

The Meaning Of Pancasila In The Indonesian Legal System

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ABSTRAK

Sebagai prinsip Negara, posisi Pancasila sebagai sumber dari semua sumber hukum harus dimanifestasikan dalam sistem hukum nasional, sebagai cita -cita hukum (persimpangan) negara dan negara, yang tidak hanya sebagai dasar untuk mengevaluasi dan menyelaraskan semua undang -undang dan peraturan agar tidak mengganggu nilai -nilai yang terkandung dalam Pancasila tetapi lebih dari itu nilai -nilai Pancasila harus tercermin dan diterjemahkan ke dalam undang -undang itu sendiri. Dalam praktiknya di Indonesia, menafsirkan Pancasila menjadi undang -undang mengatur hampir semua garis kehidupan bangsa dan negara, mulai dari urusan negara, urusan politik, urusan ekonomi, urusan agama, dan urusan hukum, hingga urusan sosial, semua urusan ini tidak boleh bertentangan dengan Pancasila. Bahkan untuk menyelesaikan konflik pada skala komunitas, Pancasila digunakan. Mempertimbangkan betapa vital dan pentingnya nilai -nilai Pancasila bagi kehidupan bangsa dan Negara, itu diberikan bahwa setiap undang -undang harus mencakup nilai -nilai yang terkandung dalam masing -masing sila Pancasila. Oleh karena itu, secara kelembagaan, adalah tugas legislatif dan eksekutif untuk bersama -sama memastikan bahwa nilai -nilai dari setiap sila di Pancasila dimasukkan dalam undang -undang sesuai dengan kepentingan rakyat Indonesia.

Kata Kunci: Konstrual, Pedoman, Hukum, Pancasila.

ABSTRACT

As the principle of the state, the position of Pancasila as the source of all sources of law has to be manifested in the national legal system, as a legal ideal (rechtside) of the nation and state, which not only as the basis to evaluate and harmonize all laws and regulations in order to not disaccord with the values contained in Pancasila but more than that the values of Pancasila have to be reflected and translated into the legislation itself. In practice in Indonesia, the construing of Pancasila into law regulates almost all lines of the life of the nation and state, ranging from state affairs, political affairs, economic affairs, religious affairs, and legal affairs, to social affairs, all of these affairs must not conflict with Pancasila. Even to solve conflicts at the community scale, Pancasila is used. Considering how vital and important the values of Pancasila are to the life of the nation and state, it is a given that every legislation should include the values contained in each of the precepts of Pancasila. Therefore, institutionally, it is the duty of both the Legislature and Executive to jointly ensure that the values of each precept in Pancasila are included in the law in accordance with the interests of the Indonesian people.

Keywords: *Construal, Guidelines, Law, Pancasila.*

A. INTRODUCTION

Pancasila, which is part of the preamble to the 1945 Constitution, is referred to by Notonogoro as *staats fundamental norm* (Pokok Kaidah Fundamentaltil Negara), this term is similar to the term used by Hans Nawiasky about the level of legal norms (*die theorie vom stufentordnung der Rechnormen*)¹ which by A. Hamid S. Attamimi and Maria Fariada also mentioned that Pancasila contained in the points of thought contained in the Preamble The 1945 Constitution is a State Fundamental Norm (*Staatsfundamentalnorm*).² The fundamental norm of the state which is the highest norm in a country is a norm that cannot be formed by a higher norm, but is "*pre-supposed*" or set in advance by the people in a country and is a norm on which legal norms depend under it.³

Then in 1966, the position of Pancasila gained a higher place in the legal system in Indonesia where in the annex to the Provisional People's Consultative Assembly Decree No. XX / MPRS / 1966, concerning the DPRGR Memorandum concerning the Orderly Source of Law of the Republic of Indonesia, it was stated that Pancasila was the Source of All Legal Sources, then reaffirmed in MPR Decree No. III / MPR / 2000, formulated in Article 1 paragraph (3) which states that the

¹ RM. AB Kusuma, *Birth of the 1945 Constitution (contains copies of authentic documents of the Oentoek Agency investigating Oesaha-Oesaha Preparations for Independence)*, Badan Penerbit FH UI, Depok, 2004, p. 28.

² Maria Farida is the first woman to become one of the 9 judges of the Constitutional Court of the Republic of Indonesia serving for the period 2008 – 2018, who can be regarded as a protégé of Prof. A. Hamid S. Attamimi, thus that most of her thoughts were obtained from Prof. Hamid, especially regarding Legislation in Indonesia.

³ Maria Farida Indarti S, *Legislation Science 1 (Types, Functions, and Materials of Charge)*, Revised Edition, Kanisius, Yogyakarta, 2020, p. 48.

source of national law is Pancasila as written in the Preamble of the 1945 Constitution, then in Law No. 12 of 2011, as amended by Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, states that Pancasila is the Source of All Sources of State Law.⁴

Pancasila as the source of all sources of law must certainly be manifested in the national legal system, as the legal ideal (*rechtside*) of the nation and state, so to be able to record the ideal framework of the national legal system that reflects the pattern of Indonesian legal *rechtside*, covering two aspects, namely the reflection of Pancasila values in legislation and the National Law system itself.⁵ The framer of the law in drafting the law needs to correctly demonstrate the values of Pancasila that underlie the law.⁶ This is in line with Sri Soemantri's opinion, suggesting that the substance of the written law developed must be a manifestation or elaboration of the precepts contained in Pancasila. At least the substance of the legal product does not contradict the precepts contained in Pancasila.⁷ Both views certainly entrust the Executive and Legislature to interpret the values of Pancasila into legal products that are made and mutually agreed upon.

