

Preserving Indonesia's Unity Through The Law Based On Bhineka Tunggal Ika

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Abstract

Based on positive law, which applies in Indonesia, decentralization has "chosen" to give up some of its authority to autonomous regions. The delegated authority is very broad, because in Law Number. 23 of 2014 uses a residual system when determining what is the authority of local governments. With the residual system, the central authorities have been clearly defined in advance, while the rest are autonomous regions. Therefore, authority in the health sector has become an autonomous regional government authority, because that authority is not determined as the authority of the central government. On the one hand this benefits the local government, because by using its authority, the regional government can regulate the health sector according to its aspirations and capabilities. This research was approached in terms of legal science, both at the dogmatic level, legal theory, and legal philosophy. In this study also used a normative legal approach or library law, namely legal research conducted by examining library materials or secondary data. Normative legal research or literature includes research on semantic law, research on the degree of vertical and horizontal synchronization, comparison of law and history of law. Research on legal principles is carried out by interpreting the legal norms formulated in laws and regulations relating to local government in Indonesia. Based on this research study, it can be concluded that in terms of law and policy as well as the scope of authority of regional governments that support regional autonomy in the health sector, it is still unclear and inconsistent in the description of the functions and authority of regional governments in the health sector.

I. Introduction

Constitutionally, Pancasila, with the motto Bhineka Tunggal Ika, embodies the essence of our nation, serving as the foundation of the Republic of Indonesia and the cornerstone of our national ideology. As a reflection of our collective values, Pancasila stands as the wellspring of law, crystallizing diverse truths and inspiring the determination to be upheld in our daily lives through positive law.¹

History has shown that Pancasila is the essence of all Indonesian people. It provides strength to the Indonesian nation and guides it in the pursuit of inner happiness in a just and prosperous society. It is important to make continuous efforts to appreciate and practice the noble values of Pancasila by every Indonesian citizen, state administrator, state institution, and community institution at both the central and regional levels in order to preserve its sacredness.²

In the current era of reform, the ethical and legal system of Pancasila is caught up in power struggles that result in violations of political ethics. One common form of this violation is the abuse of power by state administrators in the legislative, executive, and judiciary branches. This misuse of authority leads to corruption among various circles of state administrators.³

Former President Habibie once highlighted the significance of Pancasila for the life of the Indonesian nation, especially after it was neglected for about a decade during the early excitement of political change. Habibie emphasized that Pancasila, as the philosophical foundation of the Indonesian nation, has undergone various challenges and changes in the political system, from the era of parliamentary democracy, guided democracy, and the New Order era to the current multiparty democracy of the reform era. He emphasized that Pancasila continues to evolve and is not limited to a specific historical period.⁴

Second, changing factors such as globalization, the development of the concept of human rights and the increased use of information technology by the community have led to a shift in values in the life of the Indonesian nation. This necessitates the reemphasis of Pancasila. Third, Pancasila is essential to reinforce the understanding of

¹ Kaelan, 2008, *Pancasila Education*, Paradigm Publisher, Yogyakarta, p. 148.

² Lilik Mulyadi, 2013, *The Existence of Customary Criminal Law in Indonesia: A Study of Principles, Norms, Theories, Practices and Procedures*, Journal of Law and Justice, Volume 2 Number 2 July, pp. 243-244.

³ Paristiyanti Nurwardani et al., 2016, *Pancasila Education for Higher Education (Textbook of General Compulsory Courses of Pancasila Education)*, Directorate General of Learning and Student Affairs, Ministry of Research, Technology, and Higher Education of the Republic of Indonesia, Jakarta, pp. 163-165.

⁴ *Ibid.*

national unity within a pluralistic Indonesian society, as well as to address the question of where the civilization of this nation is heading amidst numerous challenges and uncertainties. Fourth, it is crucial to implement Pancasila values in all aspects of Indonesian people's lives. Equally important is the role of state and government administrators in intelligently, consistently, and effectively implementing Bhineka Tungga Ika and the values of Pancasila in various policies and programs.⁵

The political basis of Pancasila as a philosophical system also extends to the agreement on the use of symbols in the life of the state. Article 36A of the 1945 Constitution states that the State Emblem is Garuda Pancasila with the motto Bhineka Tunggal Ika, emphasizing unity in diversity and the equality of all citizens.⁶ In line with this, Soekarno emphasized the importance of national unity in a diverse country. Furthermore, Soekarno also emphasized the idea of Indonesian democracy, reflecting the pluralistic nature of the Indonesian nation's thoughts and feelings, rather than just being a technical tool.⁷

