

# The Role of the State in Maintaining the Relationship Between the Church and Society based on Pancasila and the 1945 Constitution of the Republic of Indonesia

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## ABSTRACT

The Indonesian constitution states that Indonesia is a state of law where the law is the commander in the life of the nation and state. Indonesia is not a religious state nor is it a secular state, but Indonesia is a religious country where in the foundation of the state namely Pancasila and in the first precept says the One and Only God. Indonesian people who adhere to various religious traditions can live together and side by side based on Pancasila and the Constitution of the Republic of Indonesia. One of the religions believed by the people of Indonesia is Christianity where a collection of Christians is called the Church. In certain places there are frictions between the church and non-Christian communities. The state has a role to maintain the relationship between the church and the community based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

## Keywords

*State, church, society, Pancasila, Constitution of the Republic of Indonesia in 1945*

## INTRODUCTION

Every country has a state policy in which it shows the common goals and thoughts of the founding father. The unity of mind that binds the nation to form the country and the country's journey in the future. A nation in realizing the ideals of its life in a modern state, objectively has its own characteristics, and through a process and development in accordance with the historical background, social reality, culture, ethnicity, religious life, and geographical constellation owned by the nation. (Laksono, 2019)

The founding fathers of the Indonesian nation had agreed that Pancasila as the basis of the state. The search for the idea of Pancasila brings us back to see the history of the journey of the Indonesian nation. Because by exploring the history of the journey of the Indonesian nation we will understand the life view of the Indonesian nation to become an independent and prosperous nation. That view of life and ideals is the elanvital of this nation in the struggle to explore and formulate Pancasila into the philosophy, ideology and policy of the country. (Huda, 2018)(Zabda, 2017)

In a speech that in history was patented as the Speech of the birth of Pancasila". On June 1, 1945 before the BPUPKI (Investigating Agency for Preparatory Efforts for Indonesian Independence) session, Sukarno said that Pancasila was Philosophische Grondslag. In fact, Pancasila is also broader than what can be described in doctrine or research studies of Sukarno's thought itself in any methodology. Karno himself often said, he is a digger of Pancasila, not a maker of Pancasila.

The ideology of Pancasila is established as the basis of the state as well as the national ideology. In Pancasila, there are noble values and ideals of the Indonesian nation. Pancasila is lifted from the values, customs, culture, moral values contained in the outlook of life of the Indonesian nation. Thus, Pancasila as the ideology of the Indonesian nation and state is rooted in the nation's outlook on life and culture. Pancasila

does not adopt from outside ideologies. In fact, the values of Pancasila are superior to ideological values from outside.(Selection & Wisdom, 2018)

A strong nation cannot be separated from the solid and strong foundation and ideology of the State. Without it, the State will not become a strong nation and swayed by the harshness of global competition in the life of the nation and state. In this concept, understanding the basis of our country's Pancasila is not just in speech, but much deeper must make us more aware that our nation has a strong national identity. Therefore, we should apply it in our daily lives to realize and demonstrate the identity of our nation that is more advanced, dignified, and highly cultured. That basis is expected from the people of this nation to explain Pancasila as the basis and ideology of the state, elaborate the values contained therein, and also understand that Pancasila as the principle of national law.(Fathani & Qodir, 2020)

The Church and Christianity as we know and find it today was first of all the Roman Catholic Church, which came and entered with Portuguese merchants (and soldiers) in 1511. Throughout the 16th century this church developed quite rapidly in various places in Indonesia, especially in the coastal and port areas. We remember with reverence, for example, Franciscus Xavier, that diligent and valiant and dedicated missionary. Since the early 17th century, with the presence of the Verenigde Oost-Indische Compagnie (VOC), a Dutch trading partnership supported and armed by the Dutch government supported and armed by the Dutch government, most Roman Catholics were Protestantized, except in Flores and East Timor (formerly Portuguese Timor). This church or school has only returned to existence and developed massively since the mid-19th century, when the Dutch government (East Indies) adopted the principle of neutrality in the religious field and allowed the mission of the Roman Catholic Church to return to work in this country.

