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Is it Possible to Construct Pancasila within a Hierarchy of Legal Regulations?

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ABSTRACT

This study aims to provide an explanation regarding the existential issue of Pancasila. This issue focuses on whether Pancasila can be explicitly included in the hierarchy of legislation, so that the first level of legislation in Article 7 paragraph (1) of Law 12/2011 is Pancasila. Is it ontologically possible for Pancasila to be present in the hierarchy as part of legal norms (axioms/postulates that have undergone positivization)? To uncover this legal issue, normative research was conducted using philosophical, conceptual, and legislative approaches. The data used are secondary data, including primary, secondary, and tertiary legal materials. Data analysis will be presented descriptively and qualitatively through content analysis. The results of this study found that Pancasila exists as the basis of the state; it is a fundamental reality of values, grundvalues, and rechtsidee/staatfunamentalnorm, which inspires, provides purpose, and serves as a measure for the creation and validity of positive norms. Thus, Pancasila is not at the level of legal products, but at the level of the foundation of legal meaning; It is a foundation (foundation) and not the basis itself. Pancasila is not suitable to be positioned as a 'norm level' in the hierarchy because it is not part of a series of positive norms. The implications of including Pancasila in the legal hierarchy are (1) a change in the category of Pancasila from grundnorm/source to object of the hierarchy, (2) the potential for Pancasila to be changed, and (3) the need for an overhaul of the norm testing architecture.

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1. INTRODUCTION

Is it possible for Pancasila to be issued its status as a fundamental norm of the State/basic norm and put it in the hierarchy/ranks of other laws and regulations (PUU)? This condition will "force" Pancasila to become one of the entities placed in the ranks of PUU spread across the hierarchy, so that what used to be "values" becomes "norms". What used to be transcendent, became immanent. What used to be in the realm of idealism (ideas) has become materiality (matter). What used to be a presupposition, became an assumption, which used to be an idea, became an object. What used to be metaphysical, became empirical. which used to be abstract, became concrete.(Bahrum, 2013; Salminawati & Hasibuan, 2021) In other

words, Pancasila is made one of the "types" of PUU, which if follows this logic, then Pancasila is explicitly above the 1945 Constitution.

So far, Pancasila has been placed as a source of value in the formation of PUU. He became the guiding "compass" to form all PUU. Pancasila is the basis of the state as well as the nation's ideology which contains fundamental values as direction, spirit, and ethical standards in the formulation of policies and laws and regulations. In that framework, Pancasila is not merely understood as a historical "text", but as a Basic Norms which gives legitimacy and limits to the birth of every legal norm under it. Therefore, every legal product should ideally reflect, not contradict, and instead translate the values of Pancasila into an operational formulation.(Adhayanto, 2015; Prianto, 2024; Shaleh & Wisnaeni, 2019)

However, the position of Pancasila, which has been placed as a source of value, raises further questions. Is Pancasila sufficiently positioned as a *guiding principle*, or does it also need to be affirmed as part of the *normative hierarchy*? If Pancasila is placed in the hierarchy, it will appear as a certain level that can be used as a formal reference in the testing *(review)* of norms. On the other hand, if Pancasila is understood to be above or outside the formal hierarchy, then it functions as the basis for the entire legal building without having to be equated with certain types of regulations. This debate is important because it concerns the certainty of the position of Pancasila in the legal system, whether it is only a general moral-political parameter, or a juridical parameter that can be used more emphatically to assess the constitutionality and validity of a regulation. In other words, the discussion about placing Pancasila in the PUU hierarchy is not just a matter of the technical order, but a matter of how the state ensures that the basic values of Pancasila really work as a binding norm in the formation, implementation, and evaluation of laws and regulations.

In the Indonesian legal norm system, Pancasila is understood as *Fundamental norm of the state*, namely the main points of thought in Preamble to the 1945 Constitution which becomes Sources and foundations for the formation of all legal norms under it. Pancasila is also a *Legal idea* which points to the ideas, feelings, creations, and thoughts, not an ideal in the sense of will or hope. Because of this position, the five precepts of Pancasila Positive Acting as a Guiding Star which directs each process of filling in the material of laws and regulations, and in a manner Negative become Boundary signs so that the content of the regulation does not go out of the corridor of its basic value. In practice, these precepts, both standalone and interrelated, serve as Principles of general law to assess and guide the substance of the regulation. That is why in much academic literature and popular history, Pancasila is often referred to as State Ideology. However, a number of recent researches have tried to reconstruct its position by including Pancasila in the Hierarchy of laws and regulations, as if he had to appear as one of the norm levels.(Cornelius, 2021)

