



## PANCASILA AS A BASIC GUIDELINE IN LEGAL PROTECTION OF HUMAN RIGHTS

Ibnu Abdillah<sup>1</sup>, Nur Asyarah Tanjung<sup>2</sup>, Aprilia Ayu Puspita<sup>3</sup>, Anis Nur Aqilah<sup>4</sup>

<sup>1,2,3,4</sup>Islamic Communication and Broadcasting, Universitas Islam Negeri Sumatera Utara, Indonesia

\*Corresponding Author: [anisnuragilah8@gmail.com](mailto:anisnuragilah8@gmail.com)

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### ABSTRACT

Human Rights are basic rights or citizenship that are inherent in individuals since they were born by nature which are given directly by God Almighty which cannot be taken away and revoked and must be respected, upheld, and protected by the state, law, government and every person for the honor and protection of human dignity and honor. Indonesia is a country based on law. So that the State of Indonesia is obliged to provide protection of Human Rights to every citizen. While a state of law is a country based on the sovereignty of law. The law is sovereign. The state is a legal subject, in the sense of *rechtstaat*. Because the state is seen as a legal subject, if it is guilty it can be prosecuted in court for unlawful acts. This study discusses the role of Pancasila as the basis of the state in protecting Human Rights (HAM) in Indonesia. With a qualitative approach and case studies, this study explores how the values of Pancasila function as legal guidelines that guarantee the basic rights of citizens. Pancasila, although not explicitly mentioned in the 1945 Constitution, is a fundamental source of law that underlies legislation. The results show that the values of Pancasila, especially "Just and Civilized Humanity," are the ethical basis for protecting human rights. Pancasila and the 1945 Constitution guarantee equality and non-discrimination, so that every citizen has rights protected by law. Thus, Pancasila is not only an ideology, but also a legal framework that supports human welfare and dignity in Indonesia. (Hidayat Eko, 2016).

**Keywords:** Pancasila Pancasila, Law, Human Rights

## 1. INTRODUCTION

Indonesia has the motto *Bhinneka Tunggal Ika* reflecting the cultural diversity of the people in the unitary state of the Republic of Indonesia. Indonesia has various tribes, religions, cultures, and races. Indonesia as a very diverse nation state must have guidelines that can unite all diversity, which are guided by the state philosophy, namely Pancasila and also sourced from the law.

Indonesia is a country of law. The operationalization of the concept of the Indonesian legal state is stated in the state constitution, namely the 1945 Constitution (UUD) which is the basic law of the state that occupies the position as the highest basic law of the state in the

Indonesian legal order. The legal state is related to the human rights of the Republic of Indonesia (Rambe et al, 2024). Although the Preamble to the 1945 Constitution does not explicitly mention the word Pancasila, it is known that the 5 (five) principles referred to are Pancasila to be intended as the basis of the state.

Because, one of the characteristics of a legal state is the guarantee of human rights. Therefore, a legal state is responsible for the protection and enforcement of the human rights of its citizens. In this regard, the question is how is the protection of the basic rights of citizens (human rights) in Indonesia which claims itself through its constitution as a state of law with Pancasila as a normative source of law for the organization of the state (Triputra, 2015). Pancasila is not only the basis of the state, but also a moral guideline that influences the formation of legal norms and policies that are oriented towards respecting individual rights, Pancasila also has an important role in providing direction for legal policies in Indonesia, including in the aspect of protecting human rights. Thus, it is important to understand how Pancasila is applied in the context of human rights law in Indonesia, especially in facing the various challenges faced in enforcing these rights (Ali, A, 2019).

## **2. RESEARCH METHODE**

This research is a case study with a qualitative approach designed to explore the application of the Pancasila law as the source of all legal sources. The qualitative method was chosen because of its in-depth and explorative nature. This method allows researchers to explore the broader meaning behind the phenomena studied, including a deep understanding of Pancasila as a basic guideline in legal protection of human rights. This study uses an empirical legal method with a contextual approach where this approach connects lesson materials with events or situations in the real world. The data sources used are various literature books, journals, scientific works and also other documents in physical and digital form.

