Book of Abstracts

The 1st International Conference on Social Sciences, Humanities, Economics and Law (ICONSHEL)

September 5-6, 2018
Grand Inna Muara
Padang, Indonesia

Current Issues on Social Humanities, Economic Development and Law
Call for Paper

"Current Issues on Social, Humanities, Economic Development, and Law

September 5-6, 2018
Grand Inna Muara
Padang, Indonesia

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Prof. Dr. Lyn Parker (University of Western Australia, Perth, Australia)
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Prof. Dr. A. Mani (Kolej MDIS, Malaysia)
Prof. Soong Seung Won (Hankuk University of Foreign Studies, South Korea)
Prof. Mikihiro Moriyama (Nanzan University, Japan)

Abstract Submission Deadline:
April 30, 2018

About Conference
The conference is jointly organized by the Faculty of Humanities, Faculty of Social and Political Sciences, Faculty of Law, and Faculty of Economics, at Universitas Andalas, West Sumatra, Indonesia. The committee invites academic, practitioners, decision-makers, NGO activists, journalists, and students, to share their knowledge, findings, experiences, concepts, and critical analysis with their international peers.

Register
http://iconshel.conference.unand.ac.id
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Atlantis Press
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  2. Prof. Dr. Afrizal, MA (Universitas Andalas)  
     “Development, Conflict and Human Rights”  
  Moderator: Hafiz Rahman, S.E, MSBS, Ph.D |
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CERTIFICATE
OF PARTICIPATION

This certificate is presented to

Yoyon Mulyana Darusman

as presenter

in the International Conference on Social Humanities, Economics, and Law
in Padang on 5–6 September 2018, Grand Inna Muara Hotel

Rector of Universitas Andalas

Prof. Tafdil Husni, S.E., MBA.

Organizing Committee President

Dr. Jendrius, M.Si.
PANCASILA AS THE FUNDAMENTAL NORM IN THE UNITY STATE OF THE REPUBLIC OF INDONESIA
(The Theoretically Study Legal Hierarchy by Hans Nawiasky)

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ABSTRACT

The Preamble Constitution of the Republic of Indonesia th 1945 which decided by the committee preparation the independence of Indonesia (PPKI) on Agustus 18, 1945. It has put Pancasila as the filosofis basic of the existence of the unity of the unity state of the republik Indonesia. Pancasila as the philosophical foundation of the country is expected to bind the diversity of the indonesian nation into a powerful country united and sovereign. Pancasila should be able to give the strengthening to the framework of the country which is stipulated in the trunks of laws year 1945, It is also with the terms of the other law. Tap MPR NO.XX/MPR/1966, Tap MPR No. II/MPR/II, The Laws no. 10 year 2004 and Laws no 12 Year 2011 are the effort of the state in carrying out of the nation and Pancasila as falsafah of the country and the state. The determining of Tap MPRS, Tap MPR and Legislation above. It can’t be hide that has influenced from the theories of Legal Hierarchies from Hans Nawiansky. In the research will be used primary data and secondary data, The primary data is the data that directly taken from first resources of the expert in the field of philosophy and the officer’s in state agencies, and The secondary data is the data which taken from connection legislations, the opinion of the experts in their field. The conclusion in the research which basd on the result of the theory of Legal Hierarchy (Stefanbau Theory) of Hans Nawiasky and how the implementation in the Law of Indonesia, and Pancasila should not only a set of philosofi moral of the country but It is must be as a fundamental norm country which has to give the strengthening to the hierarchy of the norm legislations beneath.

Key words : Philosophy of Pancasila, Fundamental Norm, The Legal Hierarchy, Hans Nawiasky

