

## The Ideology of Law: Its Reflection in the Legal Products of Indonesia

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### ABSTRACT

**Keywords:**  
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*Law reflects the ideology adopted by a country. Therefore, this means Pancasila, as the ideology of Indonesia, needs to be accommodated in every legislation in the country. However, the formation of laws in line with the guiding principles of the country is influenced and developed from the understanding of the practices in other countries. This study aimed to analyze the position of Pancasila as the source of all laws and a basic state norm reflected in every legal product in Indonesia through the use of normative juridical research and conceptual approaches. The results showed the philosophical understanding of Pancasila as the origin of all legal elements means it is conceptualized as a law-forming institution in the search and justification dimensions. This was associated with its inherent values serving as the foundation for constitutive and regulative elements in the Indonesian legal system.*

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### 1. INTRODUCTION

From the 17<sup>th</sup> to the beginning of the 21<sup>st</sup> century, ten global ideologies were developed in Indonesia and they include liberalism, conservatism, democratic socialism, communism, anarchism, nationalism, fascism, feminism, ecologism, and Islamic fundamentalism among several other developments<sup>1</sup>. Despite the absence of Pancasila (the Five Principles) among these popular ideologies, it was developed against Western

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<sup>1</sup> F. Budi Hardiman, "Ideologi Sebagai Pemikiran Politis," *Diskursus Filsafat Dan Teologi* 2, no. 1 (2003): 158–87.

Liberalism, Fascism/Nazism/Tenno Heikaiism, Marxism/Communism, and Capitalism<sup>2</sup>, moreover, the constitutional system of the country is established on its noble values.<sup>3</sup>

Law reflects the ideology adopted by a country and this is mostly observed in the ideas or values contained in the legal products. In its ideal position, Pancasila is projected to be the ideology influencing the content of existing laws and regulations in Indonesia.

Etymologically, ideology deals with the study of ideas or thoughts. The concept was explained by Stuart Hall as a framework of thought - language, concepts, categories, imagery, and systems of representation - used by various classes and social groups to understand, find out, and understand the workings of society<sup>4</sup>. In this context, ideology is used in the management of a nation or state.

In the reformation era, the power of the Pancasila as the foundation, glue, and pillars supporting the country was questioned by many parties and several fundamental issues were raised in different fields. In the field of law, numerous legal products were made without a vertical foothold in this ideology and some national laws formulated were not according to its principles.<sup>5</sup>

The official website of the Constitutional Court shows 1,272 cases concerning the judicial review of legislations from 2003 to June 2019 and, out of these, 1,258 have been decided with 261 requests granted and 442 rejected. This shows that there is a discrepancy in interpreting the legal basis and the ideals of the country's law or, even, there is a different understanding of the meaning of Pancasila as the basis of the state and source of all laws in the country.

Article 2 of Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning Formation of Laws and Regulations shows Pancasila is the source of laws in the country. However, most of the academic materials used in teaching law at the undergraduate level have failed to comprehensively explain the concept. This is one of the implications of the unclear and incomplete philosophical understanding of “the source of all sources of law” itself.

The development of the reform period authorized both the House of Representatives as the Legislative Institution and the President as the Executive to formulate legislation. Therefore, this means the laws and regulations formulated are a manifestation of the interaction and competition among several political interests. It also shows the rule of law is established as a contest of political power causing non-reflection

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<sup>2</sup> Petrus C.K.L Bello, *Ideologi Hukum (Refleksi Filsafat Atas Ideologi Di Balik Hukum)*, 1st ed. (Bogor: Insan Merdeka, 2013).

<sup>3</sup> Agna Susila and Suharso Suharso, “Eradication Development of Corruption and Neoliberalism in the Current Era,” *Varia Justicia* 14, no. 2 (2018): 94–100, <https://doi.org/10.31603/variajusticia.v14i2.2418>.

<sup>4</sup> Teun A. van Dijk, *Ideology: A Multidisciplinary Approach* (London: SAGE Publication, 1998), <https://doi.org/http://dx.doi.org/10.4135/9781446217856>.