For example, Isnawati's research reconstructs the hierarchy by including Pancasila as the source of all legal sources at the highest position (as well as encouraging hierarchy to be contained in the constitution). According to him, Pancasila must be raised and placed on top of the 1945 Constitution.(Isnawati, 2020) In line with that, the findings from Suwandi recommend a reconstruction that includes Pancasila in its position as the source of all sources of law at the highest position in the hierarchy.(Suwandi, 2023) The non-inclusion of Pancasila in the PUU hierarchy has resulted in the emergence of disharmony between PUU. It is not surprising that there are laws and or regional regulations that have been canceled due to the problem of disharmony. For this reason, it is necessary in law to include Pancasila in the PUU.(Siregar & Muharam, 2022) Almost the same as the previous research, Bo'a expressly proposed sit Pancasila as the pinnacle of laws and regulations In order for Pancasila to have Binding power against all types of PUU.(Good, 2018) The series of research justifies that Pancasila must be placed/explicit into the PUU's hierarchy, so that Article 7 (1) of Law 12/2011 (hereinafter referred to as Law-P3) is reconstructed into Pancasila, 1945 Constitution, TAP MPR, UU/Perppu, Government Regulations, Presidential Regulations, Provincial Regulations, Regency/City Regulations.

However, this research is in a position to deny (contra) that Pancasila cannot be positioned or explicitly raised in the PUU hierarchy. Pancasila is not appropriate to be presented as one of the levels in the hierarchy of laws and regulations because it is not a tiered positive norm, but a basic value/legal ideal that is metanormative, becoming a source of orientation, legitimacy, and assessment measure for all

norms, so that its position is above and beyond the hierarchy, not in the hierarchy. Including Pancasila in the hierarchy of laws and regulations is a *category mistake.* Hierarchy is possible only if the stratified ones are in the same type of existence (fellow positive "entities" that are born of authority, procedures, and can be tested through norms above them). Meanwhile, Pancasila is at the ground *of being* for normativity. It works as a possible condition (transcendental condition) for why "law" can be meaningful and binding in the Indonesian political community, as well as a *causa finalis* (ultimate goal) that gives direction to all the formation and interpretation of norms. Therefore, Pancasila has an ontological priority over all positive norms (it *provides* orientation and legitimacy of the system), not just a "higher" priority in the order of stairs, so putting it *in* the hierarchy means lowering it from "based" to "based", whereas the entire hierarchy actually depends on Pancasila as the foundation of meaning and measure value.

The PUU hierarchy contains positive norms that are known and verified through formal-institutional criteria, while Pancasila is a horizon of meaning and epistemic principles that actually allows us to understand, assess, and give direction to positive norms (as a source of value, purpose, and measure of justice). Making Pancasila one level in the hierarchy means turning it into an object whose validity is tested by the same method as the Law/PP/Perda. In fact, Pancasila functions as a criterion of normative knowledge, a standard of justification used to assess whether a rule is materially valid and morally and constitutionally feasible. In other words, inserting Pancasila into the hierarchy mixes "justifying" with "justifying". Thus, Pancasila loses its position as a framework of knowledge that guides the formation and interpretation of law, and is reduced to a mere "supreme text" whose meaning is closed by legal-formal logic, rather than being opened as a source of orientation for the entire system of norms.

This research wants to explore whether the true nature of Pancasila (ontology), so that it is not suitable to be placed as something *(being)* that is equated with legal norms/PUU. PUU norms are *normative-positive entities* that "exist" because they are produced by authorized institutions through certain procedures, in the form of operational formulations, and their binding power works through sanctions and enforcement mechanisms. Meanwhile, Pancasila "exists" as the basis for state life, it is a reality of values that are fundamental *to the values* as well as *the rechtsidee* that animates, provides goals, and is a measure for the birth and validity of the content of positive norms. Thus, Pancasila is not at the level of a *product of* the legal system, but at the level of the foundation of the meaning of the legal system, it is "grounded" not "*grounded*". In line with that, this research wants to see how Pancasila is positioned in the framework of the formation of PUU and what are the implications if Pancasila is placed as part of the PUU order.

2. METHODS

This type of research is normative.(Marzuki, 2013) The approach used is philosophical, conceptual (*conceptual approach*) and laws and regulations (*statue approach*).(Christiani, 2016; Nurhayati et al., 2021) The normative aspect in the context of this research is that there is a contradiction between legal norms and legal principles/theories/legal philosophy. The legal norm in question is Article 7 paragraph (1) UUP-3. The article talks about the hierarchy of PUU. It's just that, related to Pancasila, what if Pancasila is placed as part of the PUU's hierarchy? What is actually the ontology of Pancasila, so it cannot be placed as part of the PUU order? Secondary data is the main starting point in this study. Thus, the data consists of primary, secondary, and tertiary legal materials are the same components. The way legal issues are discussed in this study is based on the method of the content analysis described.(Simarmata, 2008).

