concretization of Pancasila values has been outlined in the 1945 Constitution of the Republic of Indonesia, both in the Preamble and in the laws and regulations under it. All regulations included in the national legal system must be in harmony

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<sup>4</sup> Derita Prapti Rahayu, "Aktualisasi Pancasila Sebagai Landasan Politik Hukum Inodnesia," *Yustisia* 4, no. 1 (2019): 1–9, <https://doi.org/https://doi.org/10.20961/yustisia.v4i1.8634>.

and must not contradict Pancasila and the 1945 Constitution. If there is a conflict, the regulation is declared invalid<sup>5</sup>.

According to Roeslan Saleh, the function of Pancasila can be interpreted as a fundamental position that places Pancasila as the main foundation in legal life in Indonesia<sup>6</sup>. In this framework, Pancasila plays a role, first, as an Indonesian legal ideology that is the basis for the orientation and direction of development and enforcement of national law. Second, Pancasila is a set of basic values that underlie the entire legal system, so that every legal norm that is formed must be sourced and aligned with the values of Pancasila. Third, Pancasila functions as a set of principles that are used as a guideline in determining and choosing legal policies, both in the formation of laws and regulations and in law enforcement practices. Fourth, Pancasila is the embodiment of the psychological values, ideals, and will of the Indonesian nation, which is reflected not only in social and political life, but also actualized in the national legal system and practice.

The values contained in Pancasila must be internalized and poured into the process of forming laws and regulations as part of efforts to reform national laws. The process of forming laws and regulations is one of the important stages in national legal development, in addition to the implementation of the law and law enforcement itself. Legal development can only take place comprehensively if it includes aspects of legal substance and is accompanied by consistent law enforcement and upholding human rights. Thus, the law can function optimally as a means of national renewal and development that is in line with the ideals of the law and the goals of the state. Pancasila as a fundamental norm of the state as well as a legal ideal is the main source in the formation of laws and regulations under it. Therefore, Pancasila has two dimensions, namely first, as a critical norm used to assess and test the suitability of

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<sup>5</sup> Yuli Asmara Triputra, "Implementasi Nilai-Nilai Hak Asasi Manusia Global Ke Dalam Sistem Hukum Indonesia Yang Berlandaskan Pancasila," *Ius Quia Iustum* 24, no. 2 (2017): 279–300, <https://doi.org/https://doi.org/10.20885/iustum.vol24.iss2.art6>.

<sup>6</sup> Fatimah Ratna Wijyanthi, "Pancasila Sebagai Sumber Dari Segala Sumber Hukum," *The Juris*, no. 1 (2021): 133–45, <https://doi.org/https://doi.org/10.56301/juris.v5i1.200>.

the norms under it, and second, as a guiding star that serves as a guideline and direction in the process of forming national law<sup>7</sup>.

As a legal ideal, Pancasila is also a frame for the Pancasila legal system, as a typical Indonesian system that is different from other legal systems. Pancasila is a prismatic concept that assimilates the good aspects of various concepts and grows into a separate concept that is always actualized with the reality and development of Indonesian society<sup>8</sup>.

*Rechtsidee* or legal ideals view law as a set of norms that govern people's behavior, which comes from ideas, thoughts, feelings, creativity, and the will of society itself. The conception is then manifested into three main elements, namely justice, usefulness or usefulness (*doelmatigheid*), and legal certainty. In relation to efforts to establish national law, Pancasila, which functions as a *rechtsidee*, has the following strategic roles and functions<sup>9</sup>:

- a) to be a reference that regulates as well as builds in the formation of laws.
- b) function as the main driver and guideline (Guiding Principle) in the entire implementation of the law, both at the stage of law formation (The Law-Making Process), implementation, and enforcement of the law (Law Enforcement), as well as in increasing public legal awareness (Law Awareness).
- c) serves as a relevant method and framework of explanation to be studied as a key in the process of law formation by institutions that have authority.
- d) is a rule of assessment in law enforcement, so that it plays a role as margin of appreciation, which is the limits of justification as well as a benchmark of moral ethics, honor, and dignity of the nation.

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<sup>7</sup> Lita Tyesta Addy Listya Wardhani Madaskolay Viktoris Dahoklory, "Rekonstruksi Nilai-Nilai Pancasila Dalam Undang-Undang," *Sasi* 26, no. 3 (2020): 297–309, <https://doi.org/10.47268/sasi.v26i3.271>.

