

The Examination of Government Regulation Number 28 of 2022 From a Pancasila Point of View

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DOI: <https://doi.org/10.55299/jsh.v2i3.843>

Article history: Received May 03, 2024; Revised May 17, 2024; Accepted May 18, 2024

ABSTRACT

Indonesia as a democratic country that emphasizes the rule of law as the main foundation, makes Pancasila as the moral and philosophical foundation for the constitution and laws and regulations. This research aims to evaluate the consistency of Government Regulation Number 28 Year 2022 on the Management of State Receivables with the principles of Pancasila, as well as to assess the extent to which its practical implementation reflects the moral and philosophical values of Pancasila. The method used in this research is juridical-normative with a conceptual and statutory approach, accompanied by qualitative descriptive analysis of relevant statutory documents and legal doctrine. The results of the analysis highlight the importance that Government Regulation No. 28 Year 2022 must comply with the existing legal hierarchy, as well as consistently reflect the principles of Pancasila as a moral and philosophical foundation in the regulation of state receivables. Nonetheless, the addition of new rules concerning liability for state receivables raises debates about consistency and social justice. Therefore, it is important for the government to ensure that the implementation of the rules not only considers the legal and financial aspects, but also the social and humanitarian impacts on the individuals involved. Success in regulating state receivables should be measured by the extent to which the principles of Pancasila are respected and social justice is realized in the process, which will help strengthen the foundations of democracy and the rule of law in Indonesia.

Keywords: Indonesia, Democracy, Rule of Law, Pancasila

INTRODUCTION

Indonesia as a democratic country that recognizes the rule of law as the main foothold in the administration of the life of the nation and state, asserts itself as a state of law. Since August 17, 1945 after proclaiming its independence, the founding fathers established Indonesia as a state of law. This is stated in the pre-amendment 1945 Constitution, namely in the general explanation which states that: Indonesia is a state based on law (*rechtsstaat*) and not based on power (*machtsstaat*). Post-amendment of the 1945 Constitution in Article 1 paragraph (3) also stipulates that the State of Indonesia is a state of law.¹ The concept of the rule of law is not just rhetoric, but the foundation for all actions, policies, and interactions in society. As a state of law, Indonesia places law as the highest authority that must be respected and obeyed by all citizens, even by the government itself, in all aspects of social, economic, and political life.

¹ Mahmud, Hadi. "Pancasila Ideology as the Basis for Building the Indonesian Rule of Law." *PANCASILA IDEOLOGY AS THE BASIS FOR BUILDING THE INDONESIAN RULE OF LAW* 3.2 (2020): 310-326.

Terminologically, the term “state of law” in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution does not refer specifically to one of the main concepts in the Western legal tradition, either Rechtsstaat or Rule of Law.² The views of legal and political science experts confirm that Indonesia is a state of law based on Pancasila. They argue that Pancasila, as the state philosophy and ideology, is not only the moral foundation for legal and policy development, but also a deep philosophical foundation for Indonesia's constitution and laws and regulations. Pancasila is not only symbolic in the legal system, but is the source of values that underlie every aspect of the life of the nation and state. Thus, Indonesia is not only a legal state formally, but also substantially makes Pancasila the main guide in drafting regulations and regulating the lives of its people.

This approach reinforces the idea that law cannot be separated from the ethical and moral values reflected in Pancasila. By making Pancasila the philosophical foundation, Indonesia respects the diversity of cultures and beliefs, and ensures justice, equality and welfare for all its citizens. The concept of Indonesia as a state of law based on Pancasila is not just a rhetorical claim, but a deep commitment to realizing justice and prosperity for all Indonesians.

As a country that recognizes the rule of law as the main pillar in its social order, Indonesia places law as the foundation that regulates all aspects of the life of society, nation and state. This principle emphasizes that the law is the highest authority that must be respected and obeyed by all citizens, including the government, in every action and policy taken. The existence of law as the highest authority is not only the basis for justice, but also an instrument that guarantees the protection of the rights and obligations of each individual. In the context of the rule of law, legislation is a key instrument that regulates the behavior of the government and the general public in accordance with the values upheld by the state. In Indonesia, the prevailing legal system emphasizes the importance of strict hierarchical order of laws and regulations, ensuring that every regulation must be in line with the principles contained in the 1945 Constitution and always based on the values of Pancasila.

