

The Paradigm of Contemporary Rule of Law in Indonesia: Between Conceptual Basis, Ideals, and Reflection

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Abstract

This article examines the term “rule of law,” which has been part of Indonesia’s constitutional identity since the enactment of the 1945 Constitution, yet whose implementation has often deviated from its original ideals. The rule of law seems to be nothing more than a formal jargon, marked by corruption, human rights violations, and minimal public participation in the formulation of regulations. The research method used is normative-critical-evaluative legal philosophy. The results of this study show that the Pancasila rule of law paradigm is prismatic. This paradigm is dynamic and open to new values, but the normalization of the phrase “Indonesia is a country based on the rule of law” has not had a real impact on the practice of nationhood and statehood. In the contemporary paradigm, the actualization of the rule of law still faces substantive problems in the form of weak accountability, the failure of checks and balances, and low public participation in legislation. This article makes several contributions, namely an overview of the contemporary rule of law paradigm as it relates to the factual conditions in Indonesia within the context of the concept of normativization, as well as a reflection on the rule of law in national development and nation-building. In addition, this article describes the rule of law in terms of its concept and development, the historical background of the formulation of the rule of law in its normativization, as well as the contemporary paradigm of the rule of law and the current conditions in Indonesia. This article emphasizes the need to strengthen the rule-of-law paradigm so that it is not merely formal but also substantive, in accordance with the ideals of Pancasila.

I. Introduction

The Republic of Indonesia is now 81 (eighty-one) years old—an age at which a country can formally be considered mature. However, a country's maturity is not solely determined by the length of time since its founding, as evidenced by the fact that there are countries—such as Singapore and Lithuania—that are younger in terms of their independence yet have legal systems that function far more effectively (Project, 2025). This research embeds the concept of “the rule of law” as a reflective foundation amid the current chaotic state of Indonesia's legal system. The label “State Based on the Rule of Law” has been inherently associated with Indonesia since the enactment of the 1945 Constitution of the Republic of Indonesia (UUD 1945), specifically one day after the reading of the Proclamation of Independence on August 17, 1945 (Konstitusi, 2010).

Historically, as noted by M. Hatta, the concept of a state governed by the rule of law based on Pancasila has been an ideal since the founding of the Republic of Indonesia (Hatta, 1975). The nation's founders realized that the paradigm of statehood did not merely draw on legal traditions brought by the West, but was also rooted in the original traditions of the Indonesian people. The paradigm of statehood was fully articulated through five principles—belief in God, humanity, nationalism, democracy, and social justice—which are crystallized into a single grand concept: Pancasila (Azhari, 2012).

In the beginning, the phrase “state governed by the rule of law” was already explicitly enshrined in the Explanatory Notes to the 1945 Constitution, in the section on the system of government, which stated that the State of Indonesia is based on the rule of law (*Rechtsstaat*), not on power alone (*Machtsstaat*). In the Constitution of the United States of Indonesia (1949–1950), the phrase “state governed by the rule of law” appeared in Article 1, paragraph (1), which stated that the independent and sovereign Republic of Indonesia is a democratic, federated state governed by the rule of law. Meanwhile, in the 1950 Provisional Constitution (1950–1959), Article 1, paragraph (1), states that the independent and sovereign Republic of Indonesia is a democratic state governed by the rule of law and organized as a unitary state.

Over time, amendments to the 1945 Constitution of the Republic of Indonesia have reaffirmed the phrase “state based on the rule of law” in Article 1, paragraph (3), which states that the Republic of Indonesia is a state based on the rule of law. The state based on the rule of law referred to here is one that upholds the supremacy of law to ensure truth and justice, and in which no power is unaccountable. The inclusion of this phrase in the articles of the 1945 Constitution of the Republic of

Indonesia is an example of the implementation of a fundamental agreement regarding amendments—namely, to introduce normative provisions contained in the explanatory notes into the articles themselves (Konstitusi, Naskah Komprehensif Perubahan Undang-Undang Dasar Republik Indonesia Tahun 1945., 2010). The concept of the rule of law, as set forth in Article 1, paragraph (3), is closely linked to the welfare state or the concept of the substantive rule of law, in accordance with the fourth paragraph of the Preamble and the provisions of Article 34 of the 1945 Constitution of the Republic of Indonesia.

In practice—specifically before the reform—the phrase “rule of law” tended to reflect a semantic value (Loewenstein, 1965) (Isnawati, 2022), even the very concept of the rule of law is valued only on paper; the rule of law has become a slogan that seems utopian, never put into practice in the life of the nation and the state because, in reality, it serves the interests of those in power. Historically, both the Old Order (Thoolen, 1987) and to culminate, the New Order government (Nasution, 2011) had disregarded the fundamental principles of the rule of law—and often even invoked the rule of law as a means to justify policies that were, in fact, counterproductive. Furthermore, corruption, collusion, and nepotism (KKN) were rampant, and massive human rights violations were occurring (Untarawati, 2024).

