

PANCASILA AS A LEGAL SYSTEM AND SOURCE OF NATIONAL LAW OF THE STATE OF INDONESIA

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ABSTRACT

The purpose of this study is to analyze: 1) How does Pancasila exist as a legal system and the source of all sources of national law?; 2) What are the efforts to strengthen and implement Pancasila as the source of all legal sources in the Indonesian national legal system?; The research method used is normative juridical with a legislative approach, a conceptual approach, and a case study. The results of the study show that: 1) Pancasila as the source of all sources of law is a fundamental norm as the basis for the formation of the constitution of the Republic of Indonesia, which must be reflected and animate all legal content (Laws and Regulations). 2) To be able to apply Pancasila as the source of all sources of law in the national legal system, two ways are sought, namely: first, making Pancasila a flow of law. Second, occupying Pancasila as the top in the hierarchy of laws and regulations. Thus, Pancasila is no longer just normative-semantic as the source of all legal sources but can really be applied in the national legal system.

Keywords: Pancasila, Legal System, National Legal Sources, State of Indonesia.

INTRODUCTION

Background

Indonesia is a country that consists of various ethnicities, religions, races and classes. *Sesanti Bhinneka Tunggal Ika* reflects the cultural diversity of the community under the de facto protection of the unitary state of the Republic of Indonesia. The country's territory stretching from Sabang to Merauke, in addition to natural resources, also has diverse cultural wealth.

Indonesia's plurality is also growing with the recognition of 6 (six) official religions and various religious sects, in religion, one Almighty God. Indonesia as a very diverse nation must have an adhesive that can unite all diversity, sovereignty based on the constitution, not on individual power. These provisions were then clearly articulated in the 1945 Constitution, the 1949 RIS Constitution, and the 1950 Constitution. The Indonesian legal state, which at that time was the basis of the national philosophy of life, or Pancasila.

After Pancasila was constitutionally established on August 18 by PPKI as the basis of the state, Pancasila has an important position in the life order of the Indonesian nation. The great importance of the position of Pancasila then gives awareness to the Indonesian nation to make it an absolute reference for the order of life both in social society, politics, religion, and law.

In the legal order or in the rule of law, the position of Pancasila is affirmed as the source of legal order or known as the source of all legal sources through MPR Decree Number XX/MPRS/1966 jo MPR Decree Number V/MPR/1973 jo MPR Decree Number IX/MPR/1978. Therefore, Pancasila is the main source in the legal order so that even though there are so many sources of law, the source of the law must be in accordance with Pancasila.

In its development, the existence of Pancasila as the source of all sources of law is determined by every regime in power. When the New Order regime (Orba) came to power, Pancasila became a static dogma because it was cultized by applying Pancasila and the 1945 Constitution (1945 Constitution) purely and consequentially. In this space and time, Pancasila is not only limited to the source of all sources of law in the national legal order but at the same time as a valid provider of legitimacy for Orba's authoritarian power.

Regarding the cult of Pancasila as a single ideology and its relationship with the power of Orba, Mahfud MD wrote that the cult of Pancasila was the peak of the fundraising carried out continuously since 1966/1997 by Orba in the context of national integration as decided in the Army Seminar II in 1966 which stated that it would pay whatever it would to create unity and unity, as well as ensure political stability as a prerequisite for development.¹

From a historical perspective, according to legal historians, legal sources have two meanings, namely in the sense of a source where people know the law and a source for lawmakers to dig up materials in the preparation of laws.²

During the reform period, the existence of Pancasila as the source of all legal sources still obtained a legal house through the MPR TAP Number III/MPR/2000 concerning Legal Sources and the Order of Laws and Regulations. However, in this MPR TAP, it is no longer explicitly emphasized about Pancasila as the source of all legal sources in the national legal system.

