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Indonesian State System Based on Pancasila and the 1845 Constitution: A Contemporary Developments

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ABSTRACT: In conducting the state implementation, Indonesia as a state needs regulations in accordance with the national cultural values. The values are mirrored in Pancasila as the spirit of constitutional law which is The Constitution 1945. Indonesian governmental system is presidential; the president is the state chief and the governmental chief. The state power is in three powers, that are legislative, executive, and judicial powers. Those three powers have relations in sharing the powers. This practice is not the same as the original theory of Montesquei about power divisions. In the implementation, The Constitution 1945 has supporting institutions. They are People's Consultative Council, House of representative, President, Supreme Court, Constitutional Council, Judicial Commission, Financial investigator, Police, and the Army.

KEYWORDS: Constitution, Pancasila, Development

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I. INTRODUCTION

The State is the organization in a territory with the highest power which is legal and obeyed by its people or community organizations who have the right to monopolize, seize and force. This is what distinguishes between countries with other social organizations, such as the Union of Sports or Environmental Organizations. State as an institution requires rules for governing life in government administration. The goal is to create a safe, orderly, peaceful, prosperous life.¹

Constitutional law is essentially a law governing the organization of a country's powers and all aspects related to the organization of the country. Constitutional law is usually contained in the Constitution or the constitution of a State. There are two opinions in interpreting the terms of the Constitution and the constitution, there are interpreting different (old people) and the same (modern). Hermann Heller stated that the constitution has 3 meanings, namely: (1) the constitution reflects political life in society means still a political and sociological sense, (2) the activity of seeking the legal elements of the applicable constitution and serve as a rule of law, then the constitution is called the Constitution (*Rechnerfassung*), (3) script as

¹ In general, the purpose of the state is to organize a welfare. In addition, the goal of the state is to achieve the happiness of its people. State objectives are guidelines when developing and controlling the equipment of a country. And regulate how the lives of the people in the country. See Maleha Soemarsono, "Negara Hukum Indonesia Ditinjau dari Sudut Teori Tujuan Negara." *Jurnal Hukum & Pembangunan* 37, No. 2 (2007): 300-322; Mia Kusuma Fitriana, "Peranan Politik Hukum dalam Pembentukan Peraturan Perundang-Undangan di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara (Laws and Regulations in Indonesia as The Means of Realizing the Country's Goal)." *Jurnal Legislasi Indonesia* 12, No. 2 (2018); Johannes Suhardjana, "Supremasi Konstitusi Adalah Tujuan Negara." *Jurnal Dinamika Hukum* 10, No. 3 (2010): 253-264.

the highest constitution in a country. Referring to the definition, the Constitution is a part of the constitution. Meanwhile, according to modern cleric Oliver Cromwell, the Constitution is declared as a handle to rule.

Thus, the Constitution is identical with the constitution. The shift in the meaning of the constitution began after the emergence of a civil law system that embraced codification. which aims to achieve legal unity, legal certainty, and legal equality. In the colonial period, to regulate the state administration in the Netherlands Indies applied *Regeling Reglement (RR)*, then changed to *Indische Staatsregeling (IS)*. So, in the colonial period has been enacted various regulations related to the living order of the state. As an elaboration of the IS, an *ordinantie (law-enforcement)* is made by the governor-general with the approval of the *Volksraad (parliament)* and the *Regeringsverordening (at Government Regulation)* made by the governor-general. The source of Indonesian state law has changed from time to time, from the beginning of independence to the present. Having declared independence on 18 August 1945 was passed by the 1945 Constitution by PPKI. The Constitution which was drafted by BPUPKI lasted for about 4 years, following the validity of several Constitutions in Indonesia, namely: first, the 1945 Constitution (18 August 1945 until 27 December 1949), in the Constitution there are several laws, namely Laws, Government Regulations, and Regulations Government in Lieu of Law.

