

## **Pancasila as The Foundation of The State in The Perspective of The Democratic State of Law's Ideals**

By

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### **Abstract**

Pancasila is the foundation and ideology of the Indonesian state that has become the foundation in developing a democratic legal system. Pancasila becomes the basis of the Indonesian legal ideals as a democratic state because it contains values that are in line with the principles of democracy. As the basis of legal ideals, Pancasila has a central role in composing a legal system that guides the direction and principles in carrying out a just, democratic, and law-based governance. The values contained in Pancasila, such as social justice, just and civilized humanity, democracy, and popular sovereignty, become the basis for the formation of laws and public policies.

In practice, Pancasila serves as a source of law in the process of making public policies and stipulating laws in Indonesia. Pancasila values also serve as a reference in law enforcement, where judges' decisions and public policies must be in line with Pancasila values. Pancasila also has an important role in maintaining the unity and unity of the Indonesian nation. Pancasila values, such as Bhinneka Tunggal Ika, become the basis for building a strong and robust unity in Indonesian society, so that a just, democratic, and sovereign state can be realized, thus creating a prosperous and harmonious society.

**Keywords:** Pancasila, State Foundation, Legal Ideals, Democratic State

## INTRODUCTION

Democracy and the rule of law are two concepts of power mechanisms in carrying out state governance. These two conceptions are interrelated with one another that cannot be separated, because on the one hand democracy provides the foundation and mechanism of power based on the principles of human equality and equity, on the other hand the rule of law provides guidance that what regulates a state is not humans, but the law. In practice, the principles of democracy or popular sovereignty can guarantee public participation in decision-making processes, so that every law enforced truly reflects the sense of justice of the society.

A state based on law, interprets the unity of legal norm order that is peaked on the constitution which means that in a rule of law state requires the sovereignty of the constitution in the implementation of democracy as a manifestation of the highest social contract. Based on the theory of social contract, in fulfilling the rights of each person, it is impossible to be achieved by each person individually, because humans live by the principle of freedom which relies only on their own strength to face the world while life situations are constantly changing, the strength of each human is no longer able to defend life and possessions.<sup>1</sup> Therefore, a social contract or social agreement is needed to maintain human survival and fulfill basic human needs that are carried out together as embodied in the form of a constitution as the highest law in a State.

E. Utrecht divides the concept of the rule of law into two types, formal or classical rule of law, and material or modern rule of law. A classical rule of law state is a state that merely maintains order so as not to violate public order and security, as determined by legislation or written law. While a modern rule of law state is what is known as a welfare state, which has the duty to maintain security in a broad sense, including social security and organizing public welfare, based on legal principles, so that human rights as citizens can be fulfilled (Utrecht, 1962: 19).<sup>2</sup> The concept of

democracy and the rule of law that applies in a country must not be subjective, only favoring the interests of the rulers, which is contrary to the principles of democracy, because democratic law in essence guarantees the interests of justice for everyone so that the rule of law developed is not an absolute *rechtsstaat*, but a *democratischerechtsstaat*.

Indonesia is a rule of law state and at the same time also recognizes that the people are in power (democracy). Constitutionally, this is affirmed in Article 1 paragraphs (2) and (3) of the 1945 Constitution which states, "Sovereignty is in the hands of the people and exercised according to the Constitution" and "The State of Indonesia is a rule of law state". This article explains that Indonesia is a rule of law state that recognizes that the people are in power. So, Indonesia is a democratic rule of law state, not an authoritarian rule of law state. To prove that Indonesia is indeed a Democratic Rule of Law State, it needs to be proven by looking for criteria for a democratic rule of law state.<sup>3</sup>

According to the International Commission of Jurists Conference in Bangkok in 1965, the basic requirements that must be met by a Representative Government Under the Rule of Law (democratic rule of law state) are: (1) The existence of constitutional protection, (2) The existence of independent and impartial courts, (3) The existence of free elections, (4) The existence of freedom of expression, (5) The existence of freedom of association and opposition, and (6) The existence of civic education. In addition, Pancasila is also used as the basis for Indonesia's legal ideals as a democratic state because it contains values that are in line with the principles of democracy. As the basis of legal ideals, Pancasila has an important role in composing a legal system that is used as a guide and the principles in carrying out a just, democratic, and law-based governance. This allows Indonesia in carrying out governance to always make law the main foundation which is guided by law and not outside the control of law.

