

STATE AND RELIGION RELATIONSHIP IN THE CONTEXT OF LAW ENFORCEMENT IN INDONESIA

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ABSTRACT

The problem studied in this research is how the relationship between the state and religion in the context of law enforcement in Indonesia, especially regarding the views of religious values and state power in deciding a case based on the Pancasila Law. This research uses qualitative research - verification and direct observation using the analysis of Democracy theory and the 1945 Constitution model on the relationship between state and religion to see the influence of religious values on judges' decisions and Indonesian government policies. This research will prove the role of religious values in a more just political constellation. The focus of the study is set on three specific indicators, namely Transparency, Accountability and Law Enforcement and Government policies, this was chosen in connection with the symptoms that appear in the three indicators based on the results of initial observations, namely: 1). In terms of transparency indicators, so far the judiciary has not been fully open in the application of the law because the judiciary always tries to provide unsatisfactory information and data to the public or the public; 2) In the accountability indicators, so far, it seems that the lower courts (First Level) do not have the same understanding with the higher Courts (Appeal and Cassation level) against a mighty; and 3) On indicators of law enforcement and policies, the Government has not fully implemented the Pancasila law as a form of justice for the Indonesian people.

Keywords: *State, Religion, Law Enforcement, Pancasila Law,*

A. Introduction

Based on the Constitution or the 1945 Constitution, in Indonesia the only laws that can be required or enforced by the state against its people are those that are determined by the people themselves through their representatives in the people's representative bodies at the national, regional and local levels. In accordance with the principle of popular sovereignty, in a democratic country, the law is made to protect the human rights of citizens, especially from acts outside the provisions of the law. The law is carried out in the context of realizing social order and legal certainty and justice, so that the political process in administering government can run peacefully in accordance with legal and constitutional corridors.

In the provisions of Article 1 paragraph (3) of the 1945 Constitution as a result of the 2002 Amendment, it is stated that the State of Indonesia is a state of law¹. In the General Elucidation of the 1945 Constitution before the amendments were made, it was emphasized that the Indonesian government system was a state based on law (*rechstaat*) not based on mere power (*machstaat*). Then the experts questioned, what kind of legal state is adopted by Indonesia as referred to by the *rechstaat*, whether a Continental European type of law state (*rechstaat*) or an Anglo-Saxon type of law state (rule of law).

In this case, some experts in constitutional law tend to interpret Indonesia as implementing the concept of *rechstaat*. However, when viewed in implementation, the Indonesian state actually adheres to both, because it administers administrative justice in the concept of *rechstaat*, and recognizes equality/equal treatment before the law (equal justice under law) as the concept of the rule of law. That Indonesia cannot be stated absolutely as an individual rule of law or a liberal rule of law as described by the con-

¹ Dalam Penjelasan Umum UUD 1945 sebelum dilakukan amandemen ditegaskan, bahwa Indonesia adalah negara yang berdasarkan atas hukum (*rechstaat*) tidak berdasarkan atas kekuasaan belaka (*machstaat*)

cept of the rule of law in question. It is proven that Indonesia does not make a strict separation between state and religion. And if this is returned to the basic norms (ground norm) of the implementation of a constitutional government, then Indonesia is more appropriate and closer to the classification as a state of Pancasila law (Conditional Law System).

B. The Concept of Law and Justice Based on Pancasila

Justice is the main element inherent in law so that it can be said that justice is a synonym of law or it can be said that law is justice, so the essential concept of law is law as justice. Consequently, as a state of law, every citizen must submit and obey the laws and regulations and court decisions that have permanent legal force (*inkracht van gewijsde*). If this is violated, the state through its apparatus will act by processing it for the sake of justice, with equal treatment before the law (equality before the law). In the provisions of Article 3 paragraph (2) of Law No.39 of 1999 concerning Human Rights states that:

“Everyone has the right to recognition, guarantee, protection and fair legal treatment as well as legal certainty and equal treatment before the law”.

On the other hand, as a democracy, every citizen may have an opinion, both orally and in writing. The constitution guarantees freedom of speech and opinion. The provisions are contained in Article 28E paragraph (3) of the 1945 Constitution, namely:

“Everyone has the right to freedom of association, assembly and expression.”

Then this freedom is described in Law No. 9 of 1998 concerning Freedom to Express Opinions in Public (Law No. 9 of 1998). In the provisions of Article 4 letter a, it is stated that the purpose of the regulation on freedom of expression in public is to:

“Realizing responsible freedom as one of the implementations of human rights in accordance with Pancasila and the 1945 Constitution”.

Responsible freedom, namely freedom that considers the impact of order and public interest, as well as the integrity of the nation and state (national interest). There should be no citizens who do trouble / damage in an uncultured way. This means that freedom of speech is not completely free, but is limited by national (security) interests. The national interest is higher than the public interest, but national security is also limited to a truly threatening scale. Therefore, the social benefits of freedom of speech or opinion which are individual rights can be set aside if they have affected national (security) interests.

In this case, according to the author, the concept of justice is the result of the interaction between expectations and existing reality, that is what is meant by community justice in the Pancasila law (Conditional Law). This concept is contained in the provisions of Article 24 paragraph (1) of the 1945 Constitution which states that:

“Judicial power is an independent power to administer the judiciary to enforce law and justice”.

Then in the provisions of Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Law No. 48 of 2009) it is stated that:

The trial was carried out “FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD” (as the first principle in Pancasila).

It is further clarified in the provisions of Article 5 of the Law which states that:

“Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society”.

Provisions in the Constitution and Law no. 48 of 2009 is a specialty of Pancasila Law, where in every judicial administration in Indonesia it is not only enforcing the law but more importantly upholding justice based on legal values and a sense of justice that lives in its society. Justice is not in written language, but rather in the language of the heart or the language of feelings that can only be understood and approached with good intentions and a clean heart. Justice related to truth, also means not deviating from the truth itself, not damaging, and not harming others, whose conception can be a guide in the life of the social environment. **First**, judges are always tested for their conscience and logic. Every judicial judge's verdict is expected to be able to give confidence to the wider community that justice must be upheld and exist. The phrase "**For the sake of God's Justice**" is the oath of judges as "representatives" of God Almighty and at the same time a way to act, act and swear on behalf of God. **Second**, both the executive and the legislature are also tested for their conscience and logic. Because every law and regulation issued is expected to be able to give confidence to the wider community that justice is also upright as it should be. The phrase "**By the Grace of God Almighty**" at the opening of every Act or other Legislation is the oath of its founders as "People's Representation" and at the same time to serve, act by swearing in the name of God. For a religious nation, of course, the oath is not a trivial matter, but it is a tremendous risk if they do not keep their oath. The judge's responsibilities as "the judge in the world" will certainly be very heavy before God in the future. Likewise, the DPR and the President as human beings are given the mandate to implement the constitution consistently.

Justice is always perceived differently, justice on the one hand can be injustice on the other, "Summum ius summa iniuria" (the highest justice on the one hand is an extraordinary injustice on the other). Basically, justice is a measure used in giving treatment to objects outside of each human being, where this measure cannot be separated from the concept of humans and humanity.

According to Bismar Siregar (Legal Expert and Former Supreme Court Justice of the Republic of Indonesia), the judge should find a progressive law, that is, prioritizing justice and expediency rather than merely achieving legal certainty. Bismar further stated that the judge was obliged to pay attention to all legal and non-legal aspects, so that the decisions he took were closer to a just nature that was able to resolve conflicts, and pacify the anxiety of the wider community. This means that these "representatives of God" can give the "Ultra Petita" decision. The verdict of the 'ultra petita' judge in the perspective of criminal law in Indonesia can be justified because of the legal principle, that judges are active and explore the values of justice that exist in society (Article 5 of Law No. 48 of 2009). He hopes that the judges who decide cases in court will be guided by the Supreme Court so that their decisions reflect substantive justice.