Ir. Sukarno (President of the Republic of Indonesia) at the Pancasila course in front of Pancasila cadres on May 26, 1958 at the State Palace, Jakarta said: "The state is nothing more and nothing less than one organization, one organization of power, one *machtorganisatie*. As an organization, the state has institutions in which synergize with each other. The power possessed by the state is the protection and regulation of government institutions (Government) and non-government (Non Government). The state cannot stand alone without the institutions that regulate the lives of its people.

No matter how man lives alone, he will not be able to escape the rules, both the rules he makes and the rules imposed by his environment. This means that he cannot be free as he pleases. This is because of the limitations of the ability concerned. Thus that eternal absolute freedom does not exist. Regulations made by the government sometimes have conflicts among people who force their own desires. Incomprehension of the rule creates horizontal conflicts in the midst of society.

The legal system should have a sense of justice in the midst of society. Garuda Wiko argues that building a national legal system is broader than just producing a set of written regulations and norms. Beyond these rules and norms, there are other elements arranged in the fabric of interaction that ideally boil down to achieving national goals and interests. Indonesia, which consists of various ethnicities, races and religions, needs a legal system that is at least acceptable to all components of society. Although in the application of this law is very difficult to apply because of the subjective assessment of the law.

In article 29 paragraph (2) of the 1945 Constitution: "The State guarantees the freedom of each citizen to profess his own religion and to worship according to his religion and belief". Solving the problem of the relationship between religion and state democratically requires a democratic constitution as well. A democratic constitution is considered capable of answering the formulation of problems, both politically and religiously. There are two formulations of problems that are not answered by a constitution, the constitution is flawed by itself and cannot be considered a democratic constitution, First, a democratic constitution must be consistent with diverse religious beliefs; Second, a democratic constitution must be affirmed by followers of various religious faiths. A constitution that does not contain the above two issues is clearly not a democratic constitution. If this is the case, the guarantee of religious freedom means nothing in the constitution.

In general, the establishment of houses of worship in the territory of Indonesia went well due to good relations between adherents of the majority religion and adherents of minority religions. Religious minorities are mostly immigrants to the territory of religious minorities who work as civil servants, the Indonesian National Army, the Indonesian National Police, traders, self-employed people, and so on. In some places there are adjoining houses of worship, others adherents such as church buildings and mosques side by side. For example, the Cathedral Church and the Istiqlal Mosque in Jakarta have long been side by side which reflect tolerance between religious communities. (Main & Toni, 2019)

The freedom to profess religion in Indonesia is not directly proportional to the freedom to build houses of worship. This can be seen in the rejection of church building permits in some places. This rejection was carried out by elements of the majority religious community in the place. Based on data from the Wahid Institute, the Aceh Regional Leadership Consultative Institute Singkil agreed to demolish 10 (ten) churches in the Singkil area on December 12, 2015.

Various dynamics and conditions regarding religious freedom, especially in the aspect of houses of worship, have continued in Indonesia since then. Setara Institute in the report "Leading the Promotion of Tolerance: Conditions of Freedom of Religion/Belief and Religious Minorities in Indonesia 2017" released data on cases of religious freedom in Indonesia as many as 155 (one hundred and fifty-five) events, one of which was influenced by the establishment of houses of worship. 18 In terms of the number of disturbances to houses of worship, significant progress can actually be seen in 2016 with only 15 (fifteen) cases of disturbances and in 2017 quite stable at 17 (seventeen) events. Compared to the previous research period which was always above 20 (twenty), for example in 2015, as many as 30 (thirty) times and in 2014 there were 26 (twenty-six) events. In fact, the number in 2013 reached 65 (sixty-five) disturbances to the establishment of houses of worship. The picture of decreasing disturbances to houses of worship is directly proportional to the resolution of some administrative problems, such as what happened in Jambi, where IMB problems have always experienced obstacles over the past two decades.

The purpose of this study is to determine the extent of the government's role as a representative of the rule of law acts fairly when there are problems in the midst of society. Through this research can be found legal problems that occur between church and community relations and solutions to solve these problems. The results of this research can be used for academics as a source of more in-depth research. And also for the Indonesian people in solving church and community relations problems when establishing houses of worship.

## METHODS

The research method used by the author in this paper is with normative research methods. Where to see the legal problems that occur between the relationship of church and state in Indonesia. Legal events that result in injustice faced by the church are the object of research in this dissertation. In this study wants to test a legal truth carried out by the state and society against the church in the context of the state of Pancasila.