⁴ See Article 2 of Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. Prior to the enactment of these two laws, it was first regulated in Law No. 10 of 2004 concerning the Establishment of Laws and Regulations, also mentioned in Article 2 related to the position of Pancasila as the source of all sources of state law. The source of all sources of state law is that jurists in Indonesia match Hans Kelsen's theory, namely about *Grundnorm* (Basic Norms) and Hans Nawiasky's theory i.e. *staatsfundamentalnorm* (fundamental norms of the state), but by Indonesian Legal Philosopher Fernando Manullang the meaning of Pancasila as *grundnorm* actually The implications become tragic, because the attempt to answer Pancasila is *grundnorm* or not, actually results in a reduction in the philosophical meaning of Pancasila. Pancasila, which contains the value, in the hands of legal experts who try to analyze whether Pancasila is *grundnorm* or not, has been reduced to being used as a mere normative validation reason. Therefore, academic efforts to answer whether Pancasila is *grundnorm* or not are counterproductive. See E. Fernando M. Manullang, "Questioning Pancasila as Grundnorm: A Critical Reflection in the Perspective of Foundationalism," *Jurnal Hukum & Pembangunan*, no. 2 (2020): p. 300.

⁵ Atmadja, "Legislation in the National Legal System," *Jurnal Hukum & Pembangunan*, no. 5 (2017), p. 434. Atmadja's views were sourced from the results of the IV National Law Seminar in Jakarta on March 26-30, 1979.

⁶ *Ibid.*

⁷ Sri Soemantri, *Indonesian Constitutional Law: Thoughts and Views*, second edition, PT Remaja Rosdakarya, Bandung 2015, p. 336.

Conrado M. Cornelius, on the other hand, gave his philosophical view that the Executive power does not have the legal authority to interpret Pancasila,⁸ according to him it is the community who interprets Pancasila because the interpretation by the community is juridically possible and philosophically justified.⁹ This provides an understanding that the community must take part or have the right to interpret Pancasila. Of course, this is a discourse in the public space related to public participation in interpreting Pancasila, which may be that each community has a different understanding of the process of interpreting Pancasila.

On the other hand, the DPR as a representative of the community certainly has a very large influence on representing the community in interpreting the values of Pancasila to be included in the legal products made, but according to Mariam Budiardjo the majority of laws are formulated and prepared by the executive body, while the legislature only needs to discuss and amend them,¹⁰ the DPR is expected to represent the minds of the community in the process of forming legal products, especially regarding the meaning of Pancasila values that must be in the interest of the people, as Sri Soemantri argued that the substance of legal products which are the embodiment/elaboration of the values contained in Pancasila will be the character of responsive legal products, meaning for the benefit of the people and are the embodiment of people's aspirations.¹¹

⁸ Conrada M. Cornelius, "Interpreting Pancasila: Government Authority or the Role of the Citizen? A study from the perspective of Habermasian critical hermeneutics," *Mimbar Hukum Universitas Gadjah Mada*, Vol 33 No 2 of 2021, p. 331.

⁹ *Ibid.*, p.340, Conrada concluded that interpreting Pancasila must be done communicatively within a democratic and deliberative scope because Pancasila is the "point of view" of the Indonesian nation, therefore everyone who claims to be "Indonesian" has an interest in understanding the meaning of Pancasila.

¹⁰ Mariam Budiardjo, *Basics of Political Science*, revised edition, PT Gramedia Pustaka Utama Jakarta 2008, p. 323.

¹¹ Sri Soemantri, *op.cit.*, p. 336.

Departing from the above thoughts, the question arises to what extent the executive and legislative institutions interpret or describe Pancasila in the current national legal system. Whether the current law in Indonesia reflects the values of Pancasila in it, then in the form of a reflection of how the values of Pancasila contained in the current law in Indonesia, and whether the Pancasila contained in legal products is in accordance with the legal interests of the community, it is then interesting for the author to study it in writing this article. Based on the background described above, the formulation of the problem to be studied in this study is as follows, what is the position of Pancasila in the legal system in Indonesia, and what is the meaning of Pancasila in laws and regulations?

B. RESEARCH METHOD

Based on the research questions that have been formulated, this research will use normative juridical research methods. By using a *statutory approach* (*statute approach*), and a conceptual approach (*conceptual approach*). The *statute approach* is carried out by reviewing all laws and regulations related to the legal issues being handled. While the conceptual approach (*conceptual approach*) departs from the views and doctrines that develop in legal science. Understanding views and doctrines is the basis for building a legal argument in solving the issue at hand.¹²

C. ANALYSIS AND DISCUSSION

1. Pancasila in the Indonesian Legal System

Hamid S. Attamimi argued that the legal system of the Indonesian people essentially consists of two parts, the Ideal Law and the Norm System. The Indonesian people's legal mind has been established by the people themselves, namely Pancasila as a unity of general law principles, which according to Stammler's expression as "guide star" (*Leitstern*), an endpoint that is impossible to achieve but can test positive law. While the norm system in Indonesian law is also

¹² Peter Mahmud Marzuki, *Legal Research*, Revision, Kencana Prenada Media Group, Jakarta 2019, p. 133.

tiered (*stufenformig*) which is based on and sourced from the higher, and so on to the highest legal norm, which in the arrangement of legal norms that apply in Indonesia is Pancasila. Therefore, no legal norm in the Indonesian state may deviate from it.¹³

The Pancasila Law Ideal referred to by Hamid Attamimi has 2 (two) functions, namely the regulative function and the constitutive function, the legislative function tests whether Indonesia's positive law is fair or not, while the constitutive function determines whether the rules established in the lives of the Indonesian people are laws or not.¹⁴ The regulative function of Pancasila as a legal ideal that determines fair or unfair is certainly not a few who think that justice is something subjective. Something that is measured based on the point of view, paradigm, or ideology espoused by the justice breaker or who derives the consequences of the termination. And that sense of justice is always of unequal value to the recipient of justice.¹⁵

The constitutive function of Pancasila determines whether the rules established in the lives of the Indonesian people are law or not law, of course, determining which is included in the law and which is not included in the law will be a debate among the jurists, do not determine which is not included in the law, even the jurists in providing views on the law itself, the views vary, depending on what school of law he adheres to.¹⁶

¹³ Maria Farida, A. Hamid S. *Writing Group. Attamimi: Gesetzgebungswissenschaft as one of the efforts to overcome the wilderness of laws and regulations*", Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, 2021, p. 126.