Pancasila is used in lawmaking or becomes a major step in making laws and regulations in accordance with the spirit of the Indonesian state which is humane, just, civilized and guarantees social justice for all Indonesian people. Thus, every regulation must be in accordance with the basic values contained in the 1945 Constitution and in harmony with the spirit of Pancasila. This not only reflects the legal maturity of the country, but also ensures a balance between the interests of individuals, groups and the broader national interest.

Pancasila as the foundation of the state and ideology of the Indonesian nation is not only a constitutional doctrine, but also a reflection of cultural values and moral ethics reflected in the daily lives of Indonesian people. Every policy and regulation issued by the government is expected to not only comply with the formal aspects of the law, but also exude the essence of these values, such as morality, justice, unity, legal sovereignty, and legal certainty. Therefore, the government's consistency in issuing regulations to govern various aspects of state administration, including financial supervision and handling of state receivables, must always be carefully considered.

One of the recent developments that has been highlighted is the issuance of Government Regulation No. 28 of 2022 concerning the Management of State Receivables by the State Receivables Affairs Committee (PUPN). This step marks the government's real commitment to managing state debt and improving the national financial structure. However, in applying the rule of law, it is not enough just to have regulations, but also the ability to enforce these legal rules fairly and effectively.

Therefore, it is important to further examine whether the formation of Government Regulation No. 28 of 2022 is in accordance with the principles of Pancasila, which is the moral and legal foundation for the Indonesian nation. This journal will examine more deeply the suitability of the formation of Government Regulation No. 28 of 2022 to the principle of the rule of law in the

²Aidul Fitriada Azhari. “The Indonesian Rule of Law: Decolonization and Reconstruction of Tradition.” *Ius Quia Iustum Law Journal* 19.4 (2012): 489-505.

perspective of Pancasila, and see to what extent the values contained in Pancasila are reflected in the substance and implementation of Government Regulation No. 28 of 2022. Through in-depth analysis, this journal is expected to provide a more holistic insight into the correlation between this regulation and the moral and legal values that are the foundation of the Indonesian state.

METHOD

This research is a juridical-normative research with a conceptual approach (conceptual a Government Regulation approach) and legislation (statute a Government Regulation approach). The conceptual approach is used to understand concepts related to the management of state receivables by the State Receivables Affairs Committee (PUPN), while the statutory approach is used to analyze laws and regulations related to the management of state receivables by PUPN. Juridical-normative research is research conducted by examining legislation and legal doctrine related to the problem under study. The concept approach is used to understand concepts related to the management of state receivables by PUPN, such as state receivables, PUPN, Debt Insurers, and Debt Guarantors. While the statutory approach is used to analyze laws and regulations related to the management of state receivables by PUPN, such as Law Number 49 Prp. Year 1960 concerning the State Receivables Affairs Committee and Government Regulation Number 28 Year 2022 concerning the Management of State Receivables by the State Receivables Affairs Committee.

In this research, the data used is secondary data obtained from statutory documents and legal doctrines related to the management of state receivables by PUPN. The data obtained will be analyzed using concept and statutory approaches. In analyzing the data, researchers will use qualitative descriptive analysis techniques by describing and explaining the data obtained from statutory documents and legal doctrines related to the management of state receivables by PUPN. The results of data analysis will be used to answer the formulation of problems and research objectives that have been set.

RESULTS AND DISCUSSION

Government Regulation No. 28 of 2022, which regulates the Management of State Receivables by the State Receivables Affairs Committee (PUPN), is an important legal instrument in upholding state financial governance. This regulation gives PUPN the authority, duties, and scope of managing the collection of state receivables.

The State Receivables Affairs Committee (PUPN) is an inter-departmental committee responsible for managing state receivables originating from government agencies or entities controlled by the state. PUPN plays an important role in managing Indonesia's sovereign debt and restructuring financial obligations.

Government Regulation No. 28 of 2022 is one of the legal instruments derived from a higher law, in this case, Government Regulation in Lieu of Law No. 49 of 1960 concerning the State Receivables Affairs Committee. Government Regulation No. 28 of 2022 basically functions as an implementing regulation that regulates the implementation details of the provisions stipulated in the Law.