3. FINDINGS AND DISCUSSION

The Ontology of Pancasila

Ontology explores the most fundamental structures of reality, such as the difference between *Substance* and *Accident* (the essential and the intangible), between the material and the non-material, between the fixed and the changing, and the cause-effect relationships that make something "become"

what it is. Therefore, ontology also discusses categories such as identity, relationships, space-time, potential-actuality, and the meaning of existence itself. Within this framework, ontology does not just ask "what is X", but rather "how does X exist", "in what category of existence does X include", and "what are the deepest conditions that make X possible to exist and be understood", so ontology is often referred to as the study Basic Metaphysics which is the foundation for understanding reality, including when we examine abstract concepts such as values, norms, and goals.(Hofweber, 2005)

The field of conversation is very broad, covering everything that exists and may exist, it may also include knowledge and values. Then what exactly is that fact? Reality is reality, reality is "reality" or what we better understand as the actual reality, the actual condition of something, not a temporary or deceptive state, nor a changing state. For example, in essence a democratic government respects the opinion of the people, perhaps people have witnessed the government take arbitrary actions, not respecting the opinion of the people. That includes a temporary situation, not an essential one, which is essentially a democratic government. As another example, we see something, a mirage/ Is it real or not? Nope. The mirage is not a fact, or the fact of a mirage is that it does not exist.(Luthfiah & Salminawati, 2023)

Anton Bakker elaborates the ontological problem thoroughly and systematically into Eight Subjects, namely: (1) autonomy and correlation; (2) the properties of the compound; (3) the dynamics of production; (4) physical and spiritual; (5) activities and causes; (6) the meaning and value of the manufacturer; (7) procurement norms; and (8) absence. From the mapping, it appears that the issue of "Sourcing" is the main focus in Bakker's ontology. Terms Manufacturer used to designate everything that has the "Exist"**,** So that "maker" becomes a general term for the objects that are the target of the study Metaphysics**.**(Wikandaru et al., 2019) This mapping shows that Bakker's ontology does not stop at the classical question "what does it exist?", but expands it into a series of derivative questions: how does "exist" stand (autonomous) and at the same time relate (correlate), what are its basic characteristics, how does it change or develop, how does the relationship between the material and the spiritual, how actions and causes work, to how "exists" contains meaning, values, norms, and even how to understand "nothingness" as a limit or negation of "existing."(Øhrstrøm et al., 2005)

In various perspectives, the focus of ontology can shift. The realist perspective asserts that the world and its creators exist independently of the mind, idealism emphasizes the role of consciousness or ideas in shaping what we call "reality"; phenomenology directs ontology at the way in which the "existing" manifests itself in experience; existentialism highlights the concrete existence of human beings (freedom, choice, anxiety) as central to the question of existence; While materialism sees reality primarily as material processes and structures, and spiritualism emphasizes the spiritual dimension as a fundamental part of the existent. This difference in perspective makes ontology appear as a study of objects, experiences, people, social structures, or even the language we use to say "exist".(Barqah & Fauzi, 2023)

Indonesia and Pancasila are understood as a commitment and a view of living together in a new nation based on mutual cooperation, so that the country that is built is a country of mutual cooperation. Therefore, Godhood is understood openly and tolerantly (cultured), internationalism is manifested in humanity and justice without colonialism, nationality is cared for through unity in the plurality of Bhinneka Tunggal Ika, and democracy is carried out through consensus deliberation so as not to be dictated by a mere majority or a handful of elites. The precepts of welfare are also directed at participation and the family economy, not individualism-capitalism, but also do not curb personal freedom. In essence, the spirit of mutual cooperation makes residents deliberate to formulate an agreement that prioritizes common interests (Latuheru et al., 2020). Pancasila is not at the level of a product of the legal system, but at the level of the foundation of the meaning of the legal system: it is the "foundation" *(grounding)* not "that-based" *(grounded).*(Khalid, 2014; Shaleh & Wisnaeni, 2019; Sodikin, 2014)