In observation, current national and state practices are not much different from those of previous eras; even as we enter an era of disruption, various anomalies are occurring. The state, through its government, continues to assert its superior position—from repressive actions that violate human rights, which still occur frequently, to increasingly widespread corruption, collusion, and nepotism (KKN) among officials. Even the nomination process for Vice Presidential candidate Gibran Rakabuming Raka has been called into question; which garnered significant public attention at the time due to its strong undertones of nepotism (Darmawan, 2026). Furthermore, irregularities have also occurred in policymaking, both at the level of legislation and implementing regulations. For example, the 2025 revisions to the Criminal Procedure Code (KUHAP) and the TNI Act did not undergo a transparent and accountable drafting process and failed to adhere to the principle of meaningful participation (Putusan Mahkamah Konstitusi Republik Indonesia, 2020) (Putusan Mahkamah Konstitusi Republik Indonesia, 2020).

With various anomalies, is there something wrong with the rule of law—both in terms of its meaning and its actual implementation in real life? As is well known, the formulation of the rule of law was initially included in the Explanatory Notes to the Constitution; however, after a lengthy process, it was ultimately enshrined in

Article 1, paragraph (1) of the Constitution: “The State of Indonesia is a State based on the Rule of Law.” Based on the decision in the Third Constitutional Assembly (PAH III), it was agreed to abolish the Explanatory Notes to the 1945 Constitution by incorporating normative provisions directly into the articles of the Constitution. Nevertheless, in reality, the affirmation that the Republic of Indonesia is a state governed by the rule of law is considered to have had no significant impact on the current life of the nation and state.

Theoretically, there is a correlation between the rule-of-law paradigm and society, as Satjipto Rahardjo links the rule-of-law paradigm to the existence and condition of human beings. The focus here is on how human conditions—including suffering, sorrow, and happiness—are shaped by and within a rule-of-law state. Rahardjo states that the law operates according to the roadmap presented to it. That roadmap determines how a legal system (Rahardjo, 2009). This means that the rule of law has an influence on and shapes the life of the nation and the state, as seen in how the law is properly administered and directed toward the well-being of society.

To identify the novelty of this article, this paper will compare it with several previous articles that discuss the rule of law and examine its central issues, such as Pancasila, constitutionalism, and substantive justice. First, Wahyudi Djafar’s research discusses the paradigms of the rule of law from the *rechtstaat* and rule of law traditions, both of which emphasize the limitation of power, the protection of human rights, and the supremacy of law. His research mentioned that following the third wave of democratization, the “rule of law” was used as the foundation for the development of post-authoritarian states but was distorted by neoliberalism, which prioritizes legal certainty for the sake of markets and investment. Indonesia’s commitment to the rule of law must be reaffirmed—not merely in form but in substance—to ensure justice and social welfare (Djafar, 2010). Second, Artha Debora’s research shows that the concept of the rule of law—as a paradox in the philosophical justification of Pancasila (which is based on the recognition of legally valid sources of law)—should not be interpreted as viewing Pancasila as a source of law that expands coercive actions and imperative legal choices (Silalahi, 2024). This article is distinguished by the fact that this research will provide a holistic examination of the contemporary rule-of-law paradigm in the context of the development of the rule of law in Indonesia, both in terms of the cohesiveness of its underlying concepts and as a reflection of national and state life. This study offers several contributions, namely a contemporary rule-of-law paradigm linked to the factual conditions of the Indonesian state in the context of the concept of normativization and the reflection of

the rule of law in nation-building and statehood. This study will outline the conceptual approach to the rule of law in terms of its concepts and development, the historical approach to the formulation of the rule of law in the context of its normativization, as well as the contemporary paradigm of the rule of law and the actual conditions in Indonesia.

II. Research Method

This study employs both conceptual and historical approaches to the philosophy of law to help examine the issue of the rule of law from a paradigmatic perspective. The philosophy of law seeks to offer a unique perspective in addressing each issue, given its primary characteristics of critical logic, speculation, and reflection. This research method does not seek to fall within the dichotomy of normative and empirical methods but rather adopts a normative-critical-evaluative (Bruggink, 1999) approach that aims to critique dominant theories and legal dogmatics. Therefore, this study presents a critical evaluation and further development of contemporary theories of the rule of law without being confined to a rigid paradigm of legal dogmatics only.

The primary basis for this study is a combination of theories on the rule of law, constitutionalism, and other contemporary theories, supported by research data from the World Justice Project, the Bertelsmann Transformation Index, and the Heritage Foundation Index—some of which focus on the rule of law, open government, criminal justice, human rights, and other critical issues. The second source, from a legal perspective—particularly the constitution—includes not only Indonesia's 1945 Constitution but also a comparative analysis of the constitutions of several other countries. The analysis in this study is based on the cited sources; specifically, it is a qualitative analysis that focuses on deductive and inductive reasoning, as well as on analyzing the dynamics of relationships with the observed phenomena using scientific logic. It analyzes issues regarding the contemporary rule of law paradigm as it relates to the factual conditions of the Indonesian state within the context of the concept of normativization and the reflection of the rule of law in national development and nationhood. This study will outline a conceptual approach to the rule of law in terms of its concepts and development, a historical approach to the formulation of the rule of law in the context of its normalization, as well as the contemporary paradigm of the rule of law and the current conditions in Indonesia.

