



## APPLICATION OF THE PANCASILA MODEL IN THE SOURCES OF INDONESIAN STATE LEGAL SYSTEM

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### ABSTRACT

*Pancasila as the foundation of the Indonesian state has a fundamental role in shaping the national legal system. The application of the Pancasila model in the source of the Indonesian state legal system refers to the principles contained in Pancasila which are used as guidelines in making laws and legal practices in Indonesia. In this context, Pancasila not only functions as the basis for ethics or the nation's outlook on life, but also as a source of law that regulates every legal policy, both in the 1945 Constitution of the Republic of Indonesia and in other legal products. This study aims to analyze how the values contained in Pancasila can be applied consistently in the Indonesian state legal system, as well as the challenges faced in the implementation process. Through a qualitative approach and analysis of legal documents, this study found that although Pancasila is the basis for compiling the Indonesian legal system, its application in daily legal practice still faces several obstacles, especially in terms of enforcing the principles of social justice and humanity contained in Pancasila. This study emphasizes the importance of strengthening collective awareness of the values of Pancasila among state officials and society in order to create a more just and prosperous legal system. Therefore, greater efforts are needed to integrate Pancasila values more effectively into every legal policy implemented in Indonesia.*

**Keywords:** Pancasila, Indonesian state legal system, implementation of law, 1945 Constitution, social justice, legislation

## 1. INTRODUCTION

The application of Pancasila as the basis of the state provides an understanding that the State of Indonesia is a Pancasila state. This means that the state must submit to it, defend and implement it in all laws. Regarding this, Kirdi Dipoyudo (1979:30) explains "The Pancasila State is a state that is established and maintained and developed with the aim of protecting and developing the dignity and basic rights of all citizens of the Indonesian nation (just and civilized humanity), so that each can live properly as a human being, develop themselves and realize physical and spiritual welfare as completely as possible, advance general welfare, which is the physical and spiritual welfare of all people and educate the life of the nation (social justice)."

The current phenomenon is that the Indonesian nation does not believe in Pancasila. Or the marginalization of Pancasila from the life of this nation. In fact, the implementation of Pancasila can be an effective media and means of interaction to enrich views, opinions and thoughts. In order to formulate the concept of socialization and implementation of Pancasila in the life of the nation and state, targets and methodologies are very important considering the realization of the dynamics of life that exist today which are colored by the development of democratic values in the ongoing democratization process. Indonesia as a country of law should live based on law and obey it, with the law running on its tracks properly (Rambe et al, 2024). then national and state life will be created well, of course with legal instruments and supported by legal instruments, and no less important are the law enforcers themselves / law enforcement officers who are authorized in law enforcement who must and are required to create and condition the fairest law enforcement that is not blunt upwards and sharp downwards, but views all members of society as equal before the eyes of the law, upholds human rights and is oriented towards real and true justice and as fair as possible,

Pancasila which is the main basis for the agreement on the founding of the nation and is part of the opening of the 1945 Constitution (UUD), the Indonesian constitution has been amended 4 (four) times, but the opening has not been changed, because it is a binding force for all components of the nation and to guarantee national integration<sup>12</sup>, but apart from that, the state system must also guarantee the welfare of the Indonesian people and society as a whole, thus the goals of the state will be realized in the future. Pancasila in the legal system, the hope for its realism and concreteness in the legal order as well as in the practice of legal life requires the existence of Pancasila in the law itself which is the source of legal order or commonly known as the source of all sources of law. Regarding the position of Pancasila in the law, it has been confirmed by the DPR-GR memorandum which was then given a legal basis through MPR Decree No. XX/MPRS/1966, MPR Decree No. V/MPR/1973, MPR Decree No. IX/MPR/1978.

Furthermore, Pancasila as the source of all sources of law is reaffirmed in MPR Decree No. III/MPR/2000 concerning Sources of Law and Sequence of Legislation. In addition to being regulated in the MPR Decree, Pancasila as the source of all sources of law is also regulated in Law No. 10 of 2004 concerning the Formation of Legislation. Article 2 of this Law states that "Pancasila is the source of all sources of state law".

Pancasila in the legal system is certainly not a thought born from resistance to legal pluralism or the school of legal thought adopted in the Indonesian legal system. However, as a construction of legal thought that tries to provide a broad meaning of the importance of Pancasila in law. For the author, Pancasila in the legal system is a necessity as long as the law makers, the stakeholders of justice and the community as legal subjects have knowledge, awareness and obedience to the law based on Pancasila. Thus, Pancasila in legal practice is no longer floating in normative texts alone but is truly real in daily life in legal practice both in the family, society and nation.

