



Pancasila Democracy: Non-Systemic Legal Studies

Charles Sampford

Triwahyuningsih

Ahmad Dahlan University Yogyakarta

Email : triwahyuningsih@ppkn.uad.ac.id

Abstract

The ethical orientation of the ideals of Pancasila democratic law as desired by the founding fathers is contained in the Preamble of the 1945 Constitution of the Republic of Indonesia paragraph IV, a structure of the Republic of Indonesia is formed which is sovereignty of the people based on the state philosophy, namely the values of "divinity, humanity, unity, deliberation and justice", have not been fully implemented. The purpose of this research is to analyze Pancasila democracy concept when viewed from non-systemic law Charles Sampford. This study uses a philosophical normative approach combined with a qualitative descriptive analysis. The results show that the concept of non-systemic legal science provides an alternative to different reading models of Pancasila as a complete and holistic system, both in terms of meaning and relations. The characteristic of deliberation in Pancasila Democracy is that differences are basically aimed at finding equality, descriptively, that deliberation is allowed to remain in differences, because in essence there are differences.

Keywords: Pancasila Democracy, Non-Systemic Law, Charles Sampford.

1. Introduction

The concept of democracy in Indonesia is not just a technical tool, but also as a soul, personality and national ideals¹ The implementation of democracy in Indonesia after the amendment to the 1945 Constitution, namely deliberative democracy as contained in the fourth principle of Pancasila, should be a vehicle for strengthening people's sovereignty based on the Indonesian Unity (Sila III) which is able to overcome individual and group understanding and is aimed at realizing the welfare of society, but in In practice, there are many obstacles, both culturally, institutionally and structurally. ² As Yudi Latif described, as follows:

"Culturally, politics as a technique has progressed; but politics as ethics has regressed. The hardware of the democratic procedure-appears to be relatively more democratic; but the software-democratic culture is still nepotical-feudalistic. Expanding political participation goes hand in hand with expanding

¹Yudi Latif, Negara Paripurna: Historicity, Rationality and Actuality of Pancasila, Jakarta: Gramedia Pustaka Utama, 2012, p. 475

² Yudi Latif, Pancasila Revolution, , Bandung: Mizan, 2015, p. 5

participation in corruption. At the institutional level, the design of democratic institutions places too much emphasis on allocative power (funding sources), rather than authoritative power (human capacity). At the structural level, the tendency to adopt "liberal" democratic models without adapting to the conditions of Indonesian society can actually weaken democracy. While democracy demands a degree of equality and prosperity, our democratic design choices often increase inequality and injustice."³

The distinctive character and values of the Indonesian people are togetherness that prioritizes deliberation in determining decisions for the common interest, as desired by the fourth precept of the Pancasila "People led by the wisdom of Wisdom in Deliberation / Representation".⁴

However, after the amendment to the 1945 Constitution, decisions made by voting or through the majority of votes are common in the practice of our constitutional politics. At this time, the manifestation of democracy which is rooted in the traditions of the Indonesian nation, is further away from the ideals of this country being founded. The concept of sovereignty of the Indonesian people which is based on the principles of deliberation and representation has not been able to be implemented properly by decision makers. Meanwhile, the implementation of voting democracy which has the basis of liberalism continues to roll, so that the life of the Indonesian nation is further away from its original ideals.⁵ In fact, there is always a tug of war between the concept of a state according to the Western legal tradition and the original tradition of the Indonesian people, described by Aidul Fitriadi Azhari.⁶

"The founders of the state have chosen a paradigm of a state that does not only refer to the Western legal tradition, but is also rooted in the original traditions of the Indonesian people. The paradigm of a state is formulated by perfectly integrating the 5 (five) principles of a state, namely divinity (theism), humanity (humanism), nationality (nationalism), democracy (democracy), and social justice (socialism) into a Pancasila concept. The five principles of Pancasila contain universal values, but also have a particularity base in the traditions of the Indonesian nation. The dimensions of universality and particularity lead to conceptual tensions in Pancasila, which shows that the founders of the Indonesian state wanted to establish a nation-state characterized by modernity, but still based on the traditions of the Indonesian nation."⁷

Meanwhile, the legal paradigm is No-systemic⁸ is built on the basis of the assumption that there is a shift from the perspective of legal positivism, namely: first, from the ontological aspect, repositioning the subject and object in the view of

³ Yudi Latif, *Pancasila Revolution...*, Ibid

⁴ Mahfud MD, *Pancasila as a Milestone for the Convergence of National Plurality*, Proceedings of the National Workshop on "Implementation of Pancasila Values in Upholding Indonesia's Constitutionality, Jakarta: UGM and the Secretary General of the Constitutional Court, 2011, p. 29