If Pancasila is equated with PUU and placed in a hierarchy, there is an ontological error in the form of categorization, where something that is essentially a prerequisite and source of orientation for

the existence of norms (why law must be just, humane, and divine) is treated as one of the normative objects whose enforceability is determined by a formal order. Therefore, Pancasila is not suitable to be positioned as a norm level in the hierarchy, because it is not part of a series of *Being* positive norms, but rather the ontological basis that makes the entire system of norms possible and meaningful. Ontologically, the study of Pancasila as a philosophy is intended to reveal the basic essence contained in its precepts. Pancasila, which is composed of five precepts, is understood that each precept is not a principle that stands alone, but is interrelated and forms a unity based on the same ontological basis. In the practice of the nation and state, the values of Pancasila are believed to be Base values, the peak of the nation's culture, at the same time **National Soul and Personality**. Because of its very basic role in animating and giving the character of the Indonesian nation, it is natural that Pancasila is recognized for its position as Indonesian Philosophy.(Widisuseno, 2014)

From this side, it can be seen that Pancasila is not a material entity, but a normative-ideal value order about God, humans, society, and the state, which is rooted in the essence of Indonesian human beings as monopluralist beings, and is normized as the basis of the state and a source of value for the legal system and the life of the nation. Pancasila is a normative-ideal reality, a collection of claims about "what should be" for human beings, society, and the Indonesian state. So, he is not "what is", not a fact, but "should be". The "should" is a parameter of the "real thing". What is real is PUU, what should be causa *prima/prima fatie* of PUU.

Pancasila values cannot necessarily be applied technically in daily life, so in every context it needs to be made clearer through development and elaboration. The implementation of Pancasila is carried out by constantly dialogue with real problems that change, through rational reflection, until the practical meaning appears. Therefore, Pancasila values need to be developed within an open ideological framework so that its operational principles can be formulated. The development process is pursued through critical interpretation and reinterpretation, so that Pancasila remains alive, dynamic, and does not change into a rigid doctrine. So that the basic values of Pancasila are more functional in answering *Problem* and current challenges, it is necessary to pay attention to the typical dimensions of orientation, namely the teleological dimension (the goal to be achieved), ethical (the measure of good-bad), and integrative integral (the unifier and connecting of the various elements of national life). (Soeprapto, 2013)

Pancasila is placed as a basic premise that is accepted as a common starting point (*self-evident* in the context of the state), not a derivative result of other rules. It is the foundation of the perspective of humans, society, and the state, so that it serves to provide direction, legitimacy, and a framework of assessment for all the implementation of national life. In this axiomatic position, Pancasila mainly works as a philosophical basis and fundamental value, it is not yet "operational" like an article that rules/prohibits in detail, but becomes a benchmark for formulating state goals, assessing the pros and cons of policies, and interpreting laws.

Ontologically, Pancasila is also placed as a political conception. This can be understood as a set of moral values that give legitimacy and normative power for Pancasila to be positioned as the basis of the state. In this framework, Pancasila is not just a series of precepts, but a perspective that guides how power is exercised, how public decisions are made, and how the interests of citizens are regulated fairly. As a political conception, Pancasila also emphasizes that political relations have characteristics that distinguish them from other relationships (for example, economic, family, or friendship relations). Political relations are concerned with the management of power, rules that bind everyone, and common goals in the public sphere, therefore it demands special principles such as legitimacy, justice, deliberation, respect for human dignity, and orientation to the public interest. By differentiating the character of these political relations, Pancasila provides an ethical framework so that political practice is not just a matter of winning and losing, but a matter of moral and civilized governance (Wahyudi, 2006).

As a political conception, Pancasila does not negate or reject the existence of other values and understandings that live in various social spheres, both in religious organizations, campuses, NGOs,

families, and at the individual level. At the same time, positioning Pancasila as a political conception also does not mean that the political realm is completely separate from other social values, politics still intersects with a variety of beliefs and views that develop in society. The emphasis on the "political domain" is intended to assert that state institutions and structures can stand on the support of overlapping consensus. *(overlapping consensus)* from various political and social forces. This can be seen in Indonesia's experience when Pancasila was accepted as a meeting point *(common denominator)* which brings together various ideologies and schools of thought, so that it becomes a common basis that allows state life to continue to run in the midst of pluralism.(Wahyudi, 2006)

Pancasila is not first and foremost a "rule", but a claim about the existing structure and way of existence of Indonesian-humans. Pancasila works like a reality *map (worldview)* that says what is fundamentally recognized as "existing", how the relationship between "exists", and what purpose is inherent in living together. Pancasila recognizes that reality does not stop at the material/empirical. There is a transcendent dimension (Godhead), there is human dignity (humanity), there is political togetherness (unity and people), and there is a demand for telos justice (social justice). So "what exists" is always at the same time "meaningful/valuable", facts are not completely separated from value. The subject of Pancasila is not a "free individual", but an autonomous and correlated human being, a dignified person who has lived in relationships (family, society, nation) since the beginning.