<sup>5</sup> Absori, *Politik Pembangunan Hukum Sumber Daya Alam Bersendikan Cita Hukum Pancasila*, ed. Hilman Syahrul Haq, 1st ed. (Surakarta: Pustaka Iltizam, 2016).

of elements of justice, truth, and morality in these laws and ineffectiveness in their application.<sup>6</sup> Moreover, the inability of the House of Representatives to use Pancasila as their source in the formulation of laws has been associated with some members' lack of background in the ideology, its non-application in their politics, and deliberate neglect of the ideology because of politics.

The law is described as normative texts arranged in different recognized technical and distinctive linguistics signs. It, however, contains messages to satisfy the interests of lobbyists more than the general public. Moreover, these statutory texts with their dominant position in the national legal system are interpreted according to the positivist doctrines in the semantic judicial bodies to alienate the general public craving for more substantive interpretations from all forms of legal empowerment processes.<sup>7</sup>

The critical point of the formation of law to be in line with the principles of the rule of law in Indonesia is on the influence and development of the provisions of other countries as well as the views of academics strongly influenced by those solely from other countries or the concept of law which tends to lead to legal degeneration. This statement means as caution and carefulness so that laws made are under the conditions of Indonesia and the ideals of the Indonesian state of the law by maintaining Pancasila as the source of all sources of law.<sup>8</sup>

It's can be seen in several natural resource laws, which have been overturned by the Constitutional Court because they are deemed incompatible with the 1945 Constitution of the Republic of Indonesia, and are considered to be liberal laws. Government Policies often favor foreign investors, both economic policies, oil and gas mining, trade, and maritime affairs.

The law contains idealized legal norms required to manage the affairs of a community and State due to the belief the laws are the reflection of the noble and philosophical values and ideals of a society. Moreover, the implementation of relevant laws is expected to reflect the philosophical ideals embraced by the nation's community in reality.<sup>9</sup>

The aspirations of the people to achieve certain goals in line with the foundational principles of the State has led to the need for a national platform and political framework. This was the basis for Indonesia's national legal system including all necessary interdependent elements such as content, structure, culture, facilities, laws, and

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<sup>6</sup> Taufiqurrohman Syahuri, *Hukum Konstitusi Proses Dan Prosedur Perubahan UUD Di Indonesia 1945-2002 Serta Perbandingannya Dengan Konstitusi Negara Lain Di Dunia* (Jakarta: Ghalia Indonesia, 2004).

<sup>7</sup> Cass R Sunstein, *Legal Reasoning and Political Conflict* (New York: Oxford University Press, 1996).

<sup>8</sup> Kaelan, "Fungsi Pancasila Sebagai Paradigma Ilmu Hukum Dalam Penegakan Konstitusionalitas Indonesia," in *Sarasehan Nasional Implementasi Pancasila Dalam Menegakkan Konstitusionalitas Indonesia* (Yogyakarta: Mahkamah Kontitusi dan Universitas Gajah Mada Yogyakarta, 2011), 228.

<sup>9</sup> Jimly Asshiddiqie, *Perihal Undang-Undang*, 1st ed. (Jakarta: Rajawali Pers, 2010).

regulations, and all sub-elements sourced from the Preamble and Articles of the 1945 Constitution and applied throughout the country.<sup>10</sup> Based on this background, this study examined the position of Pancasila and the basic norms of the country, which are reflected in every legal product in Indonesia.

## 2. RESEARCH METHOD

Both normative juridical and conceptual approaches were used to explore the concepts of accommodating ideology in legal products. The normative juridical technique focused on the study of the administration of justice and the values contained in the rule of law to determine the position of Pancasila as a source of all sources of law and basic norms reflected in every legal product in Indonesia. This research therefore reviewed library data and the harmony between the legal philosophy and reasons of different experts was examined. Subsequently, a set of fundamental thoughts was established to determine the right concept to answer the problems observed in this paper.

## 3. RESULTS AND DISCUSSION

### 3.1. *Pancasila as a Source of State Law*

Ideology is an essential means of uniting all the changes required to develop a country. It aids the unification of diverse tribes and cultures and integrates the development and needs of each region. In Indonesia, this function has been discovered to be performed by Pancasila.