⁵ Muhammad Hanafi, *The Position of Deliberation and Democracy in Indonesia*, *Journal of Cita Hukum*. Vol. 1 No. December 2, 2013, p. 228

⁶ Aidul Fitriadi Azhari, *The State of Law of Indonesia: Decolonization and Reconstruction of Traditions*, *Legal Journal IUS QUIA IUSTUM* NO. 4 VOL. OCTOBER 19, 2012: 489 - 505

⁷ Aidul Fitriadi Azhari, *Indonesian rule of law...* Ibid

⁸ Absori (et., Al), *Prophetic Law: Criticism of Non-Systemic Legal Paradigm*, Yogyakarta: GENTA Publishing, 2015, p. 5-6

Cartesian-Newtonian dualism because in the end it confirms human centrality as the subject of the creator of meaning and dominant structure. Second, from the epistemological aspect, the opposite of the positivism view that separates the distance between subject and object provides a way to reduce law to power formulated through law, with a monopoly on its interpretation and meaning, as a result it only encourages partial and compartmentalized analysis of law. In non-systemic law science aims to provide a legal analysis design that is more open, dynamic and accommodates diversity, so that a more complete approach can be developed. Third, from the axiological aspect, The focus of legal positivism is legal certainty, while non-systemic legal science focuses on aspects of justice that are adjusted to existing social realities so that it is more fluid because it is generated by the uncertainty of the meaning of the text. The question arises about the concept of Pancasila democracy when viewed from non-systemic law Charles Sampford?

2. Approach Method

This type of research is normative law, with a juridical and philosophical approach. Law is a system, has the ability to live, grow and develop within its own system.⁹ Researchers use primary, secondary and tertiary legal materials. The descriptive qualitative analysis method is then processed interpretatively and concluded according to the research objectives.

3. Result and Discussion

3.1 Non-Systemic Legal Perspectives Charles Sampford

Chaos theory in law to be explored by one of the leading thinkers of the late 90s namely Charles Sampford with the publication of a book entitled "The Disorder Of law", with the addition of "A Critique of Legal theory", which is a rejection of the adherents of positivistic law schools, which are guided by systems theory. On Sampford's thinking¹⁰ as described by Kelik Wardiono:

"That there are many irregularities in the law, but because thinkers from the positivistic school of law want to keep seeing that law is a rational system, and for that they are looking for the rationality of their theoretical building rests on systems theory. Whereas according to Stampford, legal theory is not necessarily based on legal systems theory, this is because the relationships that occur in society basically indicate asymmetrical relationships (asymmetries), because after all social relations are always perceived differently. by the parties. What is on the surface looks orderly, orderly, clear, certain, in fact it is full of uncertainty. Irregularity and uncertainty are caused by relationships in society that rely on power relations. This power relationship is not reflected in formal relationships in society. Then there is

⁹Khudzaifah Dimiyati, Kelik Wardiono, *Legal Research Methodology*, Surakarta: UMS Press, <https://scholar.google.com/citations>, downloaded 18 July 2018

¹⁰Kelik Wardiono, Chaos Theory: An Opinion in Understanding Law, *Journal of Legal Studies*, Vol. 15, No. 2, September 2012: 136-148

a gap between formal relationships and real relationships that are based on strength. This is that causing the disorder "¹¹

There are many kinds of interactions in society, it appears that the building shows confusion, because the relationship does not have equal strength. Therefore, there was a power of relationships that gave rise to an a-symmetrical order. Circumstances like this by Sampford is called the phenomenon of "social melée" (a fluid social condition (fluid). When the legal system which has been formally arranged symmetrically is applied in society, the legal system is run by a-symmetrical forces. the law enforced by these a-symmetrical forces is a disordered law, which is what Sampford calls "legal melée".¹²

The presence of "chaos theory" in law provides an alternative thought to see law in society and explain it better than existing views, as described by Denis J. Brion: "My general thesis is That the chaos as a metaphor for the Bay Thar las functions, is a powerful tol for Bette describing and understanding the las "¹³In a chaotic situation, there is a kind of possibility or opportunity that can be developed, if one can take lessons from this chaotic situation and can present realistic thinking in law as argued by Charles Sampford. ¹⁴

Charles Sampford with his "chaos theory" described that law is a continuation of critical thinking about law that has previously been a separate legal school, because this a-symmetrical idea of law provides a relatively different way of thinking, it can be found in the sociological school of law. , especially the sociology of micro law, such as conflict theory, interactionist symbolic theory, deconstructionist and others which base their thinking on situations of disorder, disorder, collide with each other which is contrary to the thought of the previous law.¹⁵

Absori further ¹⁶ describes Sampford's theory:

"Sampford's theory tries to reject systems theory in law which assumes that society is always in a stable and orderly condition. It introduces another point of view in obtaining alternative truths, in addition to the dominant model of truth so far. Sampford's theory moves from reality, a social and legal basis that is full of asymmetrical relationships. This is a basic assumption in constructing Sampford's theory of law which according to him consists of power relations including authority relations, as well as unintended relations and value effect relations. This is so, because often social relationships are perceived differently, resulting in behavioral polarization in social interactions.

