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THE PHILOSOPHICAL THOUGHT OF THE PROPHETIC LAW IN THE INDONESIAN LEGAL SYSTEM

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Abstract: In Indonesia, the positivistic modern ideology is currently experiencing a downfall due to its inability to overcome the problems of human life. This study aims to complete the explanation of why prophetic law is needed in the Indonesian legal system in the juridical domain and the implementation domain. This was qualitative research which used a philosophical juridical approach. This paper used a descriptive method of analysis. In Indonesia, the prophetic law refers to the ideology of Pancasila, which is interpreted as the nation's way of life. It reveals the relationship between humans and God, the relationship among humans, and the relationship between humans and the universe. The basis for the thought and implementation of prophetic law in Indonesia is the first principle of Pancasila and the Preamble to the 1945 Constitution, which stated that the proclamation of Indonesian independence was a blessing from Allah (God) Almighty. In addition, based on Law No. 48 of 2009 concerning Judicial Power, it is stated that the judiciary is carried out "for the sake of justice based on the Belief in One God," which is the soul of decisions made by judicial bodies in Indonesia.

Keywords: law implementation, prophetic law, philosophic thought, Pancasila, legal system, Indonesia.

Introduction

So far, prophetic legal thought is still very poorly implemented in the Indonesian legal system. The current legal system still focuses on positivistic understanding which prioritizes legal certainty. The problem is that the positivistic law was sourced from the Dutch colonial era hundreds of years ago. This law enforcement prioritizes legal

certainty over the justice values that live in society (Putro, 2010; Davies & Robson, 2016).

The positivist legal school focuses on formalities based on real projects. It departs from the deduction of significant logic in legal studies (Gardner, 2012; Magen, 2015; Summers, 1997). The law can be seen as an autonomous and pure institution. Therefore, in order to have legitimate and valid power, the law cannot and should not

be interfered with by non-legal aspects, such as politics, economics, society, and morality (Kingsbury, 1954; Lacey, 2007; Roth, 1958). The positivist legal school believes that the law does not come from God or nature, but was born from humans based on the provision to separate law and morals (Gadjong, 2011; Hart, 1958; Magen, 2015). The flow of positivism departs from the point of view that the law is regulatory, applies as a whole, and is determined by the state authorities (Lacey, 2007; La Torre, 2013). Within the law, there is a separation between norms/policies and ethics/morals as well as between justice and legality (Absori & Achmadi, 2017).

Nowadays, positivism and rational modern science are not everything. Such are even considered unable to overcome various problems of life (Budiono et al., 2019; Gavrilov, 2020; González-Castán, 2014). Amid the downturn and weakness of positivism, various thoughts have emerged with a wider range of religious, spiritual, ethical, and moral values that are full of dynamics and struggles of thought that were born over a long history. This variety of thoughts can be seen in transcendental law, progressive law, contemplative law, and prophetic law.

A study of prophetic law's implementation in the Indonesian legal system is urgently needed because it has not been widely studied. So far, studies on the prophetic legal thought in the Indonesian legal system focused on examining the prophetic legal thought in the legal system in the form of statutory regulations. Apart from that, such studies only focused on examining the prophetic law's implementation in terms of law enforcement by officials, both by courts and the police force.

This paper aims to complement the shortcomings of previous studies that did not pay attention to the prophetic legal thought in two domains at once, namely the juridical domain and the implementation domain by law enforcers in decision-making. This study also aims to complete

the explanation of why prophetic law is needed in the Indonesian legal system. Furthermore, it analyzes the implementation of the prophetic law in the Indonesian legal system.

Method

The implementation of prophetic law in the Indonesian legal system was chosen as this paper's subject for two reasons. First, there is a lack of similar studies. Second, the prophetic law needs to be implemented in the Indonesian legal system due to the emergence of many decisions made by courts and other law enforcement officials which are too positivistic. Thus, such decisions hurt the values of justice in society.

This research was qualitative research which relied on secondary data. This paper used a philosophical juridical approach, namely an approach that aims to examine the laws and regulations as well as the value content that underlies the legal system in Indonesia. This paper used a descriptive method of analysis which was then interpretively processed regarding the implementation of prophetic law in the Indonesian legal system.