From the concept of justice as described, there are at least two things that are universal, namely the purpose and character or characteristics of justice itself. Where the goal of justice is something that will be achieved in legal relations between fellow citizens, as well as between citizens and the state or relations between countries. While the characteristics or characters inherent in justice are fair, legal, legal, impartial, equal rights, worthy, morally reasonable and morally correct. This means that when we talk about justice, we are talking about goodness, virtue and truth, which is a moral obligation that binds members of society to one another. In fact, justice is a value that is a goal that is mutually agreed upon by members of the community and strives to achieve it for justice itself. Another meaning of justice is as a result or a decision obtained from the application or implementation of the law, so that justice is perceived as an ideal element as an ideal or an idea contained in all legal rules.

The formation of law in society can sometimes cause problems for the community itself if it has a negative impact, but for some people the law can actually have a positive impact and will be a **solution** to every problem. This happens because the law as a legal regulatory instrument in a state of law. With such a position, the law has the power to coerce, even though for some people it is not pleasing and does not pay attention to the rule of law. Regarding the existence of law itself in society, Mochtar Kusumaatmadja

stated that the main purpose of the existence of law is to guarantee order, justice, and certainty.

Thus, law is a system that has characteristics and characteristics that become the driving and regulating community life. Related to the characteristics and characteristics of law and society, Roscoe Pound has further introduced what is called law as a tool of social engineering. In connection with the formation of this law, the existence of the community in it greatly influences it. Experts say that law will always be in the midst of society, and if you want to know the development of law in that community, what must be understood is the culture of the community concerned.

The fact that the relationship between law and civilization is very strong, especially when considering the Indonesian nation which is divided into various cultures and ethnicities, makes legal arrangements in a system absolutely necessary. Based on the work and initiative of the community and then crystallized through the goals of the state, the basis of the state, and the ideals of the law, then there must be a forum that can systematize various social and legal constructions, namely in the form of a legal system. Therefore, law can be broadly classified into written law (formal law) and unwritten law (material law).

Written law is the equivalent of statutory regulations which are one of the characteristics of the modern legal conception that must regulate and serve modern life. This means that legislation is law, but law is not identical with statutory regulations. Because the law contains a political system as well as a state system, and becomes an integral part of a legal system regulating tool. For example, related to the composition of state institutions, judiciary, corruption eradication, housing arrangements, population, environment, land, marriage and birth registration, all of which are regulated in laws and regulations. Because of these characteristics, the legislation functions as a regulatory tool, and can make social change. With this position, it can finally appear in two conflicting faces, it can become a legitimate tool of an authoritarian regime to regulate society arbitrarily and unfairly. But on the other hand, it can also manifest in creating justice for the community and limiting the authorities so that they are not arbitrary.

With the rapid development of the times, culture and traditions, customs, beliefs or cultures can no longer be relied on, so they need written laws. The advantages of written law (formal law) compared to unwritten law in serving modern life are:

- a. what is arranged, it is easy for people to know;
- b. everyone, except the illiterate, had equal access to the law;
- c. people's knowledge can always be matched back with what has been written so as to reduce uncertainty;
- d. For the purposes of developing laws and regulations, making a new written law also provides many conveniences.

The existence of sanctions in the rule of law is actually to emphasize that there is value, there is truth or there is a law that is worthy to be maintained and must be maintained which is regulated in the rule of law, because if it is not so then sanctions are the same as blind arbitrariness. So the marker of the predicate of law in the rule of law is not because there are sanctions, but because of the value maintained by the rule. In this case, it is not because the regulation has sanctions so that it can be called a law, but because the regulation is based on law, meaning that when the regulation is traced upwards, the content or substance will be based on legal principles. It is the rules that contain norms that are based on legal principles which then have the predicate as law, so that they contain sanctions. The sanctions are a form of or demands from law enforcement, because the rule of law is designed in such a way for a particular event so that the rule must also be designed to be applicable by embedding sanctions in it.

Thus law is a principle or principle, while legislation is an authoritative product, and a rule of law

rests on the authority of its makers or decisions in court from judges.² Therefore, the existence of laws and regulations is closely related to the existence of state administrators and their scope of application is limited to the territorial scope of state power where the regulatory authority is located.

Meanwhile, law is not limited to the state alone but exceeds the state, so that law can always be found in all societies or is universal and continues to develop according to the dynamics of society. The law is treated as the principles of justice, the law is a fair regulation, if the regulation contradicts the principles of justice, then the regulation cannot be called a law anymore, because fairness is a constitutive element of all legal meanings. There are 8 (eight) criteria of a good law according to Lon Fuller as follows:³

- a. the law must be obeyed by everyone, including by state authorities;
- b. the law must be published;
- c. the law must apply forward, not retroactively;
- d. the rule of law must be written clearly, so that it can be known and applied correctly;
- e. the law must avoid contradictions;
- f. the law does not require something that is impossible to fulfill;
- g. The law must be constant so that there is legal certainty. but the law must also be changed if the political and social situation has changed;
- h. the actions of government officials and law enforcement must be consistent with applicable law.

One of the demands of the aspirations that developed in the reform era is the reform in the field of law towards the realization of the supremacy of the legal system. The legal system to be realized is a legal system under the constitutional system which functions as an effective basic reference in the process of administering the state and national life of the people. In an effort to realize an effective legal system, the restructuring of legal institutions, which is supported by the quality of human resources, culture and legal awareness of the community that must continue to increase, along with the renewal of legal materials that are structured harmoniously, and continuously updated in accordance with the demands of developments. needs.

C. Pancasila as the Basic Law of the Nation and the State

Pancasila is the only State Basic that is Unique in the world and is only used by the Indonesian people. The points or basics contained in Pancasila are extracted from the treasures of the life of the Indonesian nation which are then used as basic laws in the association of nation and state. Indonesia as a sovereign country establishes Pancasila as a forum for its nation's ideology. This means that in Pancasila embodied religious values, customs, and cultures that exist in Indonesia as the basis for creating legal provisions (Conditional Law).

As a country that upholds the rule of law, of course Indonesia will not be separated from the basic conception that is used as the basis for creating a nation state which is at the highest state and legal level called the constitution. This is a universal basis that applies to each country. At the level of the constitutional corridor, the issue of the rule of law is manifested in a nation-society called a constitutional law state, where every action of state administrators, namely the government and all state equipment at the center and in the regions is subject to the constitution.

The following are some Expert Opinions regarding the State of Pancasila Law, among others submitted by:

1. **Padmo Wahjono**, expressed his thoughts on the rule of law of Indonesia in relation to the influence of the concept of rechtsstaat as stated in the explanation of the 1945 Constitution, as follows:

2 Burgink, J.J.H., *Refleksi Tentang Hukum*, Citra Aditya Bakti, Bandung, 1999, Hlm. 125.

3 Munir Fuady, *Teori Negara Hukum Moderen (Rechstaat)*, Bandung, 2009, Halaman 9.

Indonesia is a country based on law, with the formulation of rechtsstaat in brackets, with the assumption that the pattern taken does not deviate from the definition of a rule of law in general (genusbegrip), meaning that it is adapted to the conditions in Indonesia, used with a view of life and views. Indonesian state.⁴

In this case, Wahjono explained in more detail that the concept of a constitutional state of Pancasila contains five elements, namely:

- a. Pancasila is the source of all sources of law, which means that Indonesia wants a national legal system that is built on the basis of national insight, archipelago insight and the insight of Bhinneka Tunggal Ika.
- b. The People's Consultative Assembly has the authority to amend and stipulate the Constitution which underlies all laws and regulations established by the House of Representatives together with the President.
- c. The government is based on a constitutional system, which is a definite and clear system in which the law is to be enforced by the state and there are limitations on the powers of the ruler or government so that its implementation is orderly and must constitute a legal order and a common goal.
- d. All citizens have the same position in law and government and are obliged to uphold the law and government without exception.
- e. Judicial power is an independent power, meaning that it is independent from the influence of government power.