A-symmetric law in society requires legal communication that is visible in the relationship between law, individuals and society, both reciprocally and individual actions through social relations, reconstruction of normative orders against certain

¹¹ Ibid

¹² Ibid

¹³ Anthon F. Susanto, *Non-Systemic Law: Foundations of Philosophy Development of Indonesian Law*, Yogyakarta: Genta Publishing, 2010, p. 98-99.

¹⁴ Ibid, p. 101

¹⁵ Absori, (et; al), *Prophetic Law: Criticism of Non-Systematic Legal Paradigm*, Yogyakarta, Genta Publishing, 2015, p. 213.

¹⁶ Ibid

individuals, also regulated reactive actions to facilitate action. personal. The main guideline for a-symmetrical relationship in this law is a change in perceptions of texts, laws and legal language which results in a broad study and a variety of thoughts because it is realized that the language made by rule-makers is generally very difficult to understand by ordinary people, even sometimes. didn't give any message.¹⁷

If it is related to power relations according to Charles Sampford by citing the viewpoint of Denis Wrong¹⁸ that in a society full of unbalanced power relations with each other, strengths collide with other forces so that the society is asymmetrical (asymmetric). This will be clearer by seeing in the concept of the text that the forces of one another clash with each other in the process of interpretation. How formal and informal forces collide, which Sampford describes as Power Mixes¹⁹. Sampford explained,

“Where a power-holder exercises a combination of power relations, different power subjects will be affected for different reasons. Some might obey a command out of fear, others out of respect for the competence or personal qualities of the leader, other out of belief that such person's commands ought to be obeyed. Thus the greater the number and specially the heterogeneity of people sought to be affected, the greater the difficulty encountered by a power holder possessing only one form of power”²⁰

For example, in the process of making laws, how power relations take place, the stronger groups politically, socially, economically, will use certain methods to influence weak groups and vice versa, resulting in mutual tension, tug of war and clashing between various interests. However, the victims are the weak people.

3.2 Pancasila Democracy

The manifestation of democracy according to the 1945 Constitution through the interpretation of the constitution has continued to develop throughout the history of Indonesian independence until now. The interpretation of the constitution at the beginning of independence was only carried out on the issue of the constitutional structure and human rights, while the basic problems of the state had not yet emerged.²¹ In 1959 the 1945 Constitution was reintroduced, marked by the operation of the originalist interpretation pattern which interpreted the 1945 Constitution text from an internal perspective that developed the meaning of indigenous Indonesian democracy which referred to the intentions of the 1945 Constitution drafters. The result was the concept of Guided Democracy and Pancasila Democracy. During the Guided Democracy era, the meaning of democracy in the 1945 Constitution was based on its basic position which was anti-liberal.²² The pattern of originalism also stood out during the implementation of Pancasila Democracy (New Order) which claimed to implement the 1945 Constitution purely and consistently.²³

¹⁷ Ibid

¹⁸ Ibid 103-104

¹⁹ Ibid, Antho F. Susanto Op. Cit, p. 104

²⁰ Ibid

²¹ Constitutional Interpretation: The Struggle to Realize Democracy in Indonesia, Yogyakarta: GENTA Publishing, 2017, p. 368-369

²² Ibid

²³ Ibid

Pancasila democracy is a democracy that is uniquely Indonesian, and can only be understood if we study deeply the outlook on life of the Indonesian people, the history of the Indonesian nation and the objective conditions that exist in Indonesia that are different from any other country. The constitutional system adopted in the 1945 Constitution is the constitutional system adopted in constitutional democracy, as reflected in Article 1 Paragraph (3) of the 1945 Constitution "The State of Indonesia is a constitutional state". Formally, our democratic system is reflected in Article 1 Paragraph (2) of the 1945 Constitution "Sovereignty in the hands of the people and implemented according to the Constitution". Democracy in the material sense or as a principle is stated in the 4th principle of Pancasila as stated in the Preamble to the 1945 Constitution with the formula "Democracy led by wisdom in deliberation / representation". This is the concept of democracy adopted in our country "Pancasila Democracy", namely democracy based on the values of Pancasila, which covers the political, social and economic fields as well as in solving national problems trying as far as possible to take the road of deliberation to reach consensus. Pancasila democracy is a term that was only popularized after the birth of the New Order (1966).²⁴