<sup>1</sup> Zikraini Alrah. 2019. Kontrak Sosial dalam Pandangan Rousseau. Jakarta: Paradigma: Jurnal Kalam dan Filsafat, Vol. 1 (1)

<sup>2</sup> Wahyudi Djafar. 2010. Menegaskan Kembali Komitmen Negara Hukum: Sebuah Catatan Atas Kecenderungan Defisit Negara

Hukum di Indonesia. *Jurnal Konstitusi*, Volume 7 (5)

<sup>3</sup> Sunarno. 2015. Negara Hukum yang Demokratis. Media.neliti.com Melalui: [https://media.neliti.com/media/publications/235\\_03-ID-negara-hukum-yang-demokratis.pdf](https://media.neliti.com/media/publications/235_03-ID-negara-hukum-yang-demokratis.pdf) yang diakses oleh penulis Pada Tanggal 8 Juni 2023

The concept of democracy in the Pancasila perspective is justice which contains a balance of individual, community, and state interests. That justice is a balancing justice, the interests of individuals between interests that are general in nature (the interests of society and the state). Based on some of the previous concepts it has explained the perspective of legal ideals towards Pancasila. Where legal ideals have formed a legal idealism that should be achieved in a democratic state. The government cannot act arbitrarily towards the people in a rule of law and a democratic state because the law is made involving the participation of the people and guarantees the rights of everyone in life in all aspects including politics (context of a democratic state). Pancasila is an ideology adopted by Indonesia's democratic state, which contains pillars that are in accordance with the ideals, goals and hopes of Indonesia. Pancasila is used as the basis for carrying out governance, which means that all legislation materially must be based and sourced from Pancasila.

Furthermore, the concept regarding the values contained in Pancasila supports Indonesia's legal ideals as a democratic state, in line with the research conducted by Made Oka Cahyadi Wiguna (2021),<sup>4</sup> The Fourth Principle of Pancasila contains the basic principles in democratic life in Indonesia which these principles cannot stand alone or separated from other principles contained in the other Principles. Then, this concept is also relevant to the research conducted by Tengku Erwinsyahbana and Tengku Rizq Frisky Syahbana (2018), which explains that the Fourth Principle of Pancasila contains the basic principles in democratic life in Indonesia which these principles cannot stand alone or separated from other principles contained in the other Principles,<sup>5</sup> the concept of a rule of law state (*rechtstaats*) in Indonesia must be in accordance with the values reflected in Pancasila. A complete understanding of

the Rule of Law concept based on Pancasila can be seen from the process and background of the birth of the formulation and Preamble of the 1945 Constitution. The study has explained the role of Pancasila as the state foundation in the perspective of the legal ideals of a democratic state which requires the concept of the rule of law (*rechtstaats*) in Indonesia to be in accordance with the values reflected in Pancasila. Therefore, the researcher assumes that Pancasila as the nation's ideology and state foundation contains values that support the legal ideals of a democratic state. Pancasila should be used as a guide in carrying out national and state life, including democratic life.

The researcher is interested in studying more deeply the extent of Pancasila's role as the legal ideals of a democratic state which then raises the question of how is the role of Pancasila as the state foundation in the perspective of the legal ideals of a democratic state? which is in line with the purpose of this paper, namely to describe the role of Pancasila itself as the state foundation as well as the legal ideals of a democratic state.