¹⁴ *Ibid.*

¹⁵ Bakhrul Amal, *Law & Society: History, Politics, and Its Development*, Thafa Media, Yogyakarta, 2018, p. 168.

¹⁶ Achmad Ali, *Unveiling the Law: A Philosophical and Sociological Study*, Second Edition, Mount Agung, Jakarta 2002, p. 16. The school of law in question is adherents of the School of Natural Law, Positivitis, Sociological, Anthropological, Historical, Realism, and so on.

Furthermore, Hamid S. Attamimi's view that Pancasila is part of the norm system in Indonesian law, this by Maria Farida compares it with the norm level theory (*Stufentheorie*) from Hans Kelsen and from his student Hans Nawiasky, namely the theory of legal norm levels (*die theorie vom Stufentordnung der Rechtsnormen*), where the prevailing legal norms are in a system that is multi-layered and multi-tiered and grouped, that is, a norm is always valid, sourced, and based on a higher norm, and a higher norm applies, sourced, and based on a higher norm, and so on until a basic state norm (*Staatsfundamentalnorm*), then Pancasila is positioned as the basic norm of the state (*Staatsfundamentalnorm*)¹⁷ means that Pancasila is the highest source of law in the State of Indonesia, where this was first adopted into TAP MPRS No. XX / MPRS / 1966 it is stated that Pancasila Source from Segal Sumber Hukum, until then included in the provisions of Law No. 12 of 2011, as amended by Law No. 15 of 2019 concerning the Establishment of Laws and Regulations, states that Pancasila is the Source of All Sources of State Law.¹⁸

In addition, Maria Farida also explained that Pancasila, its position as the legal ideal of the Indonesian people in the life of the nation and state is positively a "guiding star" that provides guidance and guidance in all activities to provide content to each law and regulation, besides that it is a framework that limits the space for movement of the content of laws and regulations. Against the content of laws and regulations, the precepts of Pancasila, both individually and together, both singly and in pairs, are general legal principles.¹⁹

According to Atmadja, to be able to record the ideal framework of the National Law system that reflects the pattern of Indonesian legal *rechtsidee*, includes two aspects, namely the reflection of Pancasila values in legislation and the national legal system itself. The reflection of Pancasila values in this law means that the framer of the law in drafting the law needs to correctly show the values of Pancasila that underlie the law.²⁰ This is in line with Sri Soemantri's opinion,

¹⁷ Maria Farida Indarti S, *op.cit*, p. 59.

¹⁸ Article 2 of Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations.

¹⁹ Maria Farida Indarti S, *op.cit*, p. 61-62.

²⁰ Atmadja, *op.cit*, p. 434.

suggesting that the substance of the written law developed must be a manifestation or elaboration of the precepts contained in Pancasila. At least the substance of the legal product does not contradict the precepts contained in Pancasila.²¹

Atmadja's view and Sri Soemantri's view interpret Pancasila in the legal system in Indonesia its values must be included in laws and regulations, then the laws and regulations stipulated must not conflict with the precepts contained in Pancasila, these two views require that the values of Pancasila must be included during the process of forming legislation before the legal product applies in people's lives. Another case with Hamid S. Attamimi's view, which places Pancasila as a test tool for laws and regulations that apply in people's lives to assess whether legal products are fair or unfair and whether they are laws or not laws. Simply put, Atmadja and Sri Soemantri brought Pancasila into the process of forming laws, while Hamid S. Attamimi brought Pancasila as a test tool to assess applicable laws and regulations.

In the legal point of view according to Mahfud MD, the position of Pancasila gave birth to a distinctive legal system as the Indonesian legal system which is generally referred to as the Pancasila legal system. The Pancasila legal system installs signs and gives birth to guiding rules in legal politics in Indonesia. The most common sign is the prohibition for the emergence of laws that contradict the values of Pancasila. This means that there must be no laws that contradict and violate every precept in Pancasila.²²

Similarly, Jimly Asshidiqie explained that in practice Pancasila and the 1945 Constitution it must be reflected and translated seriously in public policy, in every state and government policy. All policies that are set forth in the form of law, must

²¹ Sri Soemantri, *op.cit*, p. 336.

²² Mahfud MD, *Constitution and Law in Controversy Issues*, 1st ed., cet. 2, Rajawali Pers, Jakarta 2010, p. 38.

reflect the values of Pancasila and the 1945 Constitution as spirit and spirit.²³ Furthermore, Pancasila is carried out in the daily practice of exercising state power so that the values and norms contained in it can change, namely the realization of the ideals of independence, the ideals of nation and state as embodied in the formulation of the Preamble to the 1945 Constitution. In addition, Pancasila and the 1945 Constitution must also be reflected and elaborated in various legal norms contained in various laws and regulations ranging from laws to the lowest regulations. Thus, the values of Pancasila and the 1945 Constitution can be realized and forced into concrete enactment in the actions of state practice and daily governance. For this reason, several concrete efforts are needed so that the realization of the values of Pancasila and the 1945 Constitution can be fostered operationally, namely: first, executive review, second, judicial review.²⁴

In carrying out the provisions of the 1945 Constitution, we must not ignore the values of Pancasila contained in it, we must read and understand the 1945 Constitution based on the moral and ideological ideology of Pancasila, this by Jimly Asshiddiqie is called "*the moral and ideological reading of the constitution*". For this reason, in testing the constitutionality of a norm in law, the Constitutional Court (MK) must also not forget the moral and ideological context of the Pancasila values contained therein. That is, in carrying out its judicial duties, the Constitutional Court must act as the guardian of the 1945 Constitution and at the same time the guardian of Pancasila.²⁵

Jimly Asshiddiqie's view is in principle the same as Hamid S. Attamimi's view, which positions Pancasila as a touchstone for the constitutionality of an applicable legal norm, that is, in applying for legal review in the Constitutional Court, the applicant can test the norm not only contrary to the 1945 Constitution but contrary to Pancasila, it is hoped that the Constitutional Court as the guardian of the constitution, both the guardian of the 1945 Constitution and the guardian of

²³ Jimly Asshiddiqie, *Strengthening the Government and Justice System*, First Second, Sinar Grafika, Jakarta 2015, p. 2.

