

Pancasila and the Principle of Legal Certainty in the Indonesian Rule of Law

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Abstract

Pancasila, as the foundation of the state as well as the ultimate source of all sources of law, plays a fundamental role in shaping the characteristics of the Indonesian rule of law. Its position is not limited to ideological symbolism, but also serves as a philosophical, normative, and constitutive foundation in the formulation and enforcement of the national legal system. This article aims to examine in depth the relationship between Pancasila and the principle of legal certainty within the framework of Indonesian law, particularly in the dynamics of law-making and law enforcement.

This study employs a normative juridical method through a library-based approach, focusing on the analysis of legislation, legal doctrines, and previous scholarly works.

The findings reveal that the concept of the rule of law in Indonesia does not entirely adopt the *Rechtsstaat* or the dominant rule of law models found in Western countries. Instead, Indonesia develops a distinctive and prismatic concept of the rule of law, grounded in the

values of Pancasila as the national ideology. This characteristic is reflected in the integration of various legal systems existing within society—such as customary law, religious law, and positive law—into a unified national legal system aimed at ensuring justice.

Within this framework, the principle of legal certainty is not regarded as an absolute and independent value, but rather must be aligned with the values of justice and expediency. Rigid legal certainty without consideration of justice may, in fact, lead to substantive injustice in society. Therefore, Pancasila functions as a *rechtsidee* (legal ideal) that guides and limits the pursuit of balance between legal certainty, justice, and expediency. In this regard, Pancasila not only serves as the foundation of legal legitimacy but also as an evaluative instrument to assess whether legal products have realized social justice for all Indonesian people.

Keywords *Pancasila, Legal Certainty, Rule of Law, Indonesian Legal System*

A. Introduction

The 1945 Constitution of the Republic of Indonesia, particularly Article 1 paragraph (3), explicitly establishes Indonesia as a state based on the rule of law. This provision implies that all aspects of state administration including governance, law enforcement, and social relations must be grounded in prevailing legal norms. Consequently, the exercise of state power must not be arbitrary, but rather limited and directed by law, in order to ensure legal certainty, order, and the protection of citizens' rights¹.

However, the concept of the rule of law in Indonesia does not fully correspond to the models developed in Western countries, such as the *Rechtsstaat* or the rule of law tradition. These Western concepts emerged from distinct historical and socio-political contexts, particularly as responses to absolute power. In contrast, the Indonesian rule of law is constructed upon the ideological foundation of Pancasila, which reflects the philosophical, cultural, and religious values of the

¹ Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2005).

² Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977).

³ Lon L Fuller, *The Morality of Law* (New Haven: Yale University of California Press, 1964).

Indonesian people.⁴ As a result, the Pancasila-based rule of law possesses distinctive characteristics, including an emphasis on the principle of kinship, a balance between individual and collective interests, and the integration of law with morality and religion.⁵ These features shape a legal system that is neither excessively liberal-individualistic nor overly collectivistic, but rather prismatic and harmonious.⁶

In the practical implementation of the rule of law, the principle of legal certainty constitutes a fundamental element that cannot be disregarded. This principle is essential to ensure the clarity of legal norms, consistency in their enforcement, and the protection of citizens' rights and obligations. Nevertheless, within the framework of the Pancasila rule of law, legal certainty should not be narrowly understood as merely normative certainty. Instead, it must be positioned within a broader context that incorporates the values of justice and expediency. In other words, the law must not only be certain, but also just and beneficial to society.⁷

Therefore, it is necessary to conduct a more in-depth analysis of how Pancasila, as the philosophical foundation of the state and the highest source of law, influences and shapes the principle of legal certainty within Indonesia's national legal system. Such an examination is crucial to ensure that legal development in Indonesia is oriented toward achieving justice and promoting the welfare of society.

B. Research Methods

This study employs a normative juridical method, which emphasizes the examination of legal norms as codified in statutory regulations and established legal doctrines. The primary approach adopted is library-based research, conducted through a systematic

⁴ Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas, Pancasila* (Jakarta: Gramedia, 2011).

⁵ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987).

⁶ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2010).

⁷ Widodo Ekatjahhana, *Lembaga Kepresidenan Dalam Sistem Ketatanegaraan Indonesia* (Bandung: Pustaka Sutra, 2008).

⁸ Notonagoro, *Pancasila Secara Ilmiah Populer* (Jakarta: Pantjuran Tujuh, 1975).

process of reviewing, evaluating, and analyzing various legal materials relevant to the research issues⁹.

The sources of data in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, particularly the 1945 Constitution of the Republic of Indonesia, along with other relevant provisions concerning the concepts of the rule of law and legal certainty. Secondary legal materials are derived from academic journals, books, previous studies, and the opinions of legal scholars related to Pancasila and the principle of legal certainty. Meanwhile, tertiary legal materials serve as supporting references, such as legal dictionaries and encyclopedias¹⁰.

