

## **Pancasila as the Axiological Foundation of the Progressive Law Paradigm**

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**Abstract:** This article examines Pancasila as an axiological foundation of the progressive law paradigm. The question raised in this article is about how the existence of Pancasila against the law in Indonesia? How to implement the values of Pancasila as an axiological basis of the progressive law paradigm? In this case Pancasila is the philosophy of life of the Indonesian nation as well as being the source of all sources of positive law that applies in Indonesia. This then becomes the reason that the values of Pancasila must underlie all aspects of national and state life, especially in the field of law. Progressive law became one of the paradigm models offered by Prof. Satjipto Rahardjo with his efforts to break the doctrine of positivism in practice in Indonesia. The progressive paradigm born in Indonesia certainly seeks to realize the ideals of the Indonesian nation contained in Pancasila. Therefore, there is a significant correlation related to Pancasila which contains values extracted from the soul of the Indonesian nation to be used as an axiological basis for progressive paradigms in an effort to realize substantive justice. The results of the study in this article include: (1) the existence of Pancasila in the Indonesian law system has a central position, Pancasila becomes the basic norm as a foothold in forming a constitution (2) Pancasila is the axiological foundation of the progressive law paradigm by upholding divine values, human values, and social justice values.

**Keywords:** Pancasila, Axiological, Progressive Law, Basic Norm.

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### **1. Introduction**

This research article departs from the view that Pancasila is the philosophy of life of the nation as well as the source of all sources of the Indonesian nation. Pancasila has a central position on the positive laws that apply in Indonesia. The questionable question is whether Pancasila has been manifested in every law enacted in Indonesia? Then what about the process of legislation, implementation, and law enforcement is already in harmony with the values of Pancasila? According to Savigny;

Savigny's Volksgeits doctrine, which was the first to recognize that nations practically have their own continuity and uniqueness of experience, is a juridical expression of the romantic revival that had an effect on Savigny himself (Kutner, 1972). Referring to this view it can be understood that each country has a different historical, which has an influence on the pattern of laws that exist and apply in that country. The positive law in savigny conception has an attachment to the situation and conditions or circumstances of a sociality of society (Cahyadi, 2005). This means that the laws that apply in a country grow and develop along with the existence of society. The birth of a law and the disappearance of a law depends on the people or people living in a country.

Indonesia as a state of law certainly has an attachment to the history of the nation. The current positive law is the resultant of the soul of the nation (the soul of the people). This means that the law currently in force in Indonesia is made based on the values and norms that live in the Indonesian nation. The question that arises is where can the concrete soul of the Indonesian nation be found? The answer is in Pancasila. This is because Pancasila is the fundamental basis that is used as a focus in the legislative process, implementation and enforcement of positive law in Indonesia. Problems in the social reality of society show that attempts to abuse or deviate from the law are very visible. Law is no longer a tool to achieve goals, but rather the law is used as a goal. According to Arianto (2010) Indonesia is experiencing problems that are so strange in various aspects, one of which is in the field of law. Adagium who says that everyone is equal before the law is apparently no longer express in real life. Major cases such as corruption, collusion, and nepotism are not comparable to cases that

befall small people such as theft, persecution, and others. This shows that there are fundamental problems related to the way of law both legislators and law enforcement. Therefore, it takes a bold effort, especially for law enforcement in making breakthroughs that promote substantive justice. In this case a progressive interpretation of the law is needed as one of the efforts to achieve substantive justice (Asa, 2020).

This problem has been thought about further by Prof. Satjipto Rahardjo with his efforts to ground progressive law. Progressive law according to Nuryadi (Nuryadi, 2016) The thesis that man and law are two things that have different essences. Man is essentially the maker of the law, and the law is essentially the product of human thought. So it can be said that the law is for man, and not man for law. The purpose of progressive law as a paradigm offer in law cannot be separated from the soul of the Indonesian nation manifested in Pancasila. The logical consequence is that progressive law has the ideal of realizing substantive justice must also be based on Pancasila. Pancasila as the philosophy of life of the Indonesian nation, the Basis of the State, and the Source of all sources should be the axiological basis of progressive law. This is intended so that substantive justice becomes a progressive orientation in accordance with the values in Pancasila.

This research article seeks to discuss Pancasila as the nation's philosophy of life to serve as an axiological foundation of progressive law in seeking substantive justice. Research discourses on Pancasila and progressive law have been under development. Some discuss Pancasila as the foundation of Indonesian law, Pancasila as a scientific foundation, the application of progressive law and its application in Indonesia, as well as the study of progressive figures. To distinguish this research article from other articles, there are several studies that discuss Pancasila and progressive law that present the results of the research as follows. First, Francisco (2017) Pancasila as the soul of the Indonesian nation and the source of all sources can be used as a paradigm or foundation in law, social, economic, and political policy making. Second, Bo'a (2018) Indonesia's national law must all be based on Pancasila, but the existence of Pancasila in the national system is being eroded. As for the efforts in implementing Pancasila as a source of law; Make Pancasila into a stream and position Pancasila in the peak of the laws and regulations.