Background

The commencement of the Indonesian state was initiated by the proclamation of the independence of Indonesia on August 17, 1945 read by the proclaimer Ir. Soekarno and Drs. Moh. Hatta who represented the nation and all the people of Indonesia. Proclamation is a political statement of the nation and the entire people of Indonesia about the independence of Indonesia to be known by all the people of Indonesia and the international community at that time there can know it, more specifically of course the invaders such as Japan, the Netherlands and other parties who still have political and economic interests to Indonesia. Therefore after the proclamation of Indonesian independence, immediately greeted by several countries in the world who immediately recognize the independence of Indonesia. For example: India, Egypt, Yugoslavia, South Africa.. Etc. The next step after the proclamation of Indonesian independence is how to form a sovereign Indonesian state, what can be used
as a philosophical basis and juridical foundation, so that the Indonesian state immediately get full recognition from the international community. Because of that fast steps made by the founders of the nation pioneered by Ir. Soekarno, Drs. Moh. Hatta soon established the Preparatory Committee for Indonesian Independence (PPKI) [11], which had the duty to formulate and create as well as establish the Constitution of the State as the foundation of the existence of the State of Indonesia. The State is an organization of power or an organization of authority that meets the requirements of certain elements, ie there must be: (i) a sovereign Government, (ii) a certain territory and (iii) a people who live orderly so as to constitute a nation [3]. In order to support the establishment of an Indonesian state in accordance with the conditions of the birth of an internationally recognizable country, on August 18, 1945 the Constitution of the Republic of Indonesia was stipulated as the constitution of the state by the Committee for the Preparation of Indonesian Independence (PPKI).

In the Constitution of the Republic of Indonesia in 1945 has also established philosophical basis of the nation and state of the Republic of Indonesia is a system of philosophy for the Indonesian nation [9]. as stipulated in the Preamble of the 1945 Constitution. Some sentences in the fourth paragraph which read "the National Independence of Indonesia was formulated in a Constitution of the State of Indonesia, which is formed in a composition of the Republic of Indonesia sovereign people with a basis to the Belief in the One and Only God, A just and civilized Humanity, Indonesian Unity and Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and by realizing a Social Justice for all Indonesian people. And the five noble values of the Indonesian nation is called Pancasila, as the nation's way of life [12]. The way of life (the way of life) for a nation is a thing that cannot be separated from the life of the nation itself. A nation that does not have a way of life, is a nation that has no personality and identity, so that the nation is easily wavered from the influence of influence from outside the country. Personality born from within itself will more easily filter the entry of values that come from outside, so as to reinforce the values that have been embedded in the nation itself. Conversely, if the nation received a personality from outsiders, it would be easily influenced from the values that have not been tested truth that can remove the identity of the nation itself [10].

Pancasila as the personality and identity of the Indonesian nation is a reflection of the values that have long grown in the life of the Indonesian nation. The values formulated in Pancasila are not the thoughts of one person, as well as the communist ideology which is the thinking of Karl Marx, but the conceptual thinking of Indonesian figures such as Soekarno, Mohammad Hatta, Muhammad Yamin, Soepomo and other figures. As a result of the thought of Indonesian figures unearthed from the culture of the nation itself, Pancasila contains no rigid and closed values, Pancasila contains values that are open to positive new values, whether coming from within the country itself, as well as those coming from abroad. Thus, the next generation of the nation can enrich the values of Pancasila in accordance with the times [10]. Philosophically and objectively, the values contained in the principles of Pancasila are philosophical Indonesians before establishing the Republic of Indonesia. Prior to the establishment of the Indonesian state, the Indonesian nation was a revered nation, a just and civilized humane nation, and a nation that always strives to maintain unity for all people to bring about justice. Therefore, it is a moral duty to realize these values in all spheres of national and state life.

Pancasila as the basis of state philosophy should be a source for all the actions of the state organizers and become the soul of the laws applicable in the life of the state. Therefore, in facing the challenges of life of
the nation entering the era of globalization, the Indonesian nation must still have the noble values of the Indonesian nation that is Pancasila as a source of value in the implementation of statehood that animates national development in the fields of politics, economy, socio-culture and defense of security [10], and able to answer the challenges of the fast-moving and dynamic era.