In the history of the Indonesian state, many national figures and research articles have discussed Pancasila and its implementation. However, few have explored the connection between Bhineka Tungga Ika and Indonesia's unity, as well as the threat of national division caused by the imposition of uniform laws. Benyamin Tungga concluded that Indonesia's legal concept is based on Pancasila and the 1945 Constitution. He highlighted the synergy between the principle of Bhineka Tunggal Ika and legal pluralism in the unitary state model of the Republic of Indonesia, with Pancasila and the 1945 Constitution as the primary sources of law.⁸ However, Benyamin did not explain how the implementation of Bhineka Tunggal Ika in legal pluralism relates to Indonesia's unity.

Research similar to the author's work is being conducted by Munir Salim, who is studying the relationship of Bhineka Tungga Ika as a manifestation of the bond among the indigenous peoples of the archipelago. Salim explained that understanding the values of Bhineka Tunggal Ika in a multicultural or pluralistic society is crucial as a pillar of nationalism. He aims to provide discourse and brainstorming ideas to all parties, especially implementers and policymakers in various related agencies, so that it can be used as an additional reference in determining regulations related to the actualization of the understanding of Bhineka Tunggal Ika values by multicultural

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Benyamin Tungga, *Synergy of the Principle of Bineka Tunggal Ika with the Principle of Legal Pluralism*, Journal of Actual Justice, Vol. 4, No. 1 June 2019.

society as a pillar of nationalism.⁹ However, Salim has not yet explained the role of different legal applications in the diversity of the legal system in Indonesia's indigenous peoples.

Hence, the author's research focuses on implementing Bhineka Tunggal Ika as the foundation for developing national law within Indonesia's diverse legal system, in order to uphold the integrity of the Unitary State of the Republic of Indonesia.

2. Research Method

This research is designed as normative research, specifically a study that examines positive legal provisions and general legal principles¹⁰. This normative legal research is also used to identify concepts, ideas, and legal principles in depth, focusing on the implementation of Bhineka Tunggal Ika as the foundation for developing national laws within the diverse legal system of society for the unity of the Republic of Indonesia.

3. Results and Discussion

3.1. The Threat of Tearing *Bhineka Tunggal Ika* Due to Legal Consistency

The state ideology of Bhineka Tunggal Ika plays a crucial role in guiding legal morality in the life of society, nation, and state, by embracing the ideology of diversity¹¹, we can prevent the kind of division experienced in the history of the integrity of the Republic of Indonesia, such as the struggles in Aceh, parts of Sumatra, Maluku, and ongoing issues related to Papuan independence." The belief in "Bhineka Tunggal Ika" is expected to protect Indonesia from division and disruption. This belief system must ensure the stability of the state, maintain order and security, and bring about prosperity and justice for all citizens.¹²

"Bhineka Tunggal Ika" essentially embodies the dimensions of reality, ideals, and flexibility that encompass basic values, ideals, and openness so that diverse laws existing in each regional community can converge. The concept of "Bhineka Tunggal Ika" illustrates that the Indonesian nation comprises many ethnicities, religions, races,

⁹ Munir Salim, *Bhinneka Tunggal Ika as the Embodiment of the Indigenous Peoples of the Archipelago*, Al-Daulah Journal Vol. 6 / No. 1 / June 2017.

¹⁰ Peter Mahmud Marzuki, 2011, *Legal Research*, Kencana, Jakarta, p. 20

¹¹ Muhammad Fathur Rahman, et al, *Bhinneka Tunggal Ika as a Fortress Against the Risk of Indonesian Diversity*, AL-DIN: Journal of Da'wah and Socio-Religious Affairs, Vol 6, No 2, 2020.

¹² Soeprapto, 2010, *The Four Pillars of Nation and State Life*, Institute for the Study and Development of State Life, Jakarta, p. 5.

arts, customs, languages, and more, yet remains united as one nation and country.¹³

In this context, it is important to recognize that the principle of Bhineka Tunggal Ika should not only be limited to the formal legal aspect as stated in Article 6 paragraph (1) letter f of Law No. 12 of 2011 on the Establishment of Laws and Regulations, including its amendments, but it should also be evident in the actual lives of the community.