Results and Discussion

The Prophetic Legal Thought

The English term *prophetic* means: (1) of or pertaining to a prophetic inspiration (from or relating to a prophet; prophetic inspiration); (2) of the nature of or containing prophecy: prophetic writing; (3) having the function or power of a prophet, as a person (having the function or power of a prophet, as a person); and (4) predictive; ominous; prophetic sign; prophetic warnings (Wardiono, 2016, pp. 81-82).

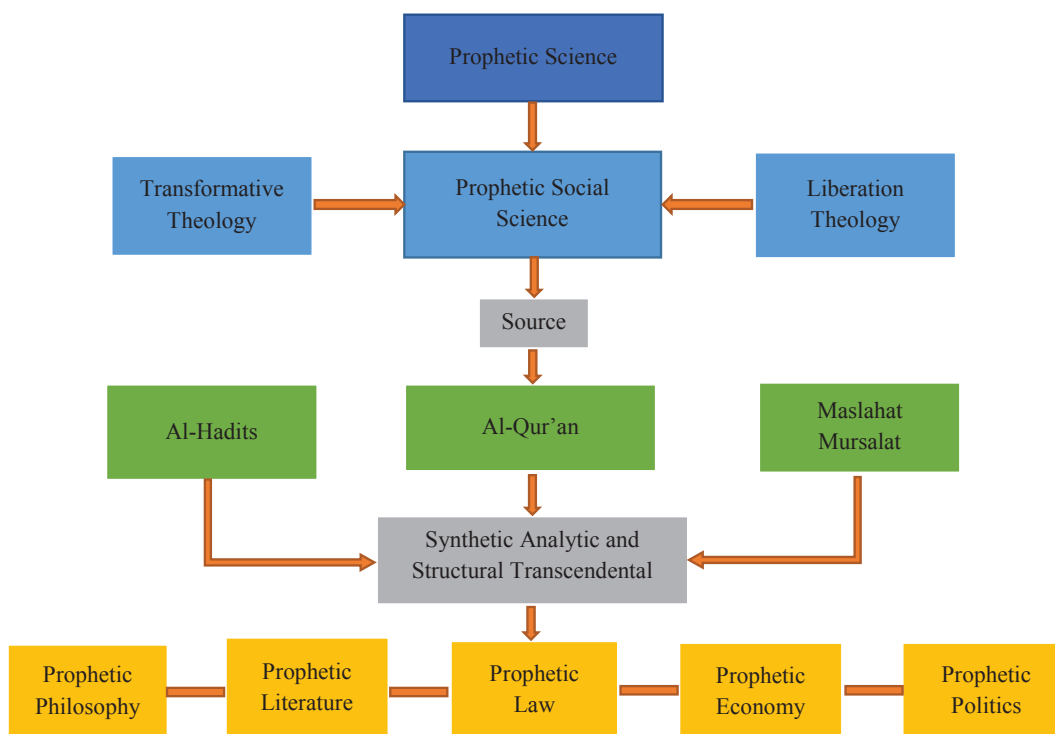


Figure 1. Prophetic Science in the Perspective of Kuntowidjojo.

Kuntowidjojo's idea of a prophetic social science was inspired by Roger Garaudy, who stated that Western philosophy could not possibly solve modern people's issues because many of its aspects were unsatisfactory. After all, it only endlessly oscillates between two poles, i.e., idealist and materialist. The Western (critical) philosophy was born from the question of "How is knowledge possible?" Roger Garaudy then turns the question into "How is revelation possible?" Dawan Raharjo stated that the emergence of Kuntowidjojo's idea of the "prophetic social science" resulted from his interaction with Moeslim Abdurahman on "liberation theology," which is the core of "transformative theology". Kuntowidjojo later changed the term *transformation* to *prophetic* social science. This was done to avoid the difference between de-codification vs. transformation groups (Absori & Achmadi, 2017).

The prophetic paradigm's main idea about the relationship between religion and science (humanities in particular), is carried out by integrating and objectifying the normative teachings of the Koran into objective categories (Dimiyati et al., 2018). Islam must become a paradigm, a theory that objectively applies so that it becomes a

blessing. Objectification starts from internalization to externalization, using synthetic and analytical methods as well as the transcendental structure approach (Absori & Achmadi, 2017).

Kuntowijoyo (2018) interprets transcendence by underlying the faith in God by introducing prophetic science in humanization, liberation, and transcendence. In this case, in the development of science and human civilization, the element of transcendence must be the basis of other elements. According to Kuntowijoyo, the method of developing science and religion is called *prophetic*, its derivative from the first revelation of Islamic Prophet Muhammad.