Therefore, Law Number 10 of 2004 concerning the Establishment of Laws and Regulations was made to reaffirm the position of Pancasila as the source of all legal sources. However, in the hierarchy of laws and regulations according to this law, the MPR TAP as the legal house of Pancasila was eliminated. Therefore, the law was then replaced with Law Number 12 of 2011 which regulates the same matter. Article 7 paragraph (1) of Law No. 12 of 2011, the MPR TAP is again included in the hierarchy of laws and regulations and has a position under the 1945 Constitution. The presence of Law Number 12 of 2011 shows that Pancasila as a source of legal order is important to be given juridical legitimacy in order to meet the element of certainty in the legal system.

However, even though Pancasila as the source of all legal sources has juridical legitimacy both in the MPR TAP and in the law, it still does not guarantee legal certainty in the order of laws and regulations. As a result, the existence of Pancasila as the source of all legal

¹ Mahfud MD, Democracy and Constitution in Indonesia, Second Edition, Jakarta: Rineka Cipta Publisher, 2003, p. 95

² Peter Mahmud Marzuki;2008." Introduction to Law". Pen. Kencana Prenada Media Group. Jakarta.Pg.301

sources does not have an imperative or binding element in the hierarchy of legislation.³ This is what then becomes a problem. The non-inclusion of Pancasila in the hierarchy of laws and regulations has resulted in the emergence of disharmony between laws and regulations. It is not surprising that there are laws (UU) and/or Regional Regulations (Perda) that have been canceled due to disharmonisation issues.

For this reason, it has become a necessity in law to include Pancasila in laws and regulations. This effort is actually in accordance with the *stufenbautheorie* or hierarchical framework of Hans Kelsen's norms, namely the hierarchy of laws and regulations topped by the *grundnorm* (basic norm) or what his student Hans Nawiasky called *Staat fundamentalnorm* (fundamental norm of the state).³ In addition to the problem of the system of laws and regulations, another problem is the strengthening of legal pluralism, namely the application of several legal systems at once such as Islamic law, customary law, civil law and common law.

However, as stated in the 1945 Constitution of the Republic of Indonesia (NEW NRI 1945), the term or title "Pancasila" is not included in the preamble or any part of the constitution. In this regard, the fifth president of the Republic of Indonesia even stated that the question of the source of reference, that Pancasila is the basis of the state and the source of all sources of state law, is often a simple but very striking question.

The striking question is when state administrators and lawmakers need to find a basis for reference in Pancasila, as the source of all legal sources referred to by the document. This is also often asked by students of the administrative law study program. and law. Pancasila seems to be a concept that is discussed every day, but it does not have a written name in the Indonesian constitution. Therefore, in this article, the author intends to explore the concept of Pancasila as the source of all legal sources and formulate the steps to apply it in building a legal state in Indonesia.

³ Jawahir Thontowi, *Pancasila in a Legal Perspective; Views on the Threat of The Lost Generation*, Yogyakarta: UII Press, 2016, p. 45.

Problem Formulation

1. How does Pancasila exist as a legal system and the source of all sources of national law?
2. What are the efforts to strengthen and implement Pancasila as the source of all legal sources in the Indonesian national legal system?

Theoretical Framework

1) Legal System Theory

Lawrence M. Friedman⁴ proposed 3 functions of the legal system. *First*, as part of the social control system that regulates human behavior. *Second*, as a means to resolve disputes (*dispute settlement*). *Third*, the legal system has a function as a *social engineering function*, which is a function that emphasizes the role of the law as a maintenance of the "status quo" that does not want change.⁵

In the national legal system, Pancasila as the source of all sources of law In addition, Pancasila is the source of all sources of law or legal order in the Unitary State of the Republic of Indonesia. This is affirmed by MPR Regulation no. III/MPR/2000 concerning Legal Sources and Legislative Procedures. Article 1 of the MPR TAP has three main points, including:

1. Legal sources are sources used as materials for the preparation of laws and regulations.
2. Legal sources consist of written legal sources and unwritten legal sources.
3. The source of the national constitution is Pancasila, as stated in the preamble to the 1945 Constitution, namely the One Godhead, just and civilized humanity, Indonesian Unity and the People led by wisdom in

⁴ Lawrence M. Friedman, *American Law*, W.W. Norton & Company, New York, 1984, pp. 5-6 in Teguh Prasetyo and Abdul Halim Barkatullah, *Philosophy, Theory and Law: Thinking Towards a Just and Dignified Society*, Raja Grafindo Persada, Jakarta, 2012, pp. 311-312.