## **3. RESULT AND ANALYSIS**

Pancasila is the foundation of the Indonesian state which is the ideological and philosophical basis for national and state life. Pancasila consists of five principles or principles stated in the Preamble to the 1945 Constitution. Pancasila is a set of formulations and guidelines for life in the nation and state. Therefore, it is the obligation of all Indonesian people to hold tightly to these guidelines. Meanwhile, the Great Dictionary of the Indonesian Language (KBBI) defines Pancasila as the foundation of the state and the philosophy of the nation and state of the Republic of Indonesia which consists of five principles. Pancasila is also often defined as the outlook on life of the Indonesian people which has the meaning that the crystallization of life experiences in the journey of the history of the Indonesian nation has formed attitudes, character, behavior, values, philosophical views, morals, ethics (Mochamad Aris Yusuf). The views on Pancasila according to Indonesian figures often vary, but generally they see Pancasila as a moral, political, and social foundation that directs the journey of the nation. Here are some views from several important figures:

1. Soekarno (First President of the Republic of Indonesia, Initiator of Pancasila): Soekarno saw Pancasila as an ideological foundation that could unite various groups of people with different cultural, ethnic, religious, and ideological backgrounds. According to Soekarno, Pancasila was the result of a compromise that was able to

bridge these differences and become a guideline for building a sovereign, just, and prosperous Indonesia.

2. **Mohammad Hatta (First Vice President of the Republic of Indonesia):** Hatta emphasized the importance of Pancasila values in the social and economic life of the nation. For Hatta, Pancasila must be implemented in creating a just and prosperous society. He emphasized the principle of Social Justice as an important foundation for a just economy, where the country's wealth must be distributed evenly for the benefit of all the people

Pancasila was formulated with the aim of being used as the foundation of the independent Indonesian state. In the process, all formulations of Pancasila as the foundation of this state were explored and based on the values of the nation's outlook on life. Pancasila was formulated based on the values of the outlook on life of the Indonesian people. Practicing the values of Pancasila in everyday life can build harmonious social relations and achieve justice for all individuals. The following are the goals of Pancasila:

- a. **Forming and elevating a sense of mutual respect and appreciation for the human rights of every human being**

This attitude can help us become better people and understand each other better. We all have an important role in maintaining harmony and peace in community life. Therefore, let us maintain togetherness and unity by respecting, honoring, and forgiving each other. The following are some examples of respecting human rights (HAM): Respecting all school residents, including students, teachers, food vendors, and school guards, not discriminating against friends, respecting other people's religious activities, being polite, listening to other people's opinions until finished.

- b. **Giving birth to nationalism and strengthening the love of the homeland in every Indonesian citizen.**

Forming a Character Based on Pancasila Values: Internalizing the values of Pancasila in everyday life so that every citizen has a strong character and love for the homeland, which is reflected in the attitude of mutual cooperation, tolerance, and justice. Strengthening National Resilience: Increasing the sense of responsibility of all people in maintaining the sovereignty of the country from threats, both from within and outside the country, so that strong national stability and security are created.

- c. **Forming and strengthening democracy in the Indonesian nation**

Forming a Democratic-Souled Generation: Educating the younger generation to understand and practice the principles of democracy in everyday life, so that democracy can continue to grow and develop in society. Encouraging Active Community Participation: Building awareness and responsibility of all people in the political process and national development, so that every citizen feels they have the right and obligation to participate in determining the direction of state policy (Amin, M., & Rahardjo, B, 2009).

Pancasila as the foundation of the Indonesian state has a fundamental role in legal protection, both for citizens and state institutions. As the main guideline, the values of Pancasila form the basis of ethics and morals in the legal system in Indonesia, namely ensuring that the laws applied are in line with the principles of justice, humanity, unity, wisdom, and social welfare. As a fundamental source of law, all regulations that are part of the Indonesian legal system must not conflict with Pancasila (and the 1945 Constitution).

Therefore, if the regulation conflicts with Pancasila and the 1945 Constitution, it can be considered an invalid regulation. From the explanation above, it is clear that basically the implementation of human rights instruments in Indonesia must be a manifestation and implementation of the values contained in Pancasila. The values of Pancasila include ethical values or moral values. The values in Pancasila are included in the basic value level. This value underlies the next value, namely instrumental value. The basic value underlies all activities of life in society, nation and state (Yuli Asmara Triputra, 2015). Another effort to realize Pancasila as a source of values is with the basic values of Pancasila as a source of forming ethical norms (moral norms) in social, national, and state life. Pancasila values are moral values. Therefore, Pancasila values can also be realized into moral norms (ethics). These ethical norms can then be used as guidelines or references in behaving and acting in national and state life. Indonesia has now succeeded in formulating ethical norms as guidelines in behaving and acting. These ethical norms are based on Pancasila as the nation's cultural values. The formulation of these ethical norms is stated in MPR Decree No. VI/MPR/2001 concerning Ethics of National, State, and Community Life. MPR Decree No. VI/MPR/2001 concerning the ethics of National, State, and Social Life is an elaboration of Pancasila values as a guideline for thinking, behaving, and acting which is a reflection of religious and cultural values that are rooted in social life (Fransiska Novita Eleanora).