III. Results and Discussion

The Concept and Development of the Rule of Law

Over time, the rule of law became crucial to a nation's identity. In fact,

according to Guillermo A. O'Donnell, the rule of law is an essential pillar for the realization of a high-quality democracy (O'Donnell, 2004). In the concept of the rule of law, there must be a guarantee that laws are established and enforced in accordance with democratic principles. Therefore, there is no doubt that the rule of law is a key element that plays a crucial role in the sustainability of democracy and serves as a constitutional ideal. Consequently, the phrase "rule of law" can be found in more than one hundred constitutions around the world, proving that the rule of law constitutes a nation's very identity (Bisariya & Bulmer, 2017).

The various paradigms of the rule of law, as viewed in terms of their characteristics, implementation, and historical context, are classified as follows (Azhar, 2015), (Zolo, 2007)1) Western concepts include the "rechtsstaat," which draws from Germany, and the "rule of law" in the Anglo-Saxon traditions of the United Kingdom and the United States; 2) socialist legality; and 3) a state based on Islamic law (Islamic nomocracy). Outside of these classifications, Indonesia has its own distinct characteristics. Although the majority of Indonesia's population is Muslim, its ideology reflects pluralistic values, leading scientific claims to classify Indonesia as a "Pancasila-based state governed by the rule of law." Furthermore, the diversity of states governed by the rule of law is also evident in the experience of Germany, which combines liberal and socialist rule of law (King, 2018). Despite the diversity of states governed by the rule of law, there are several similar characteristics that are universal in nature, such as equality before the law. The principle of equality before the law embodies natural values of justice that are truly inherent in the structure of a state governed by the rule of law. This article, does not draw radical distinctions between the various types of states governed by the rule of law.

A United Nations report outlines the general framework of the rule of law in the principles of state governance, stating that every individual, institution, and entity—whether public or private, including the state—must prioritize transparent legal accountability, ensure fair implementation, maintain an independent judiciary, and uphold and comply with international human rights norms (Nations, 2004). The rule of law also applies to the relationship between those in authority and citizens, indigenous peoples, and the private sector. There is a cohesive relationship between the rule of law and the aforementioned entities—for example, regarding how laws should be enacted, the treatment of criminal suspects, or the methods of tax assessment and collection, as well as matters of a private nature (Jansen, 2012).

According to Gowder, "equality" in a state governed by the rule of law is a

fundamental value that promotes vertical equality between the government and its people, as well as horizontal equality among citizens themselves (Gowder, 2016). Vertical equality means that existing legal institutions protect citizens from the abuse of power by officials and from the intimidation that such abuse can cause. Horizontal equality, on the other hand, means ensuring through legal institutions that the interests of the general public are taken into account and not ignored by the law (Gowder, 2016). In the line with argue Gowder in a political and institutional context, David Beetham views democracy as inseparable from the rule of law, in which institutions must embody the principles of representation and accountability—for example, in enacting laws and policies for the public and ensuring respect for the law (Beetham, 2006). To uphold the rule of law, all parties must be involved. As Huiting Qi notes in his research, the rule of law must be implemented through collaborative governance, whereby governance is carried out collectively by public authorities (the government), the private sector, nonprofit organizations, and the general public, working together on the basis of consensus (Qi, 2019).

According to Tamanaha, the rule of law requires government officials and citizens to be bound by and act in accordance with the law. Meanwhile, the “thicker” definition of the rule of law covers the protection of human rights, democracy, and substantive justice (Tamanaha, 2007) In Ronald Dworkin’s view, the implementation of the rule of law not only protects moral rights procedurally but also substantively (Dworkin, 1985). In a state governed by the rule of law, a set of standards alone is not enough; a set of processes is also required. These processes, known as procedures, must be designed to implement those standards; their primary purpose is to support the establishment of an accountable government (Endicott, 2011). Sumit mentioned that the existence of a constitutional government must be based on the rule of law (Bisariya & Bulmer, 2017).

This reminds us of the classic adage “government by law and not by men,” which, according to Josep Raz, means that all government actions must have a legal basis; when such actions do not comply with the law, they cannot be considered legitimate government actions. Such actions have no legal consequences and tend to violate legal provisions (Raz, 2016). This principle has existed since the time of Aristotle, when it was believed that a government based on the rule of law was preferable to a tyrannical government that could not be controlled even by the wise, due to concerns about the abuse of power inherent in every system of government (Tamanaha, 2004). Raz also provided an overview of actions that are contrary to the law, such as the government’s practice of amending laws retroactively, abruptly, or

without transparency whenever the issue at hand benefits the government (Raz, 2016).

The rule of law aims to protect the public interest by elevating the law to a position of supremacy. The law serves as the primary guide for national and state life; according to Tamanaha, there are key requirements for achieving the objectives of the rule of law: the law must be prospectively applicable, published for public access, universally applicable, clear, stable, and certain (Tamanaha, 2007) In line with Lon Fuller's thesis based on the eight desiderata, namely: 1) generality; 2) prospectively; 3) publicity; 4) clarity; 5) consistency; 6) conformity to the law; 7) constancy through time; 8) congruence between announced laws and administration (Fuller, 1968). Meanwhile, according to Robert A. Stein, the rule of law can be said to function effectively if it fulfills the following aspects integrating legal supremacy, equality, predictability, human rights protection, public participation, and judicial independence to counteract arbitrary power (Stein, 2009).