## RESULTS

In the beginning the state was very simple, the state government ran traditionally because the people participated directly in the overall determination of the administration and policy of the state, this could be done because the state at that time was only limited to one city with only a small number of citizens, and the interests of the people were not as many and complicated as they are today.

In classical Greek times the polis was defined as a city-state. The polis was a means of life for the Greeks. The polis is an organically existing natural institution by which other living beings are influenced by the laws of nature (the laws of growth and death). Therefore, the state needs living space (lebensraum), which grows and develops dynamically. The body is the state, the soul is society as the forming element of the state.

According to Aristotle, Man is *Zoion politikon* (beings living in the Polis). These words of Aristotle are translated in modern terminology by saying that "man is a Social Being". This translation is partly correct as well, but Aristotle is referring here to more than social beings. For him Man by nature lives in the Polis. Why are humans called creatures who live in the Polis? Because humans cannot be separated from the life of the state. People live in the state, carry out all their activities in the order, system of life and receive protection from the state. The state becomes a means of realizing good life. In this embodiment, humans always need their neighbors to relate to each other. Therefore, humans become the main actors in realizing the highest good in the state.

In essence, the State is a social unity formed by the interaction in which human beings reside. The supposed interaction between individuals belonging to one State has been expressed as a sociological element independent of law, which forms the unity of the individuals of one State, and therefore forms the State as a social reality. Departing from this thinking, that the State as a unity of individuals, it is necessary to have a clear and directed function of the State to caffeinate all individual problems that arise. In the current context, precisely the function of this state prioritizes its individual function as the leader of its state, rather than prioritizing the function of its state as an individual unit.

The goals of the country indicate what the country ideally aims to achieve. The objectives of the State according to Charles E. Merriam are:

1. External Security : External Security
2. Internal Order : Internal Order
3. Justice : Justice
4. General Welfare : General Welfare
5. Freedom : Freedom

The five goals of this country can be summed up by the notion of "common prosperity" (commonwealth) or "common good" (Commongood). The five goals of the state are always there, if we observe around the

activities of the state or based on experience and reflection of social realities. If the criteria for the purpose of the state are embodied in the interaction of its people, the state will reflect the welfare state.

### State of Law

The rule of law is a terminology that is often echoed in legal science, especially when referring to the idea of a state whose entire activity is limited by rules, so that it does not fall into a country that is governed by a few interests of each person. The term rule of law is the equivalent of the term rule of law also known as nomocracy which refers to the idea that the law must govern a, which is compared inversely to arbitrary actions carried out by individual state officials without the basis of available rules.

The idea of the real rule of law has long been developed by philosophers from the time of Ancient Greece. Plato, in his books, "the Statesman" and "The Law" stated that the rule of law is the second best form of preventing the decline of power. The concept of the modern legal state in Continental Europe was developed using the German term "rechtsstaat" among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others. While in the Anglo American tradition the concept of law was developed under the term "Rule of Law" pioneered by A.V. Dicey. In addition, the concept of the rule of law is also related to the term nomocracy (nomocratie) which means that it is decisive in the exercise of the power of the state of law.

Rechtstaat comes from two words, namely recht (Germany), right (English), law (Indonesia) and staat (Germany), which means state. Rechtstaat means the state of law. Society and law are two inseparable identities. According to Thomas Aquinas, the most basic moral commandment is to do good, to avoid evil. Thomas Hobbes said that the existence of the state is necessary because the state is a refuge for individuals, groups and societies, as well as strong rulers.

The Rechtstaat has characteristics, namely derived from the ratio of human, liberal or individual, anthropocentric humanism, absolute separation of religion and religion. The Rechtstaat also has untus, namely the recognition or protection of human rights, Trias Politika, government by law, and administrative justice.

The concept of the rule of law was also presented by Aristotle, a student of Plato. Aristotle argued that the administration of the state is not done by humans alone. The administration of the state is carried out using a fair mind. Fair thinking can only be done based on norms. Because, norms that are able to determine good or bad about something that is implemented. The state must be organized based on the determination of good norms, so that the country can also run well. The goal of a just mind and based on good norms will bring about justice for all people. Such conditions are called the rule of law. The rule of law aims to create justice for all people. The law becomes a tool to realize that justice. Aristotle also strengthened his opinion by stating that the state of law is a state organized on the basis of constitution and law. The law in question is a sovereign law, so that the sovereignty of the state is in the hands of the law.