⁵ Anis Mashdurohatun & M. Ali Mansyur, "Model of Fair Use/Fair Dealing of Copyright on Books in the Development of Science and Technology in Higher Education", *Ius Quia Iustum Law Journal*, Vol. 24 No. 1, 2017, p. 37

deliberation/representation, as well as by realizing a social justice for all Indonesian people and the 1945 Constitution.

2) Law Enforcement Theory

Legal certainty is a matter (circumstance. that is certain. The law must be absolute and fair. Legal certainty is a question that can only be answered normatively, not sociologically. Normative Legal Certainty is when a regulation is made and promulgated definitively because it regulates in a definite and logical manner.⁶ Legal Certainty is one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who commits it. There is legal certainty, everyone can estimate what will happen if they take these legal actions. Legal certainty is urgently needed to realize justice. Legal certainty is one of the characteristics that cannot be separated from the law, especially for written legal norms. Laws without the value of certainty will lose their meaning because they cannot be used as a guideline of behavior for everyone.⁷

Research Methodology

This research is included in the type of *doctrinal* research, where the approach method used is normative juridical. The study method used in this study is normative legal research, which is a study conducted by examining the laws and regulations that apply or applied to a certain legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is legal and regulatory documents and literature materials.⁸ Soerjono Soekanto,⁹ that normative legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer legal problems or issues to be studied.

⁶Cst Kansil. 2009. Dictionary of Legal Terms. Gramedia Pustaka. Jakarta.p.385 reviews

⁷*Ibid.* p. 270

⁸Johnny Ibrahim, 2006, *Theory and Methodology of Normative Legal Research*, Malang: Bayumedia Publishing, p. 12

⁹ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: Universitas Indonesia Press, 1983, p.51.

The data collection technique in this study was obtained based on *library research*. The study conducted is a literature study (*library research*) using secondary data. Secondary data in this study was obtained through literature study, by searching for as complete and as much information as possible with journal literature, newspapers, articles, scientific works and laws and regulations related to the research theme.¹⁰ This research technique is descriptive analytical, where analysis is carried out critically using various theories on the research problem. The data collected in this study will be analyzed descriptively with a qualitative *approach*, namely by providing a thorough and in-depth presentation and explanation (*holistic/verstelen*), based on words arranged in a scientific setting.¹¹

RESEARCH RESULTS

The Existence of Pancasila as a Legal System and the Source of All Sources of National Law

The source of law is essentially a place where we can find and explore the law.¹² According to Zevenbergen, legal sources can be divided into material legal sources and formal legal sources. The source of material law is the place from which the legal material is taken. These material legal sources are factors that help the formation of laws such as: social relations, political power relations, socio-economic situations, traditions (religious views, morality), international developments, geographical circumstances. Formal legal sources are places or sources from which a regulation acquires legal force. It relates to the form or manner in which the regulation is formally enforced.¹³

If it is associated with the two types of legal sources above, Pancasila is a material source of law while formal ones such as laws and regulations, agreements between countries, jurisprudence and customs. Pancasila as a source of material law is determined by the content or weight of the material contained in Pancasila. There are at least three qualities of Pancasila material, namely: first, the content of Pancasila is the philosophical content of the Indonesian

¹⁰ Soerjono Soekanto and Sri Mamudji, *Normative Law Research, A Brief Review*, Jakarta : Raja Grafindo Persada, 2011.

¹¹ Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th (Bandung: Cv. Alfabeta, 2018), p. 34

¹² Sudikno Mertokusumo, *Getting to Know the Law*, Revised Edition, Yogyakarta: Cahaya Atma Pustaka, 2010, p.107

¹³ *Ibid*, p.108

nation. Second, the content of Pancasila as a national legal identity. Third, Pancasila does not determine orders, prohibitions and sanctions but only determines the fundamental principles for the formation of laws (meta-juris).¹⁴ These three material qualities determine Pancasila as a source of material law as explained by Sudikno Mertokusumo above.