## **2. RESEARCH METHODE**

The research approach is a qualitative approach and document analysis. Moleong (2017:6) states that qualitative research is "research that intends to understand the phenomenon of what is experienced by research subjects, for example behavior, perception, motivation, action, etc." The qualitative research model used is a case study model. According to Yin (2012: 18) a case study is an empirical inquiry that investigates a phenomenon in a real-life context, when the boundaries between phenomenon and context are not clearly visible and where multiple sources of evidence are utilized. According to Creswell (2015: 135-136) case study research is a type of qualitative approach whose research explores the real life of a case or various cases through in-depth data collection.

## **3. RESULT AND ANALYSIS**

### **A. Pancasila and the Legal System**

Pancasila, as in its existence as a way of life and identity of the Indonesian nation and state, naturally requires all matters concerning the interests of the Indonesian nation and state to be based on Pancasila. Therefore, in the legal system it is also the same (Rambe & Sihombing, 2024). In the legal system, Pancasila is the basis so that any law that is applied must be subject to and practice Pancasila. Therefore, even though Indonesian law in its system is pluralistic, Pancasila is still the basis for the validity of these legal systems. On the basis of the above, if there is a legal system that is considered to be in conflict with Pancasila, it is not permitted to be applied. This has actually been confirmed in the position of Pancasila as the legal ideal and source of all sources of law which is the highest level in the theory of legal norm levels. So that the legal ideal of Pancasila in the development of the national legal system has three values, namely:

- a. Basic values, namely principles or principles that are accepted as statements that are more or less absolute. The basic values of Pancasila are divinity, humanity, unity, democracy and justice.
- b. Instrumental values are the general implementation of basic values, which are in the form of legal norms, which are further regulated and crystallized in legislation.

- c. Practical values are values that are truly implemented in reality, resulting from basic values and instrumental values. With this, practical values become the touchstone for whether basic and instrumental values are fundamental.

The realization of these three values is important because the legal regulations that are to be built must be able to integrate, combine, and align Indonesia's national interests at the national, regional and global levels. Thus, based on the values of Pancasila as a guiding star to test positive rights and provide direction to positive Indonesian law. The elaboration of the values of Pancasila in the development of the law is as follows:

- a. Divine Values. This means that in the formation of laws in Indonesia must be based on divine and/or religious values. Furthermore, freedom of religion must be guaranteed in all forms of law, and there must be no laws that support one religion and oppose another so that the law in Indonesia can realize Indonesia as a nation and a religious state.
- b. Humanitarian values. This means that in every formation of laws must create a nation to support civilized countries and respect human rights.
- c. Unity values. This means that the unity and integrity of the nation and state must be considered in making laws. In the formation of laws there must be no division (collapse) and division between nations.
- d. People's values. This means that in the formation of laws must be based on democratic values that cover all elements of the state, both legislative, executive, judiciary and society. So that Indonesian law can help realize Indonesian democracy.
- e. Social justice values. This means that national law must aim to realize justice and welfare for all Indonesian people in its formation

Pancasila in the legal system always has a special place or position so that the ideals of law and the ideals of the state can be achieved through law. Furthermore, if associated with the concept of a state of law, Indonesia also adheres to the principle of a state of law but not a state of law as in the concept of *rechtstaat* or in the concept of rule of law. The Indonesian State of Law is a Pancasila state of law, which means that all regulations of the Basic Law State are based on Pancasila. Very different from building a state of law on the European continent such as a state of law or an Anglo-Saxon state of law as a state of law. Therefore, the characteristics of a Pancasila state of law are as follows.

- a. A Pancasila state of law in which all uses of power must always have a legal basis and within the framework of the limits set by law, a fortiori for the use of public power. So, in the desired government, namely a government based on and by law (rule by law and rule of law)
- b. A Pancasila state of law, namely a democratic state, is always open to fair assessment by all parties in this country in all its state activities. Applicable values and legal frameworks. In addition, the judiciary is free to exercise its powers, other government officials are subject to court decisions, and citizens can file complaints against government officials with the courts. The government is open to critical scrutiny by its citizens and representatives of society regarding its policies and actions.

- c. The Pancasila rule of law is an organization of all people who organize themselves rationally to work together, within the framework and through the applicable legal system, to realize physical and spiritual welfare for all people by always focusing on the values of human dignity and the Almighty God."