In practice there are several types of regulations, namely Government Determination, Presidential Regulations, Government Determination, Government Notices, and Notice of the President (vice president). Second, the Constitution of the Republic of the United States of Indonesia (27 December 1949-August 17, 1950). there

are some rules of the provisional Constitution of the RIS, the Law (Emergency Law), and the Government Regulation. Third, the 1950 UUDS (17 August 1950 until 5 July 1959), this period is applicable Laws, Emergency Law, Government Regulation, Presidential Decree, Ministerial Decree, Local Regulation. Fourth, the 1945 Constitution of the Old Order (July 5, 1959 until 1 March 1966), the prevailing laws and regulations are the 1945 Constitution, MPR Decrees, Laws/Regulations, Government Regulations / Presidential Regulations, Presidential Decrees, Ministerial Regulations and Decisions Minister.²

II. METHODS

The methodology used in this research is normative, which will use descriptive study with normative juridical approach, based on applicable law. This writing uses research using descriptive analysis method by using the form of library research. The author uses secondary data as a normative research approach that seeks and uses library materials such as writing scientific papers and journals, books, about human rights as a reference and also studying laws relating to human rights.

² Kus Eddy Sartono, "Kajian Konstitusi Indonesia Dari Awal Kemerdekaan Sampai Era Reformasi." *Humanika, Kajian Ilmiah Mata Kuliah Umum* 9, No. 1 (2009); Sonia Ivana Barus, "Proses Perubahan Mendasar Konstitusi Indonesia Pra dan Pasca Amandemen." *University Of Bengkulu Law Journal* 2, No. 1 (2017): 29-55; Arif Wijaya, "Demokrasi dalam Sejarah Ketatanegaraan Republik Indonesia." *Jurnal Hukum dan Perundangan Islam* 4, No. 1 (2014): 137-158; Syafnil Effendi, "Konstitusionalisme dan Konstitusi Ditinjau dari Perspektif Sejarah." *Humanus* 10, No. 1 (2011): 73-81.

III. POSITION OF PANCASILA IN THE STATE SYSTEM: A DISCOURSE OF INDONESIAN LEGAL SYSTEM, INSTITUTION & GOVERNANCE SYSTEM

To ensure the robustness of a country's building is required an agreement between the majority of the people living in the territory of the country. The collective agreement is a common ideal commonly called the philosophy of statehood or ide (*state ideals*). In Indonesia the philosophical foundation is Pancasila which means the five precepts or five principles that are used as the basis for achieving the four national objectives contained in the fourth paragraph of the 1945 Constitution. The national goals of Indonesia are: (1) protecting the entire Indonesian nation and the whole of Indonesia, 2) promoting general prosperity, (3) educating the nation, (4) participating in world order based on freedom, eternal peace, and social justice.³

In the preamble of the 1945 Constitution other than Pancasila there are also 4 main points of thought, described in the explanation of the 1945 Constitution before the amendment, namely: (1) that the State of

³ Fannia Sulistiani Putri, and Dinie Anggtaeni Dewi. "Implementasi Pancasila sebagai Sistem Etika." *EduPsyCouns: Journal of Education, Psychology and Counseling* 3, No. 1 (2021): 176-184; Mila Andriani Nurcahya, and Dinie Anggraeni Dewi. "Implementasi Nilai Dasar Pancasila Dalam Upaya Mewujudkan Tujuan Negara di Kehidupan Sehari-Hari." *Edukatif: Jurnal Ilmu Pendidikan* 3, No. 3 (2021): 631-639; Dicky Febrian Ceswara, and Puji Wiyatno. "Implementasi Nilai Hak Asasi Manusia dalam Sila Pancasila." *Lex Scientia Law Review* 2, No. 2 (2018): 227-241; Arief Hidayat, "Revitalisasi Ideologi Pancasila dalam Aras Global Perspektif Negara Hukum: Sebuah Pandangan Indonesia Terkini." *Seminar Nasional Hukum Universitas Negeri Semarang* 2, No. 1 (2016): 1-6; Siti Afifatul Mukaromah, Ari Gusmawan, and Jeremiah Munandar. "The Lunge of Global Ideologies: The Challenges of Pancasila Ideology Education in the Middle of Global Existence in the Era of Globalization." *Jurnal Panjar: Pengabdian Bidang Pembelajaran* 4, No. 1 (2022): 1-30.

Indonesia is a State which protects and covers all the Indonesian nation and all of Indonesia's bloodspot⁴ and includes all classes and understand (2) that the State of Indonesia wishes to bring about social justice for all its citizens; (3) that the Indonesian State embraces the sovereignty of the people, the State is constituted and organized on the basis of popular sovereignty; (4) that the State of Indonesia is the State of the Almighty Godhead just and civilized humanity. Every paragraph which is contained in the Preamble of the 1945 Constitution contains the noble ideals that embody all the material in the Constitution. The first paragraph affirms that independence is the right of all nations so that all forms of exploration over the world must be abolished because it is incompatible with humanity and justice.