It is based on the Koran and Sunnah which are the main basis for the overall development of science, the first revelation was chapter al alaq "Iqra" which means "read". This word of "iqra" not only read a book but how the people read the science, phenomenon and always learn. The basic of development of science always a learn. The Koran and Sunnah are used as the basis for the entire building science, encompassing natural science as the basis for natural laws; humanities as the basis for meaning, value, and awareness; as well as divinity as the basis for God's word "Iqra" (Kuntowijoyo, 2004).

An understanding of this is directed at finding elements that are relevant to the development of science, supported by knowledge and understanding of the philosophy of science (Davies & Robson, 2016). It is associated with human law as the subject and the recipient of the mandate for certain and determined divine laws through revelation (the Koran) and the Apostolic tradition (sunnah) or hadith. Humans can reorient subjective ways of thinking to objective ways of thinking. They can theorize in addition to using the normativity of teachings; change ahistorical understandings into historical ones; and formulate general revelation formulations into specific and empirical formulations.

From this description, besides being able to be explored based on the Koran and Hadith, it can be said that science in a prophetic view, can also be extracted from *Maslahat Mursalah*, which is an additional source of law based on empirical research obtained from natural phenomena and people's behavior. It was found with an objective to bring benefits to human life (Absori, 2015). This was based on the Koran which states "And We did not send you (the Prophet), but to be a mercy for the universe" (The Holy Koran, 2020).

Benefits can be clearly captured by people who want to think, even though there are differences in understanding the nature of benefits in the realm of Islamic thought. These differences stem from varieties in individuals' intellectual abilities in interpreting Islamic teachings contained in the Koran and Hadith. This is because each thinker has limitations. So, they are unable to equally understand the nature of the benefit due to temporal differences and local conditions (Absori & Achmadi, 2017).

The prophetic dimension can be seen in the most basic teachings, namely *aqidah*, which teaches an understanding of the relationship between humans, their nature, and their God. Humans and nature are essentially mortal creatures, while God is the eternal ruler of the universe. The greatest happiness of a Muslim is when he is able to completely surrender to obey God's natural commands, whether general or detailed, as a consequence of the recognition that God is One, the Ruler of All, and that all creatures depend on Him.

In prophetic law, legal science is not only based on truth at the level of *haqq alyakin*, which

is compiled in the Koran and Hadith. But it is also based on truth obtained with potential human abilities through contemplation, reasoning, and discourse that develop in society. Humans explore, process, and formulate knowledge not only to gain knowledge but also to create policies. They do so for the benefit of the wider community and based on their love for God.

The prophetic law can only be understood with a holistic approach that sees humans and their lives in a complete form, not only material but spiritual (immaterial). Transcendental law cannot be separated between the physical body (formal) and transcendental values. The justification for transcendental law that is being sought is for justice based on the truth of the power of Allah, the Almighty, the determinant of human life. Legal and transcendental science is oriented to the benefit of humans as a form of compassion for their creatures.

Wardiono (2014) in his book mentioned that the paradigm of prophetic law is briefly stated as follows: (1) the object of legal science is norms, i.e., the norm in the normative relative world which simultaneously performs dialectics with the world of ideas and the world of empirics, as a key word in understanding ontological aspects, (2) integration between science and religion are keywords in understanding epistemological aspects, and (3) justice is a keyword in understanding axiological aspects.

The prophetic law in Indonesia refers to the ideology of Pancasila (the Five Principles that make Indonesia's state ideals), which is interpreted as the nation's way of life. It reveals the relationship between humans and God, the relationship among humans, and the relationship between humans and the universe. Several laws and regulations that accommodate prophetic law in Indonesia include the 1945 Constitution of the Republic of Indonesia. The Preamble of the 1945 Constitution states that the proclamation of Indonesia's independence is based on the Grace of God Almighty. Article 29 of the 1945 Constitution states that the state is based on the Belief in One God. Article 2 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power states that the judiciary is carried out for the sake of Justice based on the Belief in One God. Such a pattern also exists in Law No. 1 of 1974 concerning Marriage and its amendments.