Therefore, conflicts of interest are not considered the main foundation, the foundation is a connection that must be maintained through ethics and politics. The state does not "exist" only as an engine of power, it exists for a specific moral purpose of protecting human dignity, maintaining unity, exercising the sovereignty of the people through deliberation, and producing social justice. So the legitimacy of the state is teleological valid insofar as it leads to those goals. Therefore, Pancasila is more appropriately positioned as an "assessor/"standard of the validity of legal norms in the PUU". Pancasila is not an ordinary positive norm, Pancasila is more accurately read as *principles*/legal ideals that offer a horizon of interpretation and justification, not just *rule* which is subject to the amendment technique. (R. Dworkin, 1977; R. M. Dworkin, 1967). The following is presented the ontology of Pancasila.

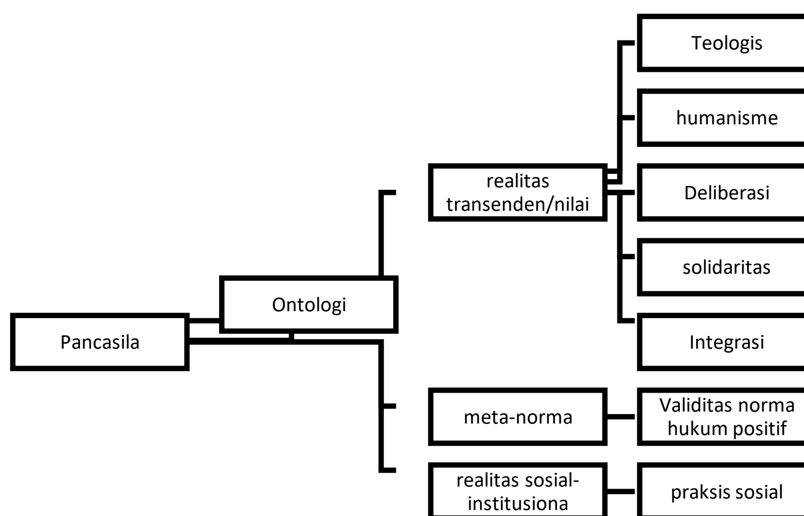

Figure 1. The Ontology of Pancasila

Pancasila: Position and Implications If Placed in the Hierarchy of Laws and Regulations

The PUU hierarchy has an important meaning considering that the law is valid if the law is formed or compiled by an authorized institution or official based on higher norms. Lower norms will not conflict with higher norms so that a tiered or hierarchical legal method is created.(Scott, 2018) The paradigm of why legal norms are tiered and hierarchical in nature starts from the thoughts of Merkl, Kelsen, and Nawiasky.

Merki sees that the legal norms above him are sourced and based on the norms above him, but downwards he also becomes the source and basis for the legal norms below him. This results in the condition that a legal norm depends on the legal norms that exist on it. If the legal norms that are above it are revoked or deleted, basically the legal norms that are below it will be revoked and erased as well. Therefore, theoretically, legal norms are called double-faced (two-faced).(Sikumbang et al., 2019) It was the theoretical foundation that sparked Kelsen to construct his opinion. According to Kelsen, legal norms are tiered and layered in a hierarchy. In other words, the lower norm applies, is sourced and based on a higher norm, the higher norm applies and is sourced from an even higher norm and so on until a norm that cannot be traced further and is hypothetical and fictitious, namely the Basic Norm *(groundnorm)*.(Atmaja et al., 2018; Kalyvas, 2006; Kelsen, 1974; Prianto, 2024)

In addition to Kelsen, Nawiasky also issued a theory about the level of norms in the country which is divided into the following groups. Group I (Staatsfundamnetalnorm or fundamental norms of the state), Group II (Staatsgrundgesetz or the basic rules of the state or the principal rules of the state), Group III (Formell Gesetz or formal laws), Group IV (Verordnung & Autonome Satzung or implementing rules and autonomous rules). It can be seen that there are several things that distinguish the theory of the level of norms according to Hans Kelsen and Hans Nawiasky, including: 1) Hans Kelsen's theory applies to all kinds of norms, while Hans Nawiasky focuses more on the legal norms of the state. 2) The highest norm according to Hans Kelsen is the grundnorm that can never change, while the highest norm according to Hans Nawiasky is the Staatsfundamentalnorm which can change according to the conditions and situation of the country in question. 3) Hans Kelsen only divides norms into levels, while Hans Nawiasky also does these norms, not only dividing them into levels, but grouping them into various categories.