The second paragraph explains the long struggle of the Indonesian nation to achieve an independent, united, sovereign, just and prosperous Indonesia. The third paragraph shows the recognition of the Indonesian nation of God's power which has given power to the Indonesian nation so that it can declare its independence. The fourth paragraph describes the vision of the Indonesian nation to build a state system organized to create an independent, united, sovereign, just and prosperous State within the unity of the Republic of Indonesia. In order to achieve the objectives stated in the Preamble of the 1945 Constitution, it is further elaborated in the body that governs the entire system of the Indonesian State, which includes the organizers of the government and the administration system. In the articles contained it should be based on Pancasila.

Governance in Indonesia Starting Independence until now experiencing different implementation. For example, In the early independence, used is the 1945 constitution with the presidential

system, but in its implementation using parliamentary system. Having experienced various forms of state and government, at present Indonesia is convinced that the unitary state of the republic with the presidential governance system feeling still suitable to be applied. In reality in the 1945 constitution also implements the characteristic of the parliamentary system, so experts often declare that Indonesia tends to implement a quasi-presidential system. presidential no mummy. It can be seen on the responsibility of the president to the people's consultative assembly as the supreme state institution. it is also the authority of the mpr to dismiss the president on the way because of allegations of state policy violations. after the 1945 Constitution amended amendment takes a more pure presidential toward direction. the president is no longer selected, appointed and dismissed by the people's consultative assembly. President directly selected by people, mpr just inaugurates. the president is no longer responsible to the people's consultative assembly as the supreme state institution, because at the moment its position is the same as the state tin ggi institution. If the president is declared to be violating the constitution or performing the right Act 4 then the decision is not again the people's consultative assembly, the mpr only determines only. While who can demolish the president has performed against the law is the Constitutional Court. In presidential presidential system as head of state and head of government. Ss the head of state of the presidential duties listed in several articles, that is (1) of article 10, the President holds the higher power of the navy army, and the force of the air (2) article 11, the President with the parliament approval stating war and making agreement with other countries (5) article 14, the president grants clemency, rehabilitation, amnesty and abolition, (6) of article 15, the president grants a degree, and honor signs. In determining the things, the President must pay attention to

considerations of multiple parties, among the house and the supreme court for certain things.

It shows that the power of President is not absolute or not unlimited. The duties of the president as the head of the governing government in several articles of the 1945 constitution include: (a) article 17, the president appoints and dismisses state ministers, (2) article 22, in a state of emergency president is entitled to apply government regulation in lieu of law) article 18, regarding regional government, this is related to the implementation of everyday governance in its operation is run by the president as the executive institution. In such article regulated about the implementation of regional government that is a hand extension of the central government. local governments have autonomy for some things, among others in the field of education, health, transportation called. Although there are some things that stay under the authority of the center among defense security, religion, monetary and fi skal, peradi lan, and foreign policy.

At this reform period in relationship between various state organs in indonesia experiencing various shifts, which originally adhering separation of power system began shifting into the direction of distribution of power. It can be seen in article 5 paragraph (1) before the amendment that declares that the power to make laws is performed by the president with the approval of the people's legislative assembly. After the amendment, article2 paragraph (1) stipulates strictly that the power to establish law is performed by the parliament, while article 5 paragraph (1) stipulates that the president is only entitled to ratify the bill to the house.

In the further context, the state as an organization that runs various state activities requires institutions or state organs. According to Hans Kelsen the organ of the state is anyone who carries out a

function determined by a tatahukum. Other than that, the state organs can be bolded as any position determined by law whose function is to create norms or to carry out norms.

State institutions or state organs are often referred to as government agencies, such institutions are established under the 1945 Constitution, the Act, PP, or other regulations. State institutions established under the Constitution explicitly listed in the IJLID, are called constitutional organs. Institutions established under the Act include the organs of the law. Institutions established under the presidential decree are also organs of the Keppres. The position of the state institutions is not the same depending on the rules of its formation.