Some of the specific roles of Bhineka Tunggal Ika as the foundation for the development of national law are as follows:

- a. "Bhineka Tunggal Ika serves as a guide for citizens, emphasizing that each citizen's actions should be guided by moral principles rather than enforcing identical laws on the diverse Indonesian population. Therefore, it is important to establish clearer guiding norms for legal frameworks that offer specific guidelines for each region to formulate its own laws."
- b. Bhineka Tunggal Ika is a rejection of values that do not align with the principles of Pancasila. For instance, the coercion of free will through equal legal treatment for all regions goes against the value of tolerance, legal prosperity in a pluralistic Indonesian society, human rights, and the spirit of unity.

3. 2. "Strategy for Preserving Unity and Integrity Through Legal Development Based on Bhineka Tunggal Ika."

If we study Bhineka Tunggal Ika academically, we can understand it in the context of the generic concept of multiculturalism. In the discourse of contemporary Western society, multiculturalism refers to three main things. First, it was part of the pragmatism movement in the late 19th century in Europe and the United States. Second, it was a political and cultural pluralism in the 20th century, which was a response to European imperialism in Africa and the massive immigration of Europeans to the United States and Latin America. Third, it became an official national policy in Canada in 1971, in Australia in 1973, and subsequently in several European countries.¹⁴

In Indonesia, the diverse society is legally recognized, as mentioned in Article 36A of the 1945 Constitution. This implies that all components of the nation should think constructively, considering the diversity of society as the primary element in legal

¹³ Badri Khaeruman and Muhtar Ghazali, 2020, *4 Pillars of National Insight: Pancasila, 1945 Constitution, NKRI and Bhineka Tunggal Ika*, First Print, LP2M UIN Sunan Gunung Djati, Bandung, pp. 86-89.

¹⁴ *Ibid.*

development in Indonesia, in order to maintain the unity of the country. The government should implement a strategy to strengthen unity and solidarity through legal development using a socio-cultural approach tailored to each region, as outlined in Article 31, paragraph (5), Article 32, paragraph (1), and paragraph (2) of the 1945 Constitution.¹⁵

In Article 31 paragraph (5) of the 1945 Constitution, it is stated that "The government promotes the development of science and technology while upholding religious values and national unity for the advancement of civilization and the welfare of mankind." Additionally, Article 32 paragraph (1) of the 1945 Constitution states that "The State promotes Indonesia's national culture in the midst of world civilization by ensuring the freedom of the people to preserve and develop their cultural values." Furthermore, according to Article 32 paragraph (3) of the 1945 Constitution, it is specified that "The State respects and preserves regional languages as national cultural assets."

The instrumental values of "Bhineka Tunggal Ika" in strengthening national integrity or integration, as mentioned above, are in line with the emphasis made by Magnis Suseno, who highlighted that the implementation of the Pancasila ideology for state administrators is an orientation of constitutional life. This indicates that the ideology of Pancasila is outlined in various laws and regulations.

There are several important elements in the position of Pancasila as the orientation of constitutional life. The willingness to respect each other in the peculiarities of each law means that there is an agreement to jointly build the Indonesian state without discrimination. The Pancasila ideology closes the door to all exclusive ideologies that want to homogenize society according to their ideas, making legal pluralism the basic value of Pancasila to realize Bhineka Tunggal Ika. This means that Pancasila must be placed as an open ideology.¹⁶

3. 3. *Bhineka Tunggal Ika* as a Legal System in Indonesia

"Bhineka Tunggal Ika serves as the foundation of the state philosophy (Philosophische Grondslag). The philosophical values encompassed in Bhineka Tunggal Ika form the basis of all legal regulations in Indonesia. This implies that the diverse values of divinity, humanity, unity, populism, and justice must underpin all applicable laws and

¹⁵ Parsudi Suparlan, *Bhinneka Tunggal Ika: Ethnic or Cultural Diversity?*, Indonesian Journal of Anthropology, No 72, 2003.

¹⁶ Kaelan, 2008, *Op.Cit.*

regulations in Indonesia.¹⁷

The phrase "Bhineka Tunggal Ika" reflects the idea of prioritizing unity in diversity. It represents the aspiration to unite the diverse elements of the Indonesian nation within the framework of the Unitary State of the Republic of Indonesia. This unity aims to create a legal environment that can accommodate and unify the nation's diversity through various legal mechanisms.¹⁸

Furthermore, the points of the precepts of Pancasila can be understood as shown in the table below.:¹⁹

SILA PANCASILA	CARA PENGAMALAN
1. Belief in the one and only God	a. Indonesian people believe in and fear God Almighty through their respective religions and beliefs, based on the principles of a just and civilized humanity. b. Respect and cooperation among people of different faiths to foster harmony. c. Respect each other's freedom to worship according to their own religion and beliefs." d.: Do not impose your religion and beliefs on others."
2. Just and Civilized Humanity	a. Recognizing the equality of degree, equal rights, and basic obligations among fellow human beings by their dignity and as beings of God Almighty.