As a derivative regulation, Government Regulation Number 28 Year 2022 has principles attached to it, which must be adhered to in the process of its formation and in its application. First, government regulations may only regulate the implementation of what has been regulated in the underlying law, in this case the Law on the State Receivables Affairs Committee. This means that Government Regulation No. 28 of 2022 should not go further or create new legal norms that are not regulated in the existing law. This is to ensure consistency and harmony between derivative regulations and higher laws.

Pancasila is not just a set of values or principles, but a framework of thinking that becomes the main foundation for the formation of laws, regulations, government policies, as well as regulating formal relationships between institutions and individuals in the context of the Indonesian state.³ First, Pancasila serves as a guide in the preparation of laws and other legal products. The values contained in Pancasila become the moral and ethical basis in the formation of legal rules that are fair and in accordance with the needs of society. Second, Pancasila serves as the foundation in formulating government policies. The principles embodied in Pancasila guide policymakers in establishing measures that promote public welfare and social justice. Third, Pancasila also regulates the formal relationship between state institutions and the individuals living within them. The principles of Pancasila guide the state in maintaining the balance of power, protecting individual rights, and ensuring justice and harmony in society.

In terms of legal hierarchy, Indonesia follows a system that positions laws and regulations in a hierarchical structure. At the top of the hierarchy is the 1945 Constitution (UUD 1945) as the highest constitution that regulates the basic principles of the state. Below the 1945 Constitution, there are laws, government regulations, presidential regulations, and regional regulations. Government regulations fall below the law, and are supposed to act as implementing instruments that elaborate and implement the provisions set out in the law.

From the perspective of Pancasila, the moral and legal principles reflected in the precepts of Pancasila must always be upheld in the process of forming laws and regulations. With ethics, the values of Pancasila which are reflected in the ethical norms of the life of the nation and state can be practiced.⁴ One of the relevant precepts of Pancasila to explain why government regulations should not go further or create new legal norms is the Precept of Social Justice for All Indonesian People.

The Precept of Social Justice emphasizes the importance of justice as a foundation in the administration of the state and society. In the context of regulation formation, justice means that there is consistency and harmony between derivative regulations and higher laws, such as laws. This is important to maintain fairness and equality in the application of law, as well as to avoid the potential for abuse of power or the creation of legal norms that contradict agreed principles.

Thus, laws and regulations, including government regulations, must be in line with the applicable legal hierarchy and must not create new legal norms that are not regulated in existing laws. Where the leveling of each type of lower legislation must not be in conflict with higher legislation. This is to ensure that a democratic and transparent legislative process is maintained, as well as to ensure compliance with higher legal principles, including the principles of Pancasila. Thus, the harmony between derivative regulations and higher laws is important in maintaining fairness and integrity in the Indonesian legal system.

Pancasila does not exist in the hierarchy of laws and regulations because Pancasila values are already contained in a norm in the 1945 Constitution. This is in accordance with Article 3 paragraph (1) of Law 12/2011, namely: "The 1945 Constitution of the Republic of Indonesia is the basic law in laws and regulations." The basic law referred to in Article 3 paragraph (1) of Law 12/2011 is the basic norm for the formation of legislation which is the source of law for the formation of laws and regulations under the 1945 Constitution. In the Preamble of the 1945 Constitution of the Republic of Indonesia, especially in the formulation of the five philosophical foundations of the state, and further elaborated in the articles of the 1945 Constitution of the Republic of Indonesia as well as in Law No. 10/2004 on the Formation of Legislation, especially Article 2, which states that Pancasila is the source of all sources of law or the source of legal order for legal life in Indonesia, then it can be interpreted that "The placement of Pancasila as the source of all sources of state law is in accordance with the Preamble of the 1945 Constitution of the Republic of Indonesia which places Pancasila as the basis

³ Yuni Priskila Ginting, and Franciscus Xaverius Wartoyo. "Fair Value of Pancasila in the Framework of Criminal Code Renewal." *Law Review* 22.3 (2023): 343-359.

⁴ Fransiska Novita Eleanor. "Pancasila as a basic norm in the Indonesian legal system." *ADIL: Journal of Law* 3.1 (2012): 141-165.

and ideology of the state as well as the philosophical basis of the nation and state so that any content material of laws and regulations should not conflict with the values of Pancasila”.

In the case of the formation of laws and regulations, harmonization of laws and regulations can also be carried out, which can be interpreted as a process of harmonizing or harmonizing laws and regulations that are to be or are being drafted, so that the resulting laws and regulations are in accordance with the principles of law and good laws and regulations.