Indonesia's prophetic understanding has been

rooted in its people even before the country's independence. However, the implementation of prophetic law has been limited to only a few of these laws and regulations. In fact, prophetic understanding has become the spirit of this country's birth, which is implicitly contained in the Pancasila and the 1945 Constitution of the Republic of Indonesia. Because the post-independence Indonesian legal system still adopts the system inherited from the Dutch, who had colonized this country for hundreds of years, Indonesia still intensively applies the positivistic understanding of the system.

Due to the lack of these laws and regulations' implementation, this condition ultimately impacts the law enforcers' level of implementation. The majority of judges' decisions have so far only been based on the sound of existing rules, without considering the prophetic values that grow and develop in society. Therefore, this impacts the number of decisions that are considered to hurt the people's value of justice.

Why is Prophetic Law Needed in the Indonesian Legal System?

The Western epistemological philosophy that succeeded in creating modern science (including modern law) has inherent shortcomings. This congenital defect can affect the survival of human civilization and is already happening today. Western epistemology affects the crisis of scientific epistemology, which has so far misunder-

stood human civilization. The epistemological flaw lies in the thinking of modern scientists, which only emerged and was based on rationalism: idealist (Platism-Descartes) and empiricist (Baconian-Aristotelian). The source of knowledge in the form of prophetic revelation (prophetic science) has no place in this philosophy, while materialistic, practical, hedonistic, and atheistic sciences hidden in support of positivist philosophy are given more space. Because people walk alone without clear and firm instructions, it is proven that dehumanization has arisen.

Post-positivist jurisprudence tries to present a different and distinctive concept from modern positivistic jurisprudence. It can be said that from time to time, science undergoes changes which usually start from changes in the paradigm used. Postmodernism began to deal with irrational things (emotions, feelings, intuition, personal experience, speculation), moral and spiritual, as an integral part of understanding scientific problems/research. Legal thought that is considered unsatisfactory (criticizing or rebelling) against the liberal and stable jurisprudence of the modern paradigm is categorized as postmodernism.

In addition, in the development of law, various new ideas that try to provide alternatives outside of rigid positivism have emerged. Some of the ideas that developed or were born in Indonesia include transcendental law, progressive law, contemplative law, and prophetic law. These thoughts have been widely studied and analyzed by legal experts.

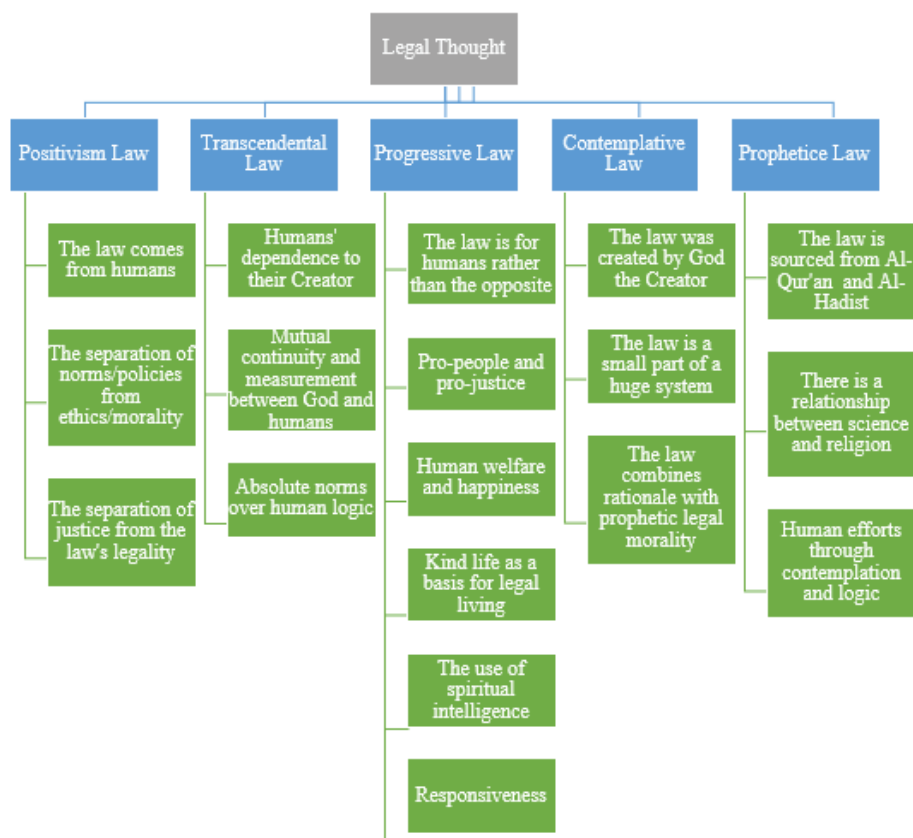


Figure 2. Several Schools of Legal Thought.