2. Muhammad Yamin expressed his thoughts on the rule of law in Indonesia that:

The power exercised by the government of the Republic of Indonesia is only based on and comes from the law and is in no way based on the power of arms, arbitrary power or belief, that it is the power of the body that may decide all disputes within the state. The Republic of Indonesia is a state of law (rechtsstaat/government under of law) where written justice applies; neither a police state nor a military state, nor a state of power (machtsstaat). The Republic of Indonesia is a country that carries out justice as stated in the law. Citizens are governed and treated by the laws of justice made by the people themselves.⁵

3. Oemar Senoadji stated that the Pancasila legal state has Indonesian characteristics by using Pancasila as the main basis and source of law. The main feature in the Pancasila state law is the guarantee of freedom of religion or freedom of religion which has a positive connotation that there is no place for atheism or anti-religious propaganda. And the next feature is that there is no rigid and absolute separation between state and religion which is in a harmonious relationship, in contrast to secular countries such as the United States which adheres to the doctrine of separation of religion and state.⁶ In addition to having these characteristics, the concept of a legal state in Indonesia also has other characteristics, namely:⁷

- a. Recognition and protection of human rights;
- b. Pancasila animates every legal regulation and its implementation;
- c. The principle of kinship is the starting point for the Indonesian legal state;

⁴ Fajar, A. Mukthie, 2005, *Tipe Negara Hukum*, Malang: Bayu Media, Hlm 86

⁵ Efendy, Marwan, 2014, *Teori Hukum Dari Perspektif Kebijakan, Perbandingan, dan Harmonisasi Hukum Pidana*, Jakarta : Referensi, Hlm 55.

⁶ Muh. Tahir Azhary, 2005, *Negara Hukum; Suatu studi tentang prinsip-prinsipnya dilihat dari segi hukum Islam, Implementasinya pada periode Negara Madinah dan masa kini*, Jakarta : Kencana, Hlm 93

⁷ Bahder Johan Nasution, 2012, *Negara Hukum Dan Hak Asasi Manusia*, Bandung: Mandar Maju, Hlm 80

- d. Judiciary that is free and not influenced by any force;
- e. Broad citizen participation.

The state of Pancasila law is a legal state characterized or based on values and based on the identity and characteristics contained in Pancasila. The values that form the basis for the constitutional state of Pancasila are God in one and only, just and civilized humanity, Indonesian unity, democracy led by wisdom in representative deliberation, social justice for all Indonesian people. The characteristics of the Pancasila state law are divinity, kinship, mutual cooperation and harmony.⁸

4. **Soepomo** stated that the meaning of the family principle contained in the Pancasila legal state means that:⁹ The state system contained in the Constitution is a family system. Thus the state of Pancasila law must be based on and guided by family thinking. And based on the principle of kinship, the paradigm is a united state that requires protection that covers the entire nation and people of Indonesia. The state of Pancasila law is a family state of the Indonesian nation that overcomes all groups, overcomes all group understandings, and all individual understandings. Based on the principle of kinship, the Pancasila legal state adheres to the notion of people's sovereignty based on democracy and deliberation of representatives which is realized in an institution called the People's Consultative Assembly and the People's Representative Council. Based on this kinship principle, the Pancasila state law must be based on the one and only God according to a just and civilized humanity.

Based on the opinion of the legal experts above, it can be concluded that the Pancasila legal state has its own characteristics, namely:

- a. family state, recognition or protection of human rights while prioritizing national interests;
- b. a state of law that is certain and just;
- c. the Indonesian state is a religious nation state, the life of the Indonesian nation and state is based on belief in God Almighty;
- d. integrating law as a tool for community change and law as a reflection of community culture;
- e. The purpose of the Pancasila state law is to realize the goals of the state (national goals), and to protect the entire Indonesian nation and the homeland of Indonesia (nationalists), to promote public welfare, to educate the nation's life, and to participate in implementing world peace, based on independence, eternal peace and social justice.

In a state in a state based on Pancasila law, freedom of religion is guaranteed as stated in the first principle of Pancasila. Freedom of religion in a state under Pancasila law always has a positive connotation, meaning that there is no place for atheism or anti-religious propaganda in Indonesia. Of course, when compared to the concept of a liberal or individual legal state, the difference is clear, Indonesia has the characteristics of a community that is community and community¹⁰, plural and tends to prioritize the principles of kinship, belief in God and mutual cooperation.

That there are differences that are not found in formal law countries and material law countries. The characteristics of the Pancasila state law are very clearly seen from the close relationship between religion and the state, relying on the one and only God, freedom of religion in a positive sense, atheism is not allowed, and communism is prohibited, the principles of family and harmony. There seem to be some

8 Teguh Presetyo dan Arie Purnomosidi, *Op cit*, Hlm 48.

9 *Ibid*, 2014, Hlm 54.

10 Paguyuban dan patembayan terjemahan dari *Gemeinschaft* dan *Gesellschaft* yaitu istilah yang diperkenalkan oleh sosiolog berkebangsaan Jerman (Ferdinand Tönnies), untuk membedakan dua ikatan sosial menjadi dua dikotomi tipe sosiologis. Patembayan atau *gesellschaft* adalah kelompok sosial yang anggota-anggotanya memiliki ikatan lahir yang pokok untuk jangka waktu yang pendek. Ciri-ciri kelompok patembayan: hubungan antaranggota bersifat formal. memiliki orientasi ekonomi dan tidak kekal.

similarities, because the concept of a formal and material legal state is adapted to the conditions of the pluralistic Indonesian society. These elements can be seen, among others: Pancasila, MPR, constitutional system, equality, and an independent judiciary. The term *rechtsstaat* contained in the explanation of the 1945 Constitution of the Republic of Indonesia cannot be interpreted in its totality to mean the legal state of *rechtsstaat* and the rule of law as proposed by its pioneers. This is clearly different, intended to adjust the implementation of the constitution which prioritizes the interests of the pluralistic Indonesian people.

As already explained, Indonesia is one of the countries in the world which based on its constitution states “Indonesia is a state of law” which is based on Pancasila and the 1945 Constitution. It is quite different from the concept of a state of law that applies in the western world. The rule of law in the West emphasizes limiting power and guaranteeing individual rights. Meanwhile, the Indonesian legal state based on Pancasila, has a different birth background and concept from the legal state known in the West. Although different, the Pancasila state law has the same elements as the state law element in *rechtstaat* and the rule of law, namely the guarantee of basic human rights. In addition, it also has specific elements that make the Indonesian state of law different from the commonly known concept of the rule of law. The difference lies in the values contained in the Preamble to the 1945 Constitution which contains Pancasila with the principles of God Almighty and the absence of separation between state and religion, the principle of deliberation in the exercise of state government power, the principle of social justice, kinship and mutual cooperation. and laws that serve the integrity of the unitary state of Indonesia.

The 1945 Constitution actually has basic criteria that can be used to create a state of law in which the rule of law will be realized. If you look closely at the 1945 Constitution, it has actually explained that: “Indonesia is a country based on a rule of law, not based on mere power”. This phrase is actually Grundnorm which was given by the Founding fathers & mother of Indonesia who built this country. How will we formulate a state of law, how will the state of law be directed, in the sense of why we are creating this state of law, as well as being required to enforce the law as one of the tools that can be used appropriately in realizing the wishes or ideals of the nation. The 1945 Constitution formula contains a basic understanding that in a country built by the Indonesian people, it is actually recognized that there are two factors involved in realizing a rule of law, namely one legal factor and the second is a power factor. This means that the law cannot be enforced inconcretely in the life of the nation, state and society without power and is manifested in the state constitution in the form of the 1945 Constitution of the Republic of Indonesia.