According to Stein, one of the hallmarks of an effectively functioning rule of law is when the public has the right to participate in the formation of laws—which are, in fact, substantive principles that serve as the minimum standards that every system must meet as a prerequisite for governance based on the law (Rijkema, 2013). From Tamanaha's perspective, the rule of law has two main functions: it imposes legal constraints on the government in two ways—by requiring government officials to comply with applicable laws and by imposing legal limits on the power to make laws—and it serves to maintain order and coordinate relations among citizens (Tamanaha, 2007) Limits on power can be established through the features enshrined in the constitution, such as the separation of powers accompanied by checks and balances, judicial independence, fix term for the president, and the protection of human rights.

The rule of law has great value and significance for the foundation and sustainability of a nation; however, in practice, many countries implement it in ways that fall far short of the ideals of the rule of law. Michel Rosenfeld states that, in reality, claims of the rule of law—contrary to expectations—lack strong legitimacy because deviant practices such as oppression, slavery, and other dehumanizing practices are carried out under the guise of the law (Rosenfeld, 2001), Gabor Halmai Gabor Halmai in his study provides an example of Hungary's practice that claims to be a state of law but its practice does not reflect what is meant by the principle of a state of law. (Halmai, 2024). In line with Kim Lane Scheppele's view, under the current prevalence of autocratic legalism, the law is used as a tool to legitimize

various abuses of power (Scheppelle, 2018). Therefore, when the law is used to legitimize irregularities, the essence of the rule of law becomes imperceptible, giving rise to the perception that the rule of law is nothing more than a label or utopian jargon.

The Normativization of the Rule of Law

During the Reformation era—specifically during the deliberations on the first amendment to the Constitution—the concept of the rule of law became a key issue that was ultimately enshrined in the main body of the Constitution. The rule of law emerged as a crucial topic of discussion because it is not merely a label or identity that binds the state to the rule of law, but rather a fundamental pillar of the state. The Economist magazine published an article on “Economics and the Rule of Law” noting that the rule of law has an influence on development economics that impacts society at large (Economist, 2008). According to WJP, without a clear “rule of law” framework, a technical activity such as the distribution of medicines may fail to reach health facilities due to corrupt practices; women, particularly in rural areas, may be unaware of their basic rights. The rule of law is key to improving the quality of public health, protecting legal participation, ensuring security, and combating poverty (Project, Rule of Law Index, 2005).

In the original intent, the concept of the rule of law was introduced by Hamdan Zoelva, a member of the Crescent Star Party faction, during the deliberations on the first amendment to the 1945 Constitution. He proposed adding the phrase “democratic Indonesia”—a state that adheres strictly to the law and democratic principles. Hamdan Zoelva also emphasized that the phrase “rule of law” was included in the main text because the law must take precedence—unlike in previous eras, when the law was subordinate to executive power (Konstitusi, 2010). Lukman Hakim Saefuddin of the United Development Party (PPP) faction offered insights regarding the pillars of the state, distinguishing between the philosophical and political pillars. The philosophical pillar of the state is Pancasila, while the political pillars include democracy, the rule of law, and social justice. Meanwhile, Andi Mattalatta from the Golkar Party Faction noted that the term “rule of law” already encompasses many aspects, such as checks and balances and legal restrictions.

Discussions on the issue of the “rule of law” are considered insufficiently paradigmatic, and the lack of debate on ideas (context) fails to address the substantive issues of the rule of law (Harijanti, 2011). First, there is no clarity regarding how the rule of law will be defined, with its implications for strengthening

law enforcement in the future. Second, there is no concept that simultaneously accommodates both the rule of law and democracy in a single formulation; as is well known, Indonesia embraces both the rule of law and popular sovereignty. According to Bagir Manan, democracy is rooted in the principle of popular sovereignty, whereby the public is given the space to participate (Manan, 2003). Third, there is a lack of clarity regarding the paradigm and the specific type of rule of law, because the 1945 Constitution of the Republic of Indonesia contains both socialist and liberal elements. Manan (Harijanti, 2011) and Mahfud (MD, 2013) recognized that there is ambiguity regarding the concept of the rule of law, in which the system of state administration under the 1945 Constitution is not merely a “politische-economische democratie,” nor merely a “democratische rechtsstaat,” but also a “democratische sociaal rechtsstaat.”

In taking a middle ground, Mahfud recognizes that the Indonesian state is founded on the principles of Pancasila and the 1945 Constitution; using a prismatic or integrative approach, he seeks to combine certain characteristics of the rechtsstaat and the rule of law (MD, 2013). Arief Hidayat argues that prismatic law seeks to integrate the positive elements contained in various legal systems to form a new system (Hidayat, 2017), (Rahmatullah, 2020). In essence, the prismatic approach is an attempt to unite the two elements of rechtstaats and rule of law which have different backgrounds. Meanwhile, long before that, a 1966 symposium at the University of Indonesia noted that Indonesia is a nation governed by the rule of law based on Pancasila. Pancasila serves as an ideology that reflects the spirit of the Indonesian people; this spirit must underpin all legal regulations and their implementation, and the principle of kinship serves as the foundation of social life (Fadjar, 2018).