Data collection is conducted through a library research method by systematically inventorying, classifying, and analyzing the legal materials. The data are then analyzed qualitatively using a descriptive-analytical approach, which aims to present the principles of Pancasila law in a systematic manner and to explore their relationship with the principle of legal certainty within the framework of the Indonesian legal system.¹¹

C. Result and Discussion

1. The Concept of the Rule of Law Based on Pancasila

The Indonesian rule of law is conceptualized as a legal system grounded in Pancasila, which serves as the philosophical, ideological, and fundamental source of values in the formation and implementation of national law. Unlike Western conceptions of the rule of law such as the *Rechtsstaat* and the rule of law tradition which emphasize formal legality and individual freedom, the Pancasila-based rule of law reflects characteristics aligned with the socio-cultural identity of the Indonesian nation.

These characteristics are evident in the application of the principle of kinship, which prioritizes collective interests without disregarding

⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Press, 2001).

¹⁰ Peter Mahmud Marzuki, *Peneilitian Hukum* (Jakarta: Kencana, 2005).

¹¹ Adriaan Bedner, "An Eileimeintary Approiach Toi Thei Rulei Oif Law," *Haguei Joiurnal Oin Thei Rulei Oif Law*, No. 1 2 (2010).

¹² A. V Dicey, "The Rule Of Law" Introduction to the Study of the Law of the Constiitutioin," n.d.

individual rights. Through this approach, the state assumes a proactive role in maintaining a balance between individual and societal interests in order to achieve social harmony and justice. Furthermore, the Pancasila rule of law is founded upon divine values, ensuring that the processes of law-making and law enforcement remain closely connected to moral and ethical principles derived from religious teachings¹⁴.

In addition, the Indonesian legal system integrates various sources of law that exist and develop within society, including customary law, religious law, and positive law. This integration illustrates that the national legal system is pluralistic rather than monolithic, unified within the framework of Pancasila values. Consequently, law functions not merely as a regulatory instrument but also as a reflection of the social and cultural values of the Indonesian people.

Despite its distinctive features, the Indonesian rule of law continues to uphold universal principles, such as the supremacy of law, equality before the law, and the protection of human rights¹⁷. These principles serve as a crucial foundation for ensuring justice, legal certainty, and the utility of law in the life of the nation.¹⁸ Therefore, the Pancasila-based rule of law represents a harmonious synthesis between

¹³ Zainal Arifin Mochtar, *Lembaga Negara Independen, Dinamika Perkembangan Dan Urgensi Penataannya Kembali Pasca-Amendemen Konstitusi* (Jakarta: Rajawali Pers, 2016).

¹⁴ Iskandar Muda, Bintan R Saragih, and Ferry Edwar, "Constitutional Authority Based on the Constitutional Court Decision in Indonesia A . Introduction The Constitutional Court of Indonesia Was Established in 2003 and Operates under the Framework Provided by the 1945 Constitution of the State VII / 2009 , Extended Its Constitutional Authority to Include Judicial Review of Government Regulations in Lieu of Law (Perppu). This Development Was Significant as Neither the 1945 Constitution nor Law No . 24 of 2003 Explicitly" 17, no. 3 (2023): 217–36, <https://doi.org/10.25041/fiatjustisia.v17no3.2636>.

¹⁵ Lukman Hakim, "Kedudukan Komisi Negara Di Indonesia," *Program Pascasarjana Universitas Brawijaya*, 2010.

¹⁶ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. (Jakarta: Rajawali Press, 1983).

¹⁷ Sutjipto Rahardjo, *Hukum Progresif* (Jakarta: Kompas, 2009).

¹⁸ John Rawles, *A Theoiry of Justiice* (Cambridge: Harvard Uniiveirsiity Preiss, 1971).

universal legal principles and the noble values of the Indonesian nation.¹⁹

2. Pancasila as the Source of All Sources of Law

Pancasila occupies a position as the *grundnorm* or fundamental norm within the Indonesian legal system. This implies that Pancasila serves as the ultimate source of all legal sources, functioning as the philosophical, juridical, and sociological foundation for the development of national law. This position ensures that all legislation and regulations in Indonesia must derive from the values of Pancasila and must not contradict its essential principles. Accordingly, Pancasila acts as a criterion for determining the validity of legal norms within the national legal system.

As a source of law, Pancasila encompasses three interrelated dimensions of values that form an integrated unity. The first dimension is that of fundamental values, which are abstract and philosophical in nature, including divinity, humanity, unity, democracy, and justice. These values constitute the *rechtsidee* or legal ideals of the Indonesian nation, serving as the primary guideline in state administration.