The enactment of MPRS Decree No. XX/MPRS/1966 on the DPR-GR Memorandum on the Sources of Law and the Order of the Republic of Indonesia, is the starting point of the long struggle of how the importance of Pancasila always be the source of all existing sources of law, as mandated in the Constitution Year 1945. Furthermore, with the establishment of permanent People's Consultative Assembly (MPR), has established several provisions that will strengthen the position of Pancasila as the philosophical foundation of the Indonesian Nation, namely: Decree of People's Consultative Assembly No. V/MPR/1973 on Review of Products in the Form of the Provisional People's Consultative Assembly of the Republic of Indonesia, Decree of the People's Consultative Assembly (MPR) No.IX/MPR/1978 on the Necessity of Improvement as set forth in Article 3 of the Decree of the People's Consultative Assembly No. V/MPR/ 1973. and People's Consultative AssemblyDecree No. III/MPR/2000 on the Source of Law and Order of Legislation Regulation, Furthermore, along with the reformation era followed by the amendment of the 1945 Constitution (change one to the fourth), has changed the institutional order of the country especially in the parliamentary field where People's Consultative Assembly Institutions (MPR) that have the highest position to be the same position with other state institutions. So the People's Consultative Assembly no longer has the authority to issue People's Consultative Assembly(MPR) resolutions. The enactment of Law no. 10 of 2004 on the Establishment of Laws and Regulations No. 12 of 2011 on the Establishment of Laws and Regulations, this is also a result of the amendment of the 1945 Constitution.

Structure of Thinking

Regarding Article 24A (1) of Constitution 1945 : Supreme Court (MA) has authority to judicial (exam) norm of the regulation under statute / rule against statute / rule. Article 24C (1) of Constitution 1945 : Constitutional Court (MK) has authority to judicial (exam) of statute / rule under constitution 1945 against constitution. There is no statute / rule / norms to regulating the authority to exam the statute / rule / norms under state fundamental (philosophy), against state fundamental (philosophy).

Literacy Reference.

Values are included in an important subject in philosophy. Value issues are discussed in a branch of philosophy, namely axiology (value philosophy). Values are usually used to denote an abstract noun, which can be interpreted as worth, or goodness. Judging means weighing, that is, the human activity of connecting something with something else, which is then continued by making a decision. The decision states whether something is positive (useful, beautiful, good, and so on), or otherwise negative. It is associated with the elements that exist in humans, namely physical, inventiveness, taste, intention, and trust. Thus can be interpreted as the nature or quality of human beings useful for human life, both inward and inner. For human values is used as a foundation, reason, or motivation in
behaving and behaving, whether consciously or not [4].

The values of Pancasila, as stated in MPRS Decree No. XX / MPRS / 1966 is essentially a way of life, awareness, and moral ideals and moral that includes the atmosphere of spiritual noble, and the character of the Indonesian nation on 18 August 1945 has been formulated and compressed by the Committee Preparation of Indonesian Independence (PPKI) the basis of the Republic of Indonesia. In relation to the values of Pancasila can be divided into objective values: (i) abstract, general and universal nature can be seen in the formulation of Pancasila principles, (ii) an enduring nature because the values of Pancasila will remain as long as (iii) The precepts in the Preamble to the 1945 Constitution, according to the law of science, qualify as the fundamental norm of the state. The subjective values are: (i) The values of Pancasila arise from the Indonesian nation, as a result of the assessment and thought of Indonesian philosophy, (ii) Pancasila values are the philosophy (way of life) of the Indonesian nation and (iii) Pancasila values contain spiritual values that manifest in accordance with the nature of the conscience of the Indonesian nation [4].

In this regard Hans Kelsen mentions that legal norms are objective guidelines derived from grundnorm or basic norms. Grundnorm resembles a supposition of the "order" that would be embodied in the common life (in this case the state). Hans Kelsen himself did not mention the contents of the grundnorm. It simply says that grundnorm is a transcendental-logical condition for the full validity of the rule of law. The whole rule of positive law must be guided hierarchically on grundnorm. Thus, indirectly kelsen also actually make a theory about the rule of law [2]. The idea of the rule of law, clarified by Hans Kelsen's disciple Hans Nawiasky with his stufenbau theory (Die stufenordnung der rechtssnirm or Die Lehre von dem Stufenbau der Rechtordnung) that classifies the rule of law (hierarchy of legal norms) within a country into 4 (four) consisting of: (i) Staats Fundamental Norms, (ii) Staats Grund Gezets, (iii) Formal Laws and (iv) Implementing Rules and Autonomous Rules (Verordnungen & Autonome satzungen) [4]. Staatsfundamentalnorm is the basic norm of the state as the highest basic norm, while Staatsgrundgezets is the basic rules (principal) of the state. Typically, the country's basic rules when set forth in a state document are referred to by the constitution or verfassung, and when set forth in some documents will be referred to as the ground rule or Grundgezets. The basic rules of a state, among other things, determine the procedure of formulating other general binding legislation, its nature is still the basic rules and has not contained any sanctions, and its nature is still common, Formelle or law (formal), which can usually be attached provision of force, either in the form of coercion implementation (Vollstreckungzwang) or punishment (Strafe). It is only in this system of law that we obtain a rule of law that binds (verbindlich) significantly. Last is Verordnungen and Autonome Satzungen or peratulan implementation or autonomous regulations. Furthermore Hans Nawiasky asserted that the so-called legislation in a country is Formelle Gezets and all its implementing regulations [4].