Therefore, the Pancasila rule of law is a rule of law based on the values contained in Pancasila as an entity that represents the reality of the lives of the Indonesian people. The reality of life is as stated in Pancasila such as God as the foundation of morals and religion, humanity as the foundation of a rational and civilized society, unity as the foundation of a shared fate and burden, democracy or democracy as the foundation of family and ideal politics, welfare as the foundation of a stable economy based on family and justice as the foundation of legal life. Therefore, it is a demand and necessity that the Indonesian rule of law is a Pancasila rule of law.

### **B. Pancasila as the Source of All Sources of Law**

Pancasila and the legal system are essentially two entities that are interconnected, namely Pancasila as the main source of the legal system and the legal system as a way to make Pancasila concrete. This reciprocal relationship strengthens the position of Pancasila in the legal system. Therefore, it is also necessary to understand the position of Pancasila as the source of all sources of law in Indonesia. However, for the sake of logical thinking, it is better to first understand the source of law. In essence, the source of law is where we can find and explore the law. According to Zevenbergen, sources of law can be divided into substantive sources of law and authoritative sources of law. Substantive sources of law are where legal materials are obtained. This substantive source of law is a factor that helps shape the law. Pancasila is intended as a source of information for all sources of law and legal order of the Indonesian nation. According to Roeslan Saleh, the function of Pancasila as a source of all legal information means that Pancasila is positioned in:

- a. Indonesian legal ideology,
- b. A set of values that must be behind all Indonesian law,
- c. Principles that must be followed as guidelines for legal decision-making in Indonesia
- d. A statement of psychological values As and the desires of the Indonesian people, and their rights.

The existence of Pancasila as a source of all legal information was then stipulated in MPR Decree No. III/MPR/2000 concerning Sources of Legal Information and Legal Order. Part 1 of the MPR Decree contains three paragraphs: Pancasila as stated in the Preamble to the 1945 Constitution is the Almighty God, a just and civilized humanity. The unity of Indonesia and democracy are guided by the wisdom of deliberation/representation and by realizing the concept of social justice for all Indonesian citizens and the body of the 1945 Constitution. In addition, Pancasila is the main standard for making all kinds of laws and regulations. However, the term Pancasila is no longer the source of all legal information. This does not affect the existence of Pancasila as a fundamental norm that regulates all norms, but of course reduces the primacy and binding power of Pancasila in the legal system. It is said so from the values of Pancasila. As a way of life, awareness, legal ideals and moral ideals no longer have legal legitimacy. Moreover,

the modern legal system only recognizes written regulations related to Pancasila as a source of information and legal positivism. All sources are subject to the law.

### **C. Pancasila as the Source of Legitimacy of the Legal System**

The position of Pancasila in the legal system as a source of all legal information cannot be denied. However, to strengthen the content of Pancasila in the existing legal system, it must be emphasized that Pancasila is also a source of legitimacy. Pancasila is present as a source of legal order, or as the legal ideal of the Indonesian state, but it still raises questions. From a legal perspective, what makes Pancasila a source of legal order and even the ideal of national law? This fundamental question needs to be answered logically from a legal perspective. Therefore, it is appropriate to talk about legitimacy. It should also be noted that legitimacy is often used as a study of politics and power, but law is also fundamentally part of this politics and power, so when law considers the question of legitimacy, it becomes quite clear. In general. Legitimacy is the legal acceptance of something that exists or is legitimate, such as an idea, doctrine, concept, or action. Regarding Pancasila as a source of legitimacy, there are three criteria for legitimacy that are met: sociological legitimacy, legality, and ethical legitimacy.

#### **1. Sociological Legitimacy**

Sociological legitimacy is about which motivational procedures concretely create people to want to get a power which in this case is Pancasila. This legitimacy talks about the official recognition of the people (here the people become the holders of the key to legitimacy) of a power that exists, namely the recognition of the power of Pancasila. The model of acceptance of Pancasila power is often juxtaposed with Max Weber's idea of its 3 conceptions of legitimacy, namely:

traditional legitimacy, namely that a power such as Pancasila power is accepted by the people because Pancasila has long been in power or has been in power for a long time since the Indonesian state existed.

charismatic legitimacy, namely that Pancasila is accepted as a power by the people because it has authority or impression or more precisely has a good influence on the people.

rational-legitimate legitimacy, namely Pancasila is accepted because it is relevant or in sync with the regulations in Indonesia so that Pancasila is evaluated as not contradictory and its existence can be maintained.