Human rights are rights inherent in humans that are natural and fundamental as a gift from God that must be respected, guarded, and protected by every individual, society or State (Rambe & Sihombing, 2024). Meanwhile, in the Law on Human Rights, it is explained that the definition of Human Rights is a set of rights inherent in the nature and existence of humans as creatures of God Almighty and is His gift that must be respected, upheld and protected by the state, law, government and everyone, for the honor and protection of human dignity (Article 1 number 1 of Law No. 39 of 1999 concerning Human Rights (Rambe et al, 2023). Discussing human rights is still relevant throughout time. In the field of practitioners, human rights issues "emerge" always related to injustice, poverty, arbitrariness, egotism of arbitrary actions/policies, and various practices that contain elements of uncertainty, anxiety towards other humans. Therefore, human rights (HAM) in Indonesia are constitutionally recognized rights as stated in Article 28A-J of the 1945 Constitution, violations of human rights are violations of the constitution. Recognition of human rights in Indonesia has been stated in the 1945 Constitution and is also contained in Pancasila, one of which is in the second principle which reads: "just and civilized humanity" means awareness of attitudes and behaviors that are in accordance with moral values in living together and the basic demands of conscience by treating things as they should be. Humans need to be treated according to their dignity and status, as God's creatures who have the same status and the same basic rights and obligations.

Based on that value, there is absolute recognition of human rights and one of the implementations of this second principle is about human rights. The following is an explanation of one of the human rights, namely Personal Human Rights (Yuli Asmara Triputra, 2015).

a. **Personal Human Rights**

Personal human rights are a fundamental and universal concept that defines the basic rights of every individual, without discrimination, and applies to all humans. This concept protects the freedom and dignity of the individual, ensuring that everyone has rights that are inseparable from other rights. Personal human rights reflect the principles of humanity, justice, and freedom that underlie various declarations and conventions on human rights around the world.

b. **Right to life and liberty**

Every individual has the basic right to life and to be protected from actions that threaten or take their life. This right is an inseparable basic right. In addition, individuals have the right to be protected from torture, inhumane treatment or punishment, and threats to their lives. And this is contained in article 28A, which reads "Everyone has the right to live and the right to defend their life and existence".

c. **Freedom of speech and opinion**

This right includes the right to have personal beliefs, thoughts, and opinions, as well as the freedom to express opinions without fear of repression or punishment. And this is contained in Law Number 12 of 2005 which states that the right to freedom of expression and opinion includes the right of everyone to express their opinions without interference, the right of everyone to express their opinions including the freedom to seek, receive, and impart information and thoughts, regardless of restrictions orally, in writing, or in print, works of art, or through other media.

d. **Freedom of religion and belief**

The right to have, change, or practice religious beliefs or personal beliefs. Freedom to practice religion can be done alone or together in public or in private. And it is contained in Article 22 of Law No. 39/1999

(1) Everyone is free to embrace their respective religions and to worship according to their religion and beliefs.

(2) The state guarantees the freedom of everyone to embrace their respective religions and to worship according to their religion and beliefs (Maskum Rangkuti, 2023).

#### **4. CONCLUSION**

Pancasila as a basic guideline in the legal protection of human rights (HAM) lies in its fundamental values that underlie every aspect of national and state life in Indonesia. Pancasila, especially in the second principle which emphasizes "Just and Civilized Humanity," encourages the protection of the basic rights of every individual without discrimination. These principles are reflected in national laws and regulations, which guarantee that every citizen has equal standing before the law and is free from all forms of discrimination. As a country of law, Indonesia uses Pancasila as the basis for formulating regulations that protect human rights, both in the constitution and other positive laws. Pancasila is not only an ideology, but also

provides an ethical and moral framework for the government in creating policies and legal systems that respect, protect, and fulfill the human rights of all citizens. As a country of law, Indonesia translates the values of Pancasila into laws and regulations, especially in the 1945 Constitution which regulates the basic rights and freedoms of citizens. The 1945 Constitution, especially Article 28, contains provisions that are in line with global human rights principles, such as equality and non-discrimination, which are guaranteed to all citizens without exception. Pancasila is a philosophical framework that strengthens Indonesia's commitment to protecting human rights through positive law, ensuring that the basic rights of every individual are not only respected but also protected by the state. Overall, Pancasila is not only a basic guideline in the preparation of national laws, but also forms ethical and moral principles for the state in protecting human rights. Pancasila encourages the creation of just laws, and involves joint responsibility between the government and society to maintain the dignity and rights of every citizen. Thus, Pancasila is not just a symbol of ideology, but also becomes a real basis for creating a legal order that is oriented towards welfare and humanity (Bobi Aswandi, 2019).

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