Legal analysis that reveals the dynamic character of the normative system of the basic norm function also indicates the further specificity of the law, the law governing its own criteria as long as a legal norm determines the way other norms are made, as well as the content of the norm. Since a legal norm is valid because it is created in the manner prescribed by other legal norms, then the last norm is the reason for its first validity. The relationship between norms governing the making of other norms and other norms can be referred to as super relationships and subordinates in spatial contexts. The norms that determine the making of other norms are superior (Lex Superiore), while the created norm is inferior (Lex Inferiore). The rule of law,
especially as the personification of the state is not a system of norms that are coordinated with each other, but a hierarchy of norms that have different levels. This unity of norms is composed by the fact that lower normative creation, determined by other norms, is higher. The making determined by the higher norm becomes the main reason for the validity of the entire legal order that constitutes unity [6].

In the basic theory (Grundnorm) Hans Kelsen places the highest Constitution, as stated in the theory of the level of legal norms that norms are tiered, the above is the source for the under, which below should not contradict the above. If there is a vertical contradiction between the Constitution and the Law, then the Act is defeated. And so on the rules of the legislation underneath. (lex superior derogate legi priore). In practice the law of law is implemented by judicial review. That according to Sri Soematri the term is called with the concept of "material toetsingsrecht" for testing that is meteril and the concept of "formele toetsingsrecht" for testing that is formal [7].

Expert Opinions

Mr. Bambang Wiyono is a lecture who teach Legal Philosophy said that, It is the time that Pancasila as values principle of nation that has been made by the founding father of the Republic Indonesia as the view of life of the nation, Pancasila must be back as the norm of the fundamental state which is used as a reference by legal norms and laws that exist underneath. The implementation should be supervised by the state through the institutions that have the authority for it, meanwhile Pancasila is used only as moral movement in the nation form view of life, because the amendment of the constitution 1945 that has been implemented four times, It has not been yet the representation of the interests of community and people of Indonesia. Therefore, is needed to be carried out the next amendment or reverse to the original text of the constitution 1945. The above opinion is related with Hans Nawiasky theory [15]. In the others opinion Mr. Bachtiar is a lecture who teach state law said that, Constitution RI 1945 consist of 2 (two) group of norms are : preamble and body (articles). This is declaring in the regulation on Article II of Addition Regulation constitution RI 1945 which mention “the confirmed of amended this constitution, the constitution RI are consist of preamble and articles. The preamble is meaning as a staatsfundamental norms, meanwhile, the body (articles) is meaning as a staatsgrundgezets. Therefore, the preamble and body (articles) as the unity norms of constitution which is supreme of national legal order. The above opinion is related with Hans Kelsen theory [16]. Pancasila (five principles) as the philosophy of the Indonesian nation has happened debates in the society especially of multi interpreter who are in charge as a supervisor of the implementation of it. Such as Mr. Refly Harun as a constitutional law expert addressing the polemic of the existence of the agency development of the pancasila ideology (BPIP), said that, Pancasila as the philosophical basis of the Indonesian nation which cant be taken over or captured by the state, which lead to abuse power for political opponents. Such as : In the time of old order. The President of Soekarno in the name of democracy and against pancasila had been imprisoning political opponents and also In the time of new order, The president of Soehartoin the name of democracy and against pancasila had been imprisoning political opponents that is why in the time of reformation era, It should not be happened again, The existence of the agency the development of pancasila ideology (BPIP) is not relevan and against spirit of reform even far from the constitution, Becasue the law of establishment BPIP only be made by the president regulation which is not regulated by laws even It should be regulated in the constitutions RI 1945, In the case, It can be the reason against Pancasila, the government and the president Joko Widodo will lead to
use the abuse power against the opponents [13].