<sup>8</sup> Moh. Mahfud M.D., "Revitalisasi Pancasila Sebagai Cita Negara Hukum, Orasi Dalam Rangka Dies Natalis Ke-65 Fakultas Hukum Univer- Sitas Gadjah Mada" (Yogyakarta, 2011).

<sup>9</sup> Tami Rusli, "Pembangunan Hukum Berdasarkan Cita Hukum Pancasila," *Jurnal Pranata Hukum* 6, no. 1 (2011): 1945, <https://doi.org/https://doi.org/10.36448/pranatahukum.v6i1.95>.

- e) serves as a *Leitstern* or guiding stars to realize the ideals of the community.

The position of Pancasila as the basis of the state in the preamble to the 1945 Constitution is juridical - constitutional. This means that the value of Pancasila as a basic norm of the state (*Grundnorm*, a fundamental state rule) is imperative; it means binding and forcing everything within the jurisdiction of the state law of the Republic of Indonesia to faithfully implement, inherit, develop and preserve it<sup>10</sup>. Pancasila is the philosophical foundation and source of values that gave birth to law in Indonesia, making it higher than the 1945 Constitution. However, structurally in the order of laws and regulations, the 1945 Constitution is the supreme law because Pancasila is the *source* of the 1945 Constitution itself.

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Pancasila as the basic norm of *Grundnorm* is the foundation or basis of all legal development both theoretically and practically, As

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<sup>10</sup> et al. Junaidi, Junaidi, "Penyuluhan Hukum Pancasila Sebagai *Grundnorm* Hukum Pada Masa Penerimaan Anggota Baru (Mapaba) Pergerakan Mahasiswa Islam Indonesia Tahun 2022," *AKM: Aksi Kepada Masyarakat* 4, no. 1 (2023): 41–48, file:///C:/Users/user/Downloads/yuni,+007+-+artikel-fransiska-juli-2012.pdf.

<sup>11</sup> et al. Junaidi, Junaidi, "Penyuluhan Hukum Pancasila Sebagai *Grundnorm* Hukum Pada Masa Penerimaan Anggota Baru (Mapaba) Pergerakan Mahasiswa Islam Indonesia Tahun 2022," *AKM: Aksi Kepada Masyarakat* 4, no. 1 (2023): 41–48, file:///C:/Users/user/Downloads/yuni,+007+-+artikel-fransiska-juli-2012.pdf.

Grundnorm, Pancasila has always been the illuminator and director of every form of legal system development activities that continue to process to approach the ideal of law. That the position of Pancasila as a national philosophy, of course, has a very high level of abstraction, therefore, the diversity of approaches in an effort to understand and translate it to a more practical level is determined by the context of the situation faced, for that all forms of legal development must be based on the values contained in Pancasila<sup>12</sup>.

### C. The Actualization of Pancasila in the Shift from Legal Formality to Legal Realism)

According to Utrecht, the legal purpose in the Indonesian legal system is the duty of protection (guardianship) within the scope of Pancasila. The reason guardianship is considered the purpose of Indonesian law is because nature contains the Indonesian view of the state as a living whole, something integral, who do not know the controversy between God, the People, the State, the Law. The people are the people of a state governed by law and God. Everyone is a creature of society. A nature that sees all for all, one for all, all for one, which forms a nation and a union not for a strong group nor does it rely on a strong group<sup>13</sup>. The building of Pancasila values that have taken root in every soul of the nation and society should be maintained for the sustainability of an idea believed in and upheld by the founders of the nation. Pancasila values will be well rooted if every child of the nation preserves it by actualizing every step of the life of the nation and state<sup>14</sup>.

In the view of legal realists, law is the result of social forces and tools of social control. Lawmakers can include human personality, social environment, economic circumstances, business interests,

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<sup>12</sup> Dani Pinasang, "Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) Dalam Rangka Pengembangan Sistem Hukum Nasional," *Jurnal Hukum UNSRAT* 1945, no. 3 (2012): 1–10.

<sup>13</sup> E. Fernando M. Manullang, "The Purpose of Law, Pancasila and Legality According to Ernst Utrecht: A Critical Reflection," *Indonesia Law Review* 5 (2015): 187–207, <https://doi.org/10.15742/ilrev.v5n2.141>.

