

INDONESIA'S DEMOCRACY AND CONSTITUTION: REFLECTING HUMAN RIGHTS BASED ON PANCASILA

Ria Wierma Putri^{*}, Febryani Sabatira^{**}, Orima Melati Davey^{***}, Muhammad Febriyan Saputra^{****}, Rudi Natamiharja^{*****}

Faculty of Law, Universitas Lampung, Indonesia^{*}

Faculty of Law, Universitas Lampung, Indonesia^{**}

Faculty of Law, Universitas Lampung, Indonesia^{***}

Faculty of Law, Universitas Lampung, Indonesia^{****}

Faculty of Law, Universitas Lampung, Indonesia^{*****}

Abstract

Pancasila democracy is a democratic system applied in Indonesia to run the government based on the 1945 Constitution. The 1945 Constitution is positioned as the state constitution and is a concrete crystallization of Pancasila's values. The constitution, the highest law source in Indonesia, is fundamental to the Pancasila democratic system. The relationship between the Democracy, Human Rights, and Pancasila is very concord. Pancasila is the ideology of the Indonesian state, the basis of the state, and the foundation of the state philosophy. The relationship is contained in the values of Pancasila. These values highly uphold human rights, which are seen from the second value of Pancasila, "fair and civilized humanity". The research aims to examine the relationship between democracy, Pancasila, and human rights in Indonesia and the reasons for the future of Indonesian democracy based on Pancasila and the goals of the Indonesian state. The research uses an approach to formulate the problem and research objectives. The data sources used are secondary data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The relationship between a democracy with human rights and Pancasila is that democracy is a system used in Indonesia to realize Pancasila's values while still being based on human rights in its implementation. Then, Pancasila must always remain the basis of the state's philosophy because Pancasila is the result of the nation founders' consensus agreement. Pancasila values are not owned by other countries and have become the Indonesian nation's identity. Pancasila is supreme because it is the core foundation in uniting the diverse Indonesian nation. In addition, ideals of law function not only as a regulatory benchmark to test whether a positive law is fair but also as a constitutive ground. Therefore, laws will lose their definition without the existence of ideals of law.

Keywords: *Democracy, Human Rights, Indonesia, Pancasila*

* ria.wierma@fh.unila.ac.id

** febbysabatira14@gmail.com

*** orimadavey23@gmail.com

**** muhammadfebriyansaputra@gmail.com

***** rudi.natamiharja@fh.unila.ac.id

A. Introduction

The development of democracy cannot be separated from the discourse on the state, state system, and socio-culture. Democracy is a state system in terms of administrative division of power and not within a government. Applications of democracy have existed since Greek times. The Greek version of democracy is run directly by the people.¹ Ancient Greece's democracy application is a democracy model run directly by citizens who have met the requirements in determining quality leadership. Community representation largely determines leadership quality and is far from philosophical and religious values and norms. Plato criticized this model of democracy in his time. Plato is an aristocracy, and although Plato supported the idea of individual freedom, he preferred a political system in which the power to rule the polis was left to an elite group with the best moral qualities, knowledge, and physical strength.²

Similar to Aristotle, democracy is not something ideal but only the most feasible form. His personal preference for the monarchy is evident in his book "Politics". He gave little support to the proposition that democracy was the form of government that best suited human nature in his day, and he agreed with Plato on the harmful nature of democracy. According to Aristotle, freedom definition as a person free to live according to his own will and for his own sake is incorrect. However, as he wrote in "Politics":³

"People, individually, have a great chance to be controlled by anger, or controlled by other feelings so that, as such, they make misleading judgments or decisions."

Based on this opinion, it shows that a human being is a creature that is easily controlled by anger and other feelings that can plunge them into making wrong decisions. Of course, this is the biggest flaw in the democratic system because it emphasizes the quality of its human resources. Democracy requires a comprehensive discussion to conduct not only direct elections but also democracy is a complete system to ensure the ideology and state's achievements. As understood by Lincoln, democracy is a form of government in which the ultimate political power and sovereignty are in the hands of the people who have the right to rule. Therefore, a democratic government is a government that has the people's approval. Moreover, democracy is a government that has received a mandate to govern from the people in a people's territory; a government system or what Lincoln referred to as "government by people" is defined in the form of a representative institution on behalf of the people's interests.⁴

¹ Yakob Noho Nani, "Pancasila Democracy versus Direct Democracy: A Review of the Concept of Civil Society," *European Journal of Science, Innovation and Technology* 2, no. 2 (2022): 1–15.

² Ibid.

³ Aidul Fitriadi Azhari, *Demokrasi Dan Autokrasi* (Yogyakarta: Pandiva Buku, 2010).

⁴ Gregorius Sahdan, *Jalan Transisi Demokrasi Pasca Soeharto* (Jakarta: Pondok Edukasi, 2004).