In the other view, At the same topic Mr. Salim Said that, In the history, Pancasila cant be pure implemented and totally, because the role of power is more than Pancasila as the nation view of life and state. Such as : Mr President Soekarno is great credited in the birth of Pancasila even He is a philosopher of the Indonesia nation, but the more high power will lead to use the abuse power of Pancasila by shaping National, Religion, (NASAKOM) which is clear against Pancasila. At the begining of his government that has good reputation even the world, but He who has legitimation power, He tried to sacred Pancasila by the program P4 (Orientation, Comprehension, Implementation Pancasila ), through the program Anyone who against Pancasila will be caught and jailed . BPIP simillar concept NASAKOM in the time of President Soekarno as like P4 program in the time of President Soeharto. Returning Pancasila to the position as fundamental norm state, and It is not as a tool of power [14].

Discussions and Results

1. 


Pure legal theory is the result of Hans Kelsen's thoughts which is poured in his book "Legal Pure Theory". Pure legal theory is a theory that seeks to study law from the science of law itself and by using the method of law itself, by eliminating the influence of other sciences in analyzing the law, such as eliminating the influence of ethics, sociology, anthropology, psychology, political science, economics, and history. The purpose of the neglect of the influence of the various disciplines in analyzing the science of law is that the study rests on the answer to the question of what and how the law is. In this case the law is a steady rule that strived not mixed with non juridical elements.

The next objective is to produce a more focused and more intensive study of law that is not mixed with other studies, so that the science of law itself is not distorted by other sciences which happens to have the object of study that is interconnected with the object of the law. In this case for example: a legal order is different from social order, or moral order, or religious order. Therefore, pure legal theory only examines the law "what the way it is" (das sein) and does not enter the "what it must be" (das sollen) sphere. Hence this pure legal theory belongs also to the "Positivism of Law" ism.

In other thinking Hans Kelsen creates the basic legal theory (Grundnorm). Grundnorm is the most fundamental rules of human life on the basic norm are made more concrete and more specific legal rules. Grundnorm, when viewed from the aspect of mobility of a legal norm, there are sua kinds of legal norms are: (i) static law norms which are a number of rights, obligations, authorities and restrictions contained in substantive law which is a legal provision that must be obeyed by individuals and the community, and (ii) the norms of dynamic law which constitute a legal norm which contains how the application process of a legal provision to be executed by humans and society [5].

Hans Kelsen therefore argues that by recognizing the existence of a rule of law based on the basic norm, we will be able to distinguish between the order because of the rules of the gangsters (order gangsters) with the order based on the rule of law of the legitimate ruler. Subsequently Has Kelsen explains the hierarchy of norms under Grundnorm: (i) Legislations created by Parliament and Custom formed by the public, (ii) Statutes made by parliament but more specifically from legislation and
Ordinance made by administrative authorities, and (iii) Material and Formal Law, are the rules that will be applied by the competent bodies, particularly courts to apply to concrete cases.

Hans Nawiasky, in 1945 has developed the theory of legal norms (die Theorie von Stufenordnung der Rechtsnormen) by contextualizing it to a country. In accordance with Kelsen's legal theory, a legal norm of any country is always tiered and multilayered, under which the underlying norms apply based on and derive from the higher legal norms, to the highest state law norms called Basic Norms State (Staatsfundamentalnorm).

In this case Hans Nawiasky said that in addition to the legal norms are layered and multi-tiered, the legal norms of a true country must also be in groups. Hans Nawiasky then grouped the legal norms within the country into four groups: (i) Group I as the Fundamental Norms of the State (Staatsfundamentalnorm), (ii) Group II as the Basic Rules (Staatsgrundgesetz), Group III as the "Formal Law ", And Group IV as the Rules of Implementation and the Autonomious Rules (Verordnung & Autonome Satzung).