The existence of legal sources as a place to explore and find law in a society and state, resulting in law having its own order. In this regard, legal values in the modern and contemporary era are greatly influenced by Hans Kelsen's legal theories regarding grundnorm (basic norms) and stufenbautheorie (order of norms).

According to Kelsen, norms whose validity cannot be obtained from other higher norms are referred to as basic norms. All norms whose validity can be traced to the same basic norm form a system of norms, or an order of norms. The basic norms that are the main source are the binding between all the different norms that form an order of norms. That a norm belongs to a system of norms, into a particular normative order, can be tested only by confirming that the norm derives its validity from the basic norms that make up the norm order.¹⁵

Kelsen's concept of basic norms was later affirmed by Nawiasky even though it was also called Staatfundamentalnorm. Nawiasky emphasized that Staatfundamentalnorm or fundamental norms of the state (basic norms) are the highest norms in a country and this norm is a norm that is not formed by a higher norm, but is pre-supposed or predetermined by the people in the country and is a norm on which the legal norms under it depend. In fact, Nawiasky also emphasized that the content of the fundamental norms of the state is the basis for the formation of a constitution or constitution.¹⁶

If we look at the meaning of basic norms according to Kelsen and or fundamental norms of the state according to Nawiasky, Pancasila is a basic norm that hosts all kinds of norms in the norm order in Indonesia. To clarify the position of basic norms in the legal order

¹⁴ Dani Pinasang, "Pancasila Philosophy as a Basic Norm (Grundnorm) in the Context of Developing the National Legal System", UNSRAT Law Journal, Vol. XX, No. 3, April-June, 2012, p. 8

¹⁵ Hans Kelsen, *General Theory of Law and State* (translated from Hans Kelsen's book, *General Theory of Law and State*; New York: Russel and Russel, 1971), Bandung: Nusa Media, 2014, p.161

¹⁶ Maria Farida Indrati S., *Jurisprudence I (Types, Functions and Content Materials)*, Yogyakarta: PT Kanisius Publisher, 2007, p. 46

of a country, Kelsen also explained the pattern of relations between norms through his theory of stufenbau or hierarchical norms. Kelsen explained that the relationship between norms that govern the formation of other norms and other norms can be described as the relationship between "superordination" and "subordination" which is a metaphor for space.

The norms that determine other norms are higher norms, while the norms formed according to these regulations are lower norms.¹⁷ According to Achmad Ali, the Kelsen stufenbautheorie is the entire legal regulation of the basic norms that are at the top of the pyramid, and the further down the more diverse and diffuse it is. The top basic norm is abstract and the further down the concrete it is. In that process, what was originally something that "should" became, turned into something that "could" be done.¹⁸

Kelsen's theory of hierarchical norms was later developed by his student Nawiasky in his book *Allgemeine Rechtslehre*. Nawiasky emphasized that the legal norm system in any country is always layered and tiered. The lower norm applies, originates from and is based on an even higher norm, to a supreme norm called the basic norm. Nawiasky then gave a new idea about the norm system, namely by the grouping of norms.

According to Nawiasky, the grouping of norms in a country consists of four major groups, namely: the first group, *Staatfundamentaln timer* or fundamental norms of the state. The second group, *Staatgrundgesetz* (basic rules/basic rules of the state). The third group, *Formell Gesetz* (Laws). The fourth group, *Verordnung & Autonome Satzung* (implementing rules & autonomous rules).¹⁹

Based on Kelsen and Nawiasky's ideas above about stufenbautheorie or the theory of the order of norms, it can be understood that the basic norms or fundamental norms of the state are at the top of the pyramid. Therefore, Pancasila as the basic norm is at the top of the pyramid of norms. Thus, Pancasila then became a source of legal order or better known as the source of all legal sources. This has been confirmed by the DPR-GR memorandum which was then given a juridical basis through MPR Decree No. XX/MPRS/1966 jo MPR Decree No.