The first time the term "Pancasila Democracy" was formally published in MPR Decree No. Soekarno. MPRS Decree No. XXXVII / MPRS / 1968 restores "Democracy according to the 1945 Constitution", namely through deliberation to reach consensus and through majority votes and revokes MPRS Decree No. VIII / MPRS / 1965 on "Principles of Deliberation for Consensus in Democracy Guided as Guidelines for Consultative / Representative Institutions" which stipulate that the only way to make decisions is through deliberation to reach consensus.²⁵

"According to Guided Democracy, the essence of deliberation is 'deliberation for consensus', which if this cannot be achieved, then deliberation must take one of the following paths: 1. The issue is left to the leadership to take policy by taking into account conflicting opinions. 2. The matter is suspended. 3. The problem is completely eliminated. Meanwhile, the Pancasila Democracy concept also prioritizes deliberation to reach consensus, but the leadership is not given the right to take it alone in the event that 'unanimous consensus' is not reached. For Pancasila Democracy in accordance with MPRS Decree No. XXXVII / MPRS / 1968, to overcome congestion due to the inability to reach 'deliberation to reach a unanimous consensus', then the way that can be done is by voting. This is in accordance with the desired procedure in Article 2 Paragraph (3) and Article 6 Paragraph (2) of the 1945 Constitution. The formulation of Pancasila Democracy as stipulated in MPRS Decree No. XXXVII / MPRS / 1968, was revoked again by Decree No. V / MPR / 1973. But more than just a technical procedural matter, many attempts have been made to provide an understanding of Pancasila Democracy. President Suharto in his state speech on August 16, 1967, among other things, stated that Pancasila Democracy means democracy of

²⁴Ajat Sudrajat, Pancasila Democracy in Historical Perspective, MOZAIK: Journal of Social Sciences and Humanities. Vol. 8 No. 1 of 2016. journal.uny.ac.id

²⁵ Ibid

the people's sovereignty which is imbued with and integrated with other principles. This means that in exercising democratic rights it must always be accompanied by a sense of responsibility to God Almighty. " V / MPR / 1973. But more than just a technical procedural matter, many attempts have been made to provide an understanding of Pancasila Democracy. President Suharto in his state speech on August 16, 1967, among other things, stated that Pancasila Democracy means democracy of the people's sovereignty which is imbued with and integrated with other principles. This means that in exercising democratic rights it must always be accompanied by a sense of responsibility to God Almighty. " V / MPR / 1973. But more than just a technical procedural matter, many attempts have been made to provide an understanding of Pancasila Democracy. President Suharto in his state speech on August 16, 1967, among other things, stated that Pancasila Democracy means democracy of the people's sovereignty which is imbued with and integrated with other principles. This means that in exercising democratic rights it must always be accompanied by a sense of responsibility to God Almighty. "²⁶

In the Pancasila Democracy concept individual freedom is not absolute, but must be harmonized with social responsibility. This means that in freedom, responsibility must always be attached to the public interest and the common interest. The universality of ideals in Pancasila democracy must be combined with the life aspirations of the Indonesian nation which are imbued with the spirit of kinship. Therefore, the system and mechanism of Pancasila Democracy will not result in "majority domination" and "minority tyranny", because the concepts of majority and minority are not in line with the spirit of kinship.²⁷

The concept of Pancasila democracy contains aspects²⁸: (a) Formal, which shows how people's participation is regulated in government administration; (b) Material, which affirms the recognition of human dignity as a creature of God Almighty who desires the government to make citizens happy and humanize in Indonesian society; (c) Rules that bind citizens and the state in acting and exercising their rights and obligations and authorities; (d) The goal to be achieved, namely to create a prosperous society in a legal state (e) Government organizations both at the central and regional levels (f) Pancasila democracy requires good morals, such as mutual respect for differences, tolerance, feeling the same as a citizen country.²⁹

On the other hand, after the New Order ended in 1998, intellectual criticism of the 1945 Constitution was so prominent that it gave birth to a pattern of interpretation that changed the meaning of democracy that had been produced during the Guided Democracy and Pancasila Democracy.³⁰The meaning of democracy is carried out by referring to the universal values of constitutionalism, especially in the basic problems of the state and the structure of the state administration. The

²⁶ Ibid

²⁷ Bagir Manan (ed), *People's Sovereignty, Human Rights and the rule of law*, Jakarta: Gaya Media Pratama, 1996, pp. 206-207.

