

THE CONCEPT OF THE STATE LAW OF PANCASILA

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ABSTRACT

The characteristic concept of the state law of Pancasila lies in the implementation of the rule of law must be based on the precepts contained in the Pancasila, namely the rule of law based on the principles of Pancasila; a country with the Belief in One Almighty and a guarantee of freedom in carrying out religion and belief; the state upholds and maintains Equality, Dignity, Liberty, a free and fair trial. The purpose of this research is to find out and analyze how the concept of the state of law of Pancasila actually is. The results showed that the ideal concept of the state of Pancasila law would not be able to contribute greatly to the life of the nation and state without seriousness in realizing it, so all elements of the nation, especially the holders of power in the country must animate and understand and have the will and determination earnestly in realizing a rule of law that puts forward the noble values of Pancasila.

Keywords: State, Law, Pancasila.

A. Introduction

The debate over the concept of the rule of law is a classic debate that has not been completed until now. Despite the classic debate, but this concept deserves to be studied continuously academically, considering this concept is always changing along with the times. The rule of law is the rechtside of a country that departs from the soul of a nation. Its characteristics depend on the values and norms of a nation that shapes the nation's identity. The development of the meaning of this identity, demands the elasticity of the concept of the rule of law so that time cannot be swallowed up.

History has noted that the concept of the rule of law was raised by Plato and Aristotle. Plato put forward the concept of *nomoi* which can be considered as the forerunner of thinking about the rule of law. Aristotle put forward the idea of a rule of law which is associated with the meaning of the state which in its formulation is still related to the concept of "policy".¹ This creates an interpretation, as if the concept of a rule of law is a western product that is not necessarily suitable to be applied in other countries.

Related to the state law of Pancasila, that Pancasila is a juridical philosophy of the Indonesian nation, historically. Pancasila was born and formulated in the session of the Investigation Agency for the Preparation of Indonesian Independence (BPUPKI) namely at the time of discussing the basics of the country, especially in Soekarno's speech on June 1, 1945. Sukarno in his speech mentioned Pancasila as the basic formulation of the State of Indonesia which means five bases.² Pancasila which has five principles or five principles which are the soul of the people or the soul of the nation (*Volkgeist*) of the Indonesian nation, this is in accordance with the views of A.G Pringgodigdo in his writings on "Scope of Indonesia".³

Pancasila can be said to have a function as the basis of the philosophy of the state or *Philosophische Grondslag*, *Wetanschauung*, *State Ideology*,⁴ *Staatsfundamentalnorm*,⁵ *Staatsidee*, *rechtsidee* from the Indonesian nation.⁶

¹MohKusnardi and Harmaily Ibrahim, *Introduction to Indonesian Constitutional Law*, Jakarta: The Study Center for UI HTN and Sinar Bakti, 1980, p. 142

²Kaelan, *Pancasila Juridical State*, Yogyakarta: Liberty, 1987, p. hlm. 10.

³A.G Pringgodigdo wrote that on June 1, 1945 was the day of the birth of the term Pancasila, whereas Pancasila itself had existed since time immemorial with the existence of the Indonesian nation. See Made HendraWijaya, "Characteristics of the Concept of the State of Pancasila Law", *Advocacy Journal* Vol. 5 No.2 September 2015, p. 99

⁴DarjiDarmodiharjo, *SantiajiPancasila: A Philosophical, Historical, Constitutional Juridical Review*, National Business - Surabaya - Indonesia, 1991, p. 16-21.

⁵Fundamental norms are norms that are the basis for the formation of a constitution or the Constitution or (*staatsverfassung*) of a country. The legal position of a *Staatsfundamentalnorm* is a condition for the enactment of a constitution. Compare Hans Kelsen, *Pure Theory of Law*, Translation from the Second (Revised and Enlarged) German Edition, Translated by: Max Knight, Berkeley, Los Angeles, London: University of California Press, 1967, p. 115, 201 - 205.

⁶Notonogoro, *Pancasila Basic State Philosophy, A Collection of Three Main Descriptions of the Issues About Pancasila*, Jakarta: BinaAkasara, 1983, p. 53.