The fundamental norm of the state as the supreme norm of law is not constituted by a higher legal norm, but pre-supposed or predetermined by the society of a state and is a legal norm upon which the norms of law rest upon it. The basic norms of the state are the basic rules of the state. The basis of the state can be poured into several state documents called "staatverfassung", or it can also be poured into several dispersed state documents. The latter is what Nawiasky calls the basic rule of the state or the fundamental rule of the state. Which specifically regulates the matters of power sharing at the top of government, the relationship between state institutions, and the relations between countries and their citizens. The group of laws is a group of legal norms that are under the basic rules of the state / basic rules of the state. The "formal" law is established to formulate the rules of the state in a more concrete and detailed manner, and can be directly applicable binding citizens. And groups of rules of conduct and autonomous rules are the last group. Autonomous rules of conduct and regulations are rules that are under a law that has the same function, namely the provision of provisions contained in the law.

Considering both theories above are: Pure legal theory and the basic theory of Hans Kelsen and The legal grouping theory of Hans Nawiasky has essentially placed Pancasila as the fundamental norm of the state, although the pattern of placement into the fundamental state between Hans Kelsen and Hans Nawiasky is somewhat different. Hans Kelsen with his theory of Grundnorm places the basic rules of the state which in practice are implemented in state constitutions including within the fundamental norms of the state. If connected with the existence of the constitution of the Republic of Indonesia namely the 1945 Constitution can be regarded as the basic norm of the state because in the trunk has set the basic foundations of the state, in addition in the preamble also regulate the fundamental norms of the country that is the noble values of the nation that bind the country and nation Indonesia namely Pancasila.

In contrast to Hans Nawiasky with his theory of hierarchical grouping of legal norms, explicitly separates the existence of the fundamental norms of the state as the supreme norm and separate existence from the basic norms of the state. Therefore Hans Nawiasky's thought hierarchically puts Pancasila as the fundamental norm of the state apart from the basic norm.
2. **Position of Pancasila in Indonesian Legal Perspective.**

In explaining the position of Pancasila in the perspective of Indonesian law, it can be started from how the history of the enactment of legal order in Indonesia:

**a. MPRS Tap No. XX / MPRS / 1966.**

MPRS Decree No. XX / MPRS / 1966 is about the establishment of a memorandum of the Gotong House of Representatives (DPR-GR) dated June 9, 1966 on the Source of Law and Order of Legislation. As mentioned in the Decree annex. MPRS No. XX / MPRS / 1966 states that Pancasila is the source of all sources of law. Furthermore, in the subsequent explanation that the regulatory framework is comprised of: (i) the Constitution of the Republic of Indonesia, (ii) the Decree of the People's Consultative Assembly, Laws / Regulations in Lieu of Law, (iii) Government Regulations, (iv) Presidential Decree, (v) Other Implementation Regulations such as: Ministerial Regulation, Ministerial Instruction and others.

**b. MPR Decree No. III / MPR / 2000**

MPR Decree No. III / MPR / 2000 on the Source of Law and Order of Legislation Regulations. In Article 2 explains that Pancasila is the source of all national basic law as written in the Preamble of the 1945 Constitution, namely: Belief in the One, Just and Civilized Humanity, Indonesian Unity, and Democracy led by the wisdom of wisdom in deliberations representatives, and by realizing a Social Justice for all Indonesian People, and the body of the 1945 Constitution. Furthermore, in Article 2, it is explained that the Regulation of Legislation Regulation is a guideline for the making of the rule of law under it. Consisting of: (i) the 1945 Constitution, (ii) the Provisional People's Consultative Assembly, (iii) Law, (iv) Government Regulation in Lieu of Law (Perpu); (iv) Government Regulation; (v) Presidential Decree which is regulatory, (vi) Local Regulation.

