

## Reactualization of Pancasila as a Source of Indonesian Law in Realizing Justice



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**ABSTRACT:** Pancasila, as the basis of the state, continues to experience fluctuations and challenges occasionally. As the basis of the state's view of life, Pancasila directs how the process and law are carried out to fulfill justice amid state life. This doctrinal legal research reflexively examines Pancasila as the basis of the state and the source of law. The research findings show that Pancasila is the basis of the state as well as the basis of the state's view of life, which serves as a guide in the management and structuring of the state. In the legal context, Pancasila is a legal ideal (*rechtsidee*) primary source of state law. Pancasila serves to ensure justice by assessing how the law is formulated and to determine the legality of a regulation. At the praxis level, the Constitutional Court, as the guardian of the state ideology, is expected to make Pancasila a touchstone in testing every regulation.

**KEYWORDS:** Pancasila, Source of Law, Justice

### I. INTRODUCTION

As affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. The affirmation of the rule of law raises the understanding that all behaviors of the social life of citizens must be based on the law or by the norms that have been mutually agreed upon. However, the rule of law can only be understood in a more formal, legalistic way. As a state of law, Indonesia places Pancasila as the basis of the state and the legal ideals that direct the law to the ideals society desires. From this, it can be understood that the desired state of law could be more pragmatic. It views legal issues as limited to being resolved based on positively applicable regulations (Silalahi, 2024). More than that, in the conception of the Pancasila state of law, the law protects the noble human values manifested in the ideals of life together.

As the basis of the state, Pancasila is the basis for all elements of behavioral life, starting from the legal, economic, and political basis for social relations between citizens (Moerdiono et al., 1996). However, there is a widening gap between ideals and reality at its operational level. Pancasila is often a formality and rhetoric repeated by the government. While the scenery on the ground is even more heartbreaking, politics increasingly shows its primitive face that only pursues power. Representative democracy led by wisdom is now replaced by mass mobilization, which is increasingly exacerbated by noisy (buzzers) without substance, the exploitation of natural resources is increasingly widespread, labor rights are increasingly marginalized, and massive privatization of public services, especially in the education and health sectors. In short, social welfare still feels far away.

As a collective agreement, *kalimatun sawa*, *common platform*, Pancasila is a long-term project of the nation that needs to be maintained and actualized together (Asshiddiqie, 2016). According to Gunawan Mohammad, Pancasila is not ready for use because it recognizes the existence of creative interpretations. Pancasila opens the possibility of becoming void, a frozen and rigid doctrine (Latif, 2011). This shows that a comprehensive understanding is needed as the operational basis of Pancasila to answer the challenges from time to time.

In its journey, it is undeniable that Pancasila is perceived variously. Starting from Soekarno with his Nasakom and Soeharto, who were committed to purifying Pancasila, both tried to perceive and interpret Pancasila as the foundation of state management. But in the end, Pancasila seemed only as a means of legitimizing power (Bo'a, 2018). Moreover, in the New Order era, Pancasila appeared to be a rigid and anti-critical sacred doctrine. The values of Pancasila, which the founding parents dug from the earth of Indonesia, now need to be grounded again as a reference for steps and behavior in structuring a better state of life. Reconstruction in operationalizing Pancasila certainly needs to be pursued continuously and continuously. Although it is a small part of the effort in that direction, this paper wants to dive more sharply to examine the position of Pancasila as the Basis of Philosophy, State Foundation, and Source of Law.

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Based on the above background, this research will answer the following problem formulations:

1. What is the consequence of the value of Pancasila as the basis of the state in the life of the state?
2. How does Pancasila influence as a source of law in realizing justice?

### II. RESEARCH AND METHODS

This doctrinal legal research reflexively examines Pancasila as the basis of the state and the source of law, which relies on norms or library resources for argumentation. In normative research, legal principles are applied using legal systematics to analyses regulations vertically and horizontally and compare applicable laws (Sonata, 2015). The study adopts a legal norm approach by examining applicable laws and regulations comprehensively to understand the rules related to the research problem.