## RESEARCH METHOD

In this study, the researcher will use a qualitative research approach. According to Creswel, qualitative research is various methods to explore and understand the meaning by a few individuals or groups of people which is considered to originate from social or humanitarian problems. This qualitative approach uses the method of library research studies, library research itself is research conducted through data collection activities through scientific papers, books, newspapers, and other reading materials, which aims to examine or collect data that has a librarian nature, or studies carried out to solve or examine a phenomenon that relies on critical and in-depth review of various relevant library materials.<sup>6</sup>

In addition, this literature study also aims to utilize library sources to obtain research. Thus, by using this literature study method, it can be concluded that the main type of data used in this research is secondary data. Secondary data is data obtained not directly from the source or through an intermediary, that is the researcher does not directly ask a

<sup>4</sup> Made Oka Cahyadi Wiguna. 2021. Pentingnya Prinsip Kebijaksanaan Berdasarkan Pancasila Dalam Kehidupan Hukum dan Demokrasi Indonesia. Denpasar: *Jurnal Ilmiah Kebijakan Hukum*. Vol. 15, No. 1, Hal. 145

<sup>5</sup> Erwinsyahbana, T., & Syahbana, T.R. F. (2018). Perspektif Negara Hukum Indonesia Berdasarkan Pancasila. Researchgate.net

<sup>6</sup> Aisah Siti Nurjanah. 2020. Peran Guru dalam Mengembangkan Keterampilan Resolusi Konflik Melalui Pembelajaran IPS. repository.upi.edu

phenomenon to informants to collect data.

The reason the researcher uses this qualitative approach with the literature study method is in accordance with the purpose of this scientific writing, namely, to describe and explain the extent to which the role of Pancasila as the state foundation in the perspective of the legal ideals of a democratic state. This research will collect empirical data that occurs to see what the role of Pancasila is as the legal basis in Indonesia. This research will seek to gather theoretical and scientific information through reading materials relevant to the research. So that valid and reliable results will be obtained.

## RESEARCH RESULTS AND DISCUSSION

Pancasila as the foundation of the Indonesian state, consists of 5 Principles which serve as guidelines in the life of the nation and homeland. The following is the meaning contained in each of its principles which has a profound meaning, namely as follows:<sup>7</sup>

The First Principle of 'Ketuhanan Yang Maha Esa', has the following meaning and significance:

- a. Humans are only one of the creatures that exist in the world, the same as other creatures created by Him.
  - 1) Humans have an obligation to carry out His orders and avoid His prohibitions.
  - 2) Faith and piety to God Almighty according to their respective religions and beliefs.
  - 3) Respecting each other and cooperating between adherents of different religions and beliefs to foster harmony in life.
  - 4) Respecting religious differences with the freedom to worship according to their respective religions and beliefs.
  - 5) Not imposing a religion or belief on others.
- b. The second Principle of 'Kemanusiaan yang Adil dan Beradab', has the following meaning and significance:
  - 1) Providing human rights in accordance with their essence as creatures of God Almighty.
  - 2) Upholding the freedom of every human being is also the right of all nations.
  - 3) Realizing justice and a strong

civilization that is not weak against any party.

- 4) Humans are placed according to their dignity and are equal before the law.
  - 5) Recognize equality, equal rights, and equal obligations between fellow human beings.
  - 6) Love each other as humans.
  - 7) Develop an attitude of tolerance.
  - 8) Don't be arbitrary towards other people.
  - 9) Uphold human values.
  - 10) Likes to carry out humanitarian activities.
  - 11) Dare to defend truth and justice.
  - 12) Develop an attitude of mutual respect and cooperation with other nations.
- c. The Third Principle of 'Persatuan Indonesia', has the following meaning and significance:
    - 1) Nationalism, love of the nation and homeland, promoting national unity and integrity, eliminating the prominence of strength or power as well as skin color and heredity, fostering a sense of shared destiny.
    - 2) Maintaining the Unity and Integrity of the Unitary State of the Republic of Indonesia.
    - 3) Willing to sacrifice for the sake of the nation and state.
    - 4) Love for the Motherland.
    - 5) Be proud to be part of Indonesia.
    - 6) Promoting social life for the sake of unity and unity of the nation with *Bhinneka Tunggal Ika*.
  - d. The Fourth Principle of 'Hikmat Kebijaksanaan dalam Permusyawaratan/Perwakilan', has the following meaning and significance:
    - 1) Prioritize the interests of the state and society.
    - 2) Do not impose your will on other people.
    - 3) Prioritize deliberation and consensus in making joint decisions.
    - 4) Deliberation to reach consensus or consensus accompanied by a family spirit.
  - e. The Fifth Principle of 'Keadila Sosial Bagi Seluruh Rakyat Indonesia', has the following meaning and significance:
    - 1) Be fair to others.
    - 2) Respect the rights of others.
    - 3) Help others.
    - 4) Respect other people.