Pancasila itself contains the principle of divinity, namely the Godhead; the principle of humanity, namely just and civilized humanity, the principle of nationality, namely Indonesian Unity, the principle of society which is manifested in the sovereignty of the people with a form of consensus democracy, namely People led by wisdom in deliberation / representation; and the principle of social justice for the public interest, namely social justice for all Indonesian people. So that the existence of Pancasila can be used as a tester of positive law in Indonesia, which means that all the formation of law and its implementation and implementation cannot be separated from the values of Pancasila as Staatsfundamentalnorm.⁷

With the existence of Pancasila as Staatsfundamentalnorm, it can be seen that the law adopted in Indonesia should be based on Pancasila, and of course the government in Indonesia must be in accordance with Pancasila, as Pancasila stated in the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as with the 1945 Constitution of the Republic of Indonesia, as a spiritual soul of the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that "the state of Indonesia is a rule of law". Based on the statement of Article 1 paragraph 3 of the Constitution that Indonesia is a state of law, but the rule of law adopted in Indonesia has characteristics that are typical of Indonesia, namely the rule of law based on Pancasila,⁸ so that when viewed in the sense of the rule of law generally has the fundamental principle is that the government must run a government based on law and not run based on power as is known as Rule by law not Rule by man, where the law referred to in it contains the enforcement of equality, freedom of each individual, and human rights.⁹

As a formulation of the problem, what is the actual concept of the state of Pancasila law? This problem arises because das sollen in the legal state of Pancasila there is no longer the term "Law in Indonesia is like" Blade ", sharp down but blunt up".¹⁰ "Laws like spiderwebs, too strong to penetrate for the weak and too fragile for the strong". This saying illustrates how law is only able to ensnare small people analogous to flies. While the big ones analogous to an eagle can be free even though he has proven guilty.

This sentence was spoken by a Greek philosopher named Anacharsis more than 600 years ago. This sentence was created as a critique of the legal situation at that time in which the authorities easily dodged from the snares of the law and the small people who were legally ill were easily caught up in lawsuits even though they were innocent. The reality (das sein) of the above adage still continues to grow, and from these two adagiums, the writer is interested in revealing the concept of the state of law of Pancasila.

B. RESEARCH METHOD

This writing uses library research, and is qualitative, descriptive analysis. Library research, which examines a number of literatures that are relevant to the problem of this writing. Qualitative research, according to Bogdan and Taylor, "qualitative methodologies refer to research procedures which produce descriptive data, people's own written or spoken words and observable behavior".¹¹

Creswell explains the following:

*Qualitative research begins with assumptions, a worldview, the possible use of a theoretical lens, and the study of research problems inquiring into the meaning individuals or groups ascribe to a social or human problem. To study this problem, qualitative researchers use an emerging qualitative approach to inquiry, the collection of data in a natural setting sensitive to the people and places under study, and data analysis that is inductive and establishes patterns or themes. The final written report or presentation includes the voices of participants, the reflexivity of the researcher, and a complex description and interpretation of the problem, and it extends the literature or signals a call for action.*¹²

The conclusion that can be drawn from the opinion of Bogdan, Taylor, and Creswell mentioned above, that qualitative research is a collection of information whose characteristics are in words and not a series of numbers. Qualitative research intends to understand the phenomenon of what is experienced by the subject of research, such as behavior, perception, motivation, actions and others holistically and by way of description in the form of words and language in a special natural context and by utilizing various methods natural.

C. ANALYSIS

⁷A. Hamid S. Attamimi, *Role of the Presidential Decree of the Republic of Indonesia in Organizing State Government: A Study of Analysis on Presidential Decisions that Function in Regulations in the Period of Pelita I-Pelita IV*, Dissertation of Legal Sciences, Postgraduate Faculty, University of Indonesia, Jakarta, 1990, p. 45.

⁸SjahanBasah, *Existence and Measure of Administrative Court in Indonesia*, Bandung: Alumni, 2015, p. 11.