According to Philipus M. Hadjon, there are four main elements in the Pancasila Rule of Law: balanced relations between the government and the people based on the principle of harmony; a proportional and functional relationship among the branches of government; the principle of resolving disputes through deliberation, with the courts serving as a last resort; and a balance between rights and obligations (Hadjon, 1987)

Article 2 of Law No. 12 of 2011 on the Formation of Legislation states that Pancasila is the source of all sources of state law. This formulation establishes Pancasila as both a staatsfundamentálnorm and a rechstidee (Prasetyo, 2014). The affirmation of Pancasila as the source of all sources of law is grounded in the values contained within Pancasila, which make it a substantive source of law for Indonesia’s positive law. Pancasila determines the content and form of legislation in Indonesia, which is

organized hierarchically. Within this hierarchical structure, Pancasila ensures harmony and the absence of contradictions among various laws and regulations, both vertically and horizontally (Kaelan, 2020). However, from a philosophical perspective, Pancasila should not be interpreted rigidly nor should it be regarded as an absolute source of guidance, because Pancasila should naturally be able to adapt to gradual changes in society (Silalahi, 2024). According to Rahardjo, the rule of law serves as the overarching framework for regulating society and human life within it, because ultimately it is up to the people or the nation itself to decide how to apply the rule of law (Rahardjo, 2009).

Are the values enshrined in Pancasila capable of adapting to the changing times, given that the rule of law rests on the values enshrined in Pancasila? Contemporary research has raised concerns that the rule of law may not be able to keep pace with technological advancements—particularly automation systems through the implementation of “*artificial intelligence*”—which could eventually replace legal decisions made by humans (Zalnieriute, 2019). Thus, when Pancasila—which serves as the state ideology—no longer aligns with the changing times, one of the implications will be legal uncertainty. Such doubts are common, but we must remain confident that Pancasila, having existed for 81 years, is capable of adapting to the changing times due to its dynamic and inclusive nature.

From a comparative perspective, the phrase “rule of law” can be found in more than one hundred constitutions around the world (Bisariya & Bulmer, 2017), proving that the rule of law serves as the identity of a nation, and thus has become a universal principle. Antje Wiener argues that the rule of law, alongside democracy, has become a fundamental norm, whereby both principles are codified and not only constitute essential elements of a constitution but are also recognized as imperative norms in international law. Wiener defines this norm as one that is recognized and accepted by the international community of states, established as a norm that must not be violated (Wiener, 2008).

This article classifies countries that explicitly include the phrase “rule of law” in an article of their constitution and in the preamble to their constitution.

Table 1. Classification of the Use of the Phrase “Rule of Law”

No				
	Countries	The Rule of Law in the Constitution Provision	Countries	The Rule of Law in the Preamble to the Constitution
1	Bhutan	The Constitution of Bhutan 2008, Article	Philippines	The Constitution of Philippines 1987, “...conserve and develop

		9 Section 1 The State shall endeavour to create a civil society free of oppression, discrimination and violence, based on the rule of law, protection of human rights and dignity, and to ensure the fundamental rights and freedoms of the people.		our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.
2	Bosnia and Herzegovina	The Constitution of Bosnia and Herzegovina of 1995, Article 1 Section 2 Democratic Principle: Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.	Afganistan	The Constitution of Afganistan of 2004, “..Form a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social justice, protecting integrity and human rights, and attaining peoples' freedoms and fundamental rights...”
3	Indonesia	Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia is a state governed by the rule of law.	Ghana	The Constitution of Ghana of 1992 “...The Principle of Universal Adult Suffrage; The Rule of Law...”

There are several countries that include the phrase “rule of law” in the preamble and articles of their constitutions, such as Portugal, Liberia, and Turkey. However, there are also several countries that incorporate the core principles of the rule of law without explicitly including the phrase “rule of law,” such as the United States, Germany, France, and India. Regardless, countries that include the term “rule of law” in the preamble to their constitutions essentially wish to demonstrate to the world that their national identity is subject to and upholds the supremacy of the law

(Orgad, 2010), (Neo & W. Arguelhes, 2025) (Neo & W. Arguelhes, 2025). Therefore, the phrase “state governed by the rule of law” is crucial; in addition to serving as the foundation of the state, it also serves as a symbol and identity for a country that is subject to the law.

Will Indonesia accommodate this by including the phrase “rule of law” in the Preamble to the Constitution to affirm Indonesia as a nation and state subject to the supremacy of the law? Including it in the preamble would raise questions about the urgency of amending the Preamble to the Constitution, given that the formal amendment process—which is carried out deliberatively to reach a collective agreement—is not easy, and such a proposal would effectively negate the “unamendability clause” in the agreement of Ad Hoc Committee III, which states that “the Preamble to the Constitution shall not be amended”.¹ The Preamble to the 1945 Constitution contains the philosophical and normative foundations underpinning all of its articles; furthermore, the Preamble sets forth the *staatsidee*—the founding principle of the state—as well as the state’s objectives and foundations. Therefore, even without any amendments, the philosophical values and objectives contained in the Preamble already reflect the structure of the rule-of-law state that is intended. However, the true essence of the rule of law lies not in the inclusion of that phrase, but in the actual conditions under which the rule of law is articulated, both procedurally and substantively. In addition, public legitimacy is a crucial element in assessing whether the rule of law is being effectively implemented, since all actions and policies ultimately have far-reaching consequences, making public acceptance an absolute necessity.