Legal norms are also divided based on several indicators. When viewed from the intended subject, legal norms consist of general legal norms and special legal norms. General law norms are legal norms intended for many and indefinite people. This has the consequence that everyone must apply the legal norm without exception, whereas the individual legal norm is the legal norm that is addressed or addressed to a person, several people, or many predetermined people. Usually, in the legal norms, it has been stated who the subjects are the target. When viewed from what is regulated or its actions, legal norms are divided into abstract legal norms and concrete legal norms. Abstract legal norms are legal norms that look at a person's actions that have no limits in the sense that they are not concrete, while concrete legal norms are legal norms that look at someone's actions in a more tangible (concrete) way.(Sikumbang et al., 2019; Suprapto, 1998, 2020)

Theoretically, the PUU hierarchy is formed from a legal system, where this system is arranged in stages/tiers/layers similar to steps. The relationship between norms that affect the actions or actions of other norms is called super-subordination relations in the spatial context. In other words, the norm that determines an act against another norm is called a superior norm. Meanwhile, the norm that is controlled or the norm that performs the act is called an inferior norm. That is why the superior norm is the justification or basis for the validity of the entire legal system that forms a unit.(Trinanda et al., 2022) In legal principles, it is known as *Superior law repealed by the lower law*.(Hiariej, 2021) The consequence of building the legal pyramid is the harmonization between various layers of law (for example, at the level of law), in the sense that legal norms in the same layer/level should not contradict each other.(Lailam, 2016)

The validity (validity) of a higher norm is determined by another higher norm. The highest norm in the hierarchy is called the basic norm, where the validity of this highest norm is no longer questioned because it is presupposed. This situation illustrates that norms are arranged in stages in an order. Lower norms get the basis of validity from the higher norm formally, namely in terms of the procedure of its creation, not from its content.(Chandra et al., 2022) In this context, the PUU contains *general and abstract norms* which is contained in formal form, while *gerund norms* It is included in the formulation of the meaning of the constitution in a material sense. The Constitution in this material sense is referred to as

the first constitution Preceding *the (second) constitution* or the constitution in its formal form. (Amin et al., 2023)

In the context of Indonesia, historically, the order/hierarchy of PUU has been regulated by various regulations. *First*, the PUU system according to TAP No. XX/MPRS/1966 is (hierarchically): the 1945 Constitution, the TAP MPR, THE LAW, including PERPU, PERPEM, KEPPRES, implementing regulations such as Ministerial Regulations, Ministerial Instructions and others.(Tambunan, 2007) *Second*, according to MPR Decree Number III/MPR/2000, the order of the PUU is the 1945 Constitution, the Decree of the People's Consultative Assembly of the Republic of Indonesia, Laws, Government Regulations in Lieu of Laws (Perpu), Government Regulations, Presidential Decrees, and Regional Regulations.(Sati, 2020) *Third*, in the construction of Law No. 10/2004, the order/hierarchy of PUU is the 1945 Constitution, Government Laws/Regulations in lieu of Laws, Government Regulations, Presidential Regulations, and Regional Regulations. *Fourth*, according to UUP-3, the hierarchy of the PUU is the 1945 Constitution, TAP MPR, UU/Perppu, Government Regulations, Presidential Regulations, Provincial Regulations, Regency/City Regulations.

So, what is the position of Pancasila in the framework of Law-P3? Within the framework of Law P3 (Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, as amended, among others, through Law No. 15 of 2019 and Law No. 13 of 2022), the position of Pancasila is affirmed as a fundamental norm. "Pancasila is the source of all sources of state law".(Sulaiman, 2016) This means that Pancasila is above and animates the entire system of regulation formation, not as one of the "types of regulations" in the hierarchy, but as a source of value/direction for all legal norms. Furthermore, Law-P3 places the 1945 Constitution as the "basic law" in laws and regulations, and the formal hierarchy of regulations begins with the 1945 Constitution. Consequently, Pancasila works as a source of material law (providing content and orientation), while the 1945 Constitution is the highest juridical reference in the composition of positive norms. At the operational level of law formation, Law-P3 locks in that the content material of each regulation reflects principles that are in line with Pancasila values (e.g. protection, humanity, nationality, family, diversity, justice, etc.). In fact, the explanation of Law-P3 emphasizes that laws and regulations must not contradict the values in Pancasila.