²⁴ *Ibid*, p. 6.

²⁵ *Ibid*, p. 4.

Pancasila, must explore existing values in Pancasila as a touchstone against the provisions of an applicable legal norm.

From the views that have been expressed above regarding Pancasila in the legal system in Indonesia, at least it can be characterized by the following characteristics: First, Pancasila is the basis of nation and state and government, *Second* Pancasila is the source of all sources of law. The three values in the precepts of Pancasila must be reflected in laws and regulations during the process of forming the Law, *Fourth*, the formation of legislation must not contradict the precepts contained in Pancasila, *Fifth*, Pancasila as a touchstone of the constitutionality of a prevailing norm.

Relying on the five characteristics mentioned above, of course, the question will arise whether the five characteristics were also intended by the *founding fathers* of the Indonesian nation when formulating the state policy at the BPUPKI session, of course, to know this it is necessary to study history by tracing Pancasila since it was formulated until it was ratified in the preamble of the 1945 Constitution on August 18, 1945. Sukarno in his speech on June 1, 1945 as the birth of the idea of Pancasila, said before the assembly:

*"..... Your Excellency the Chairman asked the proceedings of Dokuritu Zyunbi Tyooskai to put forward the policy of an independent Indonesia. This basis I will later set forth in my speech."*²⁶

*"The Lord Chief is the one who started! I understand what Your Majesty the Chairman wants! Your Majesty asks for a policy, ask for philosophische grondslag, or, if the book by the word is of good faith, His Majesty asks for a "Weltanschauung", upon which we establish this Indonesian State".*²⁷

The foundations of an independent Indonesian state by Sukarno were referred to as *philosophische grondslag* (philosophical fundament; philosophical basis) or

²⁶ RM. AB Kusuma, *op.cit.*, p. 150.

²⁷ *Ibid*, p. 154.

"*Weltanschauung*" (Philosophy of Life, View of Life), there are five basic principles, where these five basic principles by Soekarno are called Pancasila:²⁸

"... *Its name is not Panca Dharma; but I named this after a friend of ours, a linguist, whose name is Panca Sila. Sila means principle or foundation, and on those five foundations we establish the State of Indonesia, eternal and eternal*".²⁹

After Ir. Soekarno's speech, the Chairman of BPUPKI, Dr. Radjiman, decided to form a Small Committee³⁰ with the task of formulating a formulation of the State Policy that could be approved by the Religious Nationalist and Islamic Nationalist groups with Ir. Soekarno's speech was the main material plus proposals from all BPUPKI members who submitted it. The task had to be completed during the second session of BPUPKI, but Ir. Soekarno took the initiative to complete it on June 22, 1945, by producing the Preamble to the Jakarta Charter "*Gentlemen's Agreement*". Ir. Soekarno apologized for work that deviated from formalities, but the results were accepted by the BPUPKI session on July 10, 1945.³¹

After the state policy was agreed upon, then a meeting was held to form a draft constitution, where at the BPUPKI meeting on July 11, 1945, Ir. Soekarno and other members of the Constitution Drafting Committee started to compile the Constitution based on the preamble of the Constitution that had been accepted by

²⁸ The 5 basic principles offered by Soekarno are, First, Indonesian Nationality, Second, Internationalism, or humanity, Third, Consensus, or democracy, Fourth, Social welfare, Fifth, Divinity.

²⁹ *Ibid.*, p. 164.

³⁰ *Ibid.* p. 167, Small Committee officially formed by BPUPKI consists of 8 people, namely: Ir. Soekarno, Drs. M. Hatta, Mr. M. Yamin, M. Soetardjo Kartohadikoesoemo, R. Oto Iskandardinata, Mr. A. Maramis, Ki. Bagoes Hadikoesoemo, and K.H. Wachid Hasjim, while the unofficial Small Committee consisted of 9 people, namely: Ir. Soekarno, Drs. M. Hatta, Mr. M. Yamin, Mr. A. Maramis, Mr. A. Soebardjo, K.H. Wachid Hasjim, K.H. Kahar Muzakkir, H. Agus Salim and R. Abikoesno Tjokrosjojoso. These nine committees then produced a draft preamble to the Constitution which Ir. Soekarno titled Mukaddimah, by Mr. M. Yamin called the Jakarta Charter, and by Dr. Sukiman called a "*Gentlemen's Agreement*" because it has not been a decision of BPUPKI.