According to Roger Garaudy, transcendental law is interpreted from three perspectives (Budi-ono et al., 2021; Huda & Dimiyati, 2018). First, recognizing the dependence of humans on Their Creator. The attitude of being content with oneself by viewing humans as the center and measure of all things is contrary to transcendence. Transcendence lies above human instincts, such as greed and lust for power. Second, transcendence recognizes the continuity and common size between God and humans, meaning that transcendence relates to all power, wealth, and knowledge. Third, transcendence means recognizing the superiority of absolute norms that lies above human reason.

Transcendental thinking can be seen in religious, spiritual, ethical, and moral values born over a long history which are full of dynamics and struggles of thought (Basri, 2019; Ramadan, 2017). Modern science, which has been in the corridor of modernist-positivistic hegemony with empirical, objectivist, and rational doctrines, has begun to be questioned by transcendental think-

ers who put the value and meaning behind it, so that the building of science becomes more open and intact in responding to the problems of life and living. In this case, transcendental thinking begins to raise metaphysical things (emotions, feelings, intuition, values of personal experience, speculation), morals, and spirituality as integral parts of understanding science (Gardner, 2015; Jauernig, 2021; Vincini, 2020).

The progressive law that Satjipto Raharjo introduced is defined as a law that uses a human paradigm that cares about behavioral factors (behavior, experience) (Aulia, 2018; Liunima, 2016; Rhiti, 2016).

The law is for humans, rather than the other way around. Meanwhile, in legal science, humans tend to practically exist for law and legal logic. Progressive law is based on these several propositions (Lisma, 2019): (1) The law is for humans. The law is a tool for humans to give grace to the world and humanity; (2) Pro-people and pro-justice. The law must be on the side of the people, and justice must be placed above

rules; (3) Progressive law aims to lead humans to welfare and happiness; (4) Progressive law emphasizes a good life as a legal basis; (5) Progressive law has a responsive character, namely, the law is linked to the law's textual narrative; (6) The law of conscience; (7) Progressive law is carried out with spiritual intelligence, namely an effort to find the truth of a deeper meaning or value.

In this case, progressive law understands the law from a holistic perspective that departs from natural philosophy (natural law) with a universal vision that prioritizes humans as the main subject of law. Therefore, progressive law prioritizes conscience, empathy, honesty, and morality rather than logic or procedure. The law aims to make people happy and it is an effort to obtain substantive justice. Progressive law also recognizes that legal truth does not only depart from factual (physical) truths that exist in the reality of society. But it also recognizes metaphysical (spiritual) truths that are divine in nature and that can actually be reached with potential human abilities, love, and signs of God's power that are spread throughout the universe.

In order to determine good and bad, right and wrong, fair and unfair, benefit and harm, lawful and unlawful, as well as other concepts, contemplative law must enter the deepest part of the human body, specifically the conscience, which cannot be separated from the Creator and which can converse with the Creator. This is because the problem cannot be seen with the eyes alone. But must be seen with the human heart, which is the bearer of law (Sholahudin, 2015).

Ermi Warrasih, in her writing "Contemplative Sociology," says that the law must be seen in a larger order, namely the order created by the Creator. In the creation of the heavens, the earth, and humans, "order" is needed so that the relationship among their creations can continuously and universally run. A just order is needed to regulate the relationship among humans, the relationship between humans and nature, as well as the relationship between humans and other creations. It is emphasized that the law is a small part of a very large order that is closely interrelated. A very large order must be given meaning and it must be meaningful to humans. Legal science should pay close attention to this fundamental aspect. The relationship between humans and their environment creates the marriage of macro

and micro cosmos and subsequently forms life on Earth. This order can be in the form of a natural order that comes from religion and (unwritten) habitual order which in subsequent developments in the modern century is universal and generally accepted, especially when there is an artificial order called the state order as a written order (Sholahudin, 2015).