¹⁷ Hans Kelsen, *Op.Cit.*, p. 179

¹⁸ Achmad Ali, *Uncovering Legal Theory and Judicial Theory*, Vol. 1 Initial Understanding, Jakarta: Kencana Premedia Group, First Edition 2009, p. 62

¹⁹ Maria Farida Indrati, *S. Op. Cit.*, pp. 44-45.

V/MPR/1973 jo MPR Decree No. IX/MPR/1978.²⁰ Pancasila as the source of all legal sources is intended as the source of the legal order of the Indonesian state.

The position of Pancasila as the source of all sources of state law is a grundnorm in the Indonesian legal system that provides direction and soul and becomes a paradigm of norms in the articles of the 1945 Constitution. The interpretation of legal norms in the 1945 Constitution as the supreme law will be based on the soul of the nation in Pancasila which functions as the ideal of law which will be the basis and source of the nation's outlook on life or philosophy of life which will be a guideline in the formation of other lower laws and regulations. The ideals of law and philosophy of life as well as the morality of the nation, which is the source of all sources of state law, will be a crisis function in assessing legal policies or can be used as a paradigm that becomes the basis for policy making in the fields of law and legislation as well as in the social, economic, and political fields.

The Indonesian nation is grateful and proud to inherit fundamental values, starting from noble socio-culture, culminating as a philosophy of life (*weltanschauung*) which is made and upheld as the state philosophy of Pancasila. As a philosophy of life, the value of Pancasila is the foundation of national and statehood ideals. The fundamental idea of national identity, its role in providing the identity of the state system and the legal system, was also put forward by Carl von Savigny (1779-1861) with his *volkgeist* theory which can be equated with the soul of the nation and/or national identity. Similarly in France with the theory of "*raison d'etat*" (reason of state) which determines the existence of a nation and state (the rise of sovereign, independent, and national state).

²⁰ TAP MPR No. XX/MPRS/1966 concerning the Memorandum of the House of Representatives of the Republic of Indonesia Regarding the Source of Legal Order of the Republic of Indonesia and the Order of Laws and Regulations of the Republic of Indonesia. TAP MPR-RI No.V/MPR/1973 concerning the Review of Products in the Form of Decrees of the People's Consultative Assembly of the Republic of Indonesia. TAP MPR No. IX/MPR/1978 concerning the need for improvement as stipulated in Article 3 of the Decree of the People's Consultative Assembly of the Republic of Indonesia No: V/MPR/1973.

Efforts to strengthen and implement Pancasila as the source of all legal sources in the Indonesian national legal system

Pancasila as the source of all sources of law is interpreted in the context of positive law, not related to laws that are sourced from religious teachings, laws related to the administration of the Republic of Indonesia. This is reflected in the statements & results of discussions by Nahdhotul Ulama (NU) FIGURES K.H. As'ad Syamsul Arifin, K.H. Mahrus Ali, K.H. Ali Maksum and K.H. Masykur at the 1984 NU congress in Situbondo which stated that Pancasila is an Ideology and Ideology is not a religion. Islam is a religion, not an ideology. Religion is created by Allah, Ideology is created by man. So religion cannot be Pancawon and Pancasila cannot be Religion.²¹

Pancasila is not a religion, but the values contained in Pancasila do not contradict the teachings of a religion, even the values reflected in Pancasila are part of the values contained in the values of religious teachings. And these values must be reflected in all laws that become positive law in the Republic of Indonesia.

Pancasila is seen from the theory of Hans Kelsen and Nawiasky placed in the top position in the legal order / hierarchy in Indonesia as a Fundamentalnorm or Groundnorm in Hans Kelsen's terms, which means that all legal regulations under it must reflect the values of Pancasila, in the sense that they are sourced from Pancasila.