The second dimension, instrumental values, refers to the transformation of these fundamental values into more concrete legal norms, particularly through statutory regulations. At this level, Pancasila values are embodied in operational and legally binding rules. The third dimension is practical values, which represent the actual implementation of both fundamental and instrumental values in everyday life, whether through compliance with the law or through governance practices.²²

Therefore, Pancasila does not merely function as an abstract normative foundation but also as a practical guideline that directs the formation, implementation, and enforcement of national law. Through these three dimensions, the Indonesian legal system is not only oriented toward legal certainty but also toward achieving justice and social utility for all members of society.

¹⁹ Meri Yarni Kosariza, Netty, “Analisis Penyelesaian Sngketa Kewenangan Lembaga Negara Oleh Mahkamah Konstitusi,” *Sains Sosio Humaniora* Vol.4 Nomo (2020).

²⁰ Arifin Mochtar, *Lembaga Negara Independen, Dinamika Perkembangan Dan Urgensi Penataannya Kembali Pasca-Amendemen Konstitusi*.

²¹ Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*.

²² Dworkin, *Takiing Riights Seiriioiusly*.

²³ Fuller, *The Morality of Law*.

3. The Principle of Legal Certainty in the Pancasila Rule of Law

Legal certainty constitutes one of the fundamental pillars of the rule of law, aiming to ensure clarity, consistency, and predictability in the enforcement of law. Within this framework, the principle plays a crucial role in ensuring that both governmental actions and citizens' conduct can be assessed based on established legal norms.

However, in the Indonesian context, legal certainty is not regarded as an absolute and rigid principle. Instead, it must be integrated with the values of Pancasila, which emphasize a balance between legal certainty, justice, and expediency. The Pancasila rule of law requires a harmonious integration of these three elements, which must operate synergistically in the processes of law-making and law enforcement. Legal certainty that is not accompanied by justice may lead to formalistic injustice, while justice without legal certainty may result in instability and social disorder.²⁵

Accordingly, laws within the Pancasila-based legal system are designed not only to ensure normative certainty but also to realize social justice for all Indonesian people. This principle is reflected in the legislative process, which incorporates the principles of order and legal certainty, justice, and balance between individual and societal interests. The principle of legal certainty requires clear legal formulations, free from ambiguity, and consistently applicable. Meanwhile, the principle of justice demands fair and equal treatment for all citizens, extending beyond mere formal compliance. The principle of balance ensures that individual interests are accommodated without undermining the collective interest, thereby fostering social harmony.

Nevertheless, despite the comprehensive normative framework, various challenges remain in achieving optimal legal certainty in practice. Regulatory overlap constitutes a significant issue, leading to

²⁴ Muda, Saragih, and Edwar, "Constitutional Authority Based on the Constitutional Court Decision in Indonesia A . Introduction The Constitutional Court of Indonesia Was Established in 2003 and Operates under the Framework Provided by the 1945 Constitution of the State VII / 2009, Extended Its Constitutional Authority to Include Judicial Review of Government Regulations in Lieu of Law (Perppu). This Development Was Significant as Neither the 1945 Constitution nor Law No . 24 of 2003 Explicitly."

²⁵ Latif, *Negara Paripurna : Historisitas, Rasionalitas, Dan Aktualitas, Pancasila*.

²⁶ Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*.

legal disharmony and uncertainty in implementation. Moreover, the pluralism of legal systems in Indonesia including customary, religious, and positive law often results in conflicting norms, further contributing to legal uncertainty. Another critical factor is the inconsistency in law enforcement, where the application of legal norms is not always uniform or equitable.

Therefore, legal certainty within the Pancasila rule of law extends beyond the normative dimension, encompassing the practical dimension of implementation. Efforts such as regulatory harmonization, strengthening the national legal system, and enhancing the commitment of law enforcement institutions are essential to ensure that legal certainty grounded in justice and expediency can be effectively realized in the dynamics of national life.

D. Conclusion

In conclusion, the Indonesian rule of law is fundamentally grounded in Pancasila, which distinguishes it from Western legal concepts such as the *Rechtsstaat* and the rule of law tradition. Pancasila not only serves as the foundation of the state but also occupies a position as the ultimate source of all sources of law (*staatsfundamentálnorm*), providing the philosophical basis for the formation and implementation of national law. Accordingly, all legal products must reflect the values of Pancasila as the identity of the Indonesian nation.

Within this framework, the principle of legal certainty in Indonesia cannot be narrowly understood as mere normative certainty. Instead, it must be aligned and balanced with the values of justice and expediency. Therefore, the law in Indonesia is expected not only to ensure certainty but also to realize social justice and promote the welfare of society as a whole.

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