³¹ *Ibid.*, p. 167. The Jakarta Charter was agreed on June 22, 1945, consisting of 4 paragraphs, the fourth paragraph is referred to as the State Policy, which if grouped consists of 1. Divinity, with the obligation to observe Islamic law for its adherents, 2. the basis of just and civilized humanity, 3. Unity of Indonesia, 4. Citizenship led by wisdom and wisdom in representative deliberations, 5. Realizing social justice for all Indonesian people.

the plenary session, namely the "*Gentlemen's Agreement* called the Jakarta Charter.³²

At the session of the Constitution Drafting Committee on July 11, 1945, Mr. Maramis said:

*"I am of the opinion that in the preamble has been established all the basis. Therefore I'm asking that the preamble be read and on the preamble, it's the basic law."*³³

Furthermore, BPUPKI member Mr. Wongsonagor also said:

*"So a preamble can also be made for Mr. Soepomo's design because in my opinion, this is a basic point statement."*³⁴

In terms of history, Pancasila, which was part of the *preamble of the Constitution (preamble)* since its birth by the *founding parents*,³⁵ was not only a *philosophische grondslag* (philosophical fundament; philosophical basis) or "*Weltanschauung*" (Philosophy of Life, View of Life) but also used as the basis for drafting the 1945 Constitution. Where the 1945 Constitution was prepared based on the Jakarta Charter which included Pancasila, this was by Hamid Attamimi and Maria Farida called it *the Staatsfundamentalnorm* as the basis for the formation of norms under it, meaning that hierarchically Pancasila has a higher position than the 1945 Constitution. Therefore, the 1945 Constitution must not conflict with the

³² *Ibid*, p. 16.

³³ State Secretariat of the Republic of Indonesia, *Minutes of the Session of the Investigating Board for Preparatory Efforts for Indonesian Independence (BPUPKI) – Preparatory Committee for Indonesian Independence (PPKI) 28 May-22 August*, Ed. III, Cet.1, Sekretariat Negara RI, Jakarta 1995), p. 211.

³⁴ *Ibid*, p. 215.

³⁵ Called *founding parents* because the founders of the nation not only consisted of men/fathers, but those who sat in BPUPKI also had a representation of women/mothers. So it is not appropriate if it is simply referred to as a *founding father*.

philosophische grondslag or *Weltanschauung*, in this case, the Preamble of the 1945 Constitution includes Pancasila.

In relation to the hierarchy of legal norms, Hans Kelsen proposed a theory about the level of legal norms (*stufentheorie*). Hans Kelsen argues that legal norms are tiered and multi-layered in a hierarchy, in the sense that a lower norm prevails, originates, and is based on a higher norm, a higher norm applies, originates, and is based on a higher norm, and so on arrives at a norm that cannot be further traced and is hypothetical and fictitious, i.e. Basic Norm (*Grundnorm*).³⁶

Hans Nawiasky, one of Hans Kelsen's students, developed a theory of norms, also arguing that in addition to norms that are multi-layered and tiered, the legal norms of a country are also grouped, which consist of four major groups, namely:³⁷

Group I : *Staatsfundamentalnorm* (State Fundamental Norms)

Group II : *Staatsgrundgesetz* (Basic Rules of the State/Basic Rules of the State)

Group III: *Formall Gesetz* ("formal" laws)

Group IV : *Verordnung & Autonome Satzung* (Implementing Rules & Autonomous Rules.

According to Maria Farida, Hans Nawiasky's theory when viewed in the context of the legal norm system in Indonesia, the *Staatsfundamentalnorm* Pancasila, *Staatsgrundgesetz* 1945 Constitution, *Formall Gesetz* Law, *Verordnung & Autonome Satzung* Implementing Regulations. It was further explained that the *Staatsfundamentalnorm* Pancasila which is the main thought contained in the preamble to the 1945 Constitution is the source and basis for the formation of articles in the 1945 Constitution (*verfassungsnorm*), while the rules in the 1945 Constitution are the source and basis for the formation of the *Grundgesetznorm* MPR Decrees and also at the same time are the basic source for the formation of *Gesetznorm* law.³⁸

³⁶ Hans Kelsen, *General Theory of Law and State*, Russel & Russel, New York, 1945, p. 113, in Maria Farida, *Legislation, Op.cit.*, p.43.

³⁷ *Ibid.*, p. 47.

³⁸ *Ibid.*, p. 68-69. According to Maria Farida, because *Grundgesetznorm* The MPR TAP is also the Basic State Rule / Basic State Rule above *Gesetznorm* Law, then the MPR TAP is also a source for the formation of legal norms of the Law which is the highest legislation in Indonesia. After the amendment of the 1945 Constitution, the People's Consultative Assembly (MPR) no longer had the

Thus, judging from the historical context of Pancasila, which is part of the main thoughts of the preamble to the 1945 Constitution (*preamble*) in the legal system in Indonesia, it is the basis for the formation of the 1945 Constitution also called the *Staatsfundamentalnorm*, while in the juridical context of Pancasila as the source of all sources of state law, the values in the precepts of Pancasila must be reflected in the laws and regulations, in this case, the formation of Legislation must not contradict the precepts contained in Pancasila, so it could be when Pancasila is used as a touchstone for the constitutionality of a norm that applies if *judicial review* is carried out in the Constitutional Court.

2. Meaning of Pancasila in Laws and Regulations

Judging from the historical aspect as previously explained, the Jakarta Charter (*preamble* UUD) which included Pancasila was used as the basis for the formation of the 1945 Constitution by the founding *parents*. The values contained in Pancasila are manifested in the articles/torso of the 1945 Constitution, in other words, the 1945 Constitution does not conflict with Pancasila itself, which Jimly Ashiddiqie called Pancasila a source of law in a material sense that not only animates, but even must be implemented and reflected by and in every Indonesian legal regulation. It was further explained that in its formal form, the values of Pancasila were listed in the formulation of the 1945 Constitution of the Republic of Indonesia as the highest written law in the Republic of Indonesia, whose position as the legal basis for provisions contained in other regulations, such as the source of the formation of legal provisions.³⁹

The question then is, who or which state institution is most authorized to interpret the values of Pancasila into the formation of laws and regulations in

authority to form *Grundgesetznorm* TAP MPR which is a regulatory (*scheme*) President, because the President is directly elected by the people so he is no longer the Mandataris of the People's Consultative Assembly.