D. Law and Power in the Pancasila State

In the administration of state government, there are two very significant factors, namely law and power. These two factors cannot be separated from each other, like the locomotive and its rails and the carriages pulled by the locomotive. This means that the law cannot be enforced and even paralyzed without the support of power. On the other hand, power must not leave the law at all, because if power is built and without heeding the law, what happens is an authoritarian state. The function of power is essentially to provide dynamics to legal and state life in accordance with the basic norms or grundnorms as outlined in the 1945 Constitution of the Republic of Indonesia and then further elaborated correctly in the hierarchy of laws that must refer to the following matters:

1. The Concept of the State of Pancasila Law¹¹

A country can be called a state of law, if the country concerned places the law in the highest place,

11 Johan, Saiful Bahri, "Hukum Berpancasila Dalam Optik Pluralisme Masyarakat Indonesia"; Deepublish, Yogyakarta, (2015)

which includes the protection of human rights, separation of powers, every action of both the government and society is based on laws and regulations, and the existence of an independent judiciary. The rule of law was founded on the idea of the rule of law as the supreme power. Historically and practically, the concept of the rule of law appears in various models, including Islamic Nomocracy, *Rechstaat*, Rule of Law, Socialist Legality, and the State of Pancasila Law. The mention of Indonesia as a state of law can be seen in Article 1 paragraphs (2) and (3) of the 1945 Constitution that sovereignty rests with the people and is implemented based on the Constitution, and the State of Indonesia is a state of law. Then Pancasila can be found in the formulation of the opening of the fourth paragraph of the 1945 Constitution, which contains the most important basics in formulating positive legal norms for the Indonesian Nation in accordance with the real conditions of the Indonesian people or called Conditional Law, namely:

- a. God Almighty, that every Indonesian citizen positively embraces the teachings of his religion and belief. Therefore, legal regulations in the form of laws to regional regulations, as well as court decisions must be in line with the religious teachings adopted in Indonesia. This means that the State in making policies and acting must be in harmony with the religions that are embraced in Indonesia, and it can be ascertained that there are no citizens in Indonesia who are not religious/god;
- b. Just and civilized humanity, that the formation of law must show the character and legal characteristics of civilized human beings. Neither local laws and regulations nor any other legal decisions may exceed the standards of human values;
- c. Unity of Indonesia, that every legal regulation and statutory regulation to court decisions must refer to the creation of a unity among the citizens of the nation; and
- d. Democracy led by wisdom in deliberation/representation, that deliberation is the main thing. Deliberation is the main way of making every decision, and there is a system of representation in the democratization process in Indonesia. Prioritizing deliberation in every decision-making starting from the idea of mutual cooperation of Indonesian indigenous people; and
- e. Social justice for all Indonesian people, that every legal regulation, both laws and regional regulations and court decisions must reflect the spirit of justice. The justice that is meant is the spirit of social justice, not justice which is centered on the spirit of the individual.

The formulation of the precepts in Pancasila can also be referred to as the basic formulation of the ideals of the state and at the same time the basis of the legal ideals of the Indonesian state. As the ideals of the state, it is formulated based on the ideals that live in society, namely that people develop their own ideals, which contain the ideals, hopes, desires, norms, and the ideal form of society they aspire to. As a legal ideal, Pancasila contains the most basic norms that serve as a guide for the formulation of lower legal norms in the country. Therefore, Pancasila is often referred to as “the source of all sources of law”¹². The concept of a state of law adopted by the state of law Pancasila (Indonesia) is a welfare state. This rule of law is now adopted by most countries in the world. The concept of the rule of law emerged as a reaction to the concept of a legal state or the concept of a night watchman state (*nacht-wakerstaats*). The concept of states like this limits the interference of the state in the political, economic and social fields, so that the government or state administration becomes passive in carrying out its government functions (executive functions). Thus with regard to these obligations, the government must have a relatively large authority to enter aspects of people’s lives. Indeed, it will have an impact on various problems and challenges that must be faced by the government in realizing welfare for its citizens, so it is necessary to give a special authority that is only owned by the government, namely *Freies Ermessen* or *Discretionaire*. *Freies Ermessen* is the authority given to the government to take action to solve urgent problems that come suddenly where there are not enough or no

12 Mahendra, Yusril Ihza, 1996, *Dinamika Tatanegara Indonesia*, Jakarta: Gema Insani Press, Hal.28

regulations. The concept of the state of law Pancasila that is adopted and applied in Indonesia does not purely adopt the concept of the rule of law in countries that adhere to the civil law legal system, nor the concept of the rule of law in countries that adhere to the common law legal system, but instead adheres to and applies the concept of the state. the law that adapt to the conditions and soul of the Indonesian nation which historically was born not because of resistance to absolutism carried out by the ruler or king as the background for the emergence of rechtsstaat and rule of law thoughts, but was born because of the desire of the Indonesian people to be free from the shackles of imperialism and colonialism carried out by the Indonesian people. Dutch colonialism.¹³ The concept of a state of law Pancasila was born because of the encouragement of all elements of the Indonesian nation to liberate themselves from colonialism. This desire for independence is stated in the preamble of the 1945 Constitution, paragraph II which states that:¹⁴

...and the struggle for Indonesian independence has come to a happy moment and safely delivered the people of Indonesia to the gates of Indonesian independence, which is free, united, just and prosperous.

The state of law Pancasila is the concept of a state of law, on the one hand, it must meet the criteria of the rule of law in general, which is supported by the recognition and protection of human rights, an independent and impartial judiciary, and the principle of legality in both formal and material terms. On the other hand, it is colored by Indonesian aspirations with the five fundamental values of Pancasila which are formulated materially based on the perspective (paradigm) of the Indonesian nation in an integralistic state that is unique to Indonesia, taking into account the provisions in the 1945 Constitution while at the same time comparing it with the concept of a liberal law state, namely rechtstaat and the rule of law.¹⁵

2. Principles of the State of Pancasila Law

As has been explained, that based on the provisions of the 1945 Constitution of the Republic of Indonesia, it is expressly stated that the state of Indonesia is a state of law. However, the principle of the rule of law in Indonesia does not refer directly to two different notions or schools of law regarding the rule of law, namely the rule of law in the sense of rechtsstaat and the rule of law in the sense of the rule of law. In fact, the principle of the rule of law in Indonesia is based on Pancasila as its ideology. **First**, the background of the birth of the Pancasila Law State is based on the spirit of togetherness to be free from colonialism with the ideals of forming an independent Indonesia that is united, sovereign, just, and prosperous with a firm acknowledgment of the power of God. Therefore, the principle of divinity is the most important element of the elements of the Indonesian rule of law. In a state of law Pancasila assumes that humans are born in relation or existence to God Almighty. Because of that the state was not formed by agreement but “..... thanks to the grace of Allah the Almighty and with the encouragement of a noble desire, to live a free national life....”. Thus, the position of religion in the state of Pancasila law cannot be separated from the state and government. The Indonesian state of law does not provide the possibility for freedom to have no religion, freedom to promote anti-religion and does not allow for insulting or desecrating religious teachings or Indonesiab-Indonesiab which are the source of religious beliefs or defile the name of God. This element is one of the elements that signifies the main difference between the rule of law of Indonesia and Western law, so that in the implementation of state government, law formation, implementation of government and justice, the basis of divinity and religious teachings and values become a measuring tool for determining law. good or bad law (bad) even to determine constitutional law or unconstitutional

13 *Ibid*, Hlm 86.