²⁸ Ibid

²⁹ Dede Sri Kartini, *Retrospect on the Concept of Pancasila Democracy in Facing the Challenges of Globalization*, <http://download.garuda.ristekdikti.go.id/article>, accessed February 7, 2021.

³⁰ Aidul Fitriadi Azhari, *Tafsir of the Constitution...* Op. Cit., P. 369

amendment to the 1945 Constitution actually adopts a constitutional democracy system that is not fully in line with the principles of participatory democracy contained in the Preamble to the 1945 Constitution.³¹

The offer of dialogical democracy, which is known as deliberative democracy³² is a correction to democracy that is both technical and procedural in nature, in the future it is feasible to be implemented in accordance with the traditions of the state in Indonesia. Derived from Latin "deliberatio" or English deliberation means "consultation, considering or deliberation". The existence of inter-ethnic, religious, racial and inter-group dialogues based on tolerance of the existing differences in reality, can build public spaces and discussions that are beneficial to the common interest.³³

Yudi Latif explained³⁴ democracy in Indonesia is Pancasila democracy, namely: "Democracy contained in the fourth principle of Pancasila, democracy led by wisdom in deliberation / representation contains several characteristics of the realm of democratic thought in Indonesia, namely: (1) democracy (people's sovereignty); (2) deliberation (kinship); (3) wisdom. The people's ideals want to respect the voice of the people in politics by giving way to the big role and influence played by the people in the decision-making process carried out by the government. The idea of deliberation radiates the will to create a united state that can overcome individual and group understanding, as a reflection of the family spirit of the plurality of the Indonesian nationality by acknowledging the existence of "equality / equality in differences"

The concept of wisdom contains ethical meanings, as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia paragraph IV, a state structure of the Republic of Indonesia is formed with people's sovereignty based on the state philosophy of Pancasila, namely the values of "divinity, humanity, unity, deliberation and justice."

"Therefore, Indonesian democracy is neither a liberal democracy nor a totalitarian democracy, because it is thoroughly related to the principles of Pancasila. This ethical orientation (wisdom) is brought to life through the power of rationality, consensual wisdom, and a commitment to justice which can present a positive tolerance and synthesis as well as prevent power from being controlled by "majorocracy" and "minorocracy".³⁵

The meaning of deliberative democracy is that a political decision is said to be correct if it meets at least 4 prerequisites:

"First, it is based on the principles of rationality and justice, not only based on ideological subjectivity and interests; second, it is intended for the benefit of many people, not for the benefit of individuals or groups; third, far-forward oriented, not for short-term interests through destructive transactional accommodation (negative tolerance); fourth, being impartial, involving and

³¹ Ibid

³² F. Budi Hardiman, "Deliberative Democracy: Considering the State of Law and Public Space in Jurgen Habermas Discourse Theory," Yogyakarta: Kanisius, 2009, p. 128

³³ Ajat Sudraja, Democracy..., Op. Cit ..

³⁴ Yudi Latif, Negara Paripurna..., Ibid, p. . 475-476

³⁵ Ibid

considering all parties (even the smallest minority) inclusively, which can counteract the dictates of a minority of the ruling elite and businessmen as well as the claims of the majority."³⁶

The meaning of deliberative democracy is that the majority vote is accepted as limited as the minimum prerequisite of democracy, and is maximized through the participation of as many forces as possible in society. Various ways are taken, for example, through a humanist approach, collective agreements containing objective truths wisely and wisdom. The end goal is that each group has a sense of belonging and is responsible, in the end they can follow whatever decisions are made. This brief description implies that "voting (voting) should be placed as a last resort, upholding a family spirit that respects each other".³⁷

3.3 Pancasila Democracy: Non-systemic legal studies Charles Sampford

The concept of "non-systemic law science" proposes a different reading model for Pancasila. The non-systemic deconstruction of jurisprudence offers something that is more open and acceptable, and is different from the positivistic view which views that legal legitimacy with a formal character also means the birth of social and cultural legitimacy. Through the asymmetric legal theory it cannot be accepted that the ideological ties of the state administration can unite at once. Take Ali Harb's opinion³⁸, that the reading process of Pancasila must be plural, have different significance, various positions, different contexts, the explanations contradict each other, the levels are arranged and circular, even Pancasila basically contains emptiness, and is covered with cracks and cracks. Anton F. Susanto³⁹ describe the concepts of deliberation and consensus, as explained by Soediman Kartohadiprodjo, as follows:

"If Indonesian people see the purpose of human life is to live happily ..., then the way to find a way to get to that happy life, the way to use the tools for their life, is the way of deliberation. Then this was called democracy and later translated again into people's sovereignty "⁴⁰