Democracy in Indonesia underwent significant changes from the old order to the new one. One is an approach to democracy through an egalitarian and democratic perspective. This approach is through integrating state and military commands and eliminating mass politics. During the New Order era, democracy became very limited; the background of the restrictions on democracy during the New Order era was the correlation of economic development stability identified with national stability. Gradually, the concept of national stability was expanded into an anti-critical and anti-concept logic.⁵ Severe human rights violations occurred, for example, the Tanjung Priok violation, the 1998 kidnapping of activists, the Semanggi tragedy, the Trisakti tragedy, and the Munir murder case. The Tanjung Priok incident is a case of gross human rights violations in the form of mass killings, building destruction, and shootings by the police. This incident occurred on September 12, 1984, in Tanjung Priok, North Jakarta. In short, this case is a form of authority abuse by military personnel. The military opened fire on demonstrating protestors because it was forbidden to criticize the government at that time. The military personnel is from the 6th Air Defense Artillery Battalion. At least 400 people were killed and missing in this incident.⁶

The subsequent gross human rights violation was the 1997-1998 kidnapping of activists. The military carried out the kidnapping. The military formed a team called the *Tim Mawar* (Rose Team), which Major Bambang Kristiono formed.⁷ The subsequent gross human rights violation was the 1997-1998 kidnapping of activists.⁸ The military arrested thirteen activists, one of whom was named Wiji Thukul.⁹ Another serious human rights violation is the semanggi tragedy. The semanggi tragedy is divided into the first and second semanggi tragedy. The 1st Semanggi tragedy occurred on November 11-13, 1998, and claimed the lives of 17 civilians. The tragedy happened because of public distrust of the New Order regime led by B.J. Habibie. The public considered the regime highly involved in corruption, collusion, and nepotism. Most of the victims were students who rejected the government regime. Instead of disbanding the masses, the incident turned into a massacre of civilians.¹⁰ The 2nd Semanggi tragedy occurred on September 24, 1999. The background was because the law on the Management of Dangerous Conditions was rejected. Students and

⁵ Maria Winda Klaudia and Ida Bagus Nyoman Wartha, "Perkembangan Politik Dan Ekonomi Masyarakat Indonesia Pada Masa Awal Reformasi Tahun 1998-1999," *Jurnal Santiaji Pendidikan (JSP)* 10, no. 1 (2020): 1-7, <https://doi.org/https://doi.org/10.36733/jsp.v10i1.699>.

⁶ Verelladevanka Adryamarthanino, "Contoh Pelanggaran HAM Berat Di Indonesia," KOMPAS.com, 2021, <https://www.kompas.com/stori/read/2021/09/30/100000479/contoh-pelanggaran-ham-berat-di-indonesia?page=all>.

⁷ Bobi Aswandi and Kholis Roisah, "Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (HAM)," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 128-45, <https://doi.org/https://doi.org/10.14710/jphi.v1i1.128-145>.

⁸ Adryamarthanino, "Contoh Pelanggaran HAM Berat Di Indonesia."

⁹ Ibid.

¹⁰ Ibid.

activists refused the law because this law further strengthened the military power in Indonesia. Various lines of government. At least one activist who died was Yun Hap, a student from the University of Indonesia.¹¹ Another case is the Trisakti tragedy that occurred on May 12, 1998. This tragedy also involved students demanding that the "Suharto regime" step down from its authority. At least four were killed due to gunshots during demonstrations. The deceased students were Hafidin Royan, Elang Mulia Lesmana, Hertanto, and Hendriawan Sie. Another case is the Munir Murder Case. Munir's murder is the umpteenth case involving student activists. Munir died while on his way to the Netherlands by plane. There are traces of arsenic compounds in the results of the autopsy process released by the Dutch Police that indicated Munir was poisoned to death. The reason is apparent because Munir is active in fighting for human rights in Indonesia, considering the condition of Indonesia at that time was still controlled by the military.¹²

Democratic reform is a solution to the economic crisis and the division of the economic elite. However, democratic reform has led to various democratic paradoxes, namely the development of political violence, anarchy, radicalism, and public conflict. Finally, in the reformation era, democracy moved to optimism in implementing democracy due to the widespread enthusiasm for reform.¹³ In addition, there is a view that democracy is a political conspiracy that is political rhetoric rather than a political agenda. After developing democracy in Indonesia over several eras, a concept of democracy considered linear with the Indonesian nation is applied, namely constitutional democracy. Constitutional democracy is one of the most widely used types of democracy globally. The government that is run based on this system is based on a constitution or limited government.¹⁴ Democracy and constitutionalism share the same fundamental values: equality and respect for human dignity. Still, the difference between democracy and constitutionalism can explain how the people choose their representatives. Constitutional democracy does not place procedures as the only way to determine the legitimacy of the administration or government but directs matters that are substantive to the legitimacy. Indonesia is currently implementing Pancasila democracy, a constitutional democracy based on the mechanism of people's sovereignty in every government and state administrator based on the 1945 Constitution.¹⁵

¹¹ Ibid.

¹² Ibid.

¹³ Angga Nurdin Rahmat, "Pusaran Globalisasi Dan Residu Transisi Demokratisasi Di Indonesia," *Academia Praja: Jurnal Ilmu Politik, Pemerintahan Dan Administrasi Publik* 1, no. 2 (2018): 77–90, <https://doi.org/https://doi.org/10.36859/jap.v1i02.72>.