### III. RESULT AND DISCUSSION

#### A. Consequences of Pancasila as the Foundation in State Life

In every country of the world, there is always either explicitly or implicitly a view of life, ideals, values and beliefs that want to be realized in concrete reality as the basis for state administration (Moerdiono et al., 1996). So, that was also the background of Dr. Radjiman Widediningrat, as Chairman of BPUPK, when asking BPUPK members questions regarding the basis of the independent Indonesian state. This was the beginning of the milestone where the nation's basic philosophy was discussed and debated. The fundamental and fundamental question about the basis of the state then gave rise to various responses of views (Budi, 2018).

Dozens of attendees took turns expressing their views based on the state, some of which were described by Muhammad Yamin and Soepomo. The state foundation proposed by Muhammad Yamin included Nationality, Humanity, Divinity, Democracy, and People's Welfare (Budi, 2018). As for Soepomo's offer, divinity, humanity, unity, deliberation, and justice/welfare principles were implicitly mentioned based on the integralist state *Staatsidee* (Latif, 2011). In the end, Soekarno carefully summarized the previous thoughts of Mohammad Yamin, Soepomo, and dozens of other speakers regarding the conception of the state foundation, which he called Pancasila. The five principles that glue all elements of the nation include Indonesian Nationality, Internationalism or Humanity, Consensus or Democracy, Social Welfare, and God with Culture (Panitia Persiapan Kemerdekaan Indonesia (PPKI), 1945).

Referring to the history of the journey of Pancasila above, it can be said that Pancasila is the basis of the state philosophy (*philosophische grondslag*), a view of life (*weltanschauung*), a belief framework that occupies an essential position in the life of Indonesian nationality and statehood (Wiguna, 2021). As the nation's philosophy of life, Pancasila incarnates a value system that is aspired to together; it forms a belief in group life and a measure of the welfare of group life (Triputra, 2017). Thus, Pancasila is a static basis that unites and is a dynamic guiding star (*Leitstar*) that guides the nation in achieving its goals. In such a position, Pancasila is the source of identity, personality, morality, and the direction of the nation's salvation (Aristo Evandy A. Barlian & Annisa D. Permata Herista, 2021).

As a nation, Indonesia is a community built on shared experiences. In other words, what unites Indonesia is the experience of oppression, the experience of injustice, and the experience of various atrocities and humiliations suffered together. The Indonesian nation was born to end bitter experiences and realize common ideals. Therefore, the country becomes a projection forward as well as backward (Anderson & Anderson, 1999). Pancasila, which is extracted from the soul of the nation (*volksgeit*), is the basis on which Indonesia stands to be a unifier and a guide in achieving the nation's goals.

In addition, Pancasila is also the basic philosophy of the Indonesian state. However, it must be understood that the nation of philosophy is broader than the Western sense. The definition of philosophy is divided into two areas: western philosophy and Eastern philosophy. According to Western philosophy, philosophy is a science with particular objects, methods, and systematics. In Western philosophy, the ratio (intellect) plays a significant role. With this ratio, humans in the Western world can develop science and technology to answer the challenges of nature. In Eastern philosophy, philosophy is a view of human life that emphasizes intuition. In Eastern philosophy, humans learn to educate humans to become wise; with human wisdom, they will live better and more perfectly. Thus, philosophy is a science and philosophy is a way of life (Darmodiharjo & Shidarta, 1995).

Pancasila, in this case, is positioned into Eastern philosophy, which implies that Pancasila contains the ideals and worldview of the Indonesian people regarding human relations with God, human relations with fellow humans, human relations with fellow nations, human relations with their homeland, and human relations with property (Pradhani, 2018). This shared ideal is called a state philosophy that functions as a *philosophische grondslag* in the context of state life. Pancasila, as the worldview of the Indonesian people, is five basic philosophical-ideological principles to realize the four ideal goals of the state, namely: to protect the entire nation and the blood of Indonesia; to improve the general welfare; to educate the country; and to participate in implementing world order based on independence, lasting peace and social justice (Pasaribu & Briando, 2019).