In this sense, it means that deliberation is an attempt to unite differences, as explained by Soediman Kartohadiprodjo,

"This method of deliberation to reach a consensus as a way of obtaining happiness implies that there are differences or maybe differences between humans who live in groups and look for the path leading to a happy life earlier. Recognizing differences means acknowledging the differences in the personalities of each group of humans. And by not stating that one person: so

³⁶Material of the Four Pillars of the People's Consultative Assembly of the Republic of Indonesia, Jakarta: Secretariat General of the DPR RI, 2018, p. 70-71

³⁷Ibid, Material... p. 71

³⁸ Ali Harb, Truth Criticism, LKis, Yogyakarta: 1995, p. 21

³⁹Taking the example of Principle IV Pancasila concerning "the concept of deliberation and consensus", Anton F. Susanto, Non-Systemic Law ..., Op. Cit, p. 302

⁴⁰Soediman Kartohadiprodjo, Collection of Compositions, followed by Anton F. Susanto, *ibid*. Regarding this, Bung Karno said: "Thus democracy, for us is not just a technical tool, but a geloof, a belief in achieving the form of society that we aspire to, even in all our actions concerning living together. , in Javanese terms: Living a *beberayan*, we always act independently on the basis of kinship, on the basis of deliberation, on the basis of democracy, on the basis of what we call people's sovereignty. "

the opinion of one person will dominate (the opinion) of the other people, but consensus must be held, then according to the Indonesian nation's thinking, the personality of the individual is not only recognized, but also protected "⁴¹

Therefore musyawarah means an effort to unite differences, it is recognized that they are different but must be held, the meaning of different recognition does not mean letting them remain different. In the above description, differences basically aim to find similarities, descriptively, that deliberation is still allowed to remain in differences, because in essence there are differences. This will be different from acknowledging the differences and thus trying to find similarities, this is called unifying the differences.⁴²

The concept of deliberation can be interpreted broadly or narrowly:

"Deliberation or shura is generally interpreted in the general sense including all forms of giving advice (opinions) and exchanging opinions, while in the narrow sense shura means provisions that must be fulfilled as a result of congregational decisions. Universally, the principle of shura is the existence of the congregation, their rights and responsibilities are taken from all individuals as part of it, the opinion of the congregation is the overall opinion of them, and their collective will is none other than the will of all individuals or people who are mukallaf of them. . "⁴³

In the end, the principle of shura means that every decision made by the congregation must be evidence of the will of the *jumhuurul jama'ah* or all the participants.⁴⁴ That's the main concept which is the basis of the idea of democracy in Islam, namely deliberation. The word musyawarah comes from Arabic, the root word *syawara-yasy'uru-musyawah* or shura which means signs, instructions, advice, considerations.⁴⁵ Viewed from the constitutional aspect, deliberation is a constitutional principle⁴⁶ serves as a "brake" to prevent absolute power from a ruler.⁴⁷

The word shura can be found in Tafsir Al-Misbah, taken from the word *syawr*. The word means "to take and express an opinion with another opinion". This word is taken from the sentence *syirtu al-'asal* which means, "I took out the honey (from the container)". Description of deliberation by Quraish Shihab.⁴⁸

"... Equating the best opinion with honey, and deliberation is the pursuit of that honey wherever it is found or, in other words, the opinion of anyone who is judged to be correct regardless of who conveyed it. Honey is produced by bees,

⁴¹ Ibid

⁴² Ibid

⁴³ Muhammad Hanafi, The Position of Musyawarah and Democracy in Indonesia, *Journal of Cita Hukum*. Vol. I No. December 2, 2013. ISSN: 2356-1440

⁴⁴ Taufiq Muhammad Asy - Syawi, *Fiqhussy - Syura Wal Istisyarat*, Translator Djamaludin, (Jakarta: Gema Insani Press, 1997), p. 16

⁴⁵ Aidul Fitriaciada Azhari, *Tafsir of the Constitution... Op. Cit.*, P. 93

⁴⁶ Muhammad Tahir Azhary, *Rule of Law, Study of Its Principles Seen from the Viewpoint of Islamic Law, Its Implementation in the Period of the State of Medina and the Present*, Jakarta: Bulan Bintang, 1992, p. 83

⁴⁷ Ibid

⁴⁸ Inna Junaenah, Contribution of Islamic Order to Deliberative Democracy in Indonesia, *Ahkam: Vol. XVI, No. 2*, July 2016, p. 166-167

so a person who consults is like a bee, a very disciplined creature, amazing in cooperation, and eats the essence of flowers. He perches anywhere, never damaging, not disturbing unless disturbed, his sting becomes medicine ”.