Ideology refers to the networks or systems of interrelated beliefs, values, and opinions held by individuals or groups. It generally contains assumptions on how the social and political world is and how it should be.<sup>11</sup> Ideology has been used both in the sense of neutral or free values to refer to almost all abstract symbolic meaning systems as well as in a more critical sense to focus on a system of beliefs or ideas. It is this particular reality and social interest which was formulated in the Preamble of the 1945 Constitution of Indonesia during the preparation for independence.

According to Anderson, an important element in the formation of a nation is the feeling of the “nationhood” which has been understood to be the conception of ideological nationalism. This scholar further stated that the root of the content of nationalism was in the past and depends linearly on the place and time.<sup>12</sup>

Since Indonesia's independence, there has been an agreement to make the Preamble of the 1945 Constitution to be the final noble agreement (*modus vivendi*)

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<sup>10</sup> Mohammad Mahfud M.D, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Raja Grafindo Persada, 2006).

<sup>11</sup> R Jost, J. T. and Andrews, “Ideology,” in *Encyclopedia of Peace Psychology*, ed. D. J. Christie, 2011, <https://doi.org/https://doi.org/10.1002/9780470672532.wbepp134>.

<sup>12</sup> Christophe Jaffrelot, “For A Theory of Nationalism,” *Centre d'études et de Recherches Internationales, Sciences Po*, 2014, 1.

containing the foundational values of Pancasila. Therefore, means the constitutionality of the country is expected to be founded on the values of Pancasila.

This conditions occurs because the unique pattern of the Indonesian people that distinguishes them from others is that it founded on this principle. However, even though some of the precepts of the ideology are universal and shared by other nations of the world, the fifth requesting for social justice specifically characterizes the nation.<sup>13</sup>

The concept of Pancasila, in essence, is understood from two different perspectives and the first involves its role as a way of life for the inhabitants and the second as the State Base in accordance with Article 1 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVIII/MPR/1998. Therefore, this means all the legal products made and enforced are aimed at realizing the ideas contained in the ideology.

Every rule of law reflects a value and this is also inherent in the legal system. However, it is possible to divide this value system into base and goal.<sup>14</sup> Therefore, understanding legal or political products requires assessing the pattern through which values/contained in regulations were internalized based on ideas, thoughts, ideals, and goals existing in the Pancasila.

The philosophical understanding of this ideology can be observed from two perspectives. The first is from the position of an identifying source (*kenbron van het recht*) while the second is being the origin of the source required to form the rule of law or legal norms (*Welbron van het recht*). Moreover, Welbron has been discovered to be the origin of values used in the establishment of positive law or legislation. This, therefore, means Pancasila is a source of values which were further used in formulating legal norms. There is, however, a difference between kenbron which are legal sources required to know or recognize something (*kennen*) and welbron, which are the actual legal sources.<sup>15</sup>

The values contained in the ideology include divinity, humanity, unity, deliberation, and justice. From the procedural perspective, these are fixed and uninterchangeable as stated in the Preamble of the 1945 Constitution.<sup>16</sup>

From the constitutional context, the ideology has been established as the source of all sources of law. It permeates every substance and level of existing regulations

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<sup>13</sup> Joyokusumo, "Pancasila Sebagai Pandangan Hidup Dan Dasar Negara Serta Dalam Pergaulan Antar Bangsa," in *Seminar Nasional Eksistensi Pancasila Dalam Era Pluralisme* (Yogyakarta: Fakultas Hukum Atma Jaya, 2009), 5.