³⁹ Jimly Ashiddiqie, *Introduction to the Science of Constitutional Law*, 1st ed., ninth edition, Rajawali Pers, Depok, 2017, p. 159-160.

Indonesia. Whether executive, legislative, or judicial. If referring to the constitution that has the power to form laws is the DPR as mentioned in Article 20 paragraph (1) of the 1945 Constitution it is stated that "the DPR holds the power to form laws" while the President has the right to submit draft laws to the DPR, as mentioned in Article 5 paragraph (1) it is stated, "The President has the right to submit draft *laws to the DPR*".

According to Sadli Isra, if the regulation of legislation is only seen from Article 5 Paragraph (1) and Article 20 Paragraph (1), it is not wrong to say that the pendulum of law-making power is in the hands of the legislature (DPR). However, with the presence of Article 20 Paragraph (2), states "*Every draft law is discussed by the House of Representatives and the President for mutual approval*". And Article 20 Paragraph (3) of the 1945 Constitution which states "if the bill does not get mutual approval, the bill may not be submitted again in the session of the DPR at that time", does not mean that the DPR is stronger and dominant than the president in legislative functions,⁴⁰ which Fajrul Falaakh explained that with the discussion to reach a mutual agreement, introduce a comparative formula, called the *fifty-fifty formula*, between the House of Representatives and the President in the approval of the draft law into the law.⁴¹

The provisions of the 1945 Constitution as mentioned above, when Pancasila must be reflected in statutory provisions, then the DPR and the President must of course jointly interpret the values of Pancasila into the draft law to obtain mutual approval into law. In this case, the interpretation of Pancasila values into the Law is not the authority of the DPR nor is the authority of the President, but these two institutions have the same authority. Meanwhile, the authority to examine laws contrary to the 1945 Constitution is the Constitutional Court (MK), meaning that the Constitutional Court can cancel the mutually agreed law through the interpretations of the nine judges of the Constitutional Court. This means that the power of the DPR and the President in incorporating the values of Pancasila into

⁴⁰ Sadli Isra, *Shifting the Function of Legislation*, 2nd ed., fourth edition, Rajawali Pers, Depok 2018, p. 14.

⁴¹ *Ibid.*

the Law is not absolute or inviolable, but the Constitutional Court may have different interpretations from the two institutions, making the Law can be restricted, or declared unconstitutional or even declared contrary to Pancasila itself.

Pancasila must be reflected and elaborated in various legal norms contained in various laws and regulations ranging from laws to the lowest regulations, where the legislature and executive have an important role in describing the values of Pancasila, especially in the Law, it is important for us to look at the provisions of the Law in force in Indonesia today, how the Legislature and Executive in incorporating Pancasila into a mutually agreed law.

a) Law No. 7 of 2017 concerning General Elections

This law mentions the word Pancasila at least 22 times, which are spread across several articles and mentioned in the consideration section. For example: *Considering: a.....elections.....as a means of realizing people's sovereignty... based on Pancasila...*" Article 1 paragraph (1): *"...Elections... which is carried out directly.... based on Pancasila..."* Article 21 paragraph (1) letter c: *"The requirements to become a candidate for a member of the KPU, Provincial KPUD, or District/City KPU are... "loyal to Pancasila"* Article 23 paragraph (3): *"To select prospective members of the KPU, the selection team conducts the following stages of activities: e. conducting written selection with the main material on knowledge and loyalty to Pancasila..."* Article 28 paragraph (3): *"To select candidates for members of the Provincial KPU, the selection team conducts the following stages of activities: e. conducting written selection with the main material on knowledge and loyalty to Pancasila..."* Article 32 paragraph (3): *"To select candidates for members of the District/City KPU, the selection team conducts the following stages of activities: e. conducting written selection with the main material on knowledge and loyalty to Pancasila..."* Article 36 paragraph (2): *Oaths/promises of members of the KPU, Provincial KPU, District/City KPU as follows: By Allah (God), I swear/promise: that I will fulfill my duties and obligations...based on Pancasila..."* Article 72: *"The requirements to become members of PPK, PPS, KPPS, PPLN, and KPPSLN include: c. loyalty to Pancasila as the basis of the state..."*

Article 73 paragraph (2): The oath/promise of *PPK, PPS, KPPS, PPLN, and KPPSLN* as follows: *By Allah (God), I swear / promise: that I will fulfill my duties and obligations... guided by Pancasila...*" Article 117 paragraph (1) point c: *"The requirements to become candidates for members of Bawaslu, Provincial Bawaslu, District / City Bawaslu, District Panwaslu, and Village / Village Panwaslu, as well as TPS Supervisors, are: loyal to Pancasila as the basis of the state..."* Article 119 paragraph (3) letter e: *to select prospective members of Bawaslu, the selection team conducts the stages of activities: conducting written selections with the main material about knowledge and loyalty to Pancasila...*" Article 125 paragraph (3) letter e: *to select candidates for members of the Provincial Bawaslu, the selection team conducts the stages of activities: conducting written selections with the main material on knowledge and loyalty to Pancasila...*" Article 129 paragraph (3) letter e: *"to select candidates for members of the Bawaslu Regency / City Province, the selection team conducts the stages of activities: conducting written selection with the main material about knowledge and loyalty to Pancasila..."* Article 134 paragraph (2): *Oaths/promises of members of Bawaslu, Provincial Bawaslu, District/City Bawaslu, District Panwaslu, Village Panwaslu, LN Panwaslu, and TPS Supervisors as follows: That I will fulfill my duties and obligations... guided by Pancasila...*" Article 169 letter o: *"The requirements to be candidates for President and Vice President candidates are: loyalty to Pancasila..."* Article 182 letter f: *"Individuals Can become a participant in the election after fulfilling the requirements: loyalty to Pancasila."*

Article 227: *"Registration of prospective Presidential and Vice Presidential Candidates is completed with the following requirements: a letter of allegiance to **Pancasila** as the basis of the state..."* Article 240 paragraph (1) letter f: *Prospective candidates for members of the DPR, Provincial DPRD, and District/City DPRD are Indonesian citizens and must meet the requirements: loyalty to Pancasila..."* Article 280 paragraph (1) letter a: *Implementers, participants, and election campaign teams are prohibited: questioning the state basis of Pancasila..."* Explanation of article 169 letter o: *"the requirement of allegiance to Pancasila... which is based on the*

recommendations and guarantees of the leadership of the Political Party or the Coalition of Political Parties."