Atip Latifulhayat's character of the deliberation⁴⁹likened to "bee qualifications". Deliberation cannot be done by everyone, for example, participants must have a desire for the common good, a clean and gentle heart, easy to forgive etc. The process of deliberation is likened to the process of producing honey. Honey is a good creation, can be used as a medicine for various diseases, healthy and strengthens the body. Therefore the process of deliberation is a description of how various kinds of opinions and views are gathered to produce the best decisions that are beneficial to society. Another expert, Quraish Shihab⁵⁰ based on QS Al-Imran 3: 159 it is explained that:

"Then it is due to the grace of Allah that you are gentle towards them. If you are hard-hearted again harsh, they will certainly distance themselves from around you. Therefore forgive them, ask forgiveness for them, and consult with them in this matter. Then when you have made up your mind, put your trust in Allah. Indeed, Allah loves those who put their trust in Him. "

Based on the above description, it can be concluded that the idea of deliberation in Islam contains several principles. (a) the meaning of deliberation is carrying out God's orders to collect views in humanitarian affairs (b) deliberation aims to formulate the best opinion and views for the benefit of the people (c) The agreement or decision that is produced is acceptable and makes all parties happy because it gives benefits, as the honey illustration above. The criterion for the people in consultation needs to be in line with this criterion, meaning that bees only produce the best products.⁵¹ Furthermore, Atip Latifulhayat⁵²:

"Bees never go to dirty places. This is an illustration that people who are worthy of deliberation always guard themselves from despicable actions. In addition, bees never interfere, if not disturbed, as an illustration that a person in deliberation has high self-esteem. Its influence is shown only when the situation is needed with the good of society. "

Next is the Quraish Shihab ⁵³ giving honey interpretation, saying that:

"That honey, besides being sweet, is a medicine as well as a source of health and strength. With an illustration that the word *amruhum* shows that what they deliberate on are matters relating to matters and those within their authority. This interpretation also explains that there is no information found in the Koran regarding the form of *shura* it recommends. This is to provide an opportunity for each community to formulate *shura* according to the development and characteristics of their respective societies. "

More generally, Muslims are obliged to deliberate in solving every state problem. This obligation is mainly borne by every administrator of state power in

⁴⁹ *Ibid*

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*

exercising that power.⁵⁴ The implementation of deliberation is an appreciation to community figures and leaders, so that they can participate in various common affairs and interests.⁵⁵ Muhammad Abduh⁵⁶ linking the position of deliberation in the political system and government. Deliberation, for him, functionally is to discuss the benefit of society and future problems of government. With deliberation the people become educated in issuing opinions and putting them into practice, not practicing the opinion of a head of state even if his opinion is correct.⁵⁷ Furthermore, Muhammad Abduh⁵⁸ explain:

"Allah obliges the rulers to form a deliberative institution, because that is a commendable act in the sight of Allah. This verse is truly an order that must be obeyed in order to realize the integrity and strength of the people to do what is true and stay away from what is evil. Because these orders were general in nature, they had to be carried out jointly by the people and the authorities. For no truth is better than justice, and no fault is more bad than tyranny (istibdad) "

Surah Al-Imran 3: 159 instructs deliberation relating to "warfare and other worldly matters such as political, economic, social affairs, and others. Based on the historical context of the verse that came down with regard to the deliberations of the Prophet Muhammad with the Muslims of Medina when facing the Uhud war. This verse also relates to the verse of QS Al Shuura 42: 38 which in general orders all Muslims to conduct deliberation in deciding a matter based on obedience to Allah's law.⁵⁹

According to Abdullah Hamid Ismail al-Anshori ⁶⁰in his book "Al-Shura wa Asaruha fi al-Demokratyah" the importance of deliberation in the life of the nation and state is "Deliberation can create national unity, train brain activity in thinking, and as a path to truth that contains goodness and blessings" Next, deliberation is The straight path that is taken contains virtues and is very human in expressing opinions in order to reach the real truth and clarity in every problem.⁶¹

⁵⁴Khudzaifah Dimiyati, (at .al), Law and Moral Basis for the Epistemology of the Rational Paradigm HLA Hart, Yogyakarta: Genta Publishing, First published, 2017, p. 96

⁵⁵Suyuthi Pulungan, Principles of Governance in the Medina Charter, Yogyakarta: Waves, 2014, p. 255

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹Aidul Fitriada Azhari, Tafsir of the Constitution..., Op. Cit, p. . 93-94

⁶⁰Muhammad Hanafi, The Position of Deliberation and Democracy in Indonesia, - Journal of Cita Hukum. Vol. I No. December 2, 2013. ISSN: 2356-1440, p. 228-230