¹⁴ Tatu Afifah, Fuqoha, and Sukendar, "Implikasi Ideologi Pancasila Pada Gerakan Sosial Islam Dalam Prinsip Demokrasi Konstitusional," *Ajudikasi: Jurnal Ilmu Hukum* 4, no. 2 (2020): 181–91, <https://doi.org/https://doi.org/10.30656/ajudikasi.v4i2.3003>.

¹⁵ Apiek Gandamana, "Memaknai Demokrasi Pancasila," *Jurnal Handayani* 7, no. 1 (2017): 109–15, <https://doi.org/https://doi.org/10.24114/jh.v7i1.6581>.

Pancasila democracy is a constitutional democracy that emphasizes a presidential system and is based on Pancasila, the 1945 Constitution, and the TAP MPRS/MPR. Pancasila democracy in the reform era was marked by freedom of the press and freedom to express opinions. The two forms of freedom function as checks and balances and provide criticism so that the power exercised is not arbitrary. Based on the description above, the development of democracy in Indonesia increasingly reflects the values contained in the 1945 Constitution. Pancasila is the basis of the Indonesian state, which was born and grew in the nation's personality, which is a form of the attitude and personality of the Indonesian nation. Pancasila is used as the Indonesian people's principles and state ideology. As the ideology of the Indonesian state, Pancasila contains fundamental values and ideas that can be seen through the Indonesian nation's behavior, attitudes, and personality.¹⁶ The values of Pancasila are expected to be the standard so that democracy in Indonesia can balance the fulfillment between Indonesia as a state of law and the fulfillment of human rights. Based on data released by the World Justice Project regarding the Rule of Law Index, Indonesia 2021 will occupy the 68th position out of 139 countries worldwide. 2021 data showed that Indonesia has decreased in terms of the overall value, which in 2020 had increased to 0.53 but fell back to 0.52 in 2021. Indonesia's ranking in Southeast Asia occupies position 9 out of 15 countries.¹⁷ There are at least seven factors that become indicators in this assessment. First, constraints on government powers; second, absence of corruption; third, open government, fundamental rights; fourth, order and security; fifth, regulatory enforcement; sixth, civil justice; seventh, criminal justice.¹⁸ The existing data shows shortcomings that still need to be perfect to say that the Indonesian state has become legal.

Implementing democracy is expected not to stagnate and be aware of the emergence of symptoms. These symptoms are a tolerant attitude towards violence, an attitude of limiting civil liberties, and restrictions on the space for media freedom, which can injure the implementation of democracy which is contrary to human rights principles in Indonesia. On the other hand, democracy and human rights in Indonesia are avoided to bypass the Indonesian constitution and ideal of law, Pancasila. These facts, described by the previous author, show that democracy and human rights fulfillment in Indonesia still has many problems. Hence, it still needs to be closer to the country's aspired goal, which is the values of Pancasila.

¹⁶ Ridwan Arifin and Lilis Eka Lestari, "Penegakan Dan Perlindungan Hak Asasi Manusia Di Indonesia Dalam Konteks Implementasi Sila Kemanusiaan Yang Adil Dan Beradab," *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (2019): 12–25, <https://doi.org/https://doi.org/10.23887/jkh.v5i2.16497>.

¹⁷ World Justice Project, "Indonesia," World Justice Project, 2021, <https://worldjusticeproject.org/rule-of-law-index/country/2021/Indonesia>.

¹⁸ Ibid.

B. Identified Problems

Based on the background description, the research will examine 2 (two) problems, namely:

1. The relationship between democracy, Pancasila, and human rights in Indonesia; and
2. Reasons for future Indonesian democracy based on Pancasila and the goals of the Indonesian state.

C. Research Methods

This type of research is normative research that descriptively examines humans, circumstances, and other phenomena to strengthen old theories and support new ones still in the drafting stage.¹⁹ The research uses an approach to formulate the problem and research objectives. The data sources used are secondary data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials.²⁰

D. Research Findings and Discussions

1. The Relationship between Democracy, Pancasila and Human Rights

The principles of democracy were arranged by the values that grow in society, although it must be said that it is only limited to procedural democracy. In the decision-making process, voting is more prioritized than deliberation for consensus, which is the original principle of Indonesian democracy. This democratic practice based on a mental state rooted in the nation's noble values is a mere nonsense movement. The concept of Pancasila democracy is extracted from the values of the indigenous Indonesian people with the values attached to them, such as democratic villages, collectivism meetings, deliberation, consensus, mutual support, and other related terms. The aim is to provide an empirical sociological basis for the democracy's concept aligned with the indigenous Indonesian people's nature of life, not something foreign forced on the Indonesian nation's reality.²¹

The referred indigenous peoples above are forms of community life that have been taking place on the archipelago islands since centuries ago and are composed of the different minor units of life such as villages in Java, Nagari in West Sumatra, a village in Lampung or Subak in Bali. This indigenous society has a set of mental and moral values that are homogeneous, structural, and collective; all of which have their cultural system and are run democratically, namely direct democracy as existed in the city-states of ancient Greece 25 centuries ago.

¹⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 2012).

²⁰ Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2012).