<sup>14</sup> Asip Suyadi, "Pancasila Sebagai Paradigma Pembangunan Hukum," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (2018): 1–18.

prevailing trends, general emotions, and legal outcomes in life. The view in legal realism is that there is no law that governs a case until there is a judge's decision on the case. What is considered the law in the book is only an interpretation of how the judge will decide<sup>15</sup>. Pancasila is a link for Indonesia to make a paradigm shift from formality to realism.

The important emphasis given by pragmatic legal realism on the essence of law is: (1) about the essence of legal practice as the true essence of law; (2) that the law is not a necessity that is necessarily capable of realizing the purpose of the law, given that it is greatly influenced by elements outside the law; (3) The apparatus of administering the law and the society in which the law is applied are not mechanical components that automatically obey the orders of the law, but are the components of life that have the ability to store them<sup>16</sup>.

Indonesia's pluralistic legal system faces unique challenges in applying the concept of justice. As a country that adheres to the tradition of civil law but also recognizes customary law and religious law, Indonesia needs a strong philosophical framework to integrate these various sources of law. Pancasila as the basis of the state contains philosophical values that should be the basis for the formation of positive laws. However, in practice, there is still often tension between written law and the sense of justice of the community<sup>17</sup>. Pancasila does not reject written laws, but Pancasila directs the application of the law to be fair and equal to the values of Indonesian society. Each precept in Pancasila is used as part of the legal interpretation effort and is included as a consideration by the judge.

In judicial practice, judges cannot only adhere to the sound of the law rigidly but must consider the sociological and moral aspects of the case at hand. Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power explicitly requires judges to explore legal

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<sup>15</sup> Cucu Rahmawaty, "Philosophy Law Hukum Indonesia Dewasa Ini Ditinjau Aliran Aliran Filsafat Hukum," *Esensi Hukum* 2, no. 1 (2020): 113–22, <https://doi.org/https://doi.org/10.35586/esensihukum.v2i1.3>.

<sup>16</sup> Lili Rasyidi & I. B. Wyasa Putra, *Hukum Sebagai Suatu Sistem* (Bandung: Remaja Rosdakarya, 1993).

<sup>17</sup> Lazarus, "Konsep Keadilan Dalam Filsafat Hukum: Analisis Perspektif Positivisme Dan Hukum Alam," *Media Hukum Indonesia (MHI)* 4, no. 1 (2025): 223–31, <https://doi.org/https://doi.org/10.5281/zenodo.17851151>.

values and a sense of justice that lives in society. This provision reflects the spirit of legal realism that rejects the sterile legal formalism of human values. In many cases, progressive court rulings, such as cases related to human rights, environmental protection, and women's rights, indicate that Indonesian judges are beginning to adopt a legal realism approach in interpreting norms contextually and substantively<sup>18</sup>.

## D. Pancasila Analysis in the Case in Decision

### Decision Number: 400/Pdt/2019/PT SBY

Decision No. 400/Pdt/2019/PT SBY issued by the Surabaya High Court on August 26, 2019, is an appeal decision from the Sidoarjo District Court Decision Number 287/Pdt.G/2018/PN dated May 16, 2019. The parties to the dispute are the Appellant Plaintiffs: (1) Indah Iriani and (2) Hariyanto, against the Appellant Defendant: PT. BPR Diamond Kita. Panel of Presiding Judges: Dr. E.D. Pattinasarany, S.H., M.H., accompanied by Member Judges Agus Sutarno, S.H., M.H. and Winaryo, S.H., M.H. Amar verdict: upholding the decision of the Sidoarjo District Court in its entirety, with the plaintiff obliged to pay the appeal case fee of Rp150,000.00.

The Plaintiffs filed a civil lawsuit with the Sidoarjo District Court on November 22, 2018, regarding credit agreement No. 0455/PK. A. IKSDA. III/16 dated March 3, 2016, with the Defendant. The credit facility is in the form of a loan of IDR 125,000,000.00 with SHGB guarantee No. 4263/SUKO in the name of Soedarso (area of 90 m<sup>2</sup> in Sungon Suko, Sidoarjo), monthly installments of IDR 4,854,166.00, flat interest of 21.60% per year until March 3, 2020. The plaintiff admitted that he had paid twenty-eight installments totaling Rp135,916,648.00 (exceeding the principal of the loan), but was late due to financial difficulties. They accused the Defendant of committing an unlawful act (PMH) Article 1365 of the Civil Code through intimidating collection by TNI personnel to Plaintiff II's parents, as well as illegal standard clauses in the agreement in accordance with Law No. 18 of

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<sup>18</sup> Azhari Muda Hendra Setiawan, Sinta Khairani and Parningotan Malau, "Kajian Pemikiran Realisme Hukum Oliver Wendell Holmes, Karl Lieselny, Dan Jerome Frank Dalam Konteks Hukum Di Indonesia," *Jurnal Hukum Ius Publicum* 6, no. 2 (2025): 84–103, <https://doi.org/10.55551/jip.v6i2.612>.