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Pancasila, as a way of life, can be said to have undergone a crystallization process, then logically systematized to be socialized again. As a value system, Pancasila was consciously chosen by the Indonesian people and believed to be true to be realized in society, nation and state life. In such a position, Pancasila is also the ideology of the Indonesian state. Pancasila functions as the adhesive ideology of the Indonesian nation (Susanto, 2021).

As an ideology, Pancasila is interpreted as the basis of a state system for all people and nations, which is also the spiritual principle of the nation. In addition, the Pancasila ideology is based on the values of Godhead, Humanity, Unity, Democracy, and Justice (Moerdiono et al., 1996). Pancasila is believed to have high quality as an ideology because it contains three dimensions, namely:

- a) Idealistic dimension, which means that the values contained in Pancasila are systematic and rational.
- b) The rationalistic dimension, interpreted as an ideology Pancasila must be able to reflect the reality of the lives of its people.
- c) The flexibility dimension means that the Pancasila Ideology has flexibility that allows and can stimulate the development of new thoughts relevant to the nation's value.

As a state ideology, the essence of Pancasila is values that are summarized in a complete and unified system called the Pancasila Philosophical System. As a philosophical system, the precepts of Pancasila have a mutually binding relationship with one another. According to Shidarta, as an intellectual system, Pancasila is positioned as a subject that gives judgment (*genetivus subjectivus*) to everything that concerns social life (Darmodiharjo & Shidarta, 1995). In other words, Pancasila as a way of life is a product of the Indonesian philosophical process, which is final. This philosophical system is then used for practical purposes as a guide in implementing community and state activities, including building a legal system that follows the values and goals of Pancasila (Eddyono, 2019).

Pancasila has such a rich spirit and soul that Bertrand Russell, the British philosopher, called it a creative synthesis between the Declaration of American Independence (which represents capitalist democratic ideology) and the Communist Manifesto (which represents communist ideology). Thus, the founding parents of this nation have bequeathed to us a national view of life, basic philosophy (*filosofische grondslag*), and national ideology (*staatidee*) that is so visionary far ahead (Latif, 2011).

Given the importance of the value of Pancasila as an abstract view of life, further elaboration is needed to operationalize the value into a more concrete life. During the New Order era, this effort was realized by establishing the Education Development Agency for Implementing Guidelines for the Cultivation and Practice of Pancasila (BP7). BP7 was a state institution that coordinated the implementation of the Guidelines for the Cultivation and Practice of Pancasila (P4). Along with the fall of Soeharto, BP7 was also disbanded. The absence of a reform agenda intersecting with Pancasila alienates its value from development programs (Thontowi, 2016). This condition then prompted the issuance of Law No. 54 of 2017 concerning the Presidential Working Unit for Pancasila Ideology Development (UKP-PIP), later replaced by Law No. 7 of 2018 concerning the Pancasila Ideology Development Agency (BPIP).

Despite efforts to realize the value of Pancasila into a more concrete realm through the establishment of state institutions and bodies, deviations from the value of Pancasila still need to be found. Worse, these deviations are carried out by the government itself. During the New Order era, although the government intensively campaigned for Pancasila as the state's foundation, freedom of association and voice of opinion was severely restricted. Moreover, the government seemed to be the embodiment of Pancasila itself, so the rejection of government programs was considered rejecting Pancasila. Likewise, in the following period, the absence of Pancasila values at the beginning of the reformation caused the nation to be confused in the face of globalization. In addition, corruption and nepotism flourished throughout the country.

Seeing these conditions requires serious effort to put back Pancasila as the foundation of statehood. Pancasila needs to be re-internalized into every human being of the archipelago, especially those who sit in the seat of power (Pradhani, 2018). A worldview and ideology are enough to be socialized, but more importantly, they need to be exemplified, especially by those who carry the people's mandate. So that the values of Pancasila can be internalized in every government policy product and legislation drafted by the legislature. The presence of BPIP as an institution that still exists to guide the value of Pancasila to all state administrations needs to be supervised together. Hopefully, BPIP will not fall back as it has; it will stamper government policy.