By referring to the description, the author raised the title of conceptual research, namely "Pancasila as an Axiological Foundation of Progressive Paradigm". The purpose of this research is as an effort to analyze and explain the existence of Pancasila against the law in Indonesia, as well as analyze and explain Pancasila as an axiological foundation of the progressive paradigm. As for the research questions asked by researchers as follows; (1) How is Pancasila in law in Indonesia? (2) How is the implementation of Pancasila values as an axiological basis of the progressive paradigm?

## **2. Methodology**

This research uses normative research methods. This research focuses on principles or norms that serve as benchmarks for behavior. This research is a philosophical study, because legal principles are an ideal element rather than law. This will be related to the origins of the emergence of values in human life which is the beginning of the emergence of principles (Soemitro, 1990). The object of this research is Pancasila and the progressive paradigm. This study attempts to examine how Pancasila has become the axiological basis of the progressive paradigm. The study was carried out using a conceptual and library approach. Material obtained from books and journals relevant to the research theme.

## **3. Result and Discussion**

### **a. Pancasila as the cultural identity of the Indonesian nation**

The lives of various nations in this world are plural or diverse, where each nation inhabiting a particular region has a distinctive identity. Prurality or diversity of a nation we can see from the differences in race, ethnicity, cultural customs that exist, even the historical background of the existence of a nation. According to Ristekdikti (2016) Culture is a process of creativity, taste, and will that needs to be managed and developed continuously. In this case, culture can be won through the process of inquisition and acculturation. Pancasila in this case became the identity of the Indonesian nation which he formed from the process of inculturation and acculturation. Indonesian culture can be categorized as one of the results of the process of inculturation, which is a process of fusion of various cultural elements contained in the community, where it makes the community can develop dynamically, That's according to J.W.M. Bakker (1984) Cultural inculturation can be through various avenues, educational networks, family control, and guidance, basic personality structures, and self-expression.

According to Haviland (1985) Indonesian culture in addition to the result of cultural inculturation, is also produced by a cultural acculturation. In this case acculturation can be interpreted as a process of great change caused by the existence of long-lasting intercultural contact. In this case Pancasila as the identity of the nation can be traced in various references. One of As'ad Ali's essays in his book entitled "Pancasila State; The Path of National Benefit" there is explained that Pancasila is a cultural identity that can be traced in the religious life of the Indonesian people. With this we can understand that Pancasila contains the values, norms, and customs of all

communities throughout Indonesia, each of which has the truth of the influence of major religions in Indonesia. This is what makes Pancasila a unifying nation, because the entire Indonesian nation positions Pancasila as their view of life.

The view of life is in essence a perspective or way in which man views his senses. The outlook on life can also be interpreted as a result of human conception during his life from various experiences that he has been through (Ihsan, 2008). Pancasila as a view of the nation's life has a strong juridical foundation, which in the decree of MPR No. II / MPR / 1979, which states that Pancasila is the soul of all Indonesian people, the view of life of the nation, and the basis of the state. So that a nation that wants to stand firm and know the direction and purpose of its people, it requires a noble value system that is used as a handle (outlook on life/philosophy of life) (Eleanora, 2012). *Bhinneka Tunggal Ika* is the unifying principle of the nation in Pancasila (Ulmunir, 2006) that means Pancasila as a view of the nation's life must be based on *Bhinneka Tunggal Ika* where essentially the Indonesian nation consists of various ethnic groups, but all of it is in one unit that is Indonesia. According to Notonagoro (Eleanora, 2012) *Bhinneka Tunggal Ika* in explaining one of the description of the meaning and meaning of Pancasila explained that the different meanings refer to a difference that is the innate nature of man as a creature of God's creation. In this case all differences are not to be contested but to be united in a life of nation and state, so that it is expected that a society will be harmonious and prosperous.

#### **b. The existence of Pancasila is the source of all sources**

The placement of Pancasila as the first staats fundamental norm was introduced by Notonagoro (Assihiddiqie' 2006) Pancasila which is considered as a idea is an ideal rather than a law. This position demands that the establishment of positive laws can live up ideas in Pancasila and can be used to test positive laws. With the understanding of Pancasila as the basic norm of the state, the establishment of laws, their application, and their implementation cannot be separated from the values of Pancasila (Kutnisar, 2011). This is what then makes Pancasila the highest source in positive law in Indonesia. All positive laws that apply in Indonesia must refer to Pancasila. If there are various policies such as regulations that are contrary to the praxis of Pancasila, it must be aborted by various riview mechanisms, both legislative review and executive review, so as not to have an impact on other aspects of the public policy area (Hendropriyono, 2008).