- b) Law No. 17 of 2014 concerning MPR, DPR, DPD, and DPRD as amended several times last amended by Law No. 13 of 2019 concerning the Third Amendment to Law No. 17 of 2014.

This law mentions Pancasila at least 13 times in the torso, article 5 letter b: "MPR has the duty to: socialize Pancasila...." Article 9: *The oath of MPR members: that I, will fulfill my obligations.... based on Pancasila.* Article 11 letter a: Members of the People's Consultative Assembly (MPR) are obligated to: uphold and practice Pancasila". Article 11 letter c: Members of the People's Consultative Assembly (MPR) are obligated to: popularize Pancasila..." Article 16 paragraph (1) letter e: "The leadership of the People's Consultative Assembly (MPR) has the duty to: coordinate members of the People's Consultative Assembly (MPR) to socialize Pancasila..." Article 78: Oath or Promise of Members of the House of Representatives: .. That I, will fulfill my obligations... guided by Pancasila..." Article 81 letter a: Members of the House of Representatives are obligated to: uphold and practice Pancasila." Article 254: DPD promise: ... that I will fulfill my obligations... guided by Pancasila. Article 258 letter a: DPD members are obligated to: uphold and practice Pancasila. Article 320: Oath/promise of the Provincial Parliament: ... that I will fulfill my obligations... guided by Pancasila..." Article 324 letter a: Members of provincial parliaments are obligated to: uphold and practice Pancasila" Article 369: *Oath/promise of the District/City DPRD: ... that I will fulfill my obligations... guided by Pancasila...*" Article 373 letter a: "*Members of the district/city DPRD are obligated to: uphold and practice **Pancasila***"

- c) Law No. 2 of 1986 concerning General Courts as amended several times was last amended by Law No. 49 of 2009 concerning the Second Amendment to Law No. 2 of 1986.

This law at least mentions the word Pancasila in it, namely, Consideration section letter a: "*that the Unitary State of the Republic of Indonesia is a state of law based on Pancasila...*" Article 14 paragraph (1) letter c: "*To be appointed as a court*

judge, a person must be qualified: loyal to Pancasila..." Article 28 letter c: *"To be appointed as clerk of the district court, a candidate must qualify: loyalty to Pancasila..."* Article 17 paragraph (1): *"Before assuming office the Chairman, Vice-Chairman, and Judges of the Court shall take an oath or promise: "... I swear/promise that I will be loyal to and will defend and practice Pancasila as the basis and ideology of the state..."* Article 38, paragraph (2): *oath or promise of the Registrar, Deputy Registrar, Junior Registrar, and Substitute Registrar: "... I pledge that I will be loyal to and will defend and practice Pancasila as the basis and ideology of the state,..."* Article 40 paragraph (1) letter c: *"To be appointed as a bailiff, a person must qualify: loyalty to Pancasila..."* Article 42 paragraph (2): *oath or promise of the bailiff or substitute bailiff: "... I swear that I will be loyal to and will defend and practice Pancasila as the basis and ideology of the state..."* Article 46 letter c: *"To be appointed deputy secretary of the district court, a candidate must be qualified: loyal to Pancasila..."* Article 49 paragraph (2): *The oath or promise of the deputy secretary of the court: "... I solemnly swear that I, to be appointed Deputy Secretary will be faithful and fully obedient to Pancasila."*

d) Law No. 48 of 2009 concerning Judicial Power

This law mentions Pancasila at least 2 times. Article 1 paragraph (1): *"Judicial power is the power of the state... to uphold law and justice based on Pancasila..."* Article 2 paragraph (2): *"The state judiciary shall apply and enforce law and justice based on Pancasila."*

e) Law No. 24 of 2003 concerning the Constitutional Court, as amended several times, was last amended by Law No. 7 of 2020 concerning the Third Amendment to Law No. 24 of 2003.

This law only mentions Pancasila only 1 time, namely, consideration Section letter a: *That the Unitary State of the Republic of Indonesia is a state of law based on Pancasila..."*

f) Law No. 16 of 2017 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations into Law

In this Law, mention Pancasila at least 20 times, namely, consideration section letter a: *"In order to protect the sovereignty of the Unitary State of the Republic of Indonesia based on Pancasila..."* Section consideration letter b: *"... Violation of the principles and objectives of community organizations based on Pancasila..."* Consideration section letter c: *"... has not regulated comprehensively the mass of organizations that are contrary to Pancasila..."* Consideration section letter d: *"... factually it is proven that there are principles of community organizations and their activities that are contrary to Pancasila..."* Section consideration letter e: *"... and spreading teachings or understandings related to Pancasila..."* Article 1 paragraph (1): *"... for the achievement of the goals of the Unitary State of the Republic of Indonesia based on Pancasila..."* Article 59 paragraph (4) point c: mass organizations are prohibited: Adhering, developing, and spreading teachings or beliefs that are contrary to Pancasila" Explanation of Article 59 paragraph (4) letter c: *"what is meant by: teachings or understandings that are contrary to Pancasila" include the teachings of atheism, communism / Marxism-Leninism, or other beliefs that aim to replace / change Pancasila..."* Explanation of Article 82 A paragraph (1): *"... has had evil intentions (mens-rea) or bad faith contained behind a written statement of recognition as a mass organization based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 which is stated and listed in the Articles of Association of mass organizations, but in its activities contained thoughts or actions that are contrary to Pancasila..."* Explanation Section: *"In order to protect the sovereignty of the Unitary State of the Republic of Indonesia Based on Pancasila..."*