### **B. Juridical Review of Pancasila as a Source of Law in Realizing Justice**

It has been described earlier that in the life of the Indonesian nation, Pancasila is the fundamental value of the state. As a value, of course, Pancasila is in an abstract form. The abstract value of Pancasila, if it is to be used as a guideline for society, state and nation, certainly needs to be realized in a more concrete form in the form of norms, including legal norms (Azhari, 2012). So, the task of jurists is to conceptually translate abstract accentuation into a legal system.

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Pancasila, as the basis of the state, can be interpreted as a state idea (*Staatsidee*). State ideals are ideas about the ideal and best state a nation can imagine. In this state ideals, there are several sub-sections, such as legal, political, economic, and so on. The legal mind (*rechtsidee*) is the ideal picture of law according to a nation. Thus, legal ideals must be coherent with the ideals of the state. In the Indonesian context, the Indonesian legal ideal must align with the Pancasila ideology (Darmodiharjo & Shidarta, 1995).

The provision of Pancasila as the ideal of law can be seen in the Explanation of the 1945 Constitution number III. This provision is then also emphasized in MPRS Tap No. XX/MPRS/1966 which was later revoked by MPR Tap No. III/MPR/2000 also defines the legal mind as the source of all sources of law or legal order for the people of Indonesia. Further affirmation is also contained in the provisions of Law No. 10 of 2004, as revoked by Law 12 of 2011 and its various amendments, that Pancasila is the source of all sources of state law.

According to Jawahir Thontowi, in legal science, what is meant by the source of all sources of law in the context of Pancasila is the source of recognition, the source of origin, and the source of value that causes the rule of law to arise (Thontowi, 2016). Furthermore, Dahlan Thaib explained that the source of all sources of law is a view of life, awareness, legal ideals, and moral ideals encompassing a nation's psychological atmosphere and character. The view of the life of the Indonesian nation is that which contains moral and legal ideals, and the character and soul of the nation is Pancasila. So, Pancasila is a reference source for preparing Indonesian legal norms. In other words, the existing laws and regulations must be animated by the five fundamental values of Pancasila: the value of divinity, the value of humanity, the value of unity, the value of democracy, and the value of justice.

Moreover, in its position as a legal mind, the formation of law, the application of law and its implementation must be based on and not in conflict with the fundamental values of Pancasila (Wardhani et al., 2020). According to Gustaf Radbruch, the legal mind has constitutive and regulative functions. The constitutive function means that Pancasila determines the basis of a legal system that gives meaning and meaning to the law itself. Meanwhile, what is meant by the regulative function is to place Pancasila as a value guide to determine whether a positive law is fair or not (Najib, 2020).

In addition, the Constitutional Court (MK), as a high state institution authorized to interpret the 1945 Constitution, has also affirmed the same. In Decision Number 100/PUU-XI/2013 (page 86), the Constitutional Court emphasized that Pancasila occupies a separate position in the framework of thinking of the Indonesian nation and state based on the constitution, namely in addition to being the basis of the state, also as the basis of state philosophy, state fundamental norms, state ideology, state legal ideals, and so on. Thus, it becomes clear that the position of Pancasila in the Indonesian legal system is as the legal ideals of the Indonesian nation (*rechtsidee*); Pancasila is the source of all sources of law.

As a legal ideal, according to A. Hamid S. Attamimi, Pancasila, is in its position as a legal idea and state fundamental norm. As a legal idea, Pancasila is located outside the legal system and functions constitutively and regulatively against existing norms in the legal system. Meanwhile, Pancasila, as the state's fundamental norm, functions to create all lower norms in the legal norm system. Making Pancasila the ideal of law means that Pancasila is the source of all sources of law. The formulation of Pancasila is contained in the Preamble of the 1945 Constitution. If referring to Nawiasky's theory, the Indonesian Staatsfundamentalnorm is the Preamble of the 1945 Constitution because it includes the formulation of Pancasila (Muttaqin et al., 2024). By placing Pancasila as the State's Fundamental Norm, the structure of Indonesian legal norms, according to A. Hamid S. Attamimi are:

- a) Staatsfundamentalnorm: Pancasila (Preamble of the 1945 Constitution)
- b) Staatsgrundgesetz: The body of the 1945 Constitution
- c) Foemell gesetz: Law
- d) Verordnung en Autonome Satzung: implementing regulations ranging from government regulations to regional regulations