⁹Made HendraWijaya, *Op. Cit.*, p. 201. JazimHamididan Mustafa Lutfi, *Civic Education*, Jakarta: GramediaPustakaUtama, 2010, p. 51-55.

¹⁰Boy Nurdin, *Position and Function of Judge in Law Enforcement in Indonesia*, Dissertation, Bandung: Alumni, 2012, p. 3.

¹¹RobertBogdan and Steven J. Taylor, *Introduction to Qualitative Research Methods*, New York, 1975, p. 4.

¹²John W. Creswell, *Qualitatif Inquiry and Research Design: ChosingAmong Five Traditions*, London: Sage Publications, 1998, p. 37.

1. State of Law in Indonesia

The Indonesian state can be said to embrace the concept of the State of Pancasila Law. This concept is a concept developed by law and political experts in Indonesia.¹³ Basically the concept of a rule of law besides having elements in the concept of the rule of law in general, also has special elements. National Conference III Persahi: The Rule Of Law, December 1966 formulated the principles of the State of Pancasila Law as follows:

- a. Recognition and protection of human rights that have similarities in the political, legal, social, economic, cultural and educational fields;
- b. Courts that are free and impartial, are not affected by any other power / power.
- c. Guaranteed legal certainty in all issues. What is meant by legal certainty is the guarantee that the legal provisions can be understood, can be implemented and safe in carrying out them.

Philipus M. Hadjon describes the concept of the state of the Law of Pancasila, as follows:¹⁴ "Proportional functional relations between state powers, settlement of disputes in deliberation while the judiciary is the last means and about human rights not only suppresses rights or obligations but intertwines a balance between rights and obligations.

Sri Soemantri mentioned the elements contained in the concept of the Pancasila Law State as follows:¹⁵

- a. The recognition of the guarantee of human rights and citizens;
- b. The existence of power sharing;
- c. Whereas in carrying out their duties and obligations, the government must always be based on applicable law, both written and unwritten;
- d. The existence of a court that in exercising its power is independent, meaning that it cannot be influenced by the authority of the government, while specifically for the Supreme Court must also be independent from other influences.

The description of the concept of the "State of the Law of Pancasila" was also expressed by PadmoWahyono. According to PadmoWahyono, the concept of the State of Pancasila Law is .¹⁶

- a. Based on the principle of kinship which is stated in the 1945 Constitution,
- b. That the principle of kinship prioritizes "many people, but human dignity is respected"
- c. Understanding of the state and legal understanding seen from the principle of kinship are:
 - 1) The Indonesian state was formed not because of "community agreement" from the status of "naturalist to civil status with protection of civil rights, but" on the blessing of the grace of Allah the Almighty with a noble desire to live a free national life, "The construction is a noble reflection" principle kinship "which gave birth to an agreement of one goal (gesamtakt) for a free national life in the sense of" independent, sovereign, united, just and prosperous".
 - 2) There are three legal functions which are patronizing from the perspective of the principle of kinship "are:
 - a) Enforcing democracy in accordance with the system of State Government contained in the 1945 Constitution;
 - b) Realizing social justice in accordance with Article 33 of the 1945 Constitution.
 - c) Upholding humanity based on the Godhead of God Almighty in a just and civilized manner

Against this perspective based on the "principle of kinship", Mohammad TahirAzary added with the "principle of harmony", so that based on the two principles referred to: "The nation and the state of Indonesia are a unity and unity with the spirit of kinship and harmony of life".¹⁷

In relation to the "principle of harmony", Philipus M. Hadjon stated that the principle of harmony is an elaboration of the principle of kinship. Harmony from the origin of the word rukun, which means a harmonious relationship, a harmonious relationship. Rukun also means not confrontational, not hostile to each other. With this understanding, according to Philipus M. Hadjon, the Government in all its behavior always tries to establish a relationship that is in harmony with the people.¹⁸

Unlike PadmoWahyono who put forward the "principle of kinship" and Mohammad TahirAzary added that with the principle of "harmony", OemarSenoaji raised the concept of the State of Pancasila Law from the point of Pancasila as a source of law. Based on the function of Pancasila as the source of the law, the State of Indonesian Law can be called the "State of the Law of Pancasila".¹⁹Of the several concepts presented by Indonesian legal experts on the State of the Law of Pancasila, presumably the concept put forward by the Persahi III National Conference and the concept put forward by Sri Soemantri above, is not a typical concept of the State of Pancasila Law, but a general characteristic of a rule of law.