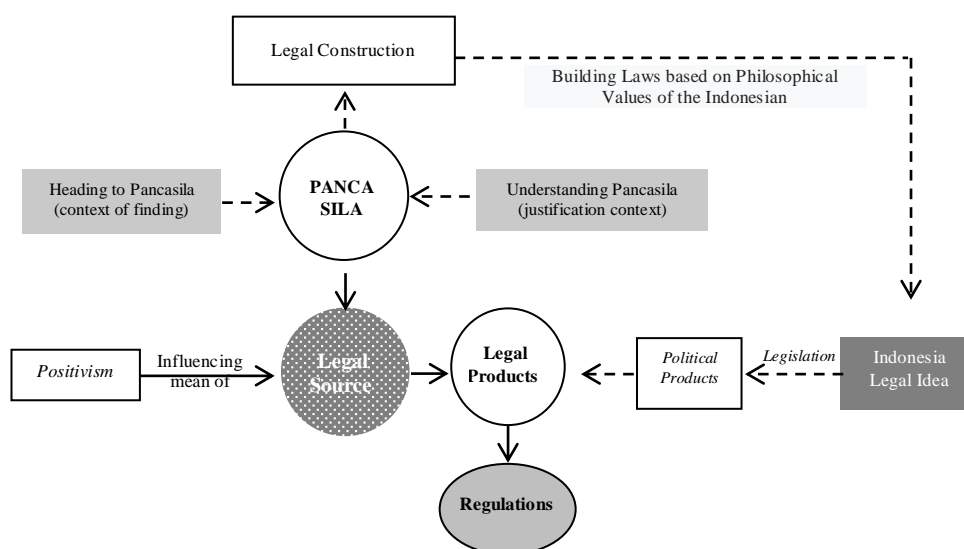
<sup>14</sup> B. Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum-Sebuah Penelitian Tentang Fundasi Kefilsafatan Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia* (Bandung: Mandar Maju, 2000).

<sup>15</sup> Dardji and Shidarta Darmodiharjo, *Pokok-Pokok Filsafat Hukum Apa Dan Bagaimana Filsafat Hukum Indonesia*, 4th ed. (Jakarta: Gramedia Pustaka Utama, 2006).

<sup>16</sup> Notonagoro, *Pancasila Dasar Filsafat Negara Republik Indonesia* (Jakarta: Pantjuran Tudjuh, 1974).

starting from the highest to the lowest, from the national law to the Village Regulations. Moreover, the public policy of every political product is required to be guided primarily by the fourth principle of Pancasila which means it needs to be deliberated wisely and thoughtfully and always attached to the sense of community justice. It is also expected to have its foundation in the values/contained in society to become familiar and implementable.<sup>17</sup>

### Legal Source Concept Framework of Pancasila



### 3.2. Grundnorm and Reflection of Ideology

*Grundnorm*, according to Stufenbau theory, is one popular theory in the legal system explained by Hans Kelsen to be the foundation of the norm system. This concept is important because a norm obtains its validity from the basics to form an order.<sup>18</sup> This further explained legal norms to be tiered and multi-layered in a hierarchy, where a lower norm is founded on higher ones. This, therefore, means the basic norms are hypothetical, fictitious and impossible to trace further (*Grundnorm*).<sup>19</sup>

*Grundnorm* is a value system which is further divided into basic/and objective parts. The basic value is used by policymakers as the basis and reference to achieve or fight for something and this limits its implementation. Meanwhile, an objective value means something expected to and worthy of fighting for. This system has an important role in the formation of law and has been integrated into several legal principles and

<sup>17</sup> Jonedi Manalu, "Dialog Publik: Pancasila Dalam Pembuatan Kebijakan Publik," 2015.

<sup>18</sup> Hans Kelsen, *General Theory of Law and State (Teori Umum Tentang Hukum Dan Negara)*, ed. Raisul Muttaqie (Bandung: Nusa Media, 2016).

<sup>19</sup> Hans Kelsen, *General Theory of Law and State*, ed. Anders Wedberg (New York: Russell & Russell, 1949).

norms which, as a whole, embody the legal system.<sup>20</sup> Satjipto Rahardjo believed *grundnorm* should be considered in every law because it is assumed to be the mother of all legal regulations and the reason people must obey the law and implement legal responsibility. It is further explained as a value projected in the rule of law to achieve justice, usefulness, and certainty.<sup>21</sup> It also serves as a source or dimension of justification of legal norms.