14 Teguh Presetyo dan Arie Purnomosidi, 2014, *Membangun Hukum Berdasarkan Pancasila*, Bandung : Nusa Media, Hlm 38-39

15 Yopi Gunawan dan Kristian, *Perkembangan Konsep Negara Hukum & Negara Hukum Pancasila*, Bandung : Refika Aditama, 2015, Hlm 92-111

law. Then other elements of this Pancasila state law are the principles of deliberation, social justice and laws that are subject to national interests and the unity of the Indonesian nation that protects all Indonesian bloodshed;

Second, the principle of deliberation and social justice of course cannot be considered simple, because it contains deep meaning for elements of the Indonesian rule of law. The principle of deliberation is one of the basic foundations for Indonesian constitutional law so that it is one of the important elements of the Indonesian rule of law. In the practice and political culture of the Indonesian state administration in the relationship between state institutions, it is clear that the principle of deliberation is highly respected;

Third, the principle of social justice is an important element for the rule of law in Indonesia. The principle of social justice is based on the view of social welfare and the nature of kinship and mutual cooperation from the Indonesian people;

Fourth, the next important principle of the Pancasila legal state is the existence of a constitutional system. Constitutionalism is the notion of limiting state power in a more tangible and operational level. Articles of the constitution stipulate more clearly regarding guarantees for the absence of monopoly of one state power institution over another state power institution, the authority of each state institution, the mechanism for filling positions for state institutions, relations between state institutions and the relationship between the state and citizens state that contains guarantees of basic human freedoms that must be respected and protected by the state. This constitution is intended to regulate three important things, namely: determining the limitation of the power of state organs, regulating the relationship between one institution and another, and regulating the power relationship between state institutions and citizens; and

Fifth, the last principle of the Pancasila state law is an independent and impartial judiciary. In carrying out their judicial duties, judges should not be influenced by anyone, either because of the interests of office (politics) or the interests of money (economics). In order to guarantee justice and truth, no “intervention” into the justice decision-making process by judges, either intervention from the executive or legislative powers or from the public and the mass media. However, judges must remain open in examining cases and living up to the values of justice in making decisions. Thus, in the practice of living in society, nation and state, it is necessary to fulfill and realize the requirements and principles as mentioned above. With the formulation of the pattern of Indonesia as a state based on law in the 1945 Constitution,¹⁶ it has implications for all components of the nation as actors, supporters and implementers, including state administrators (policy executors) and government leaders (policy makers) must have that spirit, which is in accordance with the soul of Pancasila and the 1945 Constitution. This cannot be separated from the existence of Pancasila as the basis of the state and the source of all sources of law and the soul of the Indonesian nation (volksgeist). In other words, Pancasila animates the entire life of the country and spills blood. The concept of the rule of law developed and applied in Indonesia is based on a legal system that has the characteristics found in the philosophy of the Indonesian nation and state, namely Pancasila itself.¹⁷ Based on the description above, the Indonesian legal state according to the 1945 Constitution contains the following principles:

- a. The legal norms are based on Pancasila as the basis and there is a hierarchy of levels of legal norms;
- b. The constitutional system, namely the 1945 Constitution of the Republic of Indonesia and the laws and regulations under it form a unified legal system;

16 Padmo Wahjono, 1986, *Indonesia Negara Berdasarkan Atas Hukum*, Jakarta : Ghalia Indonesia, hlm 21

17 Yopi Gunawan dan Kristian, 2015, *Perkembangan Konsep Negara Hukum & Negara Hukum Pancasila*, Bandung Refika Aditama, Hlm 92.

- c. People's sovereignty or democratic principles. This can be seen in the Preamble of the 1945 Constitution: "Popularity Led by Wisdom in Deliberation/Representation", and Article 1 paragraph (2) of the 1945 Constitution: "Sovereignty is in the hands of the people and implemented according to the Constitution".
- d. The principle of equality in law and government (Article 27 paragraph (1) of the 1945 Constitution): "All citizens have the same position in law and government and are obliged to uphold the law and government without exception".
- e. The existence of law-making organs (DPR and the President).
- f. The system of government is presidential.
- g. Judicial power that is free from other powers (executive).
- h. The law aims to protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice.
- i. There is a guarantee of human rights and basic human obligations (Article 28A-28J of the 1945 Constitution).

In Indonesia, there are quite a number of Court Judges who have decided community cases based on the Pancasila law. According to Prof. Satjipto Rahardjo, Pancasila law is a way to judge with conscience by understanding the values and sense of justice that live in society. Based on the Constitution Article 24 paragraph (1) of the 1945 Constitution states that:

"Judicial power is an independent power to administer the judiciary to enforce law and justice".

Then in the provisions of Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Law No. 48 of 2009) it is stated that:

The trial was carried out "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD" (as the first principle in Pancasila).

And Article 5 of the Law states that:

"Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society".

Provisions in the Constitution and Law no. 48 of 2009 is a peculiarity of the Pancasila Law, where in every judicial administration in Indonesia it is not only enforcing the law but more importantly upholding justice (based on legal values and a sense of justice that lives in its society). This kind of law is purely the property of the nation which is extracted from the treasures of the Indonesian nation itself. There have been many judges in Indonesia who have practiced the Pancasila Law in their decisions, including Judges Bismar Siregar and Judges Artidjo Alkostar.

1. Judge Bismar Siregar

Judge Bismar Siregar¹⁸ is one example of a judge who applies the Pancasila Law or Conditional Law. Bismar demonstrated political judicial activism in his decisions by exploring the values of justice in Indonesian society. When deciding cases, Bismar is often creatively looking for alternatives to create

18 **Bismar Siregar** lahir di Sipirok, Sumatera Utara, 15 September 1928 dan meninggal di Jakarta pada 19 April 2012 pada umur 83 tahun. Dia adalah Hakim agung Mahkamah Agung periode 1984-2000 dan dikenal sebagai sosok hakim agung yang progresif.

justice which sometimes cannot be fulfilled by laws and regulations. The proverb says, elephants die leaving their tusks, tigers die leaving stripes, humans die leaving their names, and judges are humans too but when they die they leave their names and decisions. The figure of Bismar is remembered not only because of his religious and humble profile, more than that Bismar is also remembered for the decisions he made while he was active as a judge. Some called Bismar's decisions controversial, others said they were breakthrough, innovative, progressive and so on. Regardless of people's views, the decisions of judge Bismar have proven to be recognized by many in the world of national and international law, as an enlightening decision. Several criminal decisions that have been handed down by Bismar have been recorded. Judge **Bismar Siregar** is quite a visionary as a judge who prioritizes justice. He is a judge who applies religious values in his decisions, not just certain religions. All religions, even though Bismar is a Muslim and hajj. In the decision there are religious values, customary values and cultural values of the local community. For example:

a. North-East Jakarta District Court Decision Number 46/PID/78/UT/WANITA

Case Position

Mrs. Ellya Dado is suspected of holding hostage accompanied by insults to Devy. Mrs. Ellya is angry because her vehicle was damaged by Devy and although it has been repaired it is considered unsatisfactory.

Prosecutor's Indictment

The Prosecutor accused Mrs. Ellya of deliberately violating the law by depriving people of their freedom as regulated in Article 333 of the Criminal Code (primary). Mrs. Ellya was also charged with the intention of benefiting herself or others by violating her rights, forcing Devy with violence or threats of violence so that Devy surrendered his belongings as stipulated in Article 368 paragraph 1 of the Criminal Code (a subsidiary). Finally, Mrs. Ellya was charged with intentionally and unlawfully insulting Devy verbally as stipulated in Article 315 of the Criminal Code (more subsidiary). In the prosecution, the prosecutor asked the panel of judges to sentence Mrs. Ellya to two weeks in prison with a probationary period of one month and to return evidence and pay court fees.

Decision

The panel of judges in their decision stated that the defendant was legally and convincingly proven guilty as the primary, subsidiary, and more subsidiary charges. However, the panel of judges considered that the defendant's actions were not crimes or violations that could be punished again because a peace agreement was reached between the parties. Finally, the panel of judges released the defendant from all lawsuits

b. Medan High Court Decision Number 53/PID/1983/PT Mdn

Case Position

In this case, Zulham alias Juan was charged with assault so that the victim died.

Prosecutor's Indictment

The prosecutor charged Juan with three articles of indictment, namely Article 340 of the Criminal Code (premeditated murder), Article 351 paragraph 3 of the Criminal Code (maltreatment to cause death), and Article 353 paragraph 3 of the Criminal Code (premeditated torture to cause death).