g) Law Number 12 of 2012 concerning Higher Education

This law mentions Pancasila at least 4 times, article 2: *"Higher Education Based on Pancasila..."* Article 35 paragraph (3) point b: the Higher Education curriculum must contain the course: Pancasila. Explanation of Article 35 paragraph (3) letter b: *"What is meant by "Pancasila course" is Education to provide understanding and appreciation to students about the ideology of the Indonesian nation."* Explanation of Article 35 paragraph (3) letter c: *"What is meant by*

citizenship courses is Education which includes Pancasila... "To shape students into citizens who have a sense of nationality and love for the motherland.

h) Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination

This law mentions Pancasila at least 3 times:

Section B consideration: *"any act of racial and ethnic discrimination contrary to the values of Pancasila..."* General Section of Explanation: *"Pancasila as the philosophy and outlook of life of the Indonesian nation..."*

i) Law No. 7 of 2012 concerning Social Conflict Handling

This law mentions Pancasila at least 1 time:

Article 9 letter g: *"The Government and Local Government are obliged to reduce potential conflicts in society by preserving the value of Pancasila..."*

Based on the provisions above, the eating of Pancasila in the Law is very diverse, at least it can be eaten as follows (a) Pancasila is a state ideology, national philosophy, outlook on life, and state policy, so questioning whether Pancasila is a state ideology or not, it turns out that the framers of the law provide various meanings. (b) In terms of the exercise of judicial power in the courts, Pancasila must be used as a basis for upholding law and justice. This means that judges in deciding a case not only refer to the law but also must make Pancasila the basis for a fair verdict. (c) Pancasila opposes the teachings of atheism, communism / Marxism-Leninism, or ideas that aim to replace/change Pancasila, so although the Indonesian state guarantees freedom of assembly and association, that freedom is bound by Pancasila, meaning that the Indonesian people cannot practice teachings that are contrary to Pancasila, and the Indonesian state does not give place to those who do not have a religion. (a) Pancasila is a requirement to occupy positions in State Institutions, from the Center to the Regions. Even officials of these state institutions must swear allegiance and obedience to Pancasila. (b) Pancasila opposes all acts of ethnic, religious, racial, and inter-group discrimination, which are not only contrary to the Law but also contrary to Pancasila. (c) Pancasila is an instrument for handling conflicts that occur in society. (d) The practice of Pancasila is not only carried out by civil society but is required to all officials in Indonesia

from the central to the regions. This means that the values of Pancasila are not only practiced in the community but must also be practiced in the work environment.

Seeing the meaning of Pancasila formulated in the Law almost regulates all lines of life of the nation and state in Indonesia, from state affairs, and religious affairs, to social affairs, all these affairs must not conflict with Pancasila. Even to overcome conflicts in society using Pancasila. So important are these Pancasila values in the Indonesian state, it is not wrong if Nur Hidayat and Desi Apriani offer the idea to amend Article 1 paragraph (3) of the 1945 Constitution to become the State of Indonesia is a State of Pancasila Law".⁴²

The meaning of Pancasila in various laws and regulations has been implemented in practice by the framer of the law, from the example of the Law studied by the author the meaning is still as a whole, not detailing one by one the precepts contained in Pancasila. The values contained in each precept in Pancasila must certainly be reflected in laws and regulations, it is the duty of the framer of the law to ensure that the values contained in Pancasila are included in every law that will be made. Therefore the person tasked with interpreting the values of Pancasila into laws and regulations is of course the framer of the law, namely the DPR, but according to Saldi Isra, the executive has equal authority with the DPR in the process of forming laws because the draft law must be discussed with the DPR and the Government and must obtain mutual approval. This means that the authority of legislation in Indonesia is in two hands of power, namely the Legislative, and

⁴² Nur Hidayat and Desi Apriani, "Coherence of the Pancasila Legal System with the Pancasila Ideology Reasoning Method" *State Journal of Law*, 12. 1, June 2021), p. 158. It was concluded that as a philosophy and basic norms of the state, Pancasila must be derived into the state legal system, so that the Pancasila legal system must be pyramidal, which places Pancasila as the peak of the formation, implementation, and enforcement of state law. Therefore, the method of reasoning Article 1 paragraph (3) of the NRI Constitution of 1945 needs to be amended so that the redaction of the basic legal idea that reads 'Indonesia is a state of law' will change to 'Indonesia is a State of Pancasila Law'. This change will build a true legal paradigm based on Pancasila.

Executive. Thus that the interpretation of Pancasila into legal products according to the author can only be carried out by the two institutions together while still involving community participation. While the Constitutional Court is the guardian of Pancasila itself.

D. CONCLUSION

Pancasila in the legal system in Indonesia at least can be characterized by the following characteristics: First, Pancasila is the basis of nation and state, and government, *Second*, Pancasila is the source of all sources of law. The three values in the precepts of Pancasila must be reflected in laws and regulations during the process of forming the Law, *Fourth*, the formation of legislation must not contradict the precepts contained in Pancasila, *fifth*, Pancasila as a touchstone of the constitutionality of a prevailing norm.

Then the meaning of Pancasila into law in practice the framer of the law has reflected the values of Pancasila in every Legal Product issued, where the meaning of Pancasila formulated in the Law almost regulates all lines of the life of the nation and state in Indonesia, from state affairs, religious affairs, to social affairs, even used as a basis for overcoming social conflicts, thus that the meaning of Pancasila into applicable law in Indonesia now it is in accordance with the interests of the Indonesian people.

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