²¹ Topan Indra Karsa, "Perkembangan Paradigma Demokrasi Pancasila Dalam Pembangunan Hukum Di Indonesia," *Keadilan* 17, no. 2 (2019): 130–44, <https://doi.org/https://doi.org/10.37090/keadilan.v17i2.269>.

The implementation of democracy in Indonesia can be divided into five periods: the metamorphosis process of democratic values extracted from Indonesian cultural wisdom has undergone several periodizations in the implementation process as a necessity. These stages can be seen in the following description.²²

- a. Implementation of democracy during the revolution in 1945-1950.
- b. Implementation of democracy in the Old Order Era.
 - 1) Liberal democracy period 1950-1959.
 - 2) Guided democracy period 1959-1965.
- c. Implementation of democracy in the New Order era 1966-1998.
- d. Implementation of transitional democracy in 1998-1999.
- e. Implementation of democracy during the reformation period from 1999 to the present.

Indonesia has adopted a democratic system since the proclamation. The democratic system implemented in Indonesia requires a more detailed explanation. The democratic system includes various types; for example, liberal democracy and Pancasila democracy. Pancasila democracy is essentially a norm that regulates the implementation of people's sovereignty and the administration of state government in political, economic, socio-cultural, and defense and security life. Pancasila democracy is applied to every citizen of the Republic of Indonesia, social and political power organizations, community organizations, and other social institutions, as well as state institutions at the national and regional levels. Pancasila democracy has applicable principles, such as:

- a. Freedom/Equality. Freedom is the basis of democracy. Freedom is considered a means of achieving progress and providing maximum results from people's efforts without restrictions from the authorities. The principle of equality defines that people are considered the same without being discriminated against and gaining access and shared opportunities to develop themselves according to their potential. The freedom contained in the Pancasila democracy does not mean the Free Fight Liberalism that has grown in the West, but the freedom that does not interfere with the rights and freedoms of others.
- b. People's sovereignty, in essence, the policies made are the will of the people and for the interests of the people. This kind of mechanism will achieve two things: the possibility of abuse of power is very slight, and the interests of the people in government tasks are more secure. Another

²² Zulfikri Suleman, *Demokrasi Untuk Indonesia: Pemikiran Politik Bung Hatta* (Jakarta: Kompas, 2010).

manifestation of the concept of sovereignty is the supervision by the people. Supervision is carried out because democracy does not believe in the kindness of the rulers.²³

A democratic country adheres to the government's form or mechanism by realizing the society's sovereignty to be carried out by the government.²⁴ The practice of democratic life, as occurs in developing countries, has a democratic format, but it has not been implemented optimally. Since the new order era, human rights violations are still happening. In addition, corruption, collusion, and nepotism are bad habits that cannot be avoided. Abuse of power so that the law becomes subject to politics that can manipulate justice in judicial power is contrary to human rights.²⁵ According to Article 1 paragraph (2) of the 1945 Constitution, Pancasila democracy is a constitutional democracy that has several principles, namely:

- a. Equality for all Indonesian people means that the rights and obligations of the Indonesian people are equal and equal.
- b. The principle of balance between rights and obligations means that the state accepts its rights but must also be balanced with its obligations to citizens.
- c. Realizing a sense of social justice for all citizens.
- d. The implementation of freedom is morally responsible to God Almighty, oneself, and others.

Recognition of human rights in the concept of a democratic state Pancasila. Pancasila democracy is based on cooperation aimed at the welfare of the people, which contains elements of people's welfare elements of religious awareness. These values are based on truth and noble character, making the Indonesian personality. Thus, it is sustainable. These four principles are inseparable from respect.²⁶ In Pancasila democracy, the system of state organization is carried out by the people themselves or with the people's consent. In addition, individual freedom in Pancasila democracy must be harmonized with social responsibility. The concept of a state of law Pancasila has the principle of having human rights protection with legal guarantees for demands for its enforcement through a fair process. The protection of human rights is widely promoted to promote respect for the protection of human rights as an essential feature of a democratic rule of law.

²³ Jimly Asshiddiqie, *Hukum Tata Negara & Pilar-Pilar Demokrasi* (Jakarta: Sinar Grafika, 2011).

²⁴ Ismail and Fakhri Lutfianto Hapsoro, "Tinjauan Yuridis Tindak Pidana Pemilu Dalam Perspektif Prinsip Kedaulatan Rakyat," *Justitia et Pax* 35, no. 1 (2019): 55–66, <https://doi.org/https://doi.org/10.24002/jep.v35i1.2052>.

²⁵ Wari Martha Kambu, "Tinjauan Yuridis Tentang Hak Asasi Manusia Berdasarkan Pasal 28D Ayat 3 Undang-Undang Dasar 1945," *Lex et Societatis* 9, no. 1 (2021): 137–45, <https://doi.org/https://doi.org/10.35796/les.v9i1.32170>.

²⁶ Karsa, "Perkembangan Paradigma Demokrasi Pancasila Dalam Pembangunan Hukum Di Indonesia."