In terms of the scope of legal harmonization, L.M. Gandhi who quoted the book *tussen eenheid en verscheidenheid: Opstellen over harmonisatie instaat en bestuurecht* (1988) says that harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions, legal systems and legal principles with the aim of increasing legal unity, legal certainty, justice (justice, *gerechtigheid*) and equality (equity, *billijkheid*), usefulness and clarity of law, without obscuring and sacrificing legal pluralism if it is needed. The national Law Development Agency in a book compiled by Moh. Hasan Wargakusumah and friends states that legal harmonization is a scientific activity towards a written harmonization process that refers to both philosophical, sociological, economic and juridical values.⁵

In its implementation, harmonization activities are a comprehensive assessment of a draft legislation, with the aim of knowing whether the draft regulation, in various aspects, has reflected harmony or conformity with other national laws and regulations, with unwritten laws that live in society, or with international conventions and agreements, both bilateral and multilateral, which have been ratified by the Government of Indonesia.

Harmonization is ideally done at the time of drafting legislation. Harmonization of draft laws includes 2 (two) aspects as follows :⁶

Harmonizing the content material of the draft law by:

- 1) Pancasila;
- 2) Constitution of the Republic of Indonesia Year 1945 / vertical harmonization;
- 3) Law / horizontal harmonization;
- 4) Principles of legislation:
 - a) Principles of formation;
 - b) The principle of content material;
 - c) Other principles in accordance with the legal field of the draft law concerned.

Harmonization of draft laws with legislative drafting techniques that include: *Kerangka peraturan perundang-undangan*;

- 1) Hal-hal khusus;
- 2) Variety of language;
- 3) Form of draft laws and regulations

Harmonization is done in the following ways:

- a) Ensure that the draft law includes the philosophical values of Pancasila and that the articles of the draft law do not contradict these values;
- b) Ensure that the articles of the 1945 Constitution of the Republic of Indonesia that order its formation have been correctly included and also ensure that the draft law is in line with the principles of state administration according to the Constitution;
- c) Use legal terms or legal definitions consistently;
- d) Carefully examine whether the content material of the draft law is in harmony with other related laws;

⁵ Suhartono, *Harmonization of Legislation in the Implementation of the State Budget (Solution for Efficient, Effective and Accountable State Budget Absorption)*, Thesis, Jakarta: University of Indonesia, 2011, page. 94.

⁶ *Harmonization and Synchronization of Laws and Regulations*, <https://sultra.bpk.go.id/wp-content/uploads/2018/04/Synchronization-Harmonization.pdf>, accessed on 18 April 2024

- e) Ensure that the principles of legislation, both the principles of formation, the principles of content material, and other principles relating to the field of law regulated in the draft law, have been well accommodated in the draft law;
- f) Ensure that the technical guidelines for drafting laws and regulations have been consistently followed;
- g) Ensure that the language used in formulating the norms in the draft law is in accordance with good and correct Indonesian language rules and uses the right choice of words, clear and definite.

Harmonization has a function to prevent and overcome legal disharmony. Harmonization can also ensure the process of drafting laws that comply with the principles for legal certainty. From this understanding, it can be said that harmonization of laws and regulations is a process of harmonization and alignment between laws and regulations as an integral part or sub-system of the legal system in order to achieve legal objectives.

Government Regulation No. 28 of 2022 must be understood as a derivative legal instrument that is subject to a higher legal framework, namely the law. As a derivative of a government regulation in lieu of law (Perpu), a government regulation should only regulate the implementation of what has been regulated in the Perpu and not create new legal norms. However, in Government Regulation Number 28 Year 2022, there are additional rules that were not previously regulated in Perpu Number 49 Year 1960. This raises questions about consistency with applicable legal principles.

In Government Regulation No. 28 of 2022, there is a new regulation regarding parties who can be held liable for state receivables, namely “parties who acquire rights.” According to Article 4 paragraph 3 of Government Regulation 28 Year 2022, the parties in question are relatives in blood relations up, down, or sideways to the second degree, as well as spouses. This addition creates new authority for PUPN to collect state receivables from parties that were not previously regulated in the Perpu.

Of course, the expansion of new rules that are not regulated in Perpu No. 49/1960 has caused various legal polemics related to legal certainty for the community. This is because the expansion can lead to uncertainty regarding the hierarchy of applicable legislation, as well as the potential to deviate from the principles that have been established in the rule of law.