The Contemporary Rule of Law and the Factual Conditions of the Indonesian State

Many studies on the rule of law have been conducted to date, and most of these studies by scholars seek to use the rule of law as an indicator for analyzing real-world cases. Over time, scholars and policymakers have come to view the rule of law not only as a means to achieve certain goals but also as a way to ensure legal certainty, justice, and accountable governance (Versteeg & Ginsburg, 2017).

According to Tom Ginsburg, the process of measuring the rule of law using indicators is not easy; there are challenges, particularly in conceptualization, due to differences between the concept of the rule of law and other concepts, as well as

¹ Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Republik Indonesia Tahun 1945*, 159

factors related to structural configurations, social change, and even tradition (Ginsburg, 2011). Regardless, there have already been several articles that discuss measurement, citing various institutions that publish their own indices and indicators. For example, Svend Erik Skaaning (Skaaning, 2010) cites the Bertelsmann Transformation Index, which focuses on indicators such as constitutionalism, democracy, human rights, and accountability; Freedom in the World, which focuses on human rights, civil liberties, and equality; and the World Governance Indicators (WGI), which focus on perceptions of legal compliance, property rights, and guarantees of security and order. The indicators used by the latter institution have drawn various criticisms because they are based on unclear scientific theories.

Meanwhile, in their paper, Mila Versteeg and Ginsburg cite not only the WGI but also the Heritage Foundation Index, which focuses on fundamental rights, judicial independence, and anti-corruption. Freedom House focuses on human rights, civil liberties, equality, and protection from political repression, while the WJP uses nine indicators: 1) constraints on government powers; 2) absence of corruption; 3) open government; 4) fundamental rights; 5) order and security; 6) regulatory enforcement; 7) civil justice; 8) criminal justice; and 9) informal justice. The last indicator was not included in the released index (Versteeg & Ginsburg, 2017). According to Jawahir Thontowi, the indicators used in the WJP Index can be equated with the principles of the contemporary rule of law, complementing the existing principles of the conventional rule of law (Thontowi, 2016)

This article uses several WJP indicators because they are considered sufficiently representative and comprehensive in assessing some of the nation's current issues. However, first, this article would like to present WJP data regarding Indonesia's rule of law index from 2021 to 2025. In 2021, Indonesia ranked 68th; in 2022, 64th; in 2023, 66th; in 2024, 68th; and in 2025, 69th. Based on this data, it is evident that there are complex issues that need to be examined and analyzed in depth using WJP indicators. This article uses three indicators to provide an overview and discussion of current substantive issues and challenges, including constraints on government power, the absence of corruption, open government, and fundamental rights.

In addition, Thontowi adds several key elements of a contemporary rule-of-law state that were overlooked during the reform era: the state must play an active role in maintaining order and security—not the opposite—and it must govern in a manner free from corruption, collusion, and nepotism (Thontowi, 2016). As it should be (*das sollen*), a constitutional government is based on the rule of law, which prioritizes transparency and accountability. Within the framework of Pancasila, these key

elements are linked to the values embodied in Pancasila, such as the second principle of Pancasila—“Just and Civilized Humanity”—which holds that the practice of corruption, collusion, and nepotism (KKN) is, in essence, a violation of the values of justice and humanity because it harms the public interest. It is not difficult to measure existing indicators against the values of Pancasila, as Pancasila is dynamic and inclusive of new developments and values—as previously stated, Pancasila is believed to be capable of transforming itself in response to gradual changes in society.

First, the WJP uses the “constraints on government powers” indicator, which essentially limits the power of the government—both institutionally and in terms of its officials—and imposes legal accountability. Components of the “constraints on government powers” indicator: 1) Parliament exercises oversight over the government as a form of checks and balances; 2) Judicial institutions must be independent in exercising oversight over the government; 3) independent agencies exercise oversight over the government; 4) strict sanctions are imposed on state officials (executive, legislative, and judicial branches, as well as other government officials) who commit dereliction of duty or other violations; and 5) civil society exercises direct oversight over the government (Project, The World Justice Project, 2025)

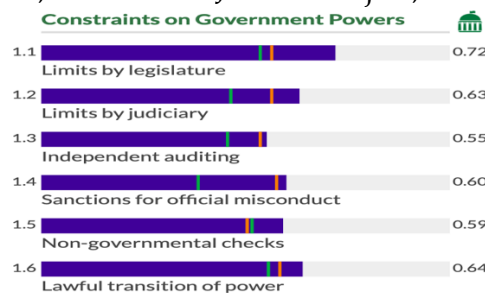


Figure 1. Indonesia’s Score on the “Constraints on Government Powers” Indikator

Throughout 2024–2026, several cases were uncovered involving officials who committed abuses of power, ranging from ethical violations and immoral conduct to corruption. For example, Constitutional Court Justice Anwar Usman committed an ethical violation due to a conflict of interest with Gibran Rakabuming Raka, a prospective vice-presidential candidate (see MKMK Decision No. 2 of 2023). Pursuant to the relevant MKMK Ruling, he must be removed from his position as Chief Justice of the Constitutional Court. *Second*, the outbreak of the 2025 demonstrations was triggered in part by controversial statements and reprehensible actions by several members of the House of Representatives, including Adies Kadir, Nafa Urbach, Uya Kuya, Eko Patrio, and Ahmad Sahroni (CNBC, 2025). The sanctions imposed are

considered too lenient, given that the actions taken in both cases undermined the principles of the rule of law—such as the supremacy of law and accountability—raising legitimate concerns that similar incidents could recur. Regarding ethical violations related to conflicts of interest, provisions are needed to mitigate the occurrence of conflicts of interest in public office.