Basically, the characteristic of the State of Pancasila Law can be summarized as follows:

¹³In Indonesia, the term rule of law is often translated as rechtstaats or the rule of law. See Juhaya S. Praja, *Legal Theory and Its Application*, Bandung: Library Faithful, 2011, p. 137.

¹⁴Philipus M. Hadjon, *Legal Protection for the People in Indonesia*, Surabaya: BinaIlmu, 1987, p. 45.

¹⁵Sri Soemantri, *Indonesian Government Administrative Law*, Alumni, Bandung, 1992, p. 49.

¹⁶Padmo Wahyono, *Juridical Concept of the State of Indonesian Law*, Paper, September, 1988, p. 4-6

¹⁷ Mohammad Tahir Azary, *State of Law, A Study of Its Principles Seen in terms of Islamic Law, its implementation in the period of the Medina State and the Present*, Jakarta: Bulan Bintang, 2012, p. 71

¹⁸ Philipus M.Hadjon, *Op. Cit.*, p. 45.

¹⁹ Oemar Seno Adji, *State Law Free Justice*, Jakarta: Erlangga, 1980, p. 26.

- a. The State of Pancasila Law, prioritizes the establishment of a harmonious relationship based on the principle of family and harmony;
- b. The State of Pancasila Law prioritizes deliberation and consensus in resolving disputes, while the judiciary is a last resort;
- c. The Pancasila Law State puts a balance between rights and obligations;
- d. The Pancasila Law State prioritizes common interests rather than individual or group interests.

Although there are differences in the main characteristics of each concept of the rule of law, there is the same essence that exists among these concepts, namely:

- a. Both want protection and recognition of human rights;
- b. Both want the sharing of state power;
- c. Both want the power to be carried out according to the law, not on the basis of mere power (absolutism).
- d. The same aims to prosper the people and social justice.

This is the essence of the various features and types of concepts of the rule of law. The differences outside the essential elements are characteristic of each concept of the rule of law which causes different designations.

The concept of the state of the Pancasila law seems to stand between the concepts of Western countries that overemphasize individual freedom and separate religion from the state, with the concept of the rule of law of communism socialism which emphasizes government power and places people under the state and rejects religion altogether. On the one hand, the concept of the state of Pancasila, ideally, recognizes individual freedom, as affirmed in Article 28 of the 1945 Constitution. But on the other hand, this concept also emphasizes the role of the government in controlling natural resources that are important and needed by the people for the benefit of people. This mastery is intended so that vital natural resources are utilized to the maximum extent by all the people of Indonesia and for their welfare. Based on the above, the state law of Pancasila, once again ideally, does not recognize the monopoly of a handful of economic elites and open fair competition. In addition, recognition of individual freedom is reflected in the existence of constitutional guarantees for the people to gather, organize and express their opinions freely, without being overwhelmed by fear.

The concept of the state of Pancasila, even though it does not make one religion as the official religion of the state, guarantees freedom for its people to practice their religion. The state does not separate religion from political life. Therefore, the state does not provide space for communism to live on this Pancasila earth. As a realization of the absence of this separation, the state regulates the religious problems of its people under the coordination of the Ministry of Religion.