Human rights are fundamental rights owned by every human being as a gift from God whose existence cannot be contested. These rights have been brought from birth and are inherent in humans as creatures of God. Every human being has the same degree and dignity. Law Number 39 of 1999 concerning Human Rights states that human rights are a set of rights inherent in the nature and existence of humans as creatures of God. Therefore, human rights must be respected, upheld, and protected by the state, government, and everyone for honor and protection of dignity and worth. Concerning democracy, human dignity and the freedom of citizens are interrelated. Suppose democracy can realize the fulfillment of the rights of the people themselves and lead to quality democratic outcomes. Therefore, the people have the right to get a proper education, the right to religion according to their beliefs, the right to have an opinion, the right to politics, get a decent job, and get welfare guaranteed by the state.²⁷

Democracy and human rights have a very close relationship because democracy is one of the foundations of people's human rights can be fulfilled. Then how is it related to Pancasila? Based on the *stufen* theory or ladder theory by Hans Kelsen, the position of Pancasila is at the highest level. As the highest ladder, Pancasila is placed as groundnorms or the source of all laws that form the basis for the enactment of the 1945 Constitution.²⁸ Pancasila, as a *grundnorm* represents the recognition of human rights, which can be studied through each precept. The first precept is that God has given the state an obligation to guarantee the freedom of the people to believe in religion according to their respective beliefs. The second precept is civilized humanity, namely maintaining and protecting the soul or self physically and mentally. The second precept also gives responsibility to the state to provide personal protection, family, honor, and dignity. The fifth precept, social justice, means that all Indonesian people get fair treatment in law, politics, society, economy, and culture.²⁹ Based on these three precepts, Pancasila has recognized human dignity and contains recognition of human rights. To get a clearer picture of the relationship between democracy, Pancasila, and human rights, the research will illustrate as follows.

²⁷ Fauzan Khairazi, "Implementasi Demokrasi Dan Hak Asasi Manusia Di Indonesia," *INOVATIF / Jurnal Ilmu Hukum* 8, no. 1 (2015): 72–94.

²⁸ Nunung Nugroho, "Justice in Partned in the Legal System of Pancasila as the Parent of Strengthening the Value of Unity and Unity," *UNTAG Law Review (ULREV)* 5, no. 1 (2021): 74–83, <https://doi.org/http://dx.doi.org/10.56444/ulrev.v5i1.2229>.

²⁹ Aswandi and Roisah, "Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (HAM)."

Illustration 1. The Relationship between Democracy, Pancasila, and Human Rights



Based on Illustration 1, the relationship between Pancasila, democracy, and human rights, namely, Pancasila as the basis of the state contains human rights as the basis for implementing democracy. Therefore, democracy is also part of the fulfillment of human rights. On the other hand, democracy is a reflection of Pancasila. The enforcement of democracy is one form of society in Indonesia that guarantees and protects human rights. As a Pancasila democracy, Indonesia has established human rights as a prerequisite and a goal in implementing democracy. In the implementation of democracy, some principles must be implemented, namely under the precepts of Pancasila, such as equality for all Indonesian people, freedom of responsibility, realizing justice, and a balance between rights and obligations.

2. Indonesian Democracy Based on Pancasila and the Goals of the Indonesian State

The definition of democracy shows that the people hold power, make and determine the highest decisions and policies in the administration of the state and government and control the implementation of policies, whether carried out directly by the people or their representatives through representative institutions. Therefore, a country that adheres to a democratic system is organized based on the will and will of the majority people and does not exclude the minority people.³⁰ Sovereignty in Indonesia is a constitutional democracy whose values and rules are contained in laws and regulations. Democracy plays a very significant role to the people who carry it out because, through sovereignty, the rights of the people to choose for themselves the stages of a country can be guaranteed. Pancasila democracy is based on the values of the indigenous Indonesian people with the values attached to them, such as democratic villages, collectivism meetings, deliberation, consensus, mutual assistance, and other related terms. The aim is to provide an

³⁰ Ellya Rosana, “Negara Demokrasi Dan Hak Asasi Manusia,” *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 12, no. 1 (2016): 37–53, <https://doi.org/https://doi.org/10.24042/tps.v12i1.827>.

empirical sociological basis on the concept of democracy following the nature of the indigenous Indonesian people's life, not something inspired by western culture and integrated into the life of the Indonesian nation.³¹ Democracy in Indonesia as a constitutional democracy is firmly based on Pancasila because the values of Pancasila are universal and show humanity so that they can be readily accepted. However, the values in Pancasila are only sometimes accepted by all nations. The difference lies in the historical fact that values are consciously assembled and validated into a single unit that functions as the basis for political behavior and the nation's moral attitude.

The difference lies in the historical fact that values are consciously assembled and validated into a single unit that functions as the basis for political behavior and the nation's moral attitude. As the country's philosophy, Pancasila reflects Indonesian nationality, internationalism or humanity, consensus or democracy, prosperity, and cultured divinity.³² Therefore, Pancasila is the unique property of the Indonesian nation and, simultaneously, becomes the national identity thanks to its moral and cultural legitimacy. Pancasila is formed through the noble values contained and lived in the life of the Indonesian people. The unique values contained in Pancasila can be found in its precepts. The application of Pancasila sovereignty occurs under the growth of community activities in Indonesia. The fulfillment of the populist values in the Pancasila precepts, which the people in Indonesia demonstrate, is based on the fourth precept.³³ Indigenous Indonesian cultural values guide the thought of the rule of law in Indonesia. The idea of a rule of law that encourages the development of democracy in Indonesia is Pancasila democracy. Pancasila has a vital role in upholding the rule of law. Pancasila is an open philosophy, state foundation, and ideology. Pancasila is a source of enlightenment, inspiration, and a basis for solving problems faced by Indonesia.