Decision

In decision No. 393/KIS/198/PN Mdn, the panel of judges at the Medan District Court stated that it was legally and convincingly proven to have committed a criminal act of persecution that resulted in death. Juan was sentenced to 3 years and 6 months in prison.

Appeal Legal Effort

Then, Juan filed an appeal to the Medan High Court. In the process of examining the case, the panel of judges sought to make peace between the defendant and the victim's family according to

custom. Based on these considerations, the panel of judges on appeal reduced the defendant's sentence to a suspended sentence. In considering the decision, the panel of judges quoted al-Baqarah: 178

- c. Medan High Court Decision Number 144/PID/1983/PT Mdn

Case Position

This case is related to the adultery between King Sidabutar's mother-in-law and Katarina br Siahaan. Before the adultery, in-laws promised to marry Katarina. However, the promise was not kept, so Katarina reported it to the police.

Prosecutor's Indictment

The prosecutor charged the in-laws with committing a criminal act of obscenity (Article 293 of the Criminal Code in conjunction with Article 5 paragraph 3 of the 1951 Emergency Law), fraud (Article 378 of the Criminal Code), and unpleasant acts (Article 335 of the Criminal Code).

Decision

The panel of judges at the Medan District Court in their decision Number 571/KS/1980/PN Mdn dated March 5, 1980 stated that the defendant was proven to have committed sexual abuse with a woman who was not his wife. The defendant was sentenced to three months in prison with a probationary period of six months, then the Prosecutor made an appeal.

Appeal Decision

The panel of judges at the Medan High Court overturned the court's decision of the first instance, and the defendant was found guilty of fraud. In considering the decision, the panel of judges expanded the meaning of the elements of Article 378 of the Criminal Code "..... **to give/deliver certain goods**".

The panel of judges is of the opinion that the meaning of "goods" also includes "services". In this case, the panel of judges saw that the intercourse between in-laws and Katarina could mean that in-laws received "services" from Katarina.

The panel of judges also argued that the meaning of "goods" also includes Katarina's "honor" which she handed over to her mother-in-law because of a promise to marry. In this regard, the panel of judges borrowed the term from the local language of the defendant and witness (Katarina), Tapanuli, "**bonda**" which also means goods including genitals. In the order, the panel of judges sentenced the mother-in-law to three years in prison

- d. North-East Jakarta District Court Decision Number 02/PID/76/TIM/Tol. Economy

Case Position

A man named Marzuki alias Gho Kie Tjong smuggled gold bullion by wrapping it around his waist to trick customs inspection officers at Jakarta's Halim Perdanakusumah Airport.

Prosecutor's Indictment

In court, the prosecutor charged Marzuki with Article 1 to 1 sub h in conjunction with Article 1 sub a of Law No. 7 Emergency of 1955 (primary) and Article 25 point II sub a, c of the Customs Ordinance (Stbld 1931 Number 471) in conjunction with Article 1 to 1 sub h in conjunction with Article 6 paragraph 1 sub a of Law No. 7 Emergency 1955 (a subsidiary). Then, the prosecutor demanded that the defendant be sentenced to 4 years in prison, fined Rp. 8 million, subsidiary to 6 months in prison, and confiscated 8 kg of gold bars which became evidence.

Decision

In the decision, the panel of judges is of the opinion that smuggling cases should not be generalized, so the method, nature and type of smuggled goods must be considered. For Marzuki's case, the panel of judges considered that the defendant's smuggling did not include qualifications that threatened the country's economy. Then, the panel of judges used Article 14c of the Criminal Code which gave the judge the authority to apply "special conditions" (special agreements) in punishing the accused. In amar, the panel of judges sentenced the defendant differently from the prosecutor's demands.

Marzuki was sentenced to 1 year in prison with 3 years probation. The defendant was also sentenced to pay a fine of Rp. 1 million, subsidiary to 6 months in prison. Then, the panel of judges also had special conditions (special agreement) in the form of a security deposit of IDR 5 million with the stipulation that if Marzuki violated the law within a span of 1 year, the guarantee was confiscated for the state.

e. North-East Jakarta District Court Decision Number 5/PID/76/UT

Case Position

A driver named Sapit bin Kamin crashed into Mhd Jali bin Syafei which caused a loss of Rp. 45 thousand.

Prosecutor's Indictment

In court, the prosecutor charged Sapit with Article 9 paragraph 3 Pen. L.P. jo Article 11 paragraph 4 P.P.L. Sapit is required to pay a fine of Rp. 10,000, which is a subsidiary of one month's imprisonment.

Decision

In the verdict, the panel of judges declared Sapit guilty for driving the truck without paying attention to the equipment of his vehicle so that he could not control the vehicle properly. The panel of judges sentenced Sapit to pay a fine of Rp. 10,000, revoke his right to drive for six months, withhold evidence of the vehicle registration certificate for the truck, except that Sapit paid compensation of Rp.

f. North-East Jakarta District Court Decision Number 90/PID/1976/TIM

Case Position

A mother with six children, Mrs. Meneria Marpaung Tampubolon lent money to Haji Sutan Daulay for business capital. Both parties agreed to apply 7.5% interest. Haji Sutan Daulay was apparently unable to repay the loan so this matter turned to the criminal realm.

Prosecutor's Indictment

In court, the prosecutor accused Mrs. Meneria of running a bank business without a permit from the Minister of Finance or an illegal bank as regulated in Article 38 of Law Number 14 of 1967 concerning Banking. The prosecutor demanded that the defendant be sentenced to 1 year in prison and a fine of Rp. 500 thousand, subsidiary to six months in prison.

Decision

The panel of judges at the North-East Jakarta District Court stated that Mrs. Meneria was free from lawsuits. In considering the verdict, the panel of judges was of the opinion that Mrs. Meneria was indeed proven guilty according to the prosecutor's indictment. However, for the sake of a sense of justice, the panel of judges assessed that the definition of an illicit bank should not be based solely on the presence or absence of a permit from the Minister of Finance alone. According to the panel of judges, what Mrs. Meneria did was not an illicit bank practice, but merely an attempt by the defendant to support her six children. In addition, Mrs. Meneria only intends to help Haji Sutan Daulay who wants to open a business.

2. Judge Artidjo Alkostar

The figure of Artidjo Alkostar, is a former Supreme Court Justice who retired on May 22, 2018 after turning 70 years old, and for 18 years he held the position of Supreme Court Justice until he finally retired. He is also known as a tough judge on corruptors, which according to him is one of the reasons Indonesians are getting poorer because of the behavior of corruptors. So that he is known as a judge who is tough on corruptors, he believes his decision is supported by the Indonesian people in general. Therefore, when he served as Chairman of the Criminal Chamber of the Supreme Court, he gave severe cassation sentences in various cases, especially those that caught the public's attention, for example the cases of Angelina Sondakh, Luthfi Hasan Ishaq, Djoko Susilo, and Labora Sitorus.