⁶¹"The meaning contained in deliberation is in the form of the reality of human equality, freedom of opinion and the right to criticism as well as recognition of humanity itself. Through deliberation, a way is found to unite humans, unite groups with various attributes in the midst of turbulent general problems, and with deliberation also develops an exchange of ideas and opinions. The implementation of deliberation for human life is more than just the political interests of a group or a state, because it is a fundamental character of society as a whole. " Ibid

4. Conclusion

Non systemic legal concept Charles Sampford that in a society full of unequal power relations where one power collides with another power so as to make the society asymmetrical (asymmetric). Its application in Pancasila Democracy is that deliberation means an effort to unite differences, it is recognized that it is different but must be held, the meaning of different recognition does not mean letting it remain different. In the above description, differences basically aim to find similarities, descriptively, that deliberation is still allowed to remain in differences, because in essence there are differences. This will be different from acknowledging the differences and thus trying to find similarities, this is called unifying the differences.

In that deliberation individual personalities, not only recognized, but also protected, all members will get their own happiness. Therefore it means non-systemic law Charles Sampford is in line with the concept of deliberation according to Islam, in the end the happiness of all members is his main goal. That is the philosophy of the purpose of law to provide maximum happiness and benefit to members of society.

5. Reference

- Absori (et.,al), *Hukum Profetik : Kritik Terhadap Paradigma Hukum Non- Sistemik*, Yogyakarta : GENTA Publishing, 2015
- Ajat Sudrajat, *Demokrasi Pancasila Dalam Perspektif Sejarah*, *MOZAIK: Jurnal Ilmu-Ilmu Sosial dan Humaniora* . Vol. 8 No. 1 Tahun 2016. journal.uny.ac.id
- Aidul Fitri ciada Azhari, *Tafsir Konstitusi : Pergulatan Mewujudkan Demokrasi Di Indonesia*, Yogyakarta, Genta Publishing, 2017.
- _____, *Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi*, *Jurnal Hukum IUS QUIA IUSTUM* NO. 4 VOL. 19 OKTOBER 2012: 489 - 505
- Ali Harb, *Kritik Kebenaran*, LKis, Yogyakarta : 1995
- Anthon F. Susanto, *Ilmu Hukum Non Sistemik : Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia*, Yogyakarta : Genta Publishing, 2010
- Bagir Manan (ed), *Kedaulatan Rakyat, Hak Asasi Manusia Dan Negara Hukum*, Jakarta : Gaya Media Pratama, 1996
- Dede Sri Kartini, *Retrospeksi Konsepsi Demokrasi Pancasila Dalam Menghadapi Tantangan Globalisasi*, <http://download.garuda.ristekdikti.go.id/article>, diakses 7 Februari 2021
- F. Budi Hardiman, " *Demokrasi Deliberatif : Menimbang Negara Hukum dan Ruang Publik dalam Teori Diskursus Jurgen Habermas*, " Yogyakarta : Kanisius, 2009
- Inna Junaenah, *Kontribusi Tatanan Islam Terhadap Demokrasi Permusyawaratan Di Indonesia* , *Ahkam: Vol. XVI*, No. 2, Juli 2016
- Kelik Wardiono, *Chaos Theory: Sebuah Ancangan Dalam Memahami Hukum*, *JURNAL ILMU HUKUM*, Vol. 15, No. 2, September 2012
- Khudzaifah Dimiyati, Kelik Wardiono, *Metodologi Penelitian Hukum*, Surakarta: UMS Press, Geogle Scholar, diunduh 18 Juli 2018
- _____, (et .al) , *Hukum Dan Moral Basis Epistemologii Paradigma Rasional H.L.A Hart*, Yogyakarta : Genta Publishing, Cetakan pertama, 2017
- Materi Sosialisasi Empat Pilar Mpr Ri*, Jakarta : Sekretariat Jendral DPR RI, 2018

- Muhammad Tahir Azhary, *Negara Hukum, Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah Dan Masa Kini*, Jakarta: Bulan Bintang, 1992
- Muhammad Hanafi, *Kedudukan Masyarakat dan Demokrasi di Indonesia*, *Jurnal Cita Hukum*. Vol. I No. 2 Desember 2013. ISSN: 2356-1440
- Suyuthi Pulungan, *Prinsip-Prinsip Pemerintahan Dalam Piagam Madinah*, Yogyakarta : Ombak, 2014,
- Taufiq Muhammad Asy - Syawi, *Fiqhusy - Syura Wal Istisyarat*, Penerjemah Djamaludin, (Jakarta: Gema Insani Press, 1997
- Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila*, Jakarta : Gramedia Pustaka Utama, 2012
- _____ *Revolusi Pancasila*, Bandung : Mizan, 2015