At present, in relation to law, there is always a general tendency Pancasila is placed as the highest part of the legal pyramid. It is a “guiding star” or “*leitstern*” with layers of material containing the legal substance serving as the skeleton of its legal structure and the living environment of its legal culture.<sup>22</sup>

Every country needs a philosophical foundation for the life of its nation and state to establish its vision, mission, and objectives. Therefore, the ideology is the national guidance and standards, norms and principles containing human rights and responsibilities, and also used as a margin of appreciation.<sup>23</sup>

Pancasila is also interpreted as an orientation for the present formation and a rational basis for assumptions of the future of the state and nation. It is implemented because it is contained in the Fourth Alenia and also serve as the mysticism of the Preamble. Moreover, as the foundation of all laws, it serves as the national legal ideal containing a general guideline and measure for the contents of law in the society towards ensuring legal empowerment and development.

The Indonesian law is based on the provisions of the ideology and this has made its values/become the source and benchmark to run the country’s constitutional system. It positively contains the norms specifying the content of laws and regulations in the country needs to be developed based on these values.

The consideration of basic norms as being valid, a legal system based on them is also clearly has validity.<sup>24</sup> Therefore, the Pancasila as *philosophische grondslag* needs to be operationalized in the life of the nation and state and this constitutionally requires the following. **First**, conformity to the ideals of the Proclamation of Independence made on August 17, 1945, and its values, it means every decision taken in the administration of the state by the government must be in accordance with the ideals of independence and values in the Pancasila. **Second**, philosophical requirements related to consistency

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<sup>20</sup> Bahder Johan Nasution, “Kajian Filosofis Tentang Hukum Dan Keadilan Dari Pemikiran Klasik Sampai Pemikiran Modern,” *Al-Ihkam Jurnal Hukum Dan Pranata Sosial* 11, no. 2 (2016): 25.

<sup>21</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Alumni, 1982).

<sup>22</sup> Anthon F. Susanto, “Menggugat Fondasi Filsafat Ilmu Hukum Indonesia,” in *Butir-Butir Pemikiran Dalam Hukum: Memperingati 70 Tahun Prof. Dr. B. Arief Sidharta, SH.* (Bandung: Refika Aditama, 2011), 22.

<sup>23</sup> Muladi, “Pancasila Sebagai Dasar Pengembangan Ilmu Hukum Indonesia,” in *Seminar Nasional Dalam Rangka Dies Natalis Ke40 Universitas Pancasila* (Jakarta, 2006), 11–12.

<sup>24</sup> Hans Kelsen, *Introduction to the Problems of Legal Theory (Pengantar Teori Hukum)*, ed. Siwi Purwandari (Bandung: Nusa Media, 2010).

between each law and the guiding principles of those existing in the ideology. **Third**, a legal requirement requiring each law to synchronize with other regulations, both vertically and horizontally. **Fourth**, the sociological requirement for each law to be in accordance with the needs and aspirations of the people for the implementation of a prosperous, just, and democratic state law that can protect all Indonesian people.<sup>25</sup>

The protection was implemented to realize orderliness and regularity towards ensuring predictability, peacefulness, justice, social welfare, and to foster divine and noble morals. This means the government is expected to focus on the interests of the people, nation, and state and set aside personal or group interests.

Not all the values/contained in the constitution are statutory norms, some such as those included in the *staatsfundamentalnorm* are only the spirit of the constitution while the norms inherent in the articles are categorized as abstract. Therefore, in relation to the constitutional system of Indonesia, there is a difference between the Preamble and Articles of the 1945 Constitution.<sup>26</sup>

There is a need for the right design of legal development to achieve a proper formulation of law. This involves an adequate understanding of the characteristics of the object of development to be built which is mostly limited by different views on the scope of legal science and the magnitude of the influence of the development of science on the law.<sup>27</sup>

It is impossible to separate the orientation of Indonesian law from the national outlook on life. This means “ideals” implies ideas, feeling, wish, creativity, and thoughts to be realized. In this regard, understanding of the ideals of the law in the country needs to be based on Pancasila and the 1945 Constitution of the Republic of Indonesia by considering the plurality of norms with the ability to guarantee certainty, orderliness, enforcement, and protection of justice.<sup>28</sup>

Pancasila, as the root of the ideals of the Indonesian nation's law, provides coherence and direction on thoughts and actions to navigate through the dynamics of the life of the nation and state. It is formed in the minds and hearts of humans as a product of an integrated view of life, religious beliefs, and social reality.