According to SoediknoMertokusumo the source of law is essentially a place where we can find and research the law (Mertokusumo, 2010). According to Zevenbergen, the source of law can be distinguished into the source of material law and the source of formil law. The source of substantive law is the place from which the material is excavated. The material sources are factors that help in the formation of law, for example: social relations, political power relations, socioeconomic situations, traditions (religious, moral views), international developments, geographical conditions. A formal source is the place or source from which a regulation has the power of law. It has to do with the form or way that makes the rule formally effective (Bo'a, 2018).

Pancasila can be interpreted to include substantive sources, while sources that are formal, namely laws, agreements between countries, jurisdictions and customs. Pancasila as a substantive source is determined by the content or weight of the material contained in Pancasila. There are at least three quality pancasila materials, namely: First, the content of Pancasila is the philosophical content of the Indonesian nation. Second, the content of Pancasila as the personality of national law. Third, Pancasila does not establish orders, prohibitions and sanctions, but only determines the basic principles of law formation (metajuris) (Pinasang, 2012).

With the enactment of the Law No. 10 of 2004 on the Establishment of Law, as contained in article 2 of Law No. 10 of 2004 which stipulates that "Pancasila is the source of all sources of state law", expressly mentions Pancasila as the source of the following sources: "Pancasila as the source of the source of state law in accordance with the opening of the 1945 Constitution, which establishes Pancasila as the basis of state ideology and philosophical basis" of the nation and state, so that there is no material legislation that is contrary to the values contained in Pancasila"(Kutnisar, 2011). The background to why Pancasila can be said to be the source of all sources, we can see from how Pancasila already exists first as the values that live in society. Pancasila is not a positive law made by the ruler, but it is a document of the social anthropology of the Indonesian nation, where Pancasila is a law that lives ingrained in Indonesian society, it grows and develops in Indonesian society, so it should be used as a reference in carrying out community life, nation, and statehood (Susilowati& Christina, 2016).

The role of Pancasila as the source of all sources contains the meaning that Pancasila resides as: 1) Indonesian ideology, 2) A collection of values that must sustain the integrity of Indonesian law, 3) The principles that are guidelines must be followed when making Indonesian decisions, 4) As a statement about psychological values and the will of the Indonesian people, also exist in the law (Saleh, 1979). The existence of Pancasila as the source of all sources then re-emphasized in MPR Decree No. III / MPR / 2000 Concerning Sources and Regulatory Order contains three paragraphs (Bo'a: 2018) 1) The source of the law is the source used as a material for the preparation of provisions, 2) The source of the law is the source of written law and the

law is not written, 3) The source of the national constitution is in Pancasila written The opening of the 1945 Constitution is the Godhead almighty, just and civilized humanity, the unity of Indonesia and the people, wisdom in contemplation/ representation, and through the realization of social justice for all Indonesian people and the 1945 Constitution.

### **c. Progressive law paradigm**

According to SatjiptoRahardjo the place and role of the court along with the dynamics that occur in society, from time to time can be seen experiencing a change. In the transition of the 19th century to the 20th century, at that time society could witness a fundamental change that occurred in the body of the judiciary, where the role of the judiciary from the beginning as a narrow and isolated institution, began to shift towards a pro-people court (Rahardjo, 2008). This spirit which can then be said as a spirit of law that upholds the values of immigration, where SatjiptoRahardjo in his intellectual journey, participated in grounding progressive law as a new perspective in law.

Essentially the positive spirit of liberalism and legalism, it seems to have had its effect in the 19th century, which provided the basis of legitimacy for a court that trisolated the dynamics of society. This isolation is also considered to lead to a court dictatorship, where the court only decides according to what the law sounds like. The courts of this century also tend not to pay attention to the dynamics that occur in the community. The consequence that arises is, the court in this case is considered an institution that is foreign to society, where it is separated by the shackles of positivistic / positivism law. positivism is a paradigm that attempts to eliminate speculation about metaphysical aspects and the nature of law. This is motivated by efforts to limit the world from everything that is outside the law. In this case the normative system that applies is analogous to the power of the state in enacting a law and its sanctionsMukhidin (2014) According to the view of positivism, a norm can only be tested by equal norms, cannot be with non-norms. Positive norms will be accepted as axiomatic doctrines, insofar as following the rules of the system containing the principles of exclusion, subsumation, derogation and non-contradiction.

The modern state in this regard has a fairly central role in the development of positivism. The idea of positivism was present long before the 18th century, it's just that the thought of it has strengthened since the modern state was present. This is also true in the tradition of making the law positive, the community at that time was more familiar with interactional law or customary law (Rahardjo, 2000) positivism in the view of E. Sumaryono (Mukhidin, 2014) It can generally be understood as follows; 1) A school of thought that examines the conception of the law exclusively, based on positive laws or current laws, 2). A theory that states that laws are only valid when they are imposed and established by an instrument within a country.