The concept of the rule of law presented by Julius Stahl is within the realm of the Continental European tradition. Julius Stahl, who termed the state of law as rechtsstaat, gave four concepts of the state of law. The four concepts of the rule of law according to Julius Stahl are:

1. Protection of human rights for mankind
2. There is a division of power in the state
3. The government runs and is organized in accordance with the law
4. The State shall have a State administrative court.

A.V. Dicey also gives a view on the concept of the rule of law. Dicey based the concept of the legal state on the Anglo Saxon tradition. The concept of the rule of law proposed by Dicey contains three important elements, namely:

1. The existence of the rule of law in the state
2. Equality before the law for every human being
3. The state has a judicial process

According to Von Munch as quoted by A. Hamid S. Attamimi, it is said that the element of the state based on law is:

1. Human rights.
2. Division of power.
3. The attachment of all organs of state to the constitution and the attachment of the judiciary to laws and laws.
4. Basic rules on proportionality (verhältnismässigkeit).
5. Judicial supervision of decisions (determinations) of general power.
6. Judicial guarantees and fundamental rights in judicial proceedings.
7. Restrictions on retroactive law.

The implications of applying the concept of rule of law in a state will lead state administrators to the recognition of the following principles and authorities:

1. The implementation of the concept of rule of law requires an atmosphere of respect for "law and order" rather than an atmosphere of anarchy, war, riots, and strife. Therefore, in protecting the rights and freedoms of the people, the government must not allow chaos.
2. The exercise of authority by state administrators must always be in accordance with applicable law. If there is a dispute, the judiciary must decide it. In this case, if any people's rights are violated by the government, for any reason, there must be two processes for those people to ask for the intervention of the courts to decide them fairly. Even if the government is guilty, it must be able to provide redress to the people (despite the right to immunity and the executive), or other sanctions are applied, including political sanctions, for example in the form of impeachment if the offense committed is serious
3. Political bodies (especially parliaments) determine the details of the rule of law mechanism, both substantive and procedural, so that therefore, the principle of rule of law does not become too subjective and uncertain.

In the concept of the state of law the Rule of Law there is the concept of Rule by Law or commonly called the concept of state action must be based on law which means that the law becomes a reference for practices or actions carried out by the state or government, where according to Brian Z Tamanaha Rule by Law is contained in the formal version of the Rule of Law, and the concept of Rule by Law is very popularly used by modern countries. In the concept of Rule by Law is an idea that the law is a means by which the state conducts affairs, all actions taken by the government, must be in accordance with the rule of law. So whatever the law says is an order that must be carried out by the government, and the government prefers the concept of Rule by Law as a way because it is considered the most convenient way to govern. Rule by Law is the antithesis as the exercise of arbitrary power by the state or government. Rule by Law is part of a formal conceptual form within the state theory system of law Rule of Law.

One of the basic principles that received affirmation in the amendment of the 1945 Constitution was the principle of the rule of law, as stated in Article 1 paragraph (3) of the 1945 Constitution which stated that "The State of Indonesia is a state idealized by the founding fathers as stated in the general explanation of the 1945 Constitution before the change on the state government system which states that the State of Indonesia is based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). Looking at the development of the theory of the State of Law, it can be seen that in the sense of *rechtstaat* is often associated with the notion of democracy, so that the ideal understanding of the state of law is "democratic state of law". According to Padmo Wahjono, that the core of legal formulation in a state of law must be formulated democratically, that is, it is desired by the people, because the highest sovereignty is in the hands of the people (without any restrictions), will give rise to absolute-democratic, which is no different in nature from power not limited to one dictator or to a group of dictators (proletarian dictatorship). Therefore, according to Padmo Wahjono that the formulation contained in the fourth paragraph of the Preamble to the 1945 Constitution (containing the precepts of Pancasila), is a guarantee of restrictions for the possibility of absolute democracy, even this guarantee is firmer when compared to the formulation of a democratic state of law or vice versa a democratic state limited by the pattern of the rule of law.