#### **2. Legality**

Legality is the legitimacy that arises according to the elements of the rules related to Pancasila, namely whether Pancasila is in sync or not using the existing and applicable rule system in Indonesia. This criterion tends to convey the validity or normative value according to something that has power, for example Pancasila for the people and nation of Indonesia. Legality has the essence that something of power, for example the power of Pancasila, is valid and relevant if it is valid and relevant from the existing and applicable rules. So, if Pancasila is not relevant to the existing rules, then Pancasila will not have legality or will still be valid as a rule.

#### **3. Ethical Legitimacy**

Ethical legitimacy is the recognition of the validity of the power of Pancasila according to the moral values that exist and are lived in Indonesia. This legitimacy is the most selective criterion because it concerns the spiritual realm of all the people and nation of Indonesia. It is said that the spiritual realm is very selective because it is simple, namely the people and nation of Indonesia uphold what are called ethical values and these values require the spiritual or spiritual readiness of all subjects of the people. Regarding this legitimacy, Pancasila has fulfilled it, namely as stated in chapter I that Pancasila has 2 foundations, namely political foundations & ethical foundations, namely moral & religious values. The three criteria for legitimacy above are fulfilled by Pancasila. For that, Pancasila has sociological, legal, and ethical legitimacy as a force that exists and lives in Indonesia. This is also a logical justification for the status of Pancasila as the source of everything in Indonesia, or as the source of all sources of law in the legal system, and as the ideal of national law.

#### **D. Pancasila in the legal system, an inevitability**

Pancasila in the legal system can be likened to the roots of a durian tree. The durian tree is the source of life for all elements of the tree, be it the roots, trunk, leaves or the fruit it produces. All elements of the durian tree are the same when the roots die or are damaged. Therefore, to fertilize the durian tree must always be attempted, and in the context of Pancasila as its roots, the individuality of Pancasila must always be attempted, so that Pancasila as the source of life of the legal system never dies or is damaged.

For that, Pancasila does not have to run alone, but requires active participation as citizens or as legal entities that fully recognize Pancasila. The position of Pancasila in the legal system is so important that it fosters optimism about the inevitability of Pancasila in the legal system. For Pancasila to be truly needed in the legal system, it depends on four factors: legislator knowledge, legal policy, law enforcement, and compliance with legal entities.

##### **1 Legislator Knowledge**

Knowledge is the result of all human reasoning and experience. A person who has legal knowledge and Pancasila relies on human reason and experience in relation to law and Pancasila. Reason and experience can gain knowledge when they have awareness of customs and realities, such as Dharma and Pancasila.

##### **2 Judicial Policy**

Judicial policy depends on the main actor in the judiciary, namely the judge. Here, judicial wisdom is said to be no different from the judge as a judicial pendulum. According to Article 24 paragraph (1) of the 1945 Constitution, "the judiciary is an independent power to administer justice in order to maintain law and order". This provision of the 1945 Constitution is further strengthened by Article 1(1) of Law No. 48/2005 (Rambe et al, 2023). Pancasila and the 1945 Constitution of the Republic of Indonesia are to uphold the supremacy of the law of the Unitary State of the Republic of Indonesia (Sanjaya et al, 2023). "The judiciary is in principle free. The main task of the judiciary is to receive, investigate, decide and try all cases submitted.

##### **3 Law Enforcement**

The law functions to protect human interests. The law must be enforced to protect human interests. Law enforcement can be normal and peaceful, but it can also be based on violations of the law. In this case, the law that is violated must be enforced. Law enforcement makes the law a reality. In law enforcement, we must always consider three factors: legal certainty, benefit and justice. Everyone wants the law to be passed in their particular case. Whatever the law is, it must be implemented. Basically, don't deviate like the famous voice (even if the world ends, the law must be obeyed)

#### **4. CONCLUSION**

Pancasila is the basis so that any law that is applied must be subject to and practice Pancasila. In the legal system, it actually needs to be emphasized because the increasingly strong pluralism of the Indonesian legal system causes the law in its process, implementation and objectives to be far from the demands of the needs of the Indonesian people and nation. Therefore, the legal system that applies in Indonesia is attempted to be based on and aimed at Pancasila so that there needs to be a Pancasila legal system, so that the demands of the needs of the Indonesian people and nation can be achieved in the applicable legal system.



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