Along with the passage of time, the turmoil that occurred between the order of the liberal paradigm that adhered to positivism and the dynamics of society, then gave rise to various disobediences carried out by the courts. This defiance arises in courts that tend to side with the people, where the consideration of the court is not only on the sound of the law, but the turmoil of the dynamics of society becomes the main consideration. The legalistic/positivistic paradigm of philosophy has begun to be abandoned, as a new paradigm emerged, namely the school of realism, with prominent figures namely Benjamin Cordozo and Oliver Wendell Holmes (Rahardjo, 2008). This school of realism is the antithesis of positivism, offering an approach by looking at the realities or dynamics of law that occur within society.

Facts are a major consideration in law according to realism, and the law is positioned as a reference in the cataloguing between what happened and what should have been. The view of realism is one of the starting points for the birth of progressive thinking.

Speaking of the progressive thinking built by SatjiptoRahardjo, of course, we cannot simply forget the foundation of the intellectual community behind it. The progressive paradigm that has been grounded today cannot be separated from the long academic journey of a Prof. SajiptoRahardjo or often known as Prof. Tjip. Social capital collection planned and built by Prof. Tjip has been carried out since the 1970s where he is currently actively writing in the media, teaching in law school, and actively socializing with social organizations. assemblers in Indonesia who have begun to lose their way because they tend to be positivistic, making progressive laws then accepted responsively by academics and practitioners.

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SatjiptoRahardjo in his view of progressive law made a conclusion similar to Roger Cotterel, that science could not be an independent science he needed other social sciences. This is because social science has a strong philosophical and methodological foundation, while science is based only on practical problems (Erwin, 2018). This was reinforced by SatjiptoRahardjo who affirmed that at the level of community development as it is today, the use of social sciences is something urgent, in the hope that work will be more constructive. With this, the law will be more optimal when approached not only in one perspective, but the sociological perspective becomes urgently used to find the substance of the law that blends with people's lives.

The teachings of progressive law constructed by Prof. SatjiptoRahardjo can be spelled out as follows(Erwin, 2018):

**a. Laws are made and reserved for man, not man for law**

According to SatjiptoRahardjo the law is for humans and does not apply otherwise. In this context the law must be viewed as a human instrument in its efforts to realize human ideals. Man in this case should not then be governed and dictated by law as a system of coercive instruments.

**b. Laws are made to achieve human well-being and happiness**

The test of success of a product is when the law is able to prove that the law made is oriented to humans. Progressive law pays more attention to substance than form, besides that the aspect of happiness is also no less important that needs to be considered in progressive law. This is certainly a characteristic that distinguishes between progressive law and western paradigms that tend to characterize aspects of rationality.

**c. Progressive law is a law that bases on the noble values, and good morality of a nation**

SatjiptoRahardjo stated, "We often express our pride as a virtuous nation; Moral, familial, together, and such. But it doesn't get to our culture. Culture tends to individualism. Morality has not yet become our social capital" (Mahfud MD., et al, 2013). This then became the basis that morality is a social capital in the culture in society. In line with this, in the state of law the subject is culture. Culture in this case is more about the pleasure of the people.

**d. The law must be able to live in society**

Progressive law believes that the spirit of power of a law resides in society. In this case people have the autonomous power to protect and organize themselves, but in reality that power is immersed in the monopoly of modern law which is essentially the law of the state. Therefore, progressive law was born as an effort to bridge the exit of the autonomous power in realizing the laws that live in society. In the context of living law, Satjipto pays more attention to customary law as a law that lives in society.

**e. The law must be carried out on the basis of spiritual ingenuity**

According to SarjiptoRahardjo, modern law has become a technical and rigid product, thus losing sensitivity to human feelings. This view is in harmony with Thomas Aquinas' view of the laws of natural law on the aspect of humanity. Spiritual intelligence in the perspective of progressive law is an intelligence that is not limited by a benchmark (rule-bound) and not limited to textual. The law is obliged to get out of the situation that exists in any attempt to search for truth or the search for a value in depth.

**f. The law must move progressively and reject the status quo**

Materialism derived from the Cartesian-Newtonian paradigm which considers a system must be logical, fixed, and closed by adhering to logic, with regard to moral, political, social, cultural and ethical aspects. This way of fielding is a positivistic pattern of understanding. According to SatjiptoRahardjo, this kind of approach model must be rejected, because the law should be an institution that must be open to empathizing with the thorny issues that society faces, and can only be understood through a social science perspective.