However, a different view was expressed by Jimly Asshiddiqie; according to him, if the Preamble of the 1945 Constitution is a Staatsfundamentalnorm, then it has placed the Preamble of the 1945 Constitution separate from the Body of the 1945 Constitution (*staatsverfassung*). This split will certainly confuse when referring to Article II of the Supplementary Rules of the 1945 Constitution (amendment), which reads, "The 1945 Constitution of the Republic of Indonesia consists of a Preamble and Articles" (Asshiddiqie, 2016).

In addition, it is mentioned in the Explanation of the 1945 Constitution that the Constitution creates the main ideas contained in the preamble in its articles. It also states that "These thoughts embody the legal ideals (reconsider) that govern the basic laws of the state, both written (Constitution) and unwritten laws. The Constitution creates these ideas in its articles". By looking at the Explanation of the 1945 Constitution, according to Jimly Asshiddiqie, it appears that the Preamble of the 1945 Constitution is a unity with its articles. According to Jimly Asshiddiqie, Pancasila, which was editorially agreed upon on August 18, 1945, contained in the Preamble of the 1945 Constitution, is a unity with the articles of the 1945 Constitution (Asshiddiqie, 2020). It can also be

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seen historically in the process of drafting the Preamble of the 1945 Constitution, which is a series with the discussion of the issue of the form of the state, the representative body of the people and the advisory body in the 1945 Constitution by BPUPK.

Thus, Jimly Asshiddiqie emphasized that although the Preamble of the 1945 Constitution is the main idea that is highly abstract and elaborated in the articles, it is not the basis for the validity of the articles of the 1945 Constitution. The Preamble of the 1945 Constitution (including Pancasila) is a written constitution of the Indonesian nation. Placing Pancasila in the constitution also places it as an abstract norm that will provide valuation both constitutively and regulatively to the norms below it. In such a position, where the Preamble of the 1945 Constitution and Pancasila become a unified part of the constitution, the main ideas of Pancasila can genuinely become a *rechtsidee* in the development of the Indonesian legal system.

Although there are differences regarding the position of Pancasila in the hierarchy of norms, no one rejects the idea that Pancasila is a source of law in Indonesia. As a source of law, Pancasila must be operationalized in a more concrete form. Pancasila is a touchstone to measure whether a regulation can be declared valid. Therefore, the Constitutional Court is important in manifesting Pancasila in law testing. The Constitutional Court is not only the guardian of the Constitution but also the guardian of state ideology. Therefore, every decision of the Constitutional Court should be a manifestation of the values of Pancasila (Muttaqin et al., 2024). Thus, every decision of the Constitutional Court is not only a reflection of the Constitution in the narrow sense in the form of articles in the body but is a reflection of the values of Pancasila, which in turn reflects the spirit of social justice.

## IV. CONCLUSIONS

As described above, Pancasila, in the conception of the state, is a shared ideal that functions as a filosofische grondslag in the life of the Indonesian nation and state. This idea aligns with the Eastern tradition that interprets philosophy as a way of life. Pancasila as a way of life is the nation's values that have undergone a crystallization process by the founding parents. These values are a guide in the management and structuring of state life. Thus, Pancasila is the basis of philosophy and the foundation of the Indonesian state. Pancasila was consciously chosen by the Indonesian people and believed to be true to be realized in society, nation and state life. In such a position, Pancasila is also the ideology of the Indonesian state.

As a state ideology, Pancasila has become a common guide in managing the state in the legal, economic, social, and other fields. In this legal field, Pancasila occupies a position as a legal system (*rechtsidee*). In its position as a source of law, Pancasila has a constitutive and regulative function. Therefore, operationalizing the values of Pancasila in every regulation requires the role of the Constitutional Court as the guarding state ideology. Every decision of the Constitutional Court must reflect Pancasila values that provide a sense of justice.

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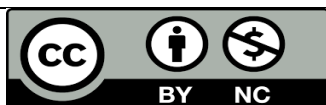
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