From these characteristics, Azhary concluded that the concept of the Pancasila legal state adopted by Indonesia was different from the concept of Continental European *rechtsstaat* and Anglo Saxon rule of law.²⁰

Tabel 1
State of Pancasila Law

Characteristic Features	Main Elements
<ul style="list-style-type: none"> • A close relationship between religion and the state • Rely on God Almighty • Religious freedom in a positive sense • Atheism is not justified and communism is prohibited • The principle of family and harmony. 	<ol style="list-style-type: none"> (1) Pancasila; (2) MPR; (3) constitutional system; (4) Equality; (5) A free and impartial court

Based on the doctrine, the concept of a legal state that is good and suitable for Indonesia is the State of Pancasila Law. The essence of the state law theory of Pancasila is the existence of a close relationship between state and religion in which religion animates the life of the state and the state to protect religious life. Regarding religious life, in the rule of law Pancasila must be: First, there are legal rules that guarantee and protect the state and its citizens in religious life, in society and in the state, including here in the enforcement of religious laws; Second, all actions of the state and citizens are based on laws that are in line and not against religion; Third, to enforce the law there must be a free and independent judiciary; and Fourth, to enforce religious law, there must be a religious court according to the teachings of the religion in question.²¹

The legal state of Pancasila is different from the "theocracy" state which teaches that the state exists by the will of God and the ruling is God, the king is considered to be the incarnation of God or reigning in the name of God. Indonesia is not a theocracy or a religious state, a country based on one particular religion, but a legal state of Pancasila that provides space for all religious people and their religious laws to live together in Indonesia. The legal state of Pancasila is also different from the concept of the rule of law according to the West.

²⁰ThahirAzhary, *Op. Cit.*, p. 71.

²¹In the State of the Pancasila Law, all citizens, all religions that exist and are recognized as having the right to live, all religious communities can practice their respective religions by obtaining guarantees and services from the state. The state guarantees the independence of each citizen to embrace his religion and worship according to his religion and belief. All religious people have the same rights in religious, social and state life.

Tabel 2
The Difference Between the Concept of the State of the Law of Pancasila and the Concept of the Law According to the West

No.	The Concept of the State of the Law of Pancasila	The Concept of a Western Law-based State
1	There is a close relationship between religion and the state	There is no relationship between religion and the state. A strict separation between religion and the state
2	State and law rely on the One God, democracy and human rights	State and law rely on democracy and human rights without the element of divinity
3	There is a guarantee of religious freedom in a positive sense, meaning that there is a guarantee that religion is carried out by its adherents	There is religious freedom in a negative sense, meaning that it is allowed to be religious, may not be religious because it is a private matter
4	Atheism is not justified and communism is prohibited	Atheism and communism are not prohibited
5	The principle of family and harmony is applied	Applied individual principles and liberalism.

2. State of Pancasila

The state of law of Pancasila contains five principles, namely First, the principle of the Supreme Godhead. This principle is stated in the Preamble to the 1945 Constitution paragraph IV, namely "... then the Indonesian national independence is compiled in an Indonesian Constitution which has sovereignty based on the One God Almighty. Based on this statement, Indonesia is a God-based country, religion is carried out in a manner that is civilized, interreligious relations, worship activities and tolerance must be based on Godhead. Religious freedom must be carried out based on three pillars, namely freedom, rule of law and tolerance (tolerance).

Second, the principle of universal humanity. This principle recognizes and treats people according to their dignity as God's creatures, also recognizes equality, equality of human rights and obligations without discriminating on ethnicity, ancestry, religion, race, color, social position, and so on. In the Preamble of the 1945 Constitution, the embodiment of the principle of humanity in Indonesia's positive law in daily life is seen in institutions established to accommodate all that is not balanced in social life.

Third, the principle of nationality or unity in diversity, namely every citizen has the same position, rights and obligations. This principle shows that the Indonesian people are free to determine their own destiny and sovereignty, so that it does not allow interference from other nations in matters concerning domestic affairs.

Fourth, the principle of deliberative democracy or popular sovereignty. The incarnation of this principle can be seen in the agreement of the people over the government. It can be shown that the president cannot stipulate a government regulation, but first the existence of a law means that without the consent of the people the President cannot establish a government regulation.²²

Fifth, the principle of social justice. This principle is, among other things, realized in the provision of social security and state institutions engaged in the social sector that organizes social problems in the country.