Pancasila becomes the axiological foundation of progressive law

H. Lotzke was a German philosopher who pioneered the investigation of value. Lotzke viewed the idea of value as independent of reality. Lotzke viewed value as so important, he sought to reduce logic, ethics, and metaphysics to axiology. This is what makes him known as a pioneer of axiology studies (Fronzi, 2021). Axiology itself can be understood from the origin of the word axio (Greek) which has a value meaning and logos meaning theory, so that axiology is understood as the study of theory about value. Bramel divides axiology into three aspects: ethics, aesthetics, and socio-political philosophy (Jurdi, 2019). The world of law is very close to value, and it is studied specifically into the philosophy of value (axiology). Axiology in Kattsoff's

(2004) view It is a science that examines the essence of values that are generally viewed from the philosophical aspect and even axiology in the field of philosophical studies into a branch of philosophy itself. The study of this world concerns many questions of value in particular, including economics, aesthetics and ethics, religious philosophy and epistemology. According to BudionoKusumohamidjojo (2019) Value concepts are studied in three study focuses including sociology, psychology and axiology. An understanding of values is the beginning of norms and norms. Values themselves are something that people see as appropriate and must be pursued, fought for, realized, and maintained (Bagus, 1996). Values make people know the direction of life as it will be achieved. Thus axiology can be understood as one of the branches of philosophy that examines in depth the value. The philosophical study of the value will boil down to the nature of the value itself.

People's views on values vary; First glances from psychological circles, values are seen as something that pleases us, other groups add values equal to what is dreamed of, the third group views values as the target of our attention. Values in these circles are seen as mere personal experiences. The second view arises as a reaction to psychologists who view value as the essence, the Platonic Idea. The mistakes made in combining value with essence are partly due to the randomization between that which is not the reality—a sign typical of value—and an identity that marks the essence. The permanence of assumed values lends great support to teachings that seek to put values into the same category as ideal objects. According to Fronzi (2021) No one seeks to reduce value by the status of an object, there is no doubt that value has been confused by the material object that covers it, i.e. in its store or its place of deposit. Chaos begins with the very real reality that value does not exist in itself, but in its support, which is generally an bodily substance. It is suppose with beauty that does not exist by itself, as it is in the air and difficult to explain, but it manifests itself in physical objects; clothes, stones, human bodies, etc. It becomes a necessity for value in particular that makes it parasitically exclusive, but the peculiarities cannot justify the randomization between the supporters and the supported ones.

With this, an understanding can be drawn, that axiology is a theoretical study of values that are studied and reflected philosophically. So when we try to find the basis of the value of an object then, at this stage we are trying to philosophize, more precisely we are trying to find out the axiological basis of an object. The approach that is often used in finding value can be based on a concept, fact, or empirical thing, depending on how to look between the value and values carried.

The axiology approach is very useful for all fields of science, both exact sciences and social sciences humanities. According to Driyarkara (Maharani, 2008) Cartesian and Newtonian linear-linear world, the science of knowledge basically has an attention to certain values, namely the value of truth and the value of honesty, even became Descartes' ideal "I want to give myself completely to achieve the truth". The attention of science is apparently also applicable in the science of law. The philosophical study of values in law (axiology) is also of particular concern, where a axiology has a special role in the formation of substances of values in law, such as equality, freedom. Axiology occurs in every fact of human action. This is because the discussion of the values that are recognized in every act of law will always correlate with the making of the law and the implementation of the law. If we want to find an axiological basis for something, then in this case we are discussing the solution of values contained in it. According to Fronzi (2021) Axiological efforts are focused on things that are implicitly isolated. The study of isolated values finds a new meaning if one explores and records not merely the network that binds into one entity, but also the soul or spirit that directs all research to the deepest nature of the value of each field of research into one. This is reinforced by Runes' view Which explains that the value questioned by axiology is a desire or desire, a good, an investigation of its nature, its criteria, and its metaphysical status.

Referring to the elaboration of the above axiological concepts, then in this case we can question whether progressive law as a predigma of value-free law or not? So if it is not free what values underlying it? Is Pancasila as a view of life of the Indonesian nation relevant if it is used as an axiological basis rather than progressive law? How then the implementation of Pancasila as an axiological foundation of progressive law.

To answer this, it takes a serious analysis, first if we talk about value-free progressive laws or not, surely we can answer it by understanding what is progressive law? Progressive law is a paradigm that wants to free people from injustice in laws that tend to be positivistic. Referring to this, it can be seen that the progressive law is not value-free, it carries a substantial value of justice based on the values that live in society. This means that a thesis on science that is not free of value if used to see how progressive law works, has strong relevance.

