

Pancasila, the 1945 Constitution, and Legal Development in Indonesia

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Abstract

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This research aims to analyze the relationship between Pancasila, the 1945 Constitution, and the development of national law in the context of constitutional enforcement in Indonesia. The method used is a literature study (library research) by examining various academic sources, official legal documents, and laws and regulations. Data is collected through documentation techniques, then analyzed using the content analysis method to identify the relevance of Pancasila values and the provisions of the 1945 Constitution to the direction of national law formation. The results of the study show that although Pancasila and the 1945 Constitution have become the main normative foundation, the practice of legal development still faces challenges in the form of political inconsistencies in the law, overlapping regulations, and low legal awareness of the public. The era of globalization and digitalization has also given rise to new issues, such as personal data protection and cybersecurity, which require legal adaptation without neglecting national identity. This research emphasizes the importance of synergy between state institutions and public participation to realize constitutional enforcement that is consistent with Pancasila values.

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1. Introduction

The Constitution is a fundamental instrument that is the highest guideline in the administration of the state. In various countries, the constitution serves as the "supreme law of the land" that determines the direction of legal, political, and social development. In the Indonesian context, the 1945 Constitution of the Republic of Indonesia (1945 Constitution) is the highest juridical foundation that affirms the basic principles of statehood while regulating the relationship between the state and citizens. The role of the 1945 Constitution is not only limited to formal arrangements, but also reflects the aspirations for independence, Pancasila values, and national ideals that are to be realized. Since its ratification on August 18, 1945, the 1945 Constitution has become a symbol of the transition from the Dutch colonial legal system to a sovereign national legal system. Before independence, the legal system in Indonesia referred to colonial regulations that were not fully aligned with the needs of indigenous peoples.

The 1945 Constitution exists to replace the system, establish a legal framework that reflects national identity, and ensure the protection of the basic rights of citizens.¹ This transition process was gradual, considering that some colonial regulations were still enforced under the Transitional Rules to avoid legal vacancies. The historical role of the 1945 Constitution in the development of the national legal system can be seen from several aspects. First, as the highest legal basis

¹ Muhammad Nur Jamaluddin. "The role of the people in the Amendment of the 1945 Constitution based on democratic constitution making: Future prospects." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 7, no. 1 (2020): 19-42.

(lex supreme), the 1945 Constitution is the benchmark for whether or not a law is legal. Second, the 1945 Constitution legitimizes the colonial legacy regulations that are still in force while encouraging the formation of new national laws. Third, this constitution affirms the principle of the rule of law as stated in Article 1 paragraph (3), which requires all actions of state administrators and citizens to be subject to the law. Fourth, the 1945 Constitution regulates the rights and obligations of citizens, ensures equality before the law, and guarantees legal certainty. Fifth, the 1945 Constitution is the foundation for the development of national law that is just, civilized, and in accordance with the noble values of the nation.

However, the implementation of constitutional values does not always go smoothly. There are a number of challenges that hinder the consistent implementation of the 1945 Constitution. These challenges include low public understanding of the content and meaning of the constitution, weak law enforcement due to corrupt practices, nepotism, and collusion, and the dominance of the political interests of certain groups that sometimes ignore constitutional norms. Socio-economic disparities also have an effect, because the unfair distribution of resources can undermine the principle of social justice that is mandated by the constitution. In addition, technological and information developments demand adjustments to legal norms, especially in data protection and privacy.

In facing these challenges, the relationship between Pancasila, the 1945 Constitution, and the enforcement of the constitution has become very relevant. Pancasila as the basis of the state functions as a *grundnorm* or fundamental norm

that gives spirit to every article in the 1945 Constitution. Thus, the enforcement of the constitution in line with the values of Pancasila will ensure that the national legal system reflects the ideals of independence, upholds the sovereignty of the people, and protects human rights. Therefore, this study aims to analyze the role of the 1945 Constitution as the main source of law in the development of the national legal system, focusing on its historical role, the challenges of its implementation, and its relevance to law enforcement based on Pancasila. This research is expected to contribute to the strengthening of constitutional awareness and legal reform in Indonesia.