In 2025, Indonesia experienced natural disasters in the form of flash floods and landslides in several areas of Aceh, North Sumatra, and West Sumatra, which claimed 1,138 lives. In fact, there were many complaints regarding the government’s handling of the situation; the government even failed to declare a state of emergency, leading the general public to question the government’s responsiveness. This slow government response inherently contradicts the principles of the rule of law, particularly regarding the protection and guarantee of citizens’ rights.

In this context, to what extent does the House of Representatives exercise its oversight function regarding the government’s disaster management efforts? The House’s lack of sensitivity and responsiveness in addressing public complaints—despite some party members visiting the field, which appears to be merely a publicity stunt—indicates that no significant efforts have been made. The DPR’s role in the system of checks and balances should be strengthened through its special powers—namely, the right to interpellation and the right to conduct inquiries—to hold the government accountable for its policies regarding disaster response and the management of disaster relief funds in Sumatra.

Second, The WJP also uses the “absence of corruption” indicator to assess whether a government is free of corruption. There are three forms of corruption: bribery, undue influence by public or private interests, and misuse of public funds or other resources. These three forms of corruption are associated with government officials in the executive, judicial, military, police, and legislative branches (Project, The World Justice Project, 2025).

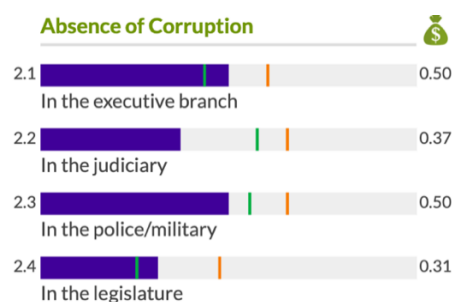


Figure 2. Indonesia's Score on the "Absence of Corruption"

In 2026, the public was shocked by a corruption case involving several high-ranking officials from law enforcement agencies, such as the Attorney General's Office, which implicated the former Deputy Attorney General for Special Crimes, Febrie Adriansyah—who was suspected of receiving funds from Tan Kiang in connection with the ASABRI and Jiwasraya corruption scandals, as well as money laundering offenses (Detik.news, 2026). Then, the former Chair of the Ombudsman of the Republic of Indonesia, Hery Susanto, was arrested and named a suspect in an alleged bribery case involving PT Toshida Indonesia; ironically, he was arrested shortly after being sworn in as Chair of the Ombudsman of the Republic of Indonesia (Hukumonline.com, 2026). The involvement of law enforcement officials and public officials in corruption cases confirms the existence of acute problems in the implementation of clean government due to a lack of transparency and accountability.

Third, the potential decline in the rule-of-law index ranking is most likely due to the "open government" factor. First, it is necessary to re-examine the components of open government, namely: 1) all legal instruments are made public and easily accessible; 2) the general public has the right to obtain information, and the government responds to information requests accordingly; 3) mechanisms for public participation are in place, including protections for freedom of opinion and expression, assembly, and association; and 4) mechanisms are in place for filing complaints regarding ineffective public services.

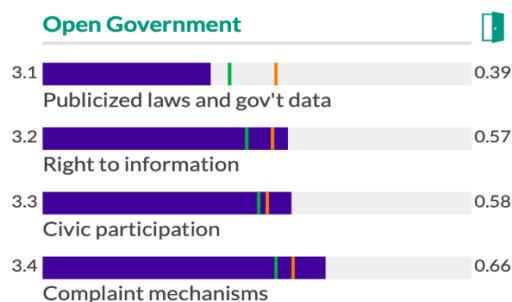


Figure 3. Indonesia's Score on the "Open Government" Indicator

One of the unresolved issues in "open government" is the lack of broad public participation in the legislative process; in fact, both DPR and the government are still considered to be insufficiently transparent regarding regulations currently being

drafted, and there is a lack of public outreach regarding regulations that have already been enacted. In fact, the Constitutional Court, in its Decision No. 91/PUU-XVIII/2020, has emphasized that the formulation of any legislation must prioritize the principle of meaningful participation. However, there are still controversial laws that resulted from legislative processes that did not prioritize the principle of meaningful participation, such as the revision of the Constitutional Court Law, the State Ministries Law, the revision of the Indonesian National Armed Forces Law, and the revision of the Indonesian National Police Law.