1999 concerning Consumer Protection Article 18 paragraph (1) letter h and POJK No. 1/POJK.07/2013 Article 22 paragraph (3) letter g (automatic power of attorney of dependents). Petitem: cancel the agreement, return the certificate, material, and immaterial damages of Rp500,000,000.00 plus dwang Rp1,000,000.00/day.

The Defendant denied, stating that the Plaintiff voluntarily applied for credit, read and signed the agreement knowingly, default with 6 installments late, no intimidation, and a valid agreement based on Articles 1320 and 1338 of the Civil Code (not the exoneration clause of abuse of circumstances). The Sidoarjo District Court rejected all lawsuits on May 16, 2019, the appellant, PT Surabaya, affirmed.

The plaintiff's legal basis in this decision is: (1) Article 1365 of the Civil Code regarding unlawful acts that cause losses; (2) Law Number 8 of 1999 concerning Consumer Protection Article 18 paragraph (1) letter h concerning the prohibition of standard clauses that give unilateral power of attorney to consumer guarantees; (3) Financial Services Authority Regulation No. 1/POJK.07/2013 Article 22 paragraph (3) letter g concerning consumer protection in the financial services sector; (4) Article 180 of the HIR in conjunction with the Circular Letter of the Supreme Court Number 3 of 2000 concerning the implementation of the immediate decision.

The legal basis of the defendant in this decision is: (1) Article 1320 of the Civil Code regarding the conditions for the validity of the agreement; (2) Article 1338 paragraph (1) of the Civil Code concerning the principle of *pacta sunt servanda*; (3) Supreme Court Jurisprudence No. 294/K/Pdt.Sus/2011 and No. 121/K/Pdt.Sus/2012 which states that the standard agreement is not necessarily null and void; (4) Article 1365 in conjunction with Article 1243 of the Civil Code regarding the condition for real and provable losses; (5) Article 20 of Law Number 20 of 1947 juncto HIR concerning procedures for examining cases at the appellate level.

The judge used the legal basis stated in this decision, namely: (1) Article 1338 of the Civil Code regarding the binding power of legally made agreements; (2) Article 1365 of the Civil Code concerning the obligation to prove elements of unlawful acts; (3) Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power regarding the principles of simple, fast, and low-cost justice; (4) Article 20 of Law

Number 20 of 1947 juncto HIR as the basis for strengthening the decision of the District Court by the High Court.

Based on the analysis of the decision in this case, the Panel of Judges of the Surabaya High Court has been correct in upholding the decision of the District Court. The judge considered that the agreement made by the parties had met the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code and therefore binding on the parties in accordance with Article 1338 of the Civil Code. In addition, the allegations of unlawful acts submitted by the Plaintiff cannot be proven because the elements of loss and causal relationship as required in Article 1365 of the Civil Code are not met. Thus, the decision has provided legal certainty and is in line with applicable civil law principles.

Although this decision has provided legal certainty, in the future the judge is expected to provide more detailed considerations related to consumer protection, especially in the use of standard agreements by financial services business actors. In addition, business actors need to pay more attention to the provisions of laws and regulations that prohibit the inclusion of standard clauses that have the potential to harm consumers so as not to cause disputes in the future. For consumers, it is necessary to be careful in understanding the content of the agreement before agreeing to an agreement, so that their rights and obligations can be legally protected.

From the perspective of the legal system, Pancasila makes the Indonesian legal system different by taking both the concept of Rechtsstaat and the Rule of Law. Pancasila must make the goal of substantive justice and legal certainty (procedural justice). In the law enforcement process, there must be legal certainty that justice is upheld<sup>19</sup>.