2. Literature Review

The study of the role of the 1945 Constitution in the development of the national legal system has been widely discussed by academics, both from historical, juridical, and sociological perspectives. Conceptually, the constitution is understood as a written basic law that regulates the organization of the state, the division of power, and the rights and obligations of citizens. According to Alexy,² the constitution is a legal instrument that limits the power of the government and protects the freedom of citizens. In the context of Indonesia, the 1945 Constitution is a manifestation of the ideals of independence and the values of Pancasila. Pancasila plays a role as the philosophical and ideological foundation of the state, which

² Robert Alexy. "Constitutional rights, balancing, and rationality." In *Habermas and Law*, pp. 265-274. Routledge, 2020.

animates every article in the 1945 Constitution. As stated by Yunita Dwi,³ Pancasila is a filosofische grondslag that functions as the source of all sources of state law. This is in line with the position of the 1945 Constitution as the supreme law that guides the formation of regulations under it. The two have a close relationship: Pancasila is the material source of the constitution, while the 1945 Constitution is a juridical form that binds all state administrators.

Historically, the 1945 Constitution replaced the Dutch colonial legal system that was in force before independence. However, through the Transitional Rules, some colonial regulations were still enforced to avoid a legal vacuum, while initiating the process of codification of national law. According to Liu et al.⁴ this transition is gradual, because building a truly national legal system requires sufficient time and resources. In its implementation, the 1945 Constitution faces various challenges. A study from Cigler⁵ identified obstacles such as weak constitutional awareness among the public, low quality of law enforcement, and the dominance of political interests in policymaking. Socio-economic factors and technological developments also affect the relevance and effectiveness of the constitution.

Constitutional enforcement requires synergy between state institutions, law enforcement officials, and active participation of the community. As affirmed in the

³ Yunita Dwi Pristiani, Ayu Jelita Ningrum, and M. Ma'rifani. "The Relationship Between Philosophy and Ideology: Philosophical Study of Pancasila as Filosofische Grondslag." In Proceedings of the International Seminar on Business, Education and Science, vol. 1, pp. 358-371. 2022.

⁴ Jia Liu, Dayong Zhang, Jing Cai, and John Davenport. "Legal systems, national governance and renewable energy investment: evidence from around the world." *British Journal of Management* 32, no. 3 (2021): 579-610.

⁵ Beverly A Cigler. "Public administration and the paradox of professionalization." In *Democracy, bureaucracy, and the study of administration*, pp. 355-391. Routledge, 2018.

rule of law theory, the law must apply universally, protecting all citizens without discrimination. The 1945 Constitution has regulated these principles in key articles, such as Article 1 paragraph (3) concerning the rule of law, Article 27 paragraph (1) concerning equality before the law, and Article 28 which guarantees freedom of association, assembly, and opinion. The literature shows that the relationship between Pancasila, the 1945 Constitution, and the development of the national legal system is integrative. Pancasila provides basic values, the 1945 Constitution provides a legal framework, while the enforcement of the constitution guarantees the continuity of these principles in state practice.

3. Method

This research uses a literature study method (library research) which aims to examine the relationship between Pancasila, the 1945 Constitution, and the development of national law in the context of constitutional enforcement. Literature studies are chosen because they allow researchers to collect, analyze, and synthesize various relevant academic sources, whether in the form of books, journal articles, laws and regulations, or official state documents. This approach is considered effective for obtaining a comprehensive understanding of the normative construction and historical development of Indonesian law, without having to conduct direct field data collection. The research stage begins with the identification of the problem, namely the gap between the values of Pancasila and the provisions of the 1945 Constitution and the practice of national legal development.

Furthermore, literature searches were carried out through scientific databases, digital libraries, and official government archives.

The selected sources are limited to publications relevant to the research topic, published within the last 5 years, and contain an in-depth analysis of constitutional law, legal philosophy, and legal politics in Indonesia. However, some classical sources are also included to provide a historical perspective, particularly as it relates to the early period of independence and the transition from colonial law to national law. The data collection process is carried out by documentation techniques, which is the systematic recording of important information found in the literature. The collected data is then analyzed using the content analysis method, which focuses on interpreting the meaning of the text and the relationship between concepts. This analysis aims to identify patterns, gaps, and relevance between research variables, namely Pancasila, the 1945 Constitution, and its implementation in the development of national law.

To maintain the validity of the data, a source triangulation technique is used, which is to compare information from different types of literature and authors to ensure the consistency of findings. In addition, the researcher also refers to official legal documents such as the minutes of the Investigating Agency for Preparatory Efforts for Indonesian Independence (*Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia*/BPUPKI), the text of the amendment to the 1945 Constitution, and the decision of the Constitutional Court as the main reference. This literature study method provides advantages in terms of completeness of historical and normative data, as well as allows for a critical analysis of the direction

of Indonesian legal development. However, the limitation is the dependence on written sources, so the interpretation of the findings is greatly influenced by the completeness and accuracy of the available literature. Therefore, the results of this research are expected to be a conceptual foothold for further empirical studies that examine the implementation of the values of Pancasila and the 1945 Constitution in legal practice in the field.