¹⁷ Comprehensive Text of Amendments to the Constitution of the Republic of Indonesia in 1945, 2010, *Background, Process, and Results of Discussion 1999-2002, Book II of the State Joints/Fundament*, Revised Edition, Secretariat General and Clerk of the Constitutional Court, Jakarta, p. 47.

¹⁸ I Nyoman Pursika, *An Analytical Study of the Motto "Bhinneka Tunngal Ika,"* Journal of Education and Teaching, Volume 42, Number 1, April 2009, p. 17.

¹⁹ Soeprapto, 2010, *Op.Cit.*

	b. Love each other. c. Develop an attitude of tolerance. d. "Do not be mean to other people." e. Upholding human values. f. to do humanitarian activities. g. "Stand up for truth and justice. h. The Indonesian nation sees itself as part of all humanity. Therefore, it has developed an attitude of respect and cooperation with other nations.
3. Unity of Indonesia	a. Placing the unity, interests, and safety of the nation and state above personal or group interests. b. Devoted to making sacrifices for the betterment of the nation and the state. c. Cherishing our homeland and standing united as a nation. d. "Proud to be part of the Indonesian nation and homeland." e. "Advancing the association for the unity and solidarity of a diverse nation."
4. Democracy guided by the inner wisdom in the unanimity arising	a. As members of the community, they hold equal positions,

out of deliberations amongst representatives	rights, and responsibilities, all focused on advancing the welfare of the state and society. b. Do not impose your will on others. Respect the autonomy of others. c. "Prioritizing thoughtful consideration when making decisions for the benefit of everyone." d. "Deliberation to reach a consensus is overshadowed by the sense of family." e. With good faith and a sense of responsibility, we accept and implement the results of deliberative decision. f. "Deliberation is conducted with common sense and a noble conscience." g. The verdict must embody moral accountability to God, uphold the dignity of all people, maintain the values of truth and justice, and prioritize unity for the common good.
5. Social justice for the whole of the people of Indonesia	a. "Strive to engage in noble actions that embody the values of family and cooperation." b. Equitable c. Striking the right balance between rights and obligations

Based on the table shown above, it is evident that the design of legal pluralism in Indonesian society, integrated in Pancasila and contained in the Fourth Alenia of the 1945 Constitution, encompasses many values of moral existence that are not present in other legal systems. Certain regions in Indonesia, such as Aceh, West Sumatra, Maluku, Papua, and almost all regions of Indonesia, have established and recognized customary laws. The presence of customary law mirrors the lifestyle of the Indonesian people. Through the practice of customary law, individuals also embrace and honor their religious and cultural heritage.²⁰

The national legal system of Bhineka Tunggal Ika is based on the principle of balancing values in Pancasila and the principle of balancing national development goals. These include balancing community protection (social defense), community welfare (social welfare), and community unity (social unity).²¹

4. Conclusion

The journey to establish the Unitary State of the Republic of Indonesia was not without challenges, marked by significant sacrifice and struggle. The hard-won independence of our nation must be safeguarded through laws based on our fundamental principle of Bhineka Tunggal Ika. This principle allows for the application of different laws among the Indonesian people while still operating within the framework of the national legal system, ensuring the continued sustainability of the Republic of Indonesia. The rejection of pluralism or legal diversity, in the form of imposing one law on different regions and arbitrarily enforcing customary and cultural laws, as well as the religion and beliefs of citizens, is an act that cannot be tolerated. The inconsistent treatment of the State with its various legal instruments based on Pancasila and the 1945 Constitution is also a problem. Therefore, it is important to reaffirm Pancasila in a pure and consequential manner, as in the history of its inception, in order to prevent this country from resembling the Soviet Union or the history of Eastern European countries.

²⁰ 4 Syarat Eksistensi Hukum Adat pada UUD 1945, <https://www.plengdut.com/4-syarat-eksistensi-hukum-adat-pada-uud-1945/11722/>, accessed on July 15, 2019, at 11.41 WIB

²¹ Erasmus Cahyadi (Editor), 2007, *Religious Complaints in the Indonesian Criminal Code Bill*, First Edition, Cooperation of the National Alliance for Criminal Code Reform and DRSP-USAID, pp. LX-LXI.

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