In Tap MPRS No. XX/MPRS/1966 it is stipulated that Pancasila is the source of all sources of law, Tap MPR No.III/MPR/2000 concerning sources of law and Legislative Order stipulates Pancasila as the source of all sources of law, and in article 2 of Law No. 10 of 2004 concerning "Formation of Laws and Regulations", it is stated: "Pancasila is the source of all sources of law".

Politically, placing Pancasila as the source of all legal sources is a political aggregation of the Indonesian nation that intends to realize the Unitary State of the Republic of Indonesia, which is Bhineka Tunggal Ika. Frans Magnis-Susino, stated:²² "Pancasila is so high and

²¹ Dr.Jazumi,SH. Mh.2005.Legislation of Islamic Law in Indonesia.Pen.PT.Citra Aditya.Bandung.Page.308

²² Ibid.P.295

absolutely valuable for the preservation of the Indonesian nation and state because it is a vehicle where various tribes, groups, religions, cultural groups, and races can live and cooperate in an effort to build a common life, without alienation and their own identity."

Although Pancasila as the source of all legal sources has a legal house both through the MPR TAP and Law No. 10 of 2004 which was later replaced by Law No. 12 of 2011, it still does not guarantee the position of Pancasila in the Indonesian national legal system. Therefore, several efforts are needed so that Pancasila as the source of all legal sources is not only limited to having a legal house but can be applied in the legal system. There are two efforts to do so, namely: making Pancasila a positive legal stream and occupying Pancasila as the top of laws and regulations.

1. Making Pancasila a legal stream

If we look at the legal literacy that discusses the flow of law, we can find a dynamic pattern related to the formation and existence of a school of law. The formation of a legal school begins with the existence of an idea about the ideal law put forward by a person or several legal experts based on the reality and social needs of the community in a certain time and region. For example, the idea of legal certainty or legal positivism originated with John, an English jurist.

According to Austin, the law is independent of justice and from the matter of good and bad. Therefore, legal science only has the task of analyzing the elements that actually exist in the modern legal system. Legal science only deals with positive law, which is law that is accepted without regard to its good and bad. Law is the order of the sovereign political power in a country.²³ Thus, Austin's thinking idealized the law as the order of the ruler.

The idea that legitimizes the absolute power of the ruler is then perfected according to the needs and developments of society and the times. Austin's idea of certainty, which placed legal certainty on the ruler's order, was perfected (developed)

²³ Satjipto Rahardjo, Law, Second Edition, Bandung: Alumni, 1986, p. 118.

by Hans Kelsen into legal certainty found in all written regulations or legislation. Although it has been refined, it must be remembered that the existence of a school of law is always determined by its relevance. This means that a school of law will remain correct if it is in accordance with a certain space and time. For example, the school of legal positivism will still be considered correct and ideal to be applied in Indonesia as long as it is still relevant to the needs and development of Indonesian society.

Based on the formation of a legal stream above, Pancasila is worthy of being a legal stream. In terms of the series of processes for its formation, Pancasila was proposed by Soekarno on June 1, 1945 and then perfected by the Committee of Nine which produced the Mukadimmah/Genlement Agreement/Jakarta Charter on June 22, 1945. Then, it was refined again by crossing out seven words in the first precept formulation and then finalized on August 18, 1945. This series of processes has shown that Pancasila is worthy as a school of thought. Likewise, in principle relevance or suitability to the needs and development of society, Pancasila has fulfilled it. Thus, if Pancasila is used as a legal school, it means a legal school that was born and developed according to the reality of life, the needs and development of the Indonesian nation. The important purpose of making Pancasila a legal school is certainly not to fight against legal streams that are still relevant to be applied as positive law, but especially so that the Indonesian state has a clear, intact and impartial national legal system.