4. Results

4.1. The Historical Role of the 1945 Constitution in the Transition from the Colonial Legal System to the National Legal System

The 1945 Constitution has a strategic position as the main pillar in the transition process from the Dutch colonial legal system to a national legal system based on the values of Pancasila. After the proclamation of independence on August 17, 1945, Indonesia faced an urgent need to establish a supreme legal framework that was not only able to accommodate the spirit of independence, but also to regulate the administration of the state in a structured manner. The 1945 Constitution, which was established the day after the proclamation, is recognized as the *lex supreme* or supreme law, so all forms of laws and regulations, both newly formed and existing, must be subject to it.⁶

⁶ Yoyon Mulyana Ageng Darusman, Bambang Wiyono, and Guntarto Widodo. "The Importance of Good Constitution for Resulting Good Governance and Clean Government." *Jurnal Dinamika Hukum* 19, no. 3 (2020): 590-611.

In the early days of independence, Indonesia did not have laws and regulations that were completely free from colonial influence. The legal system that prevails still largely still refers to the Wetboek van Strafrecht, the Burgerlijk Wetboek, and various administrative regulations of Dutch heritage. It is in this context that the 1945 Constitution plays an important role through the Transitional Rules, especially Article II which states that all existing state bodies and regulations are still valid as long as they have not been replaced in accordance with the 1945 Constitution.⁷ This strategy avoids a legal vacuum and ensures the continuity of state administration while opening up space for the formation of national law.

The role of the 1945 Constitution does not stop at formal legitimacy. It became an ideological instrument that guided the direction of the formation of new laws. Article 1 paragraph (3) which states that Indonesia is a state of law emphasizes that all government powers must be exercised based on law, not absolute power. This marked a fundamental shift from a repressive colonial system to a democratic national legal system. The 1945 Constitution also regulates the rights and obligations of citizens, including equality before the law (Article 27 paragraph (1)), guarantees of freedom of association, assembly, and expression of opinion (Article 28), and protection of the right to life and welfare (Articles 28A-28J after amendment). The formulation of these articles reflects the awareness that independence is not enough to be recognized politically, but must be followed by real legal protection.

⁷ Henry Aspan. "The role of legal history in the creation of aspirational legislation in Indonesia." *International Journal of Research and Review (IJRR)* 7, no. 6 (2020): 40-47.

In its development, the role of the 1945 Constitution as the foundation for national legal development continues to be strengthened through a series of amendments, especially in the 1999–2002 reform era. The amendment expands human rights guarantees, strengthens the check and balance mechanism, and affirms the principle of people's sovereignty.⁸ This change shows the flexibility of the 1945 Constitution to adapt to the demands of the times without losing its essence as an independence constitution. Thus, the 1945 Constitution not only replaced the colonial legal system, but also became a source of legitimacy, ideological guidance, and a normative framework for the formation of national law. He ensured that the legal transition process in Indonesia runs gradually, directed, and based on the values of Pancasila, so as to be able to realize the ideals of a democratic, fair, and sovereign state of law.

4.2. Challenges of Implementing Constitutional Values in the Development of the National Legal System

Although the 1945 Constitution has been the philosophical and juridical basis for the formation of national law, the implementation of constitutional values in practice faces various challenges. These challenges can be grouped into institutional aspects, legal substance, and community legal culture. Institutionally, although the constitution has strictly regulated the division of powers, the practice of state administration still shows symptoms of centralization of power in the executive,

⁸ Agus Riwanto. "Strengthening the Authority of the People's Consultative Assembly the Republic of Indonesia to Create Checks and Balances System based on Post-Amendment Constitution 1945." *Researches World* 9, no. 1 (2018): 50-56.

especially in the period before reform.⁹ The check and balance mechanism regulated in the 1945 Constitution has not run optimally, both because of the weakness of derivative regulations and because of the low political commitment of state administrators. For example, before the amendment, the MPR had the highest position that held full power to determine the GBHN, but the control function over the executive institution had not been effective.

In terms of legal substance, harmonization between laws and regulations and constitutional values has often not been achieved. Many legal products still adopt the colonial mindset and legal system, so they do not reflect the principles of social justice and human rights protection as mandated by the 1945 Constitution.¹⁰ An example can be seen in laws that tend to be repressive to freedom of expression, which is considered to be contrary to Articles 28E and 28F. This shows that there is a gap between constitutional norms and the regulations under them.