<sup>7</sup> August Hadiwijono, "Pendidikan Pancasila, Eksistensinya Bagi Mahasiswa", *Jurnal Cakrawala Hukum*, Vol.7(1), 2016, hlm. 90-91.

- 5) Doing work that benefits many people and the common interest.

Apart from being the foundation of the Indonesian state, Pancasila is also a way of life that reflects democratic values and is often referred to as 'Pancasila as all sources of law'.<sup>8</sup> Therealization of the basic values of Pancasila is often seen as the embodiment of democracy, because Pancasila is the foundation of democracy itself.<sup>9</sup> A democratic state's view of the meaning of Pancasila includes the importance of the principles contained in Pancasila, which consist of the principles of unity, social justice, democracy, humanity and belief in one Almighty God as the foundation for a democratic state.<sup>10</sup>

Pancasila is considered a unifying nation that encourages inclusiveness, tolerance and respect for the diversity of Indonesian society. Democratic countries see Pancasila as a tool that can help Indonesia in a country that prioritizes democracy in the form of active participation of the people, free and fair elections, and protection of human rights. Apart from that, Pancasila is also considered as a guarantee against limited and divided power, maintaining a balance between executive, legislative and judicial powers, and avoiding the domination of a single power.<sup>11</sup>

In the context of democracy, Pancasila is also considered a foundation that recognizes freedom of opinion, freedom of religion and freedom of association.<sup>12</sup> A democratic state's view of Pancasila often reflects an attempt to combine universal democratic values with local and cultural

values that exist in Indonesia.<sup>13</sup> Apart from that, Pancasila is also considered a national identity that is able to create a balance between individual and collective interests, and leads to sustainable and just development.<sup>14</sup>

And more than that, Pancasila is also the basis of democratic legal ideals where the legal ideals of Pancasila are stated in the 2nd paragraph of the Preamble to the 1945 Constitution.<sup>15</sup> The existence of Pancasila as the basis for the legal ideals of a democratic state can be seen by the fulfillment of the criteria for the legal ideals of a democratic state by the 'Representative Government Under the Rule of Law', as follows:

- A) The existence of Constitutional Protection. Constitutional protection is protection by the state for the people relating to constitutional human rights, in the form of guarantees and legal protection. Constitutional protection is also protection against state actions or violations by the state, not against actions or violations by other individuals. In terms of constitutional protection, Pancasila has an important role for society. The democratic state's view of Pancasila recognizes the constitutional values contained in it as the main foundation in building a democratic political and legal system.<sup>16</sup> Pancasila as a constitutional protection instrument has accommodated the diverse interests and diversity of Indonesian society. The principle of *Bhinneka Tunggal Ika* (Diverse but still one) contained in Pancasila emphasizes the importance of respecting cultural, religious, and ethnic differences in a

<sup>8</sup> Bobi Aswandi dan Kholis Roisah, "Negara Hukum dan Demokrasi Pancasila dalam Kaitannya dengan Hak Asasi Manusia (Ham)", *Jurnal Pembangunan Hukum Indonesia*, Vol. 1(1), 2019, hlm 139-140.

<sup>9</sup> Roja Khalda Berlian, Dinie Anggraeni Dewi, "Urgensi Pendidikan Kewarganegaraan Dalam Membentuk Negara Demokratis dan Mewujudkan Hak Asasi Manusia", *Jurnal Pendidikan Kewarganegaraan Undiksha*, Vol. 9(2), 2021, hlm 489.