Artidjo has his own principles in making case decisions as a reflection of his daily life. According to Artidjo, judges must make decisions in accordance with the law and the values of justice in society. The judge examined based on the indictment, not (based on) the demands. Although many say they are not prosecuted why are they punished. The judge made the decision not based on the demands but must be based on the indictment. In deciding the cassation case, he did not have a personal life background that motivated the spirit of dropping the cassation verdict (vengeance). He considered himself mediocre in giving consideration in deciding the cassation case. As a former lawyer, of course, he has an influence, especially when handling cases of ordinary people such as the mysterious shooting case, the eviction of the Borobudur (and) Prambanan temples, cases in East Timor, in Madura, (the case of) Madura salt farmers, subversion in Madura. , election fraud in Madura etc. (these are all serious cases for ordinary and marginalized people). It was this inner background that at least influenced him in making the cassation decision. His weapon is only moral truth, if he is believed to be morally right (conscience) then he will live it. Some people think that if Artidjo is the judge, the verdict will be heavy, this assessment is not too wrong because of his lack of understanding of the function of the judiciary. Artidjo decided the case based on an indictment, not a claim. The frame of corruption is punishment for as much compensation as possible (because he has stolen state money so that it causes state losses) that can flow to other parties (to other places). The crime of corruption is very different from other crimes, because corruption is an extraordinary crime and has an impact on the future of the nation and state. The impact (corruption) is felt, Indonesia is naturally rich but many people are poor (begging on the streets), this is quite ironic - that's the optics used. If democracy works well, then economic democracy also works. It turned out that in the middle of the road there was a rat that was gnawing at it, so it didn't reach its destination (a just - prosperous society). Corruption will lead to structural poverty, although farmers, fishermen or workers who work 24 hours will never prosper, because there is a (corrupt) mafia, fertilizer mafia, imported beef, middlemen and so on. For Artidjo, severe punishment is not only for corruption cases, but also for cases related to the state (and seen) the victims, such as narcotics with death sentences, tax cases as well. In the case of taxes, for example, taxes are transacted with the provisions of certain parties, the calculation is so many, etc. It's a terrible crime, hedges eat plants. Taxpayers compromise with taxpayers. In a case like this, the verdict is certainly high and quite a lot. For Artidjo, it is his experience as a lawyer in defending the underprivileged who demands justice which is influential in making decisions at the Supreme Court (MA). Especially in achieving access to justice, because sometimes people are not capable in the sense that they are economically weak and politically weak do not have access. Here are some cases that were decided based on the sense of justice of the Indonesian people and were sentenced by the cassation panel with Artidjo in it.

a. The case of Lutfi Hasan Ishaq

- Cases of corruption and money laundering.
- At the Corruption Court in Jakarta, Luthfi was sentenced to 16 years in prison and a fine of Rp. 1 billion, a subsidiary of 1 year in prison.
- The appellate court sentenced Luthfi to the same prison sentence and fine as the court of first instance. However, if Luthfi does not pay the fine, his subsidiary will be reduced to 6 months in prison.
- At the cassation level, Lutfi's sentence was increased to 18 years in prison and his political rights were revoked.

b. The case of Ahmad Fathanah

- Cases of corruption and money laundering related to beef imports.
- The verdict at the Corruption Court is 14 years in prison and a fine of IDR 1 billion.
- At the appeal level, the sentence for Fathanah was increased to 16 years in prison, a fine of Rp. 1 billion, subsidiary to 6 months in prison.

- The cassation panel rejected the prosecutor's and Fathanah's requests and upheld the appeal decision. Apart from that, there are only additional items confiscated from the previous verdict.

c. Labora Sitorus case

- The case of a fat bank account of Rp. 1.5 trillion.
- The Sorong District Court sentenced him to 2 (two) years in prison and a fine of Rp. 50 million, subsidiary to 6 months in prison.
- The verdict of the Papuan High Court is 8 years in prison and a fine of IDR 50 million subsidiary to 6 months in prison.
- The Supreme Court's verdict, Labora was sentenced to 15 years in prison and a fine of IDR 5 billion, subsidiary to 1 year in prison.

d. The case of Djoko Susilo

- Corruption of SIM exam simulator project.
- The verdict at the Corruption Court in Jakarta for Djoko was 10 years in prison and a fine of IDR 500 million, subsidiary to 6 months in prison.
- The verdict of the DKI High Court, 18 years in prison and a fine of Rp. 1 billion and a substitute sentence of Rp. 32 billion.
- Supreme Court verdict: 18 years in prison and a fine of Rp. 1 billion and a substitute sentence of Rp. 32 billion.

e. Case of Angelina Sondakh

- Cases of corruption in the homestead for the SEA Games athletes in Palembang and corruption in the Ministry of Education and Culture.
- The verdict from the Corruption Court is 4 years and 6 months in prison.
- The verdict on appeal is unchanged from the court of first instance.
- Supreme Court verdict, 12 years in prison and a fine of IDR 500 million

f. The case of Ananta Lianggara alias Alung

- Cases of courier distribution of psychotropics.
- The verdict of the Surabaya District Court and East Java District Court for Alung was 1 year in prison.
- Supreme Court verdict: 20 years in prison.

g. Freddy Budiman's case

- Case of possession of 1.4 million ecstasy pills
- The verdict of the West Jakarta District Court is the death penalty for this drug lord.
- The cassation submitted to the Supreme Court by Freddy was rejected. The death penalty was still imposed on him.

Of course, there are still many decisions that have been made by judges other than Bismar, both in his capacity as a single judge and as a panel of judges. Pancasila law is a way to judge with conscience. "Conscience" is what describes the Pancasila Law. The Pancasila law used by Bismar is nothing but social justice contained in a social conscience, not a subjective conscience that emphasizes personal interests or certain groups. What must be defended by judges through their decisions is the interests of the people who seek justice, especially those who are marginalized, oppressed, neglected, forgotten and lack legal protection.

Back to judge Bismar Sirega, that through his decisions, he demonstrated political judicial activism. When deciding cases with his colleagues in the formation of the panel of judges, he is often

creatively looking for alternative ways to achieve justice which sometimes cannot be fulfilled by laws and regulations. Therefore Bismar often cites the holy verses of his religion and other religions, as well as the values of customary law that support the creation of justice. “The alternatives are in the form of legal construction (law creation/rechtsvinding) and in the form of creative interpretation (legal reform),” as Pancasila Law. The example of law creation shown by the judge above shows the creation that stipulates the peace decision in the decision Number 46/PID/78/UT/WANITA and the decision Number 53/PID/1983/PT Mdn; the application of criminal penalties along with compensation in the decision Number 5/PID/76/UT; made an analogy of goods with sex services in the decision Number 144/PID/1983/PT Mdn. Then we can also see in his decision that the nuances of legal reform are to apply and interpret the special conditions (special agreement) Article 14c of the Criminal Code in Decision Number 02/PID/76/TIM/Tol. Economics; and interpreting the qualifications of illicit banks in Number 90/PID/1976/TIM.

Reflecting on these decisions, it shows that the court is not an institution that is only an engine of law. Citing the views of Prof. Satjipto Rahardjo, that the court should be able and dare to voice their conscience in order to create public justice in accordance with the law that lives in the community concerned (living law). Thus, it is time for Indonesia to apply a law that grows and develops from its own homeland called the Pancasila Law or Conditional Law in people’s lives that reflect a noble personality; uphold justice, truth and honesty; believe and be pious; to be responsible; and has moral independence which must be reflected in its decisions. In this case, of course, how religious values are applied, justice is highlighted, judges have integrity, and judges uphold the values of justice and truth in their decisions.

E. The Contrarius Actus Principle in Pancasila Law

Basically the principle of *contrarius actus* is known in State Administrative Law (HAN). This means that the *contrarius actus* principle is automatically attached to the State Administrative Officer (TUN) without having to be explicitly mentioned in the law. TUN officials who form public policies (Regulations and Decisions) can revoke, change, and replace policies that are formed or issued. Law No. 30 of 2014 concerning Government Administration (Law No. 30 of 2014) adopts the *contrarius actus* principle. This law, if viewed from the political aspect of the law, was built so that governance in Indonesia becomes more responsive, more responsive to solving protection problems.

The principle of *contrarius actus* is the key in dealing with problems in the field of State Administrative Law (HTN). In the case of objections and appeals, for example, the principle of *contrarius actus* can prioritize administrative efforts in order to revive internal dialogue among government administrators. The importance of administrative efforts takes precedence, because an internal dialogue with fellow government administrators is needed in resolving TUN issues. Then again, those who know best the inner atmosphere of an agency or institution are its stakeholders and officials. So that space is given to be resolved first among the internal executives.