In addition, the cultural factor of the community's law is also a challenge. The legal culture that is still influenced by feudal mindsets, political patronage, and low awareness of constitutional rights makes the implementation of constitutional values not run optimally. Public awareness to oversee public policy through legal mechanisms is often hampered by the lack of legal literacy. As a result, violations of the constitution do not always get an adequate response. The reform era has brought

⁹ Daniel E. Walters. "The administrative agon: A democratic theory for a conflictual regulatory state." *Yale LJ* 132 (2022): 1.

¹⁰ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis. "The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems." *Cogent Social Sciences* 8, no. 1 (2022): 2104710.

significant progress through the amendment of the 1945 Constitution, the establishment of the Constitutional Court (*Mahkamah Konstitusi/MK*), and the strengthening of the Judicial Commission (*Komisi Yudisial/KY*). The Constitutional Court has the authority to test laws against the 1945 Constitution, so that it becomes a vital instrument to ensure the conformity of national law with the constitution.¹¹ However, the effectiveness of the Constitutional Court also depends on the integrity of judges and the level of compliance of state institutions with the Constitutional Court's decisions.

Other challenges arise from globalization and technological developments. The entry of international norms and global economic integration require adjustments to national laws to remain in accordance with the constitution. Developments such as digitalization, personal data protection, and freedom in cyberspace have given rise to a new dilemma between the protection of individual rights and the interests of state security. Thus, the implementation of constitutional values is not only a technical issue of lawmaking, but also a political issue of law, institutional integrity, and public awareness. The success of national legal development is highly dependent on the consistency of all parties to make the 1945 Constitution the main compass in every legal policy.

¹¹ Marco Goldoni and Michael A. Wilkinson. "The material constitution." *The Modern Law Review* 81, no. 4 (2018): 567-597.

4.3. The Relationship between Pancasila, the 1945 Constitution, and the Enforcement of the Constitution in the Development of the National Legal System

Pancasila and the 1945 Constitution are two entities that cannot be separated in the Indonesian legal system. Pancasila functions as the source of all legal sources, while the 1945 Constitution is a written constitution that contains the basic norms of the state. The relationship between the two is integrative: the values of Pancasila are internalized into the articles of the 1945 Constitution, while the 1945 Constitution becomes an instrument for the operationalization of Pancasila in the life of the state.¹² The values of God, Humanity, Unity, People, and Social Justice are reflected in various articles of the 1945 Constitution. For example, the principles of humanity and social justice are embodied in Articles 27–34 which govern citizens' rights to employment, education, and social security. Meanwhile, the value of the people is reflected in Article 1 paragraph (2) which affirms that sovereignty is in the hands of the people. Thus, the 1945 Constitution not only contains positive legal norms, but also contains philosophical content sourced from Pancasila.

In constitutional enforcement, Pancasila functions as a moral and ethical benchmark, while the 1945 Constitution provides a formal juridical foundation. For example, when the Constitutional Court examines laws, the consideration of its decision does not only refer to the reading of the 1945 Constitution, but also to the values of Pancasila as the spirit of the constitution. This can be seen in several

¹² Natangsa Surbakti. "The Ideology of Law: Its Reflection in the Legal Products of Indonesia." *Varia Justicia* (2020): 48-58.

Constitutional Court decisions, such as the cancellation of articles that are considered to threaten religious freedom or reduce citizens' political rights. However, this relationship also faces challenges. Globalization brings new values that are sometimes not in line with Pancasila, such as extreme economic liberalism or cultural relativism. In this context, the 1945 Constitution serves as a filter that ensures that adaptation to global norms remains in line with the nation's identity.

Constitutional enforcement also requires support from all components of the nation. The legislature must ensure that every law is in line with the 1945 Constitution and the values of Pancasila. The executive institution is obliged to implement public policies that do not conflict with the constitution. Meanwhile, the community has a role in supervising, criticizing, and utilizing legal mechanisms in the event of violations. Thus, the relationship between Pancasila and the 1945 Constitution in the enforcement of the constitution is mutually reinforcing: Pancasila provides moral direction, the 1945 Constitution provides a legal framework, and the enforcement of the constitution ensures that the two elements are truly alive in the practice of the nation and the state. This integration is a solid foundation for Indonesia's democratic, just, and nationally characterized legal system.