The elements of the rule of law in Indonesia are values taken from the entire process of the birth of the Indonesian state, the philosophical basis, and the legal ideals of the Indonesian state. Therefore, the position of the 1945 Constitution's Preamble, which also formulates the Pancasila, is the highest source of law for the

³¹ Ambar Wida Astuti Aprillia, Anita Trisiana, and Atiska Eka Parya, "Nilai Demokrasi Indonesia Berdasarkan Pancasila Dan UUD 1945," *Jurnal Global Citizen: Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan* 10, no. 1 (2021): 57–70, <https://doi.org/https://doi.org/10.33061/jgz.v10i1>.

³² Eko Wahyono and Fadhillah Sri Meutia, "Diskursus Demokrasi Pancasila Dalam Lintas Perspektif Etnisitas," *Journal of Government & Civil Society* 1, no. 2 (2017): 121–33, <https://doi.org/http://dx.doi.org/10.31000/jgcs.v1i2.441>.

³³ Galih Puji Mulyono and Rizal Fatoni, "Demokrasi Sebagai Wujud Nilai-Nilai Sila Keempat Pancasila Dalam Pemilihan Umum Daerah Di Indonesia," *Citizenship: Jurnal Pancasila Dan Kewarganegaraan* 7, no. 2 (2019): 97–107, <https://doi.org/http://doi.org/10.25273/citizenship.v7i2.2257>.

Indonesian legal state. The preamble to the 1945 Constitution is the highest abstraction value. The value contained in the preamble is a guiding method for preparing the articles in the 1945 Constitution. Therefore, the preamble does not deviate from the state's philosophy and ideals. The position of Pancasila in the Indonesian constitutional system is as a *staatsfundamentalnorm*. Pancasila is a legal ideal (*rechtsidee*) and is a guiding star. This position requires that the formation of positive law achieve the ideas in Pancasila and can be used to test positive law.³⁴ With the stipulation of Pancasila as a *staatsfundamental* norm, the formation of law, its application, and implementation cannot be separated from the values of Pancasila.

Democracy is a political foundation that can uphold the people's sovereignty by realizing the state's goals, as stated in the preamble to the 1945 Constitution. Apart from Pancasila, democracy must also be based on the goals of the Indonesian state. The objectives of the Indonesian state are:

- a. Promote the general welfare. The entire Indonesian nation and the entire homeland of Indonesia.
- b. Enrich the life of a nation.
- c. Participate in a world order based on freedom, eternal peace, and social justice.

The fulfillment of the state's goals is one of the frameworks of democracy. In implementing a democracy, the balance between human rights and the law must always be balanced. If the concept of democracy is implemented without being framed by legal signs, then anarchism happens. On the other hand, if the law is enacted without democratic procedures, then what happens are the repressive and coercive practices of power that are legalized by law.³⁵ To ensure this balance, Indonesia needs an indicator that must be met not to overstep the law or forget what the people are. So, the indicator is democracy which must be based on the goals of the Indonesian state.

Pancasila also functions as an idea of law (*rechtsidee*), a philosophical basis (*philosophische grondslag*), a fundamental norm of the state (*staatsfundamentalnorm*), and a view of life (*weltanschauung*).³⁶ Pancasila is a flexible ideology that can be drawn, suppressed, and expanded to cover almost any situation. The perspective and mindset of the 1945 Constitution towards human rights and the constitutional rights of citizens have changed due to

³⁴ Tengku Erwinsyahbana and Tengku Rizq Frisky Syahbana, "Perspektif Negara Hukum Indonesia Berdasarkan Pancasila," 2018, <https://doi.org/https://doi.org/10.31227/osf.io/cwev7>.

³⁵ A. Ahsin Thohari, "Mahkamah Konstitusi Dan Pengokohan Demokrasi Konstitusional Di Indonesia," *Jurnal Legislasi Indonesia* 6, no. 3 (2009): 95–108.

³⁶ Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, Dan Hasil Pembahasan 1999-2002*, 8th Ed (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010).

world views, internationalism, and cosmopolitanism shifts regarding human rights and constitutional rights. Jimly Asshiddiqie emphasized that the fundamental constitutionalism ground is a general agreement or consensus among most people about the ideal development related to the state. Members of the political community need a state organization to protect and advance their essentials through establishing and using a mechanism known as the state. The general agreement is the key; when it collapses, so is the legitimacy of the related powers, which eventually leads to civil war and revolution. This is reflected in three significant events in human history as important revolutions: France in 1789, America in 1776, Russia in 1917, and Indonesia in 1945, 1965, and 1998.³⁷