Therefore, objections and appeals caused by decisions and actions of executive officials are not directly tried in the State Administrative Court (PTUN), but through internal submissions first. In Article 66 and Article 67 of Law no. 30 of 2014, the act of revocation or cancellation of the Policy or State Administrative Decree (KTUN) can be carried out if there are defects in authority, procedure, and/or substance. The revocation of the KTUN can be carried out by a government official who stipulates the KTUN, or by the superior of the official who stipulates the KTUN, or by court order.

Decisions on revocation of KTUN made by government officials or superiors of government officials who make them are carried out no later than 5 working days from the discovery of the basis for revocation and take effect from the date the decision on revocation is stipulated. The decision on revocation made on a court order is carried out no later than 21 days from the court order, and is effective from the date the decision on revocation is stipulated.

How about in the context of Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector (Perpres No. 10 of 2021), as a follow-up to Law Number 11 of 2020 concerning Job Creation, in this case based on the principle of *contrarius actus*, the President automatically Joko Widodo (Jokowi) can cancel the decision that has been issued. Quoting William Livesey Burdick's statement in his book *The Principles of Roman Law and Their Relations to Modern Law* (p. 235), that the revocation of a State Administrative Court that has been made and has legal force can only be carried out according to the way the decision was made.

Errors in KTUN are generally caused by various factors, including the breadth of government authority, incomplete laws and regulations, and lack of implementation instructions. There are at least four principles that can be used in looking at the shortcomings of KTUN, namely:

1. The wrong KTUN can be reviewed and withdrawn by the official who made it, as long as there are no rules prohibiting such action;
2. The cancellation of the KTUN is based on the form and procedure for its issuance, if the rules regarding the procedure for canceling the KTUN are not available;
3. All efforts must be taken to prevent various negative effects as a result of the cancellation of the KTUN, which can take the form of losses and violations of the rights of the relevant community, harming legal certainty, or reducing the authority of the government; and
4. A KTUN that has deficiencies due to non-fulfillment of a number of conditions, then the cancellation of the KTUN can be temporary until these conditions are met.

As already stated, the rule of law is under the sovereignty of the people, meaning that law is made based on the aspirations and consent of the people to achieve common goals in order to achieve a just, prosperous and prosperous Indonesian society. Therefore, citizens who are mandated by the people must act only for the people, the DPR, DPR, and the President are determined by the people to serve them. For this reason, at the beginning of 2021 the Government (Jokowi) stipulated Presidential Regulation No. 10 of 2021 concerning the Investment Business Sector, as a follow-up to Law No. 11 of 2020 concerning Job Creation.

Presidential Decree No. 10 of 2021 is intended to provide investment convenience, only problems arise when the Government provides investment facilities for Liquor Manufacturing Plants (Liquor), both PMDN and PMA. Foreign or Domestic Investors are allowed to open a liquor factory with 100 percent capital. Before Presidential Decree No. 10 of 2021 was promulgated, investment in the alcohol sector was declared a closed investment, but with the Presidential Regulation it was declared open for investment. It is explicitly stated that there are 3 (three) regions opened for investment in alcohol, namely the Province of Bali, the Province of North Sulawesi and the Province of Papua. And vaguely other regions are also allowed, but must first be submitted by the Governor to the Head of BKPM. This means that the opportunity to open a liquor factory can exist anywhere with the condition that it must be proposed through the Governor to the Central Government.

However, the arrangement in the Attachment to Presidential Regulation No. 10 of 2021 received rejection from regions with strong Islamic influence. In Appendix III numbers 44 and 45 it is regulated regarding the opening of investment in Retail Trade on Liquor or Alcoholic and Street Retail Trade on Liquor or Alcoholic Drinks. The requirement just says "Distribution network and special place". Of course, this kind of arrangement is not in line with the wishes of the Indonesian people in general, because the Government facilitates investment in the retail trade of liquor for both PMA and PMDN.

Alcohol trade like this is actually dangerous for people's lives and should not be done, on the con-

trary it should be prohibited. Sales of alcohol at street vendors should be declared closed and regulated by a separate Presidential Regulation, not in the Presidential Regulation concerning Investment Business Sector. As a result, public protests and criticism arose, which in the end the Presidential Regulation which was stipulated and promulgated on January 2, 2021, was declared revoked on March 2, 2021. It should also be understood that the revocation of a policy that has been established and enforced and binds the community (published in the State Gazette or Newspapers) State) must go through a written policy as well.

This revocation statement was motivated after receiving many protests and criticisms, input and even criticism from the public, then President Jokowi as Head of Government, on Tuesday 2 March 2021 announced the revocation of several provisions in Attachment to Presidential Regulation No. 10 of 2021, especially related to investment arrangements for Alcoholic Beverage Manufacturing Plants. Or Liquor (Liquor) and arrangements regarding Alcohol Trading Investments. As an important note, President Jokowi said that his decision was taken after receiving input from many scholars and figures of mass organizations and Islamic institutions who rejected the regulation regarding investment in the manufacture of liquor. The refusal is very reasonable, considering that Indonesia is a Muslim majority country who believes that alcoholic beverages are forbidden or forbidden to be consumed

Thus, the religious beliefs held by the majority of the Indonesian people must be considered by the state in formulating the legal rules and policies that will be enforced. Indonesia is a country based on Pancasila, whose first precept is Belief in One Supreme God. Indonesia is not a secular country that does not consider the factor of religious belief in making legal norms and state policies. In the Philippines, where the constitution clearly states that the country is a secular state, the factor of religious belief remains the state's consideration in making legal norms and formulating policies. Gloria Arroyo Macapagal of the CMD (Christian-Muslim Democrat) Party while serving as President of the Philippines vetoed the passage of the Bill on Contraception which had been approved by the Philippine Senate. The consideration is because the Philippine Catholic Church opposes family planning which is considered not in line with religious doctrine.

If in a country that claims to be secular, it turns out that religious considerations are still important, then a state based on Pancasila should do more than that. This means that every religious belief and ethnic customs must be considered by the state in formulating any policies, and this does not automatically make the Republic of Indonesia a religious state or belonging to certain ethnicities, the Unitary State of the Republic of Indonesia remains a country with a pluralistic population based on Pancasila

F. Closing

Therefore, in a country that adheres to the Pancasila Law, the state is obliged to consider the religious beliefs of its people in making legal norms and formulating a policy. The state is also obliged to facilitate and provide services for the implementation of religious teachings for all religious adherents who live and develop in the Indonesian state as far as the state's role and involvement is required in carrying it out. In Indonesia's pluralistic society, some people who according to their religious beliefs do drink alcohol, are not prohibited. Like Christians, Catholics, Hindus, Buddhists and Confucians eating pork is "halal" and not something "haram" or forbidden as belief for Muslims. Therefore, for citizens and residents who think that alcohol or pork is not something haram, the state must protect and facilitate their interests. Of course, the provisions that apply to adherents of Islam cannot be applied to adherents of other religions, and vice versa.

Even in countries based on Islam, arrangements for the interests of adherents of religions other

than Islam will still exist. The rights of non-Muslim citizens must be protected and guaranteed by a state based on Islam. Therefore, in a country based on Pancasila, such things exist and have been implemented in practice. For example, in traditional markets in various regions, special counters are still set up to sell pork which are written specifically for it. The place is made in such a way, comfortable and not disturbing Muslims who certainly have no interest in stopping by the counter where the pork sells. Likewise with the regulation regarding alcohol, it should also be done that way.

In the state of Pancasila law, pig farming is certainly allowed, but it is declared closed for investment except with certain conditions, the place is special and subject to certain strict conditions so as not to cause chaos between residents. Likewise, investment in a liquor factory should be declared closed for investment, except with certain conditions. In addition to investment matters, strict supervision of the liquor trade must be tightened. And of course, don't open investment in selling alcohol at street vendors, this must be prohibited and not facilitated as stipulated in the attachment of Presidential Regulation No. 10 of 2021 as described above.