In particular, in terms of the state paradigm, the founders of the state have chosen a state paradigm that not only refers to the Western legal tradition, but is also rooted in the original tradition of the Indonesian nation. The statehood paradigm is formulated by integrating plentarily 5 (five) principles of statehood, namely Theism, Humanity (Humanism), Nationality (Nationalism), People's (Democracy), and Social Justice (Socialism) into a Pancasila concept. The five principles of Pancasila contain universal values, but also have a specificity basis in the traditions of the Indonesian nation. The dimension of universality and specificity causes conceptual tension in Pancasila which shows that the founders of the Indonesian state wanted to establish

a nation-state with modern characteristics, but still based on the traditions of the Indonesian nation.²⁴

Pancasila as a legal stream will certainly eliminate the pluralism of the legal system in law because the more plural or diverse the laws applied, the more contradictions that occur between these legal systems. Islamic law cannot be parallel to common law, just as customary law cannot be parallel to civil law. The diversity of the legal system like this makes the law unproductive and results in more difficult to achieve the ideals of Indonesian law such as certainty, justice and usefulness, as well as prosperity and welfare. For this reason, Pancasila must be present as a legal stream to reconcile legal disharmony caused by legal diversity. Especially, in order to achieve the ideals of Indonesia's national law.

2. Occupying Pancasila as the top of the hierarchy of laws and regulations

Pancasila as the source of all sources of law does have a house of law or juridical legitimacy, but it does not have a position in the hierarchy of laws and regulations. Regarding Pancasila in the legislative hierarchy system, so far there has often been an unproductive view that Pancasila is unethical to be included in the hierarchy of laws and regulations because Pancasila is the basis of the state and has become a source of legal order.

However, if referring to Kelsen and Nawiasky's *stufenbautheory* which requires the hierarchical peak of norms to be the basic norm or *Grundnorm*/*Staatfundamentalnorn*, Pancasila as the basic norm should be at the top of the order of the norms.

The position of Pancasila as the top of the hierarchy of laws and regulations does not intend to reduce the existence of Pancasila as a view of life and the basis of the state, but as an effort to avoid deviations from laws and regulations. Pancasila as a source of legal order or the source of all legal sources in the Indonesian legal order

²⁴ Aidul Fitriadi, "The State of Indonesian Law: Decolonization and Reconstruction of Tradition", *Ius Quia Iustum Law Journal*, Vol. 19, No.4, October 2012, p. 491

has become something that means mere formalities. The facts have proven that so many laws and regulations have deviated from Pancasila. The cancellation of 139 regional regulations by the Minister of Home Affairs is evidence of irregularities against Pancasila in laws and regulations. Of course, these irregularities will still have the potential to be repeated if Pancasila is not included in the hierarchy of laws and regulations. Thus, Pancasila as a basic norm must be included in the hierarchy of laws and regulations so that it has binding force for all laws and regulations.

Making Pancasila a legal stream and occupying Pancasila as the top of the hierarchy of laws and regulations will strengthen the existence of Pancasila as the source of all legal sources in the national legal order. Thus, the face of the law that is pluralism or legal practice that often makes Pancasila a mere symbol has no place in the national legal system. Likewise, the attitude of resistance to Orba who has used the status of Pancasila as a source of legal order for the benefit of power and strengthening authoritarian government; will not continue to haunt the Indonesian nation. The author's optimism towards the practice of Pancasila as the source of all legal sources in the national legal system is coupled with the formation of Presidential Regulation Number 54 of 2017 concerning the Presidential Work Unit-Pancasila Ideology Development (UKP-PIP). It is hoped that with the Presidential Regulation, the enforcement of Pancasila will not only be in the order of daily life both in society, education and bureaucracy. However, it is also in the legal order so that the existence of Pancasila as the source of all legal sources is really applied in the national legal order.

CONCLUSION

The results of the study show that;

- a. Pancasila as the source of all sources of law is a fundamental norm as the basis for the formation of the constitution of the Republic of Indonesia, which must be reflected and animate the entire content of the law (Laws and Regulations).
- b. To be able to implement Pancasila as the source of all sources of law in the national legal system, two ways are sought, namely: *first*, making Pancasila a legal stream. *Second*, occupying Pancasila as the top in the hierarchy of laws and regulations. Thus, Pancasila is no longer just normative-semantic as the source of all legal sources but can really be applied in the national legal system.

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