Explicitly in the 1945 amendment there are 34 organs or state institutions listed, namely: (1) MPR, (2) President, (3) Vice President, (4) Minister and minister⁴ (5) Foreign Minister, (6) Minister (7) Minister of Defense as Minister of Trusumpirat (Minister of Home Affairs and Minister of Foreign Affairs), Presidential and Presidential Officer in case of vacancy in the Presidential and Vice Presidential positions simultaneously, (8) Presidential Advisory Council, (9) Duta, (10) Consul, (11) Provincial Government, (12) Governor of KDH, (13) Provincial DPRD, (14) District Government, (15) Regent, (16) Regency DPRD, (17) City Government, (18) Mayor, (19)) City Council, (20) Special or special Regional Government Units, (21) House of Representatives, 22 Regional House of Representatives (DPD), (23) General Election Commission (KPU), 24 Central Bank, Supreme Court (MA), (27) Constitutional Court (28) Judicial Commission, (29) Army, (30) Army (TNI AD), (31) A (32) Air Force (TNI AU), (33) State Police (Polri), (34) Other bodies relating to the function of the judiciary, for example the prosecutor's office.

IV. LAWS & REGULATIONS IN INDONESIA

The Constitution of the State of the Republic of Indonesia of 1945 determines that Indonesia's is a democratic law state. As a state of law, then every action of rulers must be under the law, in Art does not contrary to law. One of the forewords as a state of law is the rules of invitation formed by the authorized official. Indonesian national law can be distinguished to be written law and unwritten law. Written laws form laws formed through decision making mechanisms form: (a) legislation, (b) decision, (c) court judgment. The unlawful law is the law emerging in the life of a country, a nation, and a community. Can be a constitutional law of constitutional law and customary law. Thus, the legislation is part of the Indonesian national legal product written. The legislation itself is a written regulation established by an authorized, public binding agency or official.

The formation of laws in Indonesia has eight stages that must be passed by every formulation of the law. These stages are planning, preparation, composing techniques, formulation, discussion, endorsement, enactment, and dissemination. All these stages must be passed without any passes. In the drafting technique, juridical guidelines have been established in the appendix to Law No. 10 of 2004. Not one of the stages can cause the Act can be judicial review.

Of all the relevant phases discussed here are the planning stages and the stages of discussion. The planning stage of the formulation of legislative regulation starts from the planning instrument that is with the national legislation program (Prolegnas).

The 1945 Constitution is a written constitution or constitution of the state which is the basis and source of other regulations or other legislation applicable in the territory of the unitary state of the

Republic of Indonesia. The 1945 Constitution is a text which includes: *a.* opening, consisting of 4 paragraphs; the body of the body, consisting of 16 Chapters, 37 Articles, 4 articles of the Transitional Rules and 2 verses of the Additional Rules and Explanations, comprising general explanations and chapter by chapter explanations. *b.* determined by PPKI on August 18, 1945, *c.* promulgated in the news of RI Year II number 7 dated February 15, 1946. Named the 1945 Constitution because the Constitution was drafted and stipulated in 1945. Other laws that have been used and used by the Indonesian nation are: 1) Invite 1949 Constitution of the RIS 1949); 2) of the 1950 Constitution (UUDS 1950). The 1945 Constitution is not an ordinary law, but a basic law. As a basic law, the Constitution is a source of law. Any legal product such as law, regulation or governmental decree, and any action of government policy must be based on and derived from a higher regulation that can ultimately be accountable to the provisions of the 1945 Constitution.

The terms of the constitution and the constitution in Indonesia are often aligned. This is apparent when mentioning the constitution that ever applied in Indonesia is the 1945 Constitution. The Constitution of RIS and UUDS 1950. However, with the relation to the discussion of shrimp - the constitution, especially the 1945 Constitution, the term constitution is interpreted in a broader (material) wide of the Constitution. The intended Constitution is the basic law, both written (UUD) and unwritten (convention). This is in line with the different terms of the constitution by Joeniarto which distinguishes the constitution in the narrow sense (*formil*) i.e., no other is the Constitution. While the constitution in the broad sense (material) is all the rules or provisions both written and unwritten, whether the legal degree or the degree of habit, provided that all regulate or

determine the constitution. Thus, the constitution contains a fundamental fundamental rule of the first and foremost in upholding the so-called state.