Progressive law was introduced in Indonesia by Prof. SajtiptoRahardjo, one of Indonesia's scientists and experts, who has a fairly wide influence in the realm of academia. In the development of his career he has given birth to many ideas that have been contained in various articles such as newspapers, roads, books, journals and so on. The result of his thoughts that until now is still the fruit of conversation among academics and practitioners, namely his idea of progressive law. A concept produced by a thinker certainly cannot be separated from the influence of educational background, culture, and religious values he adheres to. Likewise with SatjiptoRahardjo's thoughts on progressive law, of course, he is also inseparable from all the historical influences of his thoughts. As an Indonesian who loves his homeland, SatjiptoRahardjo certainly also obeys all

applicable rules, especially regarding his outlook on life. Indonesia as a country that is large enough, makes Pancasila a view of life, so that all its citizens including SajiertoRahardjo must make Pancasila as a view of life or guide in acting and acting in state life. So the next question is, is Pancasila relevant if it is used as an axiological basis for progressive law? The answer is relevant, considering that Pancasila is based on the nation's view of life, where all activities in the political, social, economic, religious, legal, and cultural fields must all be based on Pancasila. This starting point that can then be used to understand Pancasila is used as an axiological basis for the progressive law paradigm.

To build a civilization requires a handle either in the form of a view of life or an ideology embraced by a country. How important is a utopia that merges into one with an ideological perspective in social movements. In the historical narrative, a testimony has been made at a meeting of the Indonesian Independence Preparation Business Investigation Board (BPUPKI: DokuritsuJunbiCosakai) where at that moment RadjimanWedyodiningrat first directly questioned the "basis of the Indonesian state" when the first session was held on May 29, 1945. At the meeting it was not the first question that the territory, the principle of citizenship, typical of the state, etc., but the basis of the philosophy of the state "weltanschung", an ideology of an independent Indonesia! Which then it was answered loudly and firmly by Sukarno by saying "Pancasila"!By referring to the position, pancasila is clearly a philosophy of the Indonesian state, becoming one of the fundamental aspects of the state, including in the state (Marwan, 2013).

Progressive law as a pardigma that is constructed in Indonesia certainly cannot be separated from the social and cultural background that influences the thinker. Community values. According to Prof. SatjiptoRahardjo Progressive laws must be implemented with spiritual intelligence. In this spiritual aspect the actualization of progressive practice is required by a society that believes in the Supreme Divinity. Pancasila as the source of all sources plays an important role in blowing the spirit of spirituality in the Indonesian system. In the progressive paradigm, Pancasila has a privileged position as the epistemological basis of progressive law, especially related to how the foundation aspect of knowledge about the second precept and the fifth precept in Pancasila. Progressive law adherents consider that the value of humanity and the value of justice is not only limited to hope, but that it can be praxis in action. Therefore, it is very visible that there are three foundations of Pancasila values that are used as an axiological foundation of progressive law, including the value of the Supreme Chairman (1st precept), The Value of Fair and Civilized Humanity (2nd Precept), and The Value of Social Justice for All Indonesian People (5th Precept).

The meaning of Pancasila as the basis of the philosophy of the Republic of Indonesia is abstract, general, and universal. So because of its abstract, general, and universal nature, Pancasila is fixed and unchanged. Therefore, in order to be implemented in public life, the content of the abstract, general, and universal Pancasila needs to be spelled out in the implementation and implementation of the state, namely in the form of guidelines in the implementation of the State and outlines of the State Direction. In the context of this understanding then the content of the meaning of Pancasila then is General Collective. Elaborating on Prof. Kaelan's (2009) view can be understood that the common collective understanding is contained absolute or not absolute traits, because of the nature and circumstances in the Indonesian nation. Pancasila, which is understood as common and collective, is essentially an effort to implement Pancasila as a real state philosophy. The general and collective nature refers to the collective limitations of the implementation of Pancasila that only applies in the Indonesian nation.

The realization of the content of the common collective meaning of Pancasila, especially related to the provisions of positive law which is further as a guideline in the implementation specifically and concretely in the implementation and organization of the state operationally. The implementation of the content of the common collective meaning of Pancasila relevant to progressive law by referring to The Basic Law 145 (1945 Constitution) can be spelled out as follows (Kaelan, 2009):

**1. First, the Supreme Godhead contains understanding;**

- a. God almighty gave the territory, the homeland of Indonesia and its natural nature to the Indonesian nation.
- b. God Almighty bestowed mercy on the Proclamation of independence of the Indonesian Nation, and the enactment of the 1945 Constitution.
- c. Obliging the government and organizers to maintain the noble ethics of humanity and hold fast to the ideals of the noble people.

**2. A just and civilized humanity contains understanding;**

- a. Guarantee of the human rights of citizens as stated in article 27,28,29 paragraph (2), 30 paragraph (1) and 30 of the 1945 Constitution.