The panel of judges in its consideration is more appropriate and meets the rules of legal formalism. The judge considered that the credit agreement had fulfilled the elements in Article 1320 of the Civil Code, namely regarding the conditions for the validity of an agreement. The agreement took place and the parties signed the credit agreement. The

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<sup>19</sup> Moh. Mahfud M.D., "Revitalisasi Pancasila Sebagai Cita Negara Hukum, Orasi Dalam Rangka Dies Natalis Ke-65 Fakultas Hukum Univer- Sitas Gadjah Mada."

panel of judges did not see or find any defect in the credit agreement. Formally, the credit agreement is valid and binding like the law for the parties who sign it.

In decision No. 400/Pdt/2019/PT SBY, the judge applies the law formalistically or the judge still adheres to the view of legal formalism or legal positivism. The consideration of the panel of judges where the panel of judges interprets the Consumer Protection Law and POJK textually and assesses the standard clause does not automatically make the credit agreement invalid. This is very consistent in the view of legal formalism or legal positivism.

The legal understanding of positivism is in line with the development of other scientific paradigms. The legal era of positivism began with a paradigmatic change in the field of science and philosophy of science. The phases of understanding the laws of nature and the laws of God, are identical to what Comte calls the magic phase and the metaphysical phase. Then, when positivism appeared, legal positivism also occurred<sup>20</sup>.

The actualization of Pancasila has not been fully present in the judge's decision No. 400/Pdt/2019/PT SBY.

This decision does not present the value of Pancasila either explicitly or implicitly. This decision should be able to reflect better the values of Pancasila. The values that originate from the philosophical view of Pancasila are:

- 1) The religious values of the Indonesian nation are summarized in the first precept of Pancasila.
- 2) Human rights values and respect for the dignity and dignity of humanity are summarized in the second precept of Pancasila.
- 3) The values of the nation's interests are fully summarized in the third precept of Pancasila.

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<sup>20</sup> Sri Wahyuni, "Pengaruh Positivisme Dalam Perkembangan Ilmu Hukum Dan Pembangunan Hukum Indonesia," *Al-Mazaahib: Jurnal Perbandingan Hukum* 1, no. 1 (2012): 1–19, <https://doi.org/https://doi.org/10.14421/al-mazaahib.v1i1.1342>.

- 4) The values of democracy and people's sovereignty are summarized in the fourth precept of Pancasila.
- 5) The values of justice, both individual and social, are summarized in the fifth precept of Pancasila.

This decision reflects more on legal certainty than on the justice of Pancasila. Such a character is more likely to be the character of legal positivism. The basic principles of legal positivism are<sup>21</sup>:

- 1) A state law is valid not because it has a basis in social life (according to Comte and Spencer), nor because it comes from the soul of the nation (according to Savigny), nor because it is based on the foundations of natural law, but because it acquires the positive form of an authorized agency.
- 2) The law must be viewed solely in its formal form. Formal conflict is separated from the form of material law.
- 3) The content of law (material) is admittedly there, but it is not a material of law because it can damage the scientific truth of legal science.

In other words, the 400/Pdt/2019/PT SBY decision does not reflect the character of legal realism. The characteristics of the approach used by juridical realists to legal problems are<sup>22</sup>:

- 1) An investigation into the typical elements found in legal cases.
- 2) An awareness of the irrational and illogical factors in the process of the birth of court decisions
- 3) An assessment of the rules of law through an evaluation of the consequences of the application of the rule of law
- 4) Showing the law in relation to political, economic, and other factors.

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<sup>21</sup> Rahmawaty, "Philosophy Law Hukum Indoensia Dewasa Ini Ditinjau Aliran Aliran Filsafat Hukum."

<sup>22</sup> Ahmad Ali, *Menguak Tabir Hukum* (Bogor: Ghalia Indonesia, 2008).

## E. Conclusion

Decision Number 400/PDT/2019/PT SBY shows that there is a shift in judicial practice in Indonesia which is still struggling with legal formalism. The tension between legal certainty and substantive justice seems obvious, making this ruling particularly relevant to be analyzed in the perspective of the transition from legal formality to legal realism. Pancasila should be present in this decision based on human values and justice values, but in this decision, there is no actualization of Pancasila either explicitly or implicitly. Judges in giving legal considerations are more towards legal formalities than legal realism. The judge's consideration is more legal certainty than justice based on Pancasila values. There needs to be a strengthening of Pancasila in the judge's decision so that justice is guaranteed, not just formally.

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