The first principle to be highlighted is consistency with the established hierarchy of legislation. For example, Perpu No. 49/1960 has a higher position in the legal hierarchy compared to government regulations. Therefore, if there are new rules that are not regulated in the Perpu, this can be confusing in determining the legal validity of a regulation. This ambiguity can interfere with legal certainty for the community, because they will find it difficult to understand which one has higher legal force in a case.

In addition, the expansion of new rules may also raise questions regarding consistency with principles that have been established in higher legal rules. For example, the principle of the rule of law demands that all regulations must be in accordance with the 1945 Constitution and the values of Pancasila. If the new regulation is inconsistent with these principles, then it may be considered a deviation from established legal provisions. This can also threaten legal certainty, as people will face uncertainty regarding the legal consequences of their actions.

Thus, it is important to maintain consistency with the hierarchy of applicable laws as well as the principles set out in the higher rules of law. This will ensure that legal certainty for the public is maintained, so that they can act with confidence that their actions are in accordance with applicable legal provisions.

Additional polemics related to the new rule of “parties obtaining rights” in Government Regulation No. 28 of 2022 may also lead to misalignment with the values of Pancasila, which teaches the importance of fair treatment of all individuals. As we know, Pancasila emphasizes the importance of social justice for all Indonesians. In this context, the government will face difficulties in

determining the appropriate benchmarks to ensure that the collection of state receivables to “entitled parties” is done with humanity and justice in mind.

The government will need to ensure that in implementing this rule, they do not only pay attention to legal and financial aspects, but also consider the social and humanitarian impacts on the parties involved. This will be a very complex task, given the need for a balance between law enforcement and social justice.

In addition, this rule may also increase the burden on entitlement parties. Parties that were previously not directly involved in debt agreements with the state, but are considered responsible parties, will face financial and social unintended consequences. This can create injustice and imbalance in the treatment of individuals, which is contrary to the values of Pancasila.

As such, the government must be careful in implementing this new rule to ensure that the values of Pancasila, especially the principle of social justice, are upheld. Fair and humanitarian treatment should be the main guideline in the process of collecting state receivables, so that social justice for all Indonesians can be well realized.

CONCLUSION

Indonesia, as a democratic country that recognizes the rule of law as the main footing, affirms its commitment as a state of law based on Pancasila. The concept of the rule of law is not just rhetoric, but becomes the foundation for every action and policy in society. Law, as the highest authority, must reflect the moral and ethical values reflected in the daily lives of Indonesians.

Pancasila, as the state philosophy and ideology, is not only the moral foundation for legal development, but also the philosophical foundation for the Indonesian constitution and laws and regulations. Therefore, every regulation issued is expected to not only comply with the formal aspects of the law, but also exude the essence of Pancasila values, such as morality, justice, unity, legal sovereignty, and legal certainty.

In the context of regulating state receivables by the State Receivables Affairs Committee (PUPN), Government Regulation No. 28 of 2022 is an important instrument in upholding state financial governance. However, in the process of its formation and implementation, it is important to ensure consistency with the principles of Pancasila and the applicable legal hierarchy.

An analysis of Government Regulation 28 Year 2022 shows that as a derivative regulation, government regulations must be consistent with the higher hierarchy of legislation, namely the law. However, the addition of new rules that are not regulated in Perpu No. 49/1960 raises polemics regarding consistency with applicable legal principles.

The polemics include issues of unclear legislative hierarchy, potential creation of new legal norms, and inconsistency with the values of Pancasila, especially in terms of fair treatment of individuals. Therefore, the government needs to ensure that in implementing this regulation, they do not only pay attention to the legal and financial aspects, but also take into account the social and humanitarian impacts on the parties involved.

Thus, maintaining consistency with the hierarchy of applicable laws and the principles of Pancasila is key to maintaining justice and legal certainty for the community. Law protection and enforcement that follows the principles of Pancasila will ensure that the vision of a state of law based on Pancasila can be effectively realized, so that Indonesia remains a just, democratic and equitable state for all its people. The articles of the 1945 Constitution of the Republic of Indonesia are *staatsgrundgesetz* or basic state rules / basic state rules which are the outlines or principles of state policy to outline procedures for the formation of laws and regulations that are binding on the public. In addition, Law No.10 of 2004 Article 2 stipulates that Pancasila is the source of state law.

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