V. THE PREAMBLE OF THE 1945 CONSTITUTION AS THE FUNDAMENTAL PRINCIPLE OF STATE RULES

The preamble of the 1945 Constitution has an important position in the basic law of the Republic of Indonesia. The preamble of the 1945 Constitution can be likened to an abstract of a scientific or preliminary work in a book containing very basic things or the essence of the entire contents of a scientific work or a book. Thus, the Preamble of the 1945 Constitution contains subjects of thought and the rule of the fundamental state which by law can not be changed, in addition it contains a declaration of independence. Because of the essence of this essay, the Preamble of the 1945 Constitution was agreed as a source of moral ideals and ideals of Indonesian law.

The Preamble of the Constitution was established by the Committee for the Preparation of Indonesian Independence (PPKI) representing all the people Indonesia adopted and ratified it on August 18, 1945. The preamble to the 1945 Constitution reads as follows: "That freedom is indeed the right of all nations, and hence the occupation of the world should be abolished because it is incompatible with the humanity and fairies' justice. Thanks to the Grace of God Almighty, and encouraged by the noble desire, in order to live a free nationhood, the people of Indonesia declare with this their independence. Then to form an Indonesian state government, which protects the entire nation of Indonesia, the whole of Indonesia's blood sphere, and to promote the common prosperity, educate the life of the nation, and participate in the implementation of world order, based on freedom,

eternal peace and social justice, the independence of the Indonesian nationhood in an Indonesian State Constitution, which is formed in a composition of the Republic of Indonesia which is the sovereignty of the people, with five based on: Belief in the Almighty, a just and civilized humanity, Indonesian unity, and populism led by the benevolent wisdom in deliberations of representatives, and by realizing social justice for all Indonesian people.

The preamble of the 1945 Constitution contains fundamental and fundamental characteristics for a country that is essentially fixed and irrevocable. As specified by the MPR / MPRS in the decree no. XX / MPRS / 1966 which received both the DPR-GR Memorandum dated June 9, 1966 (*jo* Tap No. V / MPR / 1973 which states: The Preamble of the 1945 Constitution as a detailed Declaration of Independence containing the noble ideals of the Proclamation of Independence 17 August 1945 and which contains Pancasila as the Foundation of State Philosophy, is a series with the Proclamation of Independence August 17, 1945 and therefore can not be changed by anyone, including the MPR election results based on Article 3 and Article 37 of the 1945 Constitution, the contents of the Preamble to the 1945 Constitution mean that the dissolution of the state is so clear to us that the Preamble of the 1945 Constitution, both formally and materially can not be changed, materially contains the Pancasila of the Basic Philosophy of the State of Indonesia, thereby attached to survival the state of the Proclamation of 17 August 1945 which is only once and is a historical fact that can not be repeated again.

VI. CONCLUSION

To ensure the robustness of a country's building is required an agreement between the majority of the people living in the territory

of the country. In Indonesia the philosophical foundation is Pancasila which means five precepts or five principles that are used as the basis for achieving the four national goals contained in the fourth paragraph of the 1945 Constitution. The national goals of Indonesia are protecting the entire Indonesian nation and the entire country of Indonesia, promoting general prosperity, educate the life of the nation, and participate in the implementation of world order based on freedom, eternal peace, and social justice.

Governance in Indonesia starting independence until now experiencing different implementation. For example, in the Early Independence, used is the 1945 Constitution with the Presidential system, but in its implementation using parliamentary system. The state as an organization that runs various state activities requires institutions or state organs. According to Hans Kelsen, the organ of the state is anyone who performs a function determined by a *tata hukum*. Other than that, the state organs can be bolded as any position determined by law whose function is to create norms or to carry out norms. The 1945 Constitution is a written constitution or constitution of the state which is the basis and source of other regulations or other legislation applicable in the territory of the unitary state of the Republic of Indonesia. The preamble of the 1945 Constitution has an important position in the basic law of the Republic of Indonesia. The preamble of the 1945 Constitution can be likened to an abstract of a scientific or preliminary work in a book containing very basic things or the essence of the entire contents of a scientific work or a book. Thus, the Preamble of the 1945 Constitution contains subjects of thought and the rule of the fundamental state which by law can not be changed, in addition it contains a declaration of independence. Because of its very essential content, the Preamble

of the 1945 Constitution was agreed as a source of moral ideals and ideals of Indonesian law.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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