<sup>10</sup> Ida Bagus Brata, Ida Bagus Nyoman Wartha, "Lahirnya Pancasila sebagai pemersatu bangsa Indonesia" *Jurnal Santiaji Pendidikan (JSP)*, Vol.7(1), 2017, hlm 121.

<sup>11</sup> Elviana Lamboya, "Demokrasi Pancasila Dan Bhineka Tunggal Ika Solusi Heterogenitas", 2021.

<sup>12</sup> Yoga Putra Semadi, "Filsafat Pancasila Dalam Pendidikan di Indonesia Menuju Bangsa Berkarakter", *Jurnal Filsafat Indonesia*, Vol.2(2), 2019, hlm 82-89.

<sup>13</sup> Bunyamin Maftuh, "Internalisasi nilai-nilai Pancasila dan nasionalisme melalui pendidikan kewarganegaraan" *Jurnal Educationist*, 2(2), 2008, hlm 134-144.

<sup>14</sup> Tri Arie Bowo dan Budiati Budiati, "Model Pembelajaran Bahasa Inggris Interaktif Menggunakan Flascard Berbasis Pancasila Sebagai Upaya Pembentukan Karakter Bangsa", *Media Penelitian Pendidikan: Jurnal Penelitian dalam Bidang Pendidikan dan Pengajaran*, Vol.11(2), 2017.

<sup>15</sup> Mexsasai Indra, "Konsepsi Kedaulatan Rakyat Dalam Cita Hukum Pancasila", *Jurnal Selat*, Vol.1(2), 2014, hlm 120-126.

<sup>16</sup> Dody Nur Andriyan, "Rekonstruksi Pancasila Sebagai Landasan Sistem Hukum di Indonesia.", *Jurnal Majelis*, hlm 31.

country based on democracy.<sup>17</sup>

- B) The existence of an independent and impartial judiciary. A free and impartial judicial institution means an independent judicial institution which, in carrying out the judicial process, will not be influenced by any party and will not take sides with anyone, including the authorities. In the view of a democratic state, Pancasila has an important role as the basis for a free and impartial judicial institution. Because Pancasila contains principles that guarantee independence, neutrality, and justice in the judicial system. Where there is a restructuring of the judge's freedom in determining sentences that are more based on Pancasila values in imposing sentences on defendants. This relates to the judge's independence being maintained, so that judges can carry out their duties and functions in accordance with the values contained in Pancasila.<sup>18</sup>
- C) There are free general elections. The holding of general elections that are free from intervention or coercion and emphasize the people as voters. General Elections (Pemilu) are a real manifestation of democracy. Elections in Indonesia are based on Pancasila and the 1945 Constitution and are carried out based on the principles of direct, general, free, secret, honest and fair. Pancasila plays an important role in encouraging the implementation of free, fair and democratic elections, because Pancasila provides the basic values that serve as a guide in holding general elections. So, in the process, Pancasila has encouraged people's freedom to choose without intervention from any party.
- D) There is Freedom to Express

Opinions. In terms of freedom of expression, the community obtains legal guarantees and has the right to express opinions both verbally and in writing, both individually and collectively. In this case, Pancasila is often positioned as an axiom and acts as a basic governing norm, so that Pancasila also regulates the mechanism for freedom of opinion and must comply with Pancasila. The Indonesian Constitution regulates freedom of expression which must pay attention to social aspects, must not disturb or eliminate the rights and interests of other citizens as a unified people who are united and subject to Pancasila. If this mechanism is violated, it is considered the same as not respecting the noble values of Pancasila as the basis and soul of all sources of law in Indonesia.<sup>19</sup> Apart from that, Pancasila encourages people to actively participate in general elections, through instilling democratic values, deliberation, and freedom of opinion, including through voting rights in general elections.