The role of the state in the relationship between church and society should not encounter obstacles and religious conflicts, especially in terms of church establishment in the territory of the Unitary State of the Republic of Indonesia, if the State through its government is present to play a role in regulating its policies based on law based on Pancasila and the 1945 Constitution. And more than that, the community as a state entity should be given complete education about their respective religions, so that the goals of a socially just state can be realized towards the ideals of a just, prosperous and prosperous state (Hakh, 2018).

The state as the highest authority has an interest in protecting all entities that exist and become part of them. It is also the state that must be able to unite the various differences that exist in a consensus regarding common ideals. Because it is the common ideal that at the height of its abstraction is most likely to reflect the common interests among fellow citizens who in reality must live in the midst of pluralism and pluralism. Basically, the right to profess a religion and practice worship in accordance with its religion is a human right that cannot be reduced under any circumstances and by anyone. Such is the guarantee given in Article 4 jo. Article 22 of Law No. 39 of 1999 concerning Human Rights jo. Article 29 of the 1945 Constitution) (Bo'a, 2020).

The guarantee of the right to freedom of religion and worship is mandated by the 1945 Constitution, and must be further regulated in laws and regulations. Regulation of guarantees to the right to freedom of religion and worship is very important, moreover Indonesia is a country that recognizes several religions to live and develop in the Indonesian state.(Sadzali, 2020)

Guarantees of legal protection and legal certainty to practice religion are also guaranteed by the constitution and the Human Rights Law. The articles related to this matter are article 28D paragraph (1), article 28E paragraph (1), article 28G paragraph (1) and paragraph (2), article 28I paragraph (2), and article 28J or (1) of the 1945 Constitution; article 3 paragraph (2) and paragraph (3), and article 5 paragraph (1), article 22 paragraph (2) of the Human Rights Law, and actually, if freedom of religion and practice of worship

is associated or categorized as other basic rights, then many articles fall into both categories, but for the purposes of this paper, mentioned the articles closest to the subject matter. Article 29 paragraph (2) of the 1945 Constitution jo Article 22 paragraph (2) falls into these two categories because it is a state obligation that must be given and is the right of the population to obtain it (Berhиту, 2014).

Legal Protection is to provide protection to human rights that are harmed by others, and this protection is given to the community so that they can enjoy all the rights provided by law or in other words legal protection is a variety of legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party (Nainggolan, 2019; Toreh, 2013).

According to Jimly As-shiddiqie, the state, under no circumstances, can diminish everyone's right to life, the right not to be tortured, the right to freedom of mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law. According to him, a state that guarantees human rights (one of which is religious rights), then everyone is free to embrace religion and worship according to their religion. Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience. Therefore the state upholds the ethical and moral values of humanity taught by every religion, and guarantees the freedom of each citizen to embrace and practice his religion. The protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state (Aritonang, 2019)(Nugraheni, 2016).

The protection and certainty of state law in interfaith church and community relations should be present and become a shield for the lives of Indonesian people who are different ethnicities, cultures and religions. The government, be it executive, legislative and judiciary in terms of protection and legal certainty in interfaith church and community relations, has devoted all its thoughts in the form of rules and regulations as a legal basis for anyone in Indonesia and in this case provides a sense of security, comfort in carrying out activities and worship. However, it is undeniable that there are still shortcomings and sometimes between theory and practice are not in accordance with what is aspired to (Sun, 2021).

## CONCLUSION

There needs to be legal awareness for all followers of religions in Indonesia to provide input or active contribution to the government for the progress and welfare of all Indonesian people. The guarantee of freedom of religion and worship has been stipulated in the constitution of the Republic of Indonesia. With this guarantee, the state must be able to maintain the relationship between the church and the community so that there are no conflicts in the establishment of houses of worship and worship carried out by every religious believer in Indonesia. Although the number of opposition to church establishment in Indonesia is small compared to the size of Indonesia, it should not be underestimated. The state must maintain all its citizens in worship and religion recognized by the state or government. Pancasila and the 1945 Constitution of the Republic of Indonesia became guidelines for the life of the nation and state. The appreciation and practice of Pancasila values will maintain the relationship between people who adhere to various religions. Adherents of the majority religion do not become rulers in their territory, but become protectors and give place and space to members of minority religions. Differences are not a threat but a wealth in the lives of Indonesian people.

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