The thought of the state of Indonesian law, on the one hand oriented to the west and on the other hand refers to the indigenous Indonesian cultural values. It is this state of law rule which then encourages the development of an Indonesian version of the rule of law state that is the rule of law based on Pancasila. Pancasila has a very important role in upholding the rule of law. Pancasila is the philosophy, the foundation of the state and open ideology. Pancasila became a source of enlightenment, a source of inspiration and as a basis for solving the problems faced by the Indonesian nation.

Discussions about the rule of law have been a long discussion in the history of human civilization. Because thousands of years ago this discussion had existed in the idea of mankind in relation to forming an ideal country, even though in a very simple format.²³

It must be questioned then is how far the seriousness of the government in carrying out the mandate of the legal state of Pancasila in question. Even if a concept can be said to be built as ideal and comprehensive as possible. However, if at the level of implementation is still far from the fire, the ideal concepts in question will not contribute greatly to the life of the nation and state

²²YudiLatif, *Plenary State: Historicality, Rationality, and Pancasila Actuality*, Jakarta: KompasGramedia, 2011, p. 67.

²³Sayuti, "The concept of Rechtsstaat in the State of Indonesian Law (Study of Azhari's Opinion) ", *Journal of the Study of Islamic Economics and Society*, Volume 4, Number 2, December 2011, p. 81

in the country. However ideally the legal state of Pancasila, if it is not accompanied by sincerity or seriousness in realizing it, then it will not be positively correlated in the effort to achieve the goals of nation and state as outlined.²⁴

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly mandates that the state of Indonesia is a state of law. This provision does not elaborate further the meaning of the rule of law which is a reference for Indonesia, whether the state is a law in the sense of rechtsstaat or state law in the sense of the rule of law as two legal states that have been known in various parts of the world. However, by paying attention to the substance contained in the fourth paragraph of the Preamble of the 1945 Constitution, it can be understood that the meaning of the legal state referred to in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is the state of Pancasila, which is a state of law based on the Pancasila. This means that Indonesia has its own meaning in determining the characteristics of the Indonesian rule of law

The substance contained in the rule of law state of Pancasila is ideal and comprehensive, even though it is compared to the rule of law in the sense of rechtsstaat or state law in the sense of the rule of law. However, the ideal concept of the state of Pancasila will not be able to contribute greatly to the life of the nation and state without seriousness in realizing it, so all elements of the nation, especially the holders of power in the country must animate and understand and have genuine will and determination. indeed in realizing a legal state that promotes the noble values of Pancasila.

D. CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

The characteristic concept of the state law of Pancasila lies in the implementation of the rule of law must be based on the precepts contained in the Pancasila, namely the rule of law based on the principles of Pancasila; a country with the Belief in One Almighty and a guarantee of freedom in carrying out religion and belief; the state upholds and maintains Equality, Dignity, Liberty, and Human Rights; the principle of family and unity in the formation of law and the administration of the state; prioritizing consensus democracy for the common good; the separation of powers between the legislature, the executive, and the judiciary; and applying Check and Balance between state institutions will be sustainable in carrying out the state; free and fair justice in the general court, administrative court, state administration court, and military court; the state guarantees the recognition of the rights of citizens and the existence of institutions protecting the rights of citizens (Administrative Court, Judicial Review and Constitutional Complaint); and the principle of openness in realizing the goals of the country, namely the state is always open and not rigid in accepting thoughts which are the nature of realizing a good state goal.

2. Recommendations

It is easy enough to assess whether the implementation of the Pancasila legal state concept has been going well or not, namely a) by looking at between idealita (*das sollen*) and reality (*das sein*); 2) by looking at the parallel practices with the achievement of the integrity of the Indonesian nation. Thus, the direction of the realization of the concept of the Indonesian rule of law should seek the welfare of the people as stated in the Preamble of the 1945 Constitution, while maintaining the integrity of the nation in the Republic of Indonesia.

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²⁴JanpatarSimamora, "Interpretation of the Meaning of the State of Law in the Perspective of the 1945 Constitution of the Republic of Indonesia ", *Journal of Legal Dynamics* Vol. 14 No. 3 September 2014, p. 559

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