According to Anthon F. Susanto (2016), contemplative law is based on rational demands obtained through rational communication and open argumentative dialogue to improve the legal science maturation process. Ratio not only has essence but also exists in reality. The ratio in contemplative law must carry out its interpreting function in articulating the reality of a relationship that is so open and diverse (Susanto, 2016). In this position, morality plays an important role as a guide and the driving heart that directs and actualizes the idea of reality. In this case, ruling by heart essentially combines ratio with morality in the actualization of law in society. The integration of ratio and morality in contemplative law serves to bridge all differences through a conducive dialogue atmosphere towards humanization, which will lead to efforts to seek mutual understanding and agreement in a democratic, egalitarian way to achieve more meaningful goals (Susanto, 2016).

Meanwhile, the prophetic law is based on values sourced from the Koran and Hadith. It is also based on human efforts obtained from their potential abilities through reflection-reasoning and discourse that develops in society. From some of these legal ideas, the author is interested in studying the implementation of prophetic law in relation to the legal system in Indonesia.

The discourse on the relationship between the state and religion is often seen as complicated. Religion is often used to oppose the government and vice versa: the government is often used as a force to suppress religion. In political, constitutional, and religious discourses, the relationship between the two is still being debated and studied in Western and Middle Eastern countries.

In fact, people in various countries, including in Western countries, still continue to believe in and implement moral values derived from their respective beliefs and religions, and these religions are even recognized as official religions in many countries. Religious values, recognized or not, influence the formation of the law.

Table 1.

States' Relationship with Religion (Pew Research Center, 2017).

<i>States' Relationship with Religion</i>	<i>Number of Country</i>	<i>Percentage</i>
Official state religion	43	22%
Preferred/favored religion	40	20%
No official or preferred religion	106	53%
Hostile	10	5%

Based on the results of research conducted by the Pew Research Center (2017), from 199 countries around the world, more than 80 countries support a particular religion, either as an official religion supported by the government or by giving preferential treatment to one religion over other religions. Islam is the most widely supported religion by governments, with 27 countries (including most in the Middle East-North Africa region) officially declaring Islam their state religion. On the other hand, only 13 countries (including nine European countries) have designated Christianity or certain Christian denominations as their state religion. Furthermore, as many as 40 countries around the world unofficially support a particular religion. Among these, the dominant belief favored is the branch of Christianity. The study results show that Christian churches receive preferential treatment in 28 of those 40 countries.

The rational paradigm does not only try to separate law and morals/religion while considering written law as actual law. But what is even worse is the birth of secularism, liberalism, and pluralism in responding to legal issues. This certainly has a very clear reason as the positivistic theory put forward by August Comte puts aside metaphysical problems and directs to positivism. For this reason, a new paradigm is required to balance this rational thinking. This is especially because this paradigm is necessary for the state and society, which bases its laws on religious (prophetic) values like Indonesia.

The Implementation of the Prophetic Law in the Indonesian Legal System

The prophetic law in the Indonesian legal system cannot be separated from the basic principles contained in the Pancasila state ideology (Absori, 2015), where the core of Pancasila consists of five precepts, namely Divinity, Humanity, Unity,

Democracy, and Justice. According to the founding father of the nation, Soekarno, the core of Pancasila is mutual cooperation. In the legal field, the manifestation of the Pancasila ideology is embodied in the ideals of the Pancasila law, which serves as the foundation and direction of national legal development. The ideals of Pancasila law are interpreted as rules of community behavior rooted in the people's ideas, feelings, intentions, creativity, and thoughts. In this case, there are three elements of law: justice, usability, and certainty (Ali, 2010; Nursamsi, 2014).

In the dynamics of people's lives, Pancasila as a legal ideal will function as a general guiding principle, a norm of criticism, and a motivating factor in the administration of law (formation, discovery, and application of law) and legal behavior. In this case, the legal system is an exemplar of the ratification of legal ideals into various legal rules arranged in a system (Putro, 2010). Thus, the establishment and development of law should be based on and refer to the ideals of law. By the nation's founding fathers, Pancasila was placed as the philosophical foundation in organizing the framework and organizational structure of the state. Pancasila is interpreted as the nation's way of life that reveals the relationship between humans and God, the relationship among humans, as well as the relationship between humans and the universe which is based on beliefs about an individual human's place in society and the universe (Sholahudin, 2016).