- (1) All citizens have an equal standing before law and government and are obliged to uphold the law and government with no exceptions.
  - (2) Freedom of association and assembly, issuing thoughts with oral and written and so on is stipulated by law, article 28 of the 1945 Constitution.
  - (3) The State guarantees the independence of each of its citizens to embrace their respective religions and to worship according to their religion and beliefs, article 29 paragraph 2 of the 1945 Constitution.
- b. Independence is the right of all nations, so the colonization of all forms of colonization must be abolished because it is contrary to the fairy of humanity and the fairy justice (the opening of the 1945 Constitution paragraph I).
  - c. The nature of indonesia's development is the development of indonesian people as a whole, namely both from the physical, spiritual, material, spiritual (religious), individual, and community aspects.
3. Social Justice for All Indonesians contains understanding;
- a. The state protects the entire nation and all blood, advancing the general welfare of the life of the nation (The opening of the 1945 Constitution paragraph IV).
  - b. The state wants to bring about social justice for all people (Second Thoughts).
  - c. Judicial power is exercised by a Supreme Court and other judicial institutions according to the Und ang Law (1945 Constitution article 24).
  - d. All citizens have the same position before the law and the government and are obliged to uphold the law and the government with no exception (1945 Constitution Article 27 paragraph 1).
  - e. The goal of state development is to create a just and prosperous society based on Pancasila.

According to Notonagoro (Darmodihardjo, 1991), the values of Pancasila are classified as spiritual values, but spiritual values that recognize the existence of material values and vital values. With this, the values of Pancasila included in the spiritual values also contain other values in a complete and harmonious manner, both material values, vital values, truth values, aesthetic values, good values or moral values, as well as hierarkhis systematic sanctity values, which start from the supreme godhead as the basis to the social justice precepts for all Indonesian people as a goal. The axiological foundation of Pancasila which views that the values of Pancasila really exist as a reality is actually very appropriate to be used in an effort to solve the main problems of statehood and the rule of law in Indonesia. This has been done by Notonagoro by analyzing to explain the importance of teachings or schools in the field of philosophy for theories in the field of science. The flow in the field of abstract, ideal, speculative, and theoretical philosophy should be used as a fundamental basis and guideline in running the wheels of statehood and the formation of positive laws (Notonagoro, 1955). This means that the philosophy that must be developed in Indonesia must also be based on the values of Pancasila, which is basically taken from values or teachings that have lived in Indonesian society for a long time before the Indonesian state was born. This will have an impact on the implementation of Pancasila values in the formation of law and in the wheels of government.

According to Soejadi (Soeprapto, 2014) It clarifies Notonagoro's view by using a view of natural law that recognizes and respects human values. Law in this case is a means in realizing human dignity in society, so that norms that are not in accordance with the principle should not be considered as law, so it has no practice. The principle of law is one of the most fundamental things in the realm of law. Furthermore, by elaborating the view of Soejadi the principle of law into one of the fundamental things in a system, the fundamen is a rule of decency. The principle of the law will be incarnated into the laws and decisions of judges. The principle of law is not a concrete rule, so to become a concrete rule must be spelled into a law or judge's decision, the linkage shows a strong correlation between a principle as a value of decency with legality as a concrete regulation.

A specific and distinctive feature of pancasila-based law is that it reflects the principles of harmony, obedience, and harmony that are all covered in family terms. The nature of family means the purpose of law as a protector, creating conditions and encouraging humans to humanize themselves and other human beings in a reasonable and sustainable manner. Teleological aspects of law can be directed to maintain and develop human ethics as well as the noble moral ideals of the people based on the Supreme Divinity (Soejadi, 1999). This shows that Indonesia's national law still places God as the creator of the universe, which with its laws manifests into the prevailing positive laws.

Pancasila as a view of the nation's life becomes one of the focuses in carrying out all kinds of national and state activities, so that the purpose of the state is none other than applying what pancasila teaches. Progressive law as an offer of paradigm should also refer to Pancasila. If referring to the thesis that progressive law is a law that positions humans in a central position then it is appropriate that the law should refer to Pancasila, both in law making, law enforcement, and law enforcement.



Progressive law offered by SatjiptoRahardjo, directly wants to change the paradigm of society's law, from the original law with reason, wants to be changed to punish with human conscience. This thesis makes it clear that in essence man is good and that goodness comes from conscience, therefore the progressive law based on that conscience becomes sensitive to the social reality that exists in society (Budijono, 2015). The progressive paradigm places man as a major actor in law. In this aspect the law can be set aside when it harms humanity, truth, and justice. The main project of the progressive paradigm is to position man centrally in all discourse, whether in the making, to law enforcement (Mukhidin, 2014). This is in line with Pancasila as an axiological foundation of progressive law, where in this case the value of humanity and justice becomes the focus. Pancasila's second precept which reads "Just and civilized humanity" essentially positions man as a central point in the progressive paradigm, as a form of sublime respect for human values. Then the precept "Social justice for all Indonesian people" became the goal of progressive law as a paradigm. One form of social justice for all Indonesians based on progressive law is to position all citizens equally before the law. More importantly in positive law must also consider the values of wisdom that live in society. In this case the written law must not then take the substantive justice that lives in society. This is certainly in line with the law as a tool of social engineering