Therefore, to ensure community lifetime solidarity, it is necessary to formulate the goals and ideals of the community as *staatsidee*. It functions as a *philosophische grondslag* and a common ground among society members in the context of state life. Soepomo translated the term ideal state as *staatsidee* at the *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia* (BPUPKI) Meeting on May 31, 1945. According to Soepomo, the ideal state as *staatsidee* is a "basic understanding of the state". In his speech, Soepomo explained as follows:

“...before talking about the united states, republic, or monarchy, we must talk about the state, the basis of the state, therefore all state formation is based on *staatsidee*”

David Bourchier, an Indonesianist from Australia, and a professor of Asian Studies at the University of Western Australia defines *staatsidee* in his book “Illiberal Democracy in Indonesia: The Ideology of the Family State Politics in Asia”. The book elaborates *staatsidee* as the central concept behind all aspects of state administration and law, including the constitution. According to Bourchier, the main issue of controversy at BPUPKI is related to the philosophical foundation as the basis of the state. The *staatsidee rationale* was written by Bourchier as an essential and central foundation in the positivist approach to constitutional law.³⁸ Soepomo's proposition regarding *staatsidee* emphasizes a close relationship between Soepomo's opinion and the historical root because it is a crucial axiom of this view. The state organization is closely related to Germany's legal lineage or *rechtsgeschichte* and its

³⁷ Ahmad Chaidir Mirza, Sudarsono, and Istislam, “The Meaning of Political Rights of Former Prisoners in the Perspective of Pancasila Democracy,” *International Journal of Social Science Research and Review* 5, no. 1 (2022): 56–63, <https://doi.org/http://dx.doi.org/10.47814/ijssrr.v5i1.159>.

³⁸ David Bourchier, *Illiberal Democracy in Indonesia: The Ideology of the Family State* (London: Routledge, 2014).

social structure. It is also represented by Georg Jellinek (1851-1911) and Hans Kelsen (1881-1973), who dominated mainstream legal thought in Germany and the Netherlands before World War II. It eventually dominated the practice of law in Indonesia. Because of this doctrine, the state forms a hierarchy of legal norms that govern based on authority from a higher to a lower level. Soepomo emphasized that *staatsidee* was a top priority because everything came from *staatsidee*.³⁹

In this regard, Adnan Buyung Nasution, in his speech at the Inaugural Professorial Lecture at Melbourne Law School, the University of Melbourne in 2010, entitled *Towards Constitutional Democracy in Indonesia*, stated that:

*"Therefore, the state must be given unconditional trust. There should be no concern about the potential abuse of power by the state. It is inconceivable that the country could misuse its power. Thus, there is no need to limit state power, let alone human rights. For the same reason, the idea of an Integralistic State rejects the need for human rights guarantees because it is considered excessive and has a negative impact. Therefore, individual rights are placed under common interests, which are considered more important."*⁴⁰

Soepomo's view revealed that the state must be given a mandate without reserves. There should be no concern about the potential abuse of power by the state. It is only conceivable that a country could misuse its power. Thus, the state's power can be unrestricted, especially human rights. For the same reason, Soepomo's idea of an integralist state also rejects the need for human rights guarantees because these guarantees are considered excessive and have a negative impact. Therefore, individual rights are placed under the common interest, which is more important. Attamimi argues that after debating, Soepomo finally proposed a compromised solution. However, it remains consistent with the constitution's systematic draft, which was drawn up following the ideals of a kinship state and previously called the ideals of an integralistic state.

This compromise can be seen in Article 28 of the 1945 Constitution. Mohammad Hatta's proposal, which initially read, "The right of the people to express their feelings verbally and in writing, the right ..." was later changed in the formulation and accepted into "Freedom of association and assembly ..." The changes requested by Soepomo related to the word "rights", indicating a conflict between

³⁹ Ibid.

⁴⁰ Adnan Buyung Nasution, "Towards Constitutional Democracy in Indonesia" (Melbourne, 2010).

the people and the state and not by the ideals of the state. The changes requested by Soepomo related to the word "rights", indicating a conflict between the people and the state and not by the ideals of the state. That the main points of the draft constitution by Soepomo and compiled based on the agreed-upon kinship principle, as Hatta did. Soepomo's understanding of the integralistic state lies in the concept that the state is an integral social order; its members and parts constitute an organic community unit, an unselfish unity that serves all classes, a living unity based on kinship.

The phrase closely related to the ideals of the state is the ideals of law. The idea of law is a translation of *rechtsidee*. Gustav Radbruch argues that legal ideals do not only function as a regulatory benchmark to test whether a positive law is fair or not. On the other hand, it also serves as a constitutive basis on which law would lose its meaning without legal ideals. With a broader perspective, Rudolf Stammler provides an understanding of legal ideals as a construction of thought which is a must to provide legal direction to the ideals desired by society. The goal of the law is to serve as a guiding star (*leitstern*) for the ideals of society's achievements. Although there are endpoints that are impossible to achieve, the ideals of law are helpful because they contain two sides. First, with legal ideals, the applicable positive law can be tested. Second, legal ideals can direct positive law as an element with coercive sanctions against something fair (*zwangversuchzum Richtigen*).⁴¹

Radbruch also said that the concept of law depends on *rechtsidee*, which translates into ideas of law in English. In developing the concept of law, *rechtsidee* is a value directed by legal reality (for example, law). *Rechtsidee* is also considered as *Gerechtigkeit* or justice, an absolute, axiomatic, or value that cannot be derived from other values. Thus, the quality of legal ethics is derived from ideas of law (*rechtsidee*). Therefore, *rechtsidee* is also called the method of thinking. According to Stammler, the function of *rechtsidee* is to assess the truth of the law. Therefore, *rechtsidee* becomes the guardian of the legal nature, or in German, it is known as *Rechtsqualität*.