The perception of law as a mere norm system leads to the orientation of legal development to components only related to the application of the norm. This has,

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<sup>25</sup> Kaelan, “Fungsi Pancasila Sebagai Paradigma Ilmu Hukum Dalam Penegakan Konstitusionalitas Indonesia.”

<sup>26</sup> Jimly Asshiddiqie, *Pengantar Ilmu Tata Negara*, 1st ed. (Jakarta: Sekretariat Jenderal dan Kesekretariatan Mahkamah Konstitusi RI, 2006).

<sup>27</sup> Lili Rasjidi, “Pembangunan Sistem Hukum Dalam Rangka Pembinaan Hukum Nasional,” in *Butir-Butir Pemikiran Dalam Hukum (Memperingati 70 Tahun Prof. Dr. B. Arief Sidharta, SH.)*, 1st ed. (Bandung: Refika Aditama, 2011), 131.

<sup>28</sup> Khudzaifah Dimiyati, *Teorisasi Hukum Studi Tentang Perkembangan Pemikiran Hukum Di Indonesia 1945-1990*, 1st ed. (Yogyakarta: Genta Publishing, 2010).



however, been discovered not to be enough in reality.<sup>29</sup> Pancasila as a basic norm (*grundnorm*), is interpreted as the basis of a legal system. This concept is based on the need to find sources for all laws, where the constitution can be obtained legitimately. Pancasila also contains basic values/inseparable from the aspirations of the people of Indonesia. It is the dream of some of the people and this means its realization requires a genuine understanding and commitment from decision makers.<sup>30</sup> By positioning *Grundnorm* as a value system, sources or dimensions of justification of norms will be found.

The preference for this ideology is based on the assessment and measurement of the integration between beliefs or values and desires or ideals required to solve social problems. The main criterion is the reflection of the attitudes and socio-political desires in the state. Moreover, the ratio logic focuses on the mutual reinforcement of the principles and basics of the belief systems, ideas, values, principles, ethics, morals, and goals and this is needed in the formulation of an effective and implementable law.

Laws should be the bridge or instrument to realize the aspiration of the people.<sup>31</sup> They are expected to be formed and developed to simultaneously influence and reflect the dynamics of the ongoing process of interaction between several social realities such as human aspirations, religious beliefs, social, economic, political, moral, and cultural conditions as well as the civilization within natural boundaries to raise human awareness and appreciation of the reality of society. This is rooted in the view of life adopted and the interests of real human needs.

The law and legal order are, therefore, dynamic. The law is in the social and cultural sub-systems based on its inability to create values/to be maintained. Therefore, values/existing in the life of the Indonesian people help in the formation of boundaries and ideas in the constitutional system.

#### 4. CONCLUSION

The formulation of appropriate rules is conceptualized through the manifestation of values/in accordance with the people living in a society. In the Indonesian context, these rules are required to be based on values/contained in Pancasila which serves as the spiritual principles. The ideology is positioned as the foundation of constitutive and regulative elements being the origin of all the sources of laws applied in the country. It has elements describing its values as a legal ideal or *rechtsidee* which has become the philosophical force of the legal norm.

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<sup>29</sup> Dimiyati.

<sup>30</sup> Harkristuti Harkrisnowo, *Pancasila Sebagai Paradigma Pembangunan Nasional Bidang Hukum Dan Hak Asasi Manusia*, 1st ed. (Jakarta: Departemen Pendidikan Nasional, 2002).

<sup>31</sup> Alvi Syahrin, *Beberapa Masalah Hukum* (Jakarta: PT. Sofmedia., 2009).

Norms in the concretization need to be colored and flowed or immersed using the basic values inherent in the *grundnorm* containing the basic and the objective values. From the perspective of the basic value, Pancasila is a source for policymakers and a limitation in its implementation. Meanwhile from the objective perspective, the law is formed as a basis to achieve the goals or ideals of the country.

Pancasila as the source of all sources of law (the source of orderly law) of the State of Indonesia, this means that Pancasila as a source of legal material determines the contents of a legal norm. As a system of values and philosophy, Pancasila is the essence of the law. As the final standard of legal validity, Pancasila is the value contained in the constitution and laws.

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