Law as a tool of social engineering will produce a success if formulated through a rational process and formally while still considering the soul of the nation, which Savitri has emphasized with his teaching that the law is the embodiment of the soul of a nation. Dalam hal ini jiwabangsa Indonesia adalah Pancasila. Thus it can be said that, law as a tool of social engineering has the goal of forming and functioning the national system derived from the nation's philosophy, namely Pancasila and the 1945 Constitution which is carried out by paying attention to the plurality of applicable procedures and sustainable development carried out accompanied by guidance and complementary infrastructure and preparing the rule of law in accordance with the personality of the Indonesian nation by placing the law as commander-in-chief the highest in development (Gumbira, et.al, 2019).

The paradigm of progressive law to be useful and truly felt by society, of course, is not enough just to be used as a theoretical motto. The paradigm needs to be manifested into progressive forms of real action, ultimately denying the character of the progressive law. The special character of the progressive law itself is that it rejects the state of the status quo, if it is, gives rise to deans, corrupt conditions, and greatly harms the interests of the people. This distinctive character then brings progressive laws towards resistance and rebellion, leading to a progressive interpretation of the law. The interpretation of progressive law aims so that the ideals of justice that people expect can be realized. According to Rahardjo Efforts to bring justice to society require creativity, not just maintaining the status quo and rigid and textual machinery. People who know nothing, and struggle with poverty when they get a problem should be treated before the law differently. This does not mean choosing, but so that they get a guidance or direction about what they are facing. As SatjiptoRahardjo reveals (Sholehudin, 2011). That the cases that befell Granny Minah and other farmers, it happened because law enforcement officials tend to apply the law positively or legally formally in accordance with the Criminal Code only. This according to Rahardjo is not wrong, but it is very risky to scatter the sense of justice in the community. The officers should also use a conscience and common sense approach. When the apparatus is based only on the sound of the law, then the justice obtained is only formal justice. It is different if the apparatus also uses common sense and conscience, then what will be obtained is substantial justice. The Criminal Code or KUHAP itself justifies the use of common sense and conscience. In this context, law enforcement officials can stop a case if they feel that when a case is taken to a higher level, it will hurt people's sense of justice. In police is known as discretion, where a criminal case can be stopped during an investigation. It is also known in the prosecutor's domain with the title of *diponering* that a criminal case that has entered the prosecutor's office can be stopped with consideration in the public interest. So that in the future issues, especially related to criminal cases, such as the case of Granny Minah stealing Cocoa and Farmers who were convicted of pouring wood in the forest to meet the needs of life, did not happen again. Simply solve it with a restorative justice approach, namely with a non-criminal settlement of penal. In this case the mechanism is used in a familial way in a deliberative manner, of course by upholding human values and justice.

#### **4. Conclusion**

Based on the questions and the discussion of this research, conclusions can be drawn in response to the following problem formulation: The existence of Pancasila against Indonesian law has a central position. Pancasila is a *staats* fundamental norm or basic norm as a foothold in forming a constitution. Furthermore, Pancasila becomes the ideal of law (idea) in the formulation of a positive law, so that its orientation is none other than implementing Pancasila values in the accounting of law formation and the implementation of law, including law enforcement based on Pancasila. Pancasila is included in substantive sources, where as a substantive source is determined by the content or weight of the material contained in Pancasila. Where in this

case there are three material qualities of Pancasila, first; Pancasila is the philosophical content of the Indonesian nation, second; the content of Pancasila as the personality of national law, and third; Pancasila determines the basic principles in the establishment of law.

The paradigm that has developed in Indonesia from the past to the present is very diverse, ranging from positivistic or legalistic paradigms, to progressive paradigms. From the growing paradigm, the progressive paradigm that can be said to be in harmony with the values of Pancasila. The value of Pancasila in progressive discourse gained a special place as the epistemological basis of the progressive paradigm, especially related to the basis of knowledge of the second and fifth precepts of Pancasila. In progressive law the value of humanity and the value of justice is not limited to mere hope but necessary to be implemented into real life. Pancasila-based characteristics reflect the principles of harmony, compliance and harmony. The progressive paradigm puts people in a central position, so that it is in harmony with the human values in Pancasila. Thus Pancasila can be said to be the axiological foundation of the progressive paradigm, because in the spirit of the progressive paradigm upholds the values of humanity and the value of justice as formulated in the second and third precepts of Pancasila, but keep in mind that these two precepts cannot be separated from the relationship with other precepts. This is mainly related to the first precept, namely the Godhead, because in progressive law requires an aspect of spirituality where society must recognize the existence of God and obey all his commandments, and stay away from all his prohibitions.

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