- E) There is freedom of association and opposition. Freedom of association and opposition is one of the legal guarantees given to the people when establishing an association or political party. In this case, the public has the right to freedom of opposition or constructive criticism, whether through its people's representatives (in the forum of people's representative institutions) or not if it is based on statutory regulations. Pancasila provides support and a framework of values for freedom of association and opposition in the context of political and social life. This support takes the form of guaranteeing freedom of opinion, prioritizing democracy, maintaining the balance of power, and recognizing social, cultural, and political diversity in Indonesia.
- F) The existence of Civic Education Civic education or citizenship

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<sup>17</sup> Abdul Wahid, Sunardi Sunardi & Dwi Ari Kurniawati, "Masifikasi Pendidikan Konstitusi Sebagai Proteksi Hak Kebhinekaan di Era Pandemi Covid-19", *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang*, Vol. 3(2), 2020, hlm 150-161.

<sup>18</sup> Muhammad Ramzi Maulana & Pujiyono Pujiyono, "Restrukturisasi Independensi Hakim dalam Sistem Peradilan Pidana yang Berwawasan Pancasila", *Jurnal Ilmiah Universitas Batanghari Jambi*, Vol.21(2), 2021, Hlm 582.

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<sup>19</sup> Khotbatul Laila, "Hukum progresif sebagai solusi kebebasan berpendapat dengan asas demokrasi pancasila." *Jurnal cakrawala hukum*, Vol.10(2), 2019, hlm 181.

education is provided to the people, so that the people gain knowledge and understand what rights and obligations they have in accordance with applicable laws and regulations. Civic Education or Citizenship Education is a study of government and citizenship which is related to the obligations, rights and privileges of citizens (Edmonson, 1958). Citizenship education aims to build the character of the Indonesian nation that is high quality, responsible and understands culture. In Citizenship Education, Pancasila plays a central role in providing a strong foundation of values in developing civic awareness, national spirit, encouraging public participation, and concern for the development of a just and democratic society.

## CONCLUSION

### A. Conclusion

Apart from being the basis of the state, Pancasila is also the basis for the legal ideals of the democratic state of Indonesia. Where every principle contained in Pancasila has a deep meaning and significance regarding democracy itself. The legal ideals of a democratic state in Indonesia are guided by the legal ideals of a democratic state which exist in the body of Pancasila as the source of all sources of law. Pancasila plays an important role in every aspect of democracy and its existence meets the criteria of a democratic country's legal ideals according to the Representative Government Under the Rule of Law, because in Indonesia Pancasila is indeed the source of all sources of law. The criteria have been met, which consist of:

- 1) There is constitutional protection, where Pancasila recognizes the constitutional values contained in it as the main foundation in building a democratic political and legal system.
- 2) The existence of a free and impartial court institution, where Pancasila acts as the basis for a free and impartial court institution. Because Pancasila contains principles that guarantee independence, neutrality, and

justice in the judicial system.

- 3) There are free general elections, where elections in Indonesia are based on Pancasila and the 1945 Constitution which also implement the principles of direct, general, free, secret, honest and fair.
- 4) There is freedom to express opinions, this is in line with Pancasila as the basis for free elections so that Pancasila has encouraged people's freedom to choose without intervention from any party.

There is freedom of association and opposition, where Pancasila provides support in the form of guaranteeing freedom of opinion, prioritizing democracy, maintaining the balance of power and recognizing social, cultural and political diversity in Indonesia. As well as providing a value framework for freedom of association and opposition in the context of political and social life.

Civic education or citizenship education is provided to the people, so that the people gain knowledge and understand what rights and obligations they have in accordance with applicable laws and regulations based on Pancasila.

### B. Suggestions

This scientific article was created so that readers can understand the extent of Pancasila's role as the basis of the state as well as the legal ideals of a democratic state. This article is far from perfect, therefore, we as writers hope that readers will provide constructive criticism and suggestions so that we as writers can be even better in the future. This article can also be used as a guide or reference for future writers who wish to study further about Pancasila as the Foundation of the State in the Perspective of the Legal Ideal of a Democratic State, where further writers can develop the discussion indicators in this article, so that they can improve the previous article.

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