Regarding the position of Pancasila as the highest source of positive law in Indonesia, Pancasila can be seen in two main positions, namely as a legal ideal *(Legal idea)* and as a fundamental norm of the state. The placement of Pancasila as a *Legal idea* refers to the General Explanation of the 1945 Constitution (which was no longer included after the amendment of the 1945 Constitution), which affirms that Pancasila is a legal ideal that animates and controls the basic law of the state, both written and unwritten basic laws.(Susanti & Efendi, 2021)

The preamble to the 1945 Constitution is generally understood as the staatsfundamentalnorm (fundamental norms of the state), while the body (articles) is understood as the staatsgrundgesetz (the basic rules of the state). With the position as a basic norm, the Preamble to the 1945 Constitution is seen as having a more important position than the articles of the 1945 Constitution, because the Preamble contains the main points of thought which are essentially Pancasila or the soul of Pancasila as a *general acceptance of the same philosophy of government.*(Lailam, 2016)

The ideal of law can be understood as a basic idea that demands that the law be directed to the goals and ideals desired by society. It serves as a guiding "lantern" for efforts to realize these ideals. The presence of the legal mind is important because it has two roles. *First*, becomes a benchmark to assess and test whether positive law is just or not. *Second*, is a direction for the formation and application of positive laws in order to move towards justice, including through the coercion of sanctions. Thus, the legal ideal not only functions as a reference point for evaluation, but is also constitutive. Without the intention of law, law loses its meaning and identity as law. When Pancasila is placed as a legal ideal, the five precepts have a double implication, namely positively becoming a guideline that gives direction and content to every regulation formed by an authorized institution, and negatively becoming a limit so that the regulatory material does not deviate. Therefore, the content of laws and regulations must

rest on general legal principles that are derived from the precepts of Pancasila, whether used individually or as a whole.(Susanti & Efendi, 2021)

Pancasila as the fundamental norm of the state is understood as the highest norm, so that its existence is not derived or formed by other higher norms. He had been "assumed in advance" *(pre-supposed)* and it is precisely the foundation on which the legal norms under it rest. (Paulson, 2000). The validity of norms culminates in *Basic standard*.(Harris, 1971) Like Pancasila which is conceptualized as a basic norm that is presupposed, not "made" through ordinary procedures.

In this sense, Pancasila is accepted as a basic hypothesis that is "installed" to allow the entire legal building to function as a methodological fiction as well as an axiom that becomes the foundation without the need to constantly question it at the same level.(Kelsen, 1974; Olechowski, 2018; Susanti & Efendi, 2021) Therefore, the formation of the substance of national law by exploring the values of Pancasila as a *Fundamental norm of the state* reflects the awareness that Indonesia stands on a plurality of cultures, cultures, ethnicities, religions, and social lives that are formed through a long process, not something that appears instantly. This awareness is a positive first step, because diversity is a national identity that deserves to be cared for and proud of in the spirit of Bhinneka Tunggal Ika.(Sagala et al., 2025)

In the Constitutional Court Decision No. 82/PUU-XVI/2018, it is emphasized that the regulation of the formation of laws and regulations is not new. Prior to the enactment of Law 12/2011, guidelines regarding the hierarchy of laws and regulations were regulated through the MPRS Decree No. XX/MPRS/1966 concerning the DPR-GR memorandum regarding the source of legal order and the order of laws and regulations. This provision was later revoked by the MPR TAP No. III/MPR/2000 concerning Legal Sources and the Order of Laws and Regulations. Furthermore, the MPR TAP No. III/MPR/2000 was declared invalid based on the MPR TAP No. I/MPR/2003 regarding the review of the material and legal status of the MPR/MPR TAP in 1960–2002. After that, the provisions of the order of laws and regulations refer to Law No. 10 of 2004, which was later repealed and replaced by Law No. 12 of 2011. This series of regulations consistently emphasizes that Pancasila is not placed in the hierarchy of laws and regulations, but is positioned as the source of all legal sources.(Eddyono, 2019)

Pancasila is referred to as the source of all sources of law because it is understood as *Basic standard*, which is the "initial premise" where all the norma buildings depart. Because of its position as a presumed basis, its validity is doctrinally accepted: it applies precisely because it was assumed to be valid from the outset *(it is valid because it is presupposed to be valid)*. In this sense, Pancasila is not placed as part of positive law at the same level as laws and regulations, because its position goes beyond positive legal systems (transcendental-logical). However, the values contained in Pancasila determine whether or not all positive legal systems are valid. This means that all laws and regulations as referred to in Law 12/2011 must be sourced and in line with the values of Pancasila. This view is also in line with the idea of the nation's founders who want every law and regulation to contain and actualize the values of Pancasila. (Eddyono, 2019)

Pancasila as the source of all sources of law should not be understood as if it is equivalent to laws and regulations in the hierarchy. Pancasila is not a type of laws and regulations. Therefore, the provisions of Article 7 paragraph (1) of Law 12/2011 which regulates the types of laws and regulations are not intended to include Pancasila in the list of hierarchies. Thus, the "type of legislation and regulation" referred to in Law 12/2011 is limited to laws and laws and regulations under the law (in line with the scope regulation in Law 12/2011, including references to initial provisions such as Article 4). This means that Pancasila is at the normative-fundamental level as a source of value and legitimacy, while the hierarchy of Article 7 paragraph (1) regulates positive legal products formed in the regulatory order.