5. Discussion

The development of national law based on Pancasila and the 1945 Constitution is a dynamic process influenced by political, social, economic, and technological developments. The results of the study show that despite significant progress after the reform, various challenges still hinder the optimization of the

implementation of constitutional values in the Indonesian legal system. This discussion focused on three main aspects: political consistency of law, harmonization of laws and regulations, and the role of the community in constitutional enforcement.

First, from a legal political perspective, consistency in the direction of law formation is the main key. Indonesian legal politics ideally refers to Pancasila as the source of all legal sources and the 1945 Constitution as a normative guideline. However, in reality, political dynamics often influence the legislative process, so that some legal products deviate from the value of the constitution. This creates inconsistencies between basic norms and operational policies, which in turn has the potential to lower public trust in the law. Therefore, a stricter supervision mechanism is needed, including strengthening the role of the Constitutional Court in correcting regulations that are not in line with the 1945 Constitution.

Second, in terms of regulatory harmonization, paradigm differences between lawmakers, enforcers, and legal interpreters often lead to overlaps or even contradictions between one regulation and another. This condition is exacerbated by the existence of a colonial heritage law that has not been fully revised in accordance with the spirit of the constitution. Legal harmonization requires cross-agency coordination and adaptation of legal substance to the times, such as issues of personal data protection, cybersecurity, and digital trade, all of which demand a new interpretation of citizens' constitutional rights.¹³

¹³ Eldar Haber, and Ammon Reichman. "The User, the Superuser, and the Regulator: Functional Separation of Powers and the Plurality of the State in Cyber." *Berkeley Tech. LJ* 35 (2020): 431.

Third, the role of the community in enforcing the constitution is no less important. High public legal awareness can be the first bulwark in preventing constitutional violations. However, the results of the study show that the legal literacy of the community is still relatively low, so the space for public participation has not been utilized to the maximum. Improved civic education, constitutional awareness campaigns, and the involvement of civil society organizations in the legislative process can be solutions to strengthen social control over public policy. In addition to these three aspects, this discussion also highlighted the challenges of the era of globalization and digitalization. Globalization brings in international legal values and norms that are not always in harmony with Pancasila, while digitalization presents new issues related to privacy, freedom of expression, and information security.¹⁴ In this context, the 1945 Constitution serves as a filter as well as a guide for adaptation, so that legal changes can be made without losing national identity.

Finally, constitutional enforcement requires synergy between state institutions and society. The legislature must ensure that legal products are consistent with Pancasila and the 1945 Constitution, the executive is obliged to implement them with integrity, the judiciary acts as a constitutional guard, and the community acts as an active supervisor. The relationship between Pancasila, the 1945 Constitution, and the enforcement of the constitution must not stop at the normative level, but must be realized in concrete policies that protect and empower the people. Thus, this discussion emphasizes that the development of a solid national law can only be

¹⁴ Franciscus Xaverius Wartoyo and Yuni Priskila Ginting. "Convergence of Law and Technology Through Optimization of Pancasila." *Journal of Digital Law and Policy* 1, no. 2 (2022): 61-72.

realized through a joint commitment to make Pancasila and the 1945 Constitution a moral and juridical foundation, which is not only formally obeyed, but also internalized in every aspect of state administration and people's life.

6. Conclusion

The 1945 Constitution is the main pillar of the development of Indonesia's national legal system. As a constitution, it holds a historical role in the transition from a colonial legal system to a national legal system that is sovereign and reflects the nation's identity. The 1945 Constitution serves not only as the highest source of law, but also as an instrument that affirms the principles of the rule of law, people's sovereignty, protection of human rights, and social justice. The relationship between Pancasila and the 1945 Constitution is fundamental. Pancasila as the basis of the state is the material source of the constitution, while the 1945 Constitution is a formal source that binds all state administrators and citizens. This synergy creates a legal framework that not only guarantees legal certainty, but also upholds justice and humanity.

However, the implementation of constitutional values still faces significant challenges, such as weak law enforcement, low constitutional awareness, dominance of political interests, socio-economic inequality, and rapid technological development. To overcome these challenges, integrated efforts are needed through constitutional education, strengthening legal institutions, and increasing public participation. With consistent constitutional enforcement and based on Pancasila, the national legal system can develop into a just, democratic, and adaptive system to

change. This will ensure that the goal of independence protects the entire Indonesian nation, promotes public welfare, educates the nation's life, and plays an active role in world peace can be achieved in a sustainable manner.

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