Apart from being the main component of the national legal value system and *staatsfundamentaln*orms, Pancasila is included in the philosophical scope of the Indonesian nation and state. The position of Pancasila as a philosophy, according to Abubakar Busro quoted by Susilo, can be reviewed in at least three realities, namely: (1) the material reality: from the scope and content of which it is fundamental, universal, and comprehensive, where it has metaphysical values, even

teaching points on religious and human values, (2) the practical, functional reality: a series of values in the socio-cultural aspect of the Indonesian nation, so that its form can be seen in the form of the principle of belief in God, mutual awareness, loyal friends, kinship, mutual cooperation, deliberation and consensus, etc., and (3) the formal reality. The founders of the state adopted and formulated Pancasila as an ideology whose form was seen in the preamble of the 1945 Constitution as the basis of the Unitary State of the Republic of Indonesia (Susilo, 2011).

The Pancasila-based law is based on the Indonesian people's way of life, which believes that the universe and all its contents, including humans and nature, are interwoven in a harmonious relationship created by God. The presence of humans in the world is ordained in togetherness with each other. But every human being has a unique personality that distinguishes one from another. This is where unity in diversity exists. In addition, togetherness (unity) shows the nature of a different and unique personality, which means that unity has differences. The nature of these differences cannot be denied without involving human nature, which can be realized in societal life (Achmadi, 2018).

In the development of Indonesian law, a foothold underlies transcendental values, namely the state ideology of Pancasila and the Preamble to the 1945 Constitution, which states that the proclamation of Indonesian independence is due to the Grace of Allah Almighty. The opening of the 1945 Constitution is a solid agreement of the nation's founding fathers, which is the basis of state-building and embodies the ideals of the nation. The opening of the 1945 Constitution is a spiritual spirit that is an unchangeable necessity. Article 29 of the 1945 Constitution states that the state is based on the Belief in One God. The state guarantees the independence of each citizen to embrace their respective religions and to worship according to their religions and beliefs.

Article 2 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power states that the judiciary is carried out for the sake of Justice Based on the Belief in One God. The state court applies and enforces law and justice based on Pancasila (Article 2, paragraph 2). Judges are required to comply with the code of ethics and guidelines on judicial behavior (Article 5, paragraph 3). According to Djohansjah (2008), a

judge's decision is born from beliefs. It ultimately becomes part of the judge's moral attitude to accountability, which is addressed to God Almighty, namely a figure who is believed to be omniscient in the hearts of every human being. Here it is clear that the judge is God's representative on earth and, consequently, must be responsible for the decision before the Divine God. A judge's hammer beat should not be done based on his own interests or the interests of those around him. But it must be done solely for the sake of God's justice.

Law Number 1 of 1974 concerning Marriage and its amendments is an example of a fairly strong form of the prophetic law's implementation. The rules in the law are basically sourced from the Koran and Hadith and compilations of other religions recognized in Indonesia. The prophetic values in these regulations very intensively and firmly regulate what is allowed and not allowed in terms of marriage according to religious teachings. An example is the rule prohibiting interfaith marriages, which are basically prohibited by the majority of religions recognized by the state.

Conclusion

The implementation of prophetic law in Indonesia has so far been limited to a few laws and regulations. At the same time, prophetic understanding has become the spirit to establish this country, which is implicitly contained in the Republic of Indonesia's Pancasila and 1945 Constitution. Analysis of the prophetic law's implementation in the legal system has made it possible to find two important things. First, the lack of the prophetic law's implementation in laws and regulations. Several laws and regulations that accommodate prophetic law in Indonesia are the 1945 Constitution; the Preamble to the 1945 Constitution which states that the proclamation of Indonesia's independence is based on the Grace of God Almighty; Article 29 of the 1945 Constitution which states that the state is based on the Belief in One God; Article 2 paragraph (1) of Law No. 48 of 2009 concerning Judicial Powers; and Law Number 1 of 1974 concerning Marriage. This accommodation of the prophetic law ultimately impacts the level of implementation by law enforcers. The majority of judicial deci-

sions have so far only been based on the sound of existing rules, without considering the prophetic values that grow and develop in society. Second, law enforcement officers have not implemented prophetic law because they lack an understanding of the foundation of transcendental values adopted in the Pancasila ideology and the Preamble to the 1945 Constitution. The limitation of this research is secondary material which is still limited to court decisions used to analyze the implementation of prophetic law in the field.

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