Placing Pancasila as the basis of the state into the hierarchy of laws and regulations, even though it is placed on top of the 1945 Constitution, actually has the potential to damage the legal order. This is because the placement will equate Pancasila with positive legal norms that can be changed in principle, thus opening up the possibility of Pancasila being treated like a regulation that can be amended. In fact,

Pancasila should be understood as a fundamental norm that becomes a permanent basis for all legal buildings, not an object of change in the legislative mechanism. (Eddyono, 2019)

The view that places Pancasila as the source of all sources of law is basically more the will of the jurist community, not the will of the initiators of Pancasila. This paradox contains "truth" as a political achievement, i.e. an attempt to make something considered right, or in the sense of a will towards the truth. Therefore, the will of jurists to justify choices and actions through the process of formation to law enforcement, by formulating normative statements in a concept, should be understood as partial truth, not total truth.(Shirley, 2024)

If this Pancasila is placed as a part/explicit appearing in the PUU hierarchy, what is its implication? In other words, what if Article 7 paragraph (1) of the P3 Law in the first order is explicitly placed in Pancasila? *First*, if this is done, then there will be a change in the category of Pancasila, namely from "*grundnorm* / source" to "hierarchical object (type of PUU)". Article 7 paragraph (1) talks about the types of regulations. Once Pancasila is included, Pancasila will be "readable" as one of the laws and regulations even though the scope of this law states that the regulations it regulates "include laws and regulations under them". *Second*, the issue *of amendability* (the potential for "Pancasila to be changed"). Norms that enter the PUU hierarchy usually have a mechanism for formation-change. If Pancasila becomes a "hierarchical item", the question will arise, who has the authority to change it and with what procedure? If it is not regulated, the system becomes uneven, if regulated, it actually opens the door to politicization, Pancasila is treated like a positive norm that can theoretically be amended, thus shifting Pancasila from *a pre-supposed* foundation to a *posited norm.*

Third, the norm testing architecture must be overhauled. Currently, Law-P3 affirms the testing of the Law against the 1945 Constitution by the Constitutional Court and the testing of regulations under the Law against the Law by the Supreme Court. If Pancasila becomes the top of the hierarchy, logically there will be demands for direct tests against Pancasila (Law vs Pancasila, maybe even Constitution vs Pancasila). That means the authority of the Constitutional Court/Supreme Court needs to be expanded/changed or there will be a "highest norm" without a clear enforcement mechanism *(dead letter). Fourth,* the potential for uncertainty because Pancasila is an abstract norm Pancasila is very rich in value, but not always operational. If it is used as the highest formal "touchstone", there is a risk that the practice of decision/assessment "contrary to Pancasila" can become very interpretive, prone to political tug-of-war, and can add to the uncertainty of regulatory harmonization.

Putting Pancasila explicitly in Article 7(1) is not just "strengthening", but changing the design of theories and institutional designs (the definition of the PUU, the mechanism for change, and the judicial review regime). If it is not accompanied by a comprehensive change, the result tends to add to the problem: Pancasila becomes seen as an ordinary positive norm even though it is intended as a basis that goes beyond hierarchy.

4. CONCLUSION

The results of this research found that Pancasila exists as a basis for the life of the state, it is a reality of fundamental values, *grundvalues* as well as *rechtsidee/staatfunamentalnorm*, which animates, provides a purpose, and is a measure for the birth and validity of the content of positive norms. Thus, Pancasila is not at the level of a product of the legal system, but at the level of the foundation of the meaning of the legal system, it is the *grounding,* not the grounding. Pancasila is not suitable to be positioned as a "norm level" in the hierarchy, because it is not part of a series *of* positive norms. The implication if Pancasila exists in the hierarchy of laws and regulations is that (1) there is a change in the category of Pancasila, namely from a grundnorm/source to a hierarchical object, (2) the potential of Pancasila can be changed, (3) the architecture of testing norms must be overhauled. It does not explicitly place Pancasila as the first order in Article 7 paragraph (1) of Law-P3, because the Article regulates the type and hierarchy of laws and regulations so that it risks equating Pancasila with positive norms whose logic can be treated as an object of change and demands the design of a new norm test, more appropriately maintaining its position as a "source of all sources of state law", while strengthening its

operationalization through the obligation of "Pancasila check" in academic texts/harmonization and evaluation so that each regulation is truly in harmony with the values of Pancasila.

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