Meanwhile, at the regional level, large-scale protests erupted in the Pati area, sparked by Regent Sudewo’s policy to raise property taxes by up to 250% (Kompas, 2025). This is clear evidence that public involvement and the incorporation of public input into every policy decision are essential—as components of open government—ensuring that the public has the right to transparency regarding the policies adopted and is given the opportunity to participate in voicing their concerns.

Fourth, the “fundamental rights” indicator guarantees the protection of citizens’ basic rights and includes the following components: 1) the guarantee of equality and non-discrimination; 2) the right to life and the guarantee of safety from repressive actions by state authorities; 3) due process of law and the protection of the rights of suspects; 4) the guarantee of freedom of opinion and expression. All parties—such as independent media, civil society, and political parties—can criticize government policies without fear; 5) freedom of religion and the freedom to choose one’s beliefs are guaranteed; 6) the right to privacy is protected from government interference; 7) freedom of assembly and association are guaranteed; and 8) the fundamental rights of workers are guaranteed.

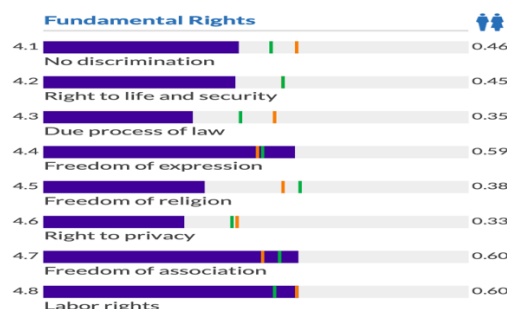


Figure 4. Indonesia’s Score on the “Fundamental Rights” Indikator

Issues regarding fundamental rights have arisen in several agrarian conflicts due to repressive actions by authorities against communities, including acts of violence and

intimidation that have occurred in the villages of Wadas, Bangis, and Rempang. In fact, in some areas, indigenous communities have faced legal problems for defending their customary lands against the disruptive effects of mining activities that damage the environment (International, 2025). Repressive actions by law enforcement officials were also evident during demonstrations against the revision of the TNI Law and KUHAP (Kompas, 2025). In August 2025, large-scale, massive demonstrations erupted, triggered by increases in allowances for members of the House of Representatives, hikes in property taxes in several regions, and controversial statements made by members of the House of Representatives. Repressive actions by police forces were inevitable, and many activists were arrested on baseless charges (Indonesia, 2025) As a disclaimer—not to justify this—police institutions generally possess coercive powers that are essential for the president to maintain control of the government; one of their roles is to control protests and demonstrations (Mietzner, 2023) (Eggert & et.al, 2016) This means that the police serve as an instrument of the government in managing protests to ensure the continuity of governance. However, in reality, protests are managed through repressive actions that violate human rights. Such practices demonstrate that the government lacks a commitment to protecting human rights, since every individual and group should be given ample space to exercise their right to freedom of expression and be afforded protection—not the opposite.

Thus, the potential for constitutional rot becomes increasingly likely when the rule of law loses its essence and is no longer in line with the constitution. Constitutional rot occurs gradually, involving the disregard of the public interest and the use of legal rules for personal interests (Balkin, 2017). A paradox has arisen: while the state, through the government, claims to exist to serve the people, the reality shows that the government has failed to establish order and security, thereby undermining the guarantee of human rights protection. Even the government, which is expected to act with integrity, has instead normalized practices of corruption, collusion, and nepotism. Given these facts, it is not an exaggeration to say that the wording of Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia is semantically similar to what was practiced during the New Order era. Therefore, this should serve as a collective opportunity for us to reflect on the entire situation and reaffirm the fundamental values of Indonesia's rule of law, rooted in the principles of Pancasila.

IV. Conclusion

The paradigm of the rule of law is to protect the public interest by elevating the

law to a position of supremacy. The law serves as the primary guiding principle in the life of the nation and the state. This means that, from a paradigmatic perspective, the rule of law holds value and significance for the foundation and sustainability of a nation.

After the collapse of the New Order regime, the Indonesian state codified this principle by explicitly including the phrase “State Based on the Rule of Law” in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The affirmation of the “State Based on the Rule of Law” serves as an effort to present Indonesia’s identity to the world as a state governed by the rule of law. Upon closer examination, Indonesia possesses its own distinct characteristics as a state based on the rule of law, namely the Pancasila-based State Based on the Rule of Law. The Pancasila-based Rule of Law retains its value and relevance in the face of changing times, particularly as we enter an era of disruption, because Pancasila, as an ideology, is dynamic and inclusive in nature.

The WJP indicators are considered representative and comprehensive in measuring the characteristics of a contemporary rule-of-law state. The WJP identifies nine indicators, namely: 1) constraints on government powers; 2) absence of corruption; 3) open government; 4) fundamental rights; 5) order and security; 6) regulatory enforcement; 7) civil justice; 8) criminal justice; and 9) informal justice. Based on these indicators, this study identified several substantive issues, namely: 1) ethical violations committed by officials; 2) the failure to implement checks and balances; 3) policies that do not reflect public aspirations; 4) minimal participation in the legislative process; and 5) repressive actions by law enforcement officials that result in human rights violations. Therefore, within the framework of the contemporary rule of law, the state—through its government—should be present to maintain order and security and ensure stable governance, free from corruption, collusion, and nepotism.

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