The idea of law is the product of a unified worldview, religious belief, and social reality projected in validating citizens' behavior that embodies these three elements. The author considers that the ideals of law must contain the understanding that the law's nature as a rule of community behavior comes from the ideas, interests, intentions, inventions, and thoughts of the community itself. Ideas of law are also related to law or perceptions of the meaning of the law, which essentially consists of justice, expediency, and legal certainty. In the

⁴¹ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Jenis, Fungsi, Dan Materi Muatan* (Yogyakarta: Kanisius, 2007).

dynamics of social life, the ideal of law will function as a general principle. It functions as a guide, a norm of criticism (rules and evaluation), and a driving factor in the administration of law (formation, discovery, application) and legal behavior.

Satjipto Rahardjo places the ideal of law as an element that aims to achieve society's ideals. Legal ideas are helpful because they can be an experimental tool for applicable positive law, and legal ideals can direct positive law toward justice and validity. Enforcing the law (which consists of thousands of laws) requires a reference to its source, which is the constitution and, more specifically, the preamble to the 1945 Constitution (Pancasila). Based on the previous explanation, in the context of Indonesia, Pancasila is the ideal of the state as well as the ideal of law. It is important to note that the ideal of law, based on universal human rights and the inviolability of human dignity, is linked to the ideal of a human being free from fear and poverty. Furthermore, in German legal thought, the rule of law (*rechtsstaat*) means that the state is limited by the embodiment of the ideal of law (*rechtssidee*).⁴²

Law enforcement regarding human rights in Indonesia is still relatively poor. Of course, this fact is supported by the Indonesian National Human Rights Commission. The commission stated that since 2019 the enforcement and handling of human rights violations are still far from the National Action Plan for Human Rights or *Rencana Aksi Nasional Hak Asasi Manusia* (RANHAM) and Nawacita, which the president echoed at the beginning of his leadership period. This statement reflects on handling uncompleted gross human rights violations cases and the number of cases that need to be appropriately handled and correctly according to the applicable law.⁴³

Based on these problems, the author tries to provide several strategic steps for improving and fulfilling human rights enforcement in Indonesia. These strategic steps include revising Law Number 26 of 2000 concerning the Court of Human Rights. Based on the Law on the Human Rights Court, the crimes included in the scope are only two crimes even though in international provisions, four crimes exist as human rights crimes, especially regarding gross human rights violations. The author considers this a normative loophole for the delay in resolving Indonesia's grave human rights problem. Second, reforming law enforcement officers, in this case, the police, and prosecutors, to be professional in executing their functions and

⁴² Satjipto Rahardjo, *Mendudukan Undang-Undang Dasar: Suatu Pembahasan Dari Optik Ilmu Hukum Umum* (Semarang: Badan Penerbit Universitas Diponegoro, 2007).

⁴³ Komisi Nasional Hak Asasi Manusia Republik Indonesia, "Penegakan HAM Di Indonesia Belum Mengalami Kemajuan," Komnas HAM Republik Indonesia, 2020, <https://www.komnasham.go.id/index.php/news/2020/7/13/1480/penegakan-ham-di-indonesia-belum-mengalami-kemajuan.html>.

authorities. The reason is that the enforcement of human rights, involving government officials and political elites, is still vulnerable to intervention. These parties' role is highly crucial, given that the police and prosecutors are under the direct command of the president. Of course, political power will be a separate factor in hindering the enforcement of human rights in Indonesia. Third, strengthening the National Human Rights Commission to be more independent in its functions and authorities. The reason is that the commission's institutional part in upholding and fulfilling national human rights still needs to be stronger.

E. Conclusions

Based on the research, it is concluded as follows:

1. The relationship between Democracy, Human Rights, and Pancasila is concord. Pancasila is the ideal of the law of the Indonesian state, the basis of the state, and the foundation of the state philosophy. The relationship is contained in Pancasila; these values highly uphold human rights. This human rights recognition can be seen in the second value of Pancasila, which reads "fair and civilized humanity". On the other hand, the relationship between a democracy with human rights and Pancasila is that democracy act as a system. Indonesia uses this system to realize the ideals of the Pancasila law with human rights as a ground for its implementation.
2. Pancasila must always remain the state philosophy's ground because Pancasila is the result of the nation's founders' consensus agreement in the past. The value of Pancasila is an identity of Indonesia since it is one of a kind. Moreover, Pancasila is prestigious because Pancasila unites the diverse Indonesia cultures. In addition, the ideal of law not only functions as a regulatory benchmark to test whether a positive law is fair but also serves as a constitutive basis; the law will lose its definition without the ideals of law's presence.

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