**c. Law (Statute) no. 10 Year 2004**

Law no. 10 of 2004 on the Establishment of Laws and Regulations. In Article 2 explains that Pancasila is the source of all state law. In Article 3 Paragraph 1 explains that the Constitution of the Republic of Indonesia is the basic legal basis in the Laws and Regulations. Furthermore, Article 7 Paragraph 1 explains that the Type and hierarchy of Laws and Regulations consist of: (i) of the 1945 Constitution of the State of the Republic of Indonesia; (ii) Government Laws / Regulations in Lieu of Law; (iii) Government Regulations ; (iv) Presidential Regulation, and (v) of Regional Regulation.

**d. Law (Statute) no. 12 Year 2011**

Law no. 12 Year 2011 on the Establishment of Legislation. In Article 2 explains that Pancasila is the source of all state law. In Article 3 Paragraph 1 explains that the Constitution of the Republic of Indonesia is the basic legal basis in the Laws and Regulations. Furthermore, Article 7 Paragraph 1 explains that the Type and hierarchy of Laws and Regulations consist of: (i) of the 1945 Constitution of the State of the Republic of Indonesia; (ii) Government Laws / Regulations in Lieu of Law; (iii) Government Regulations , (iv) Presidential Regulation, and (v) Provincial Regulations and (vi) District / City Regulations.
If you see from the description above, it can be clearly illustrated how Pancasila occupies a place that is very important and honorable. In MPRS Tap no. XX / MPRS / 1966 asserts that Pancasila is the source of all sources of state law, in the MPR Decree No. III / MPR / 2000 stipulates that Pancasila as the basic source of Indonesian national law, in Law no. 10 Year 2004 affirms that Panxasila is the source of all state laws and in Law no. 12 of 2011 also states that Pancasila is the source of all laws of the country. However, if you see the description of the four rules above with different sentences (phrases), it also affects the question that Pancasila actually has a position like what. And even if it has a clear position how to execute it?

3. **Position of Pancasila In Legal Oversight Perspective.**
   a. **Judicial Review.**
      Judicial review is one of the process of supervising legal norms between the higher legal norms and the legal norms below so as not to contradict one another. In the practice of law in Indonesia judicial review is conducted between the provisions of the law with the laws and regulations under the law. As stipulated in the provisions of Article 24A paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that the Supreme Court has the authority to hear at appeal, to examine statutory laws under the law, and to have other powers granted by law - invite. Furthermore, in Article 31 Paragraph 1 of Law no. 5 of 2004 on Amendment of Law no. Law No. 14 of 1985 on the Supreme Court, which states that the Supreme Court has the authority to examine legislation under the law against the law.
   
   b. **Constitutional Review.**
      Constitutional review is also one of the process of supervising legal norms between the higher basic norms and the legal norms below so as not to contradict each other. In the practice of law in Indonesia constitutional review conducted between the provisions of the 1945 Constitution of the Republic of Indonesia with the law. As stipulated in the provisions of Article 24C Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that the Constitutional Court has the authority to hear at the first and final level the decision is final to examine the law against the Constitution, to decide the dispute over the authority of the state institution whose authority is granted by The Constitution, to decide upon the dissolution of political parties and to decide disputes over the results of the general election. It is also regulated in Article 10 of Law no. 24 of 2003 on the Constitutional Court which states that: The Constitutional Court is authorized to hear at the first and final level the decision is final to: (a) review the law against the Constitution; (b) to decide upon the dispute over the authority of the state institution whose authority is granted by The Constitution, (c) to decide upon the dissolution of political parties and (d) to decide disputes concerning election results.
   
   c. **Legislative Review.**
      Legislative review is a process of oversight of all legal norms that have been made by the legislature so that the law can run as well as possible in order to provide order, certainty to the public. In legal practice in Indonesia legislative review has been a very big change especially after the amendment of the Constitution of the Republic of Indonesia Year
1945. In the provisions of the Constitution of the Republic of Indonesia Year 1945 original manuscript legislative review conducted by two state institutions namely People's Consultative Assembly of Indonesia (MPR -RI) through its provisions as stipulated in Article 3 which reads that MPR-RI stipulates the Indonesian Constitution and the outline of the state guidance, and the Indonesian House of Representatives through the establishment of the law as regulated in Article 20 Paragraph 1 stating that each Law requires the approval of the House of Representatives. However, different provisions of the Constitution of the Republic of Indonesia Year 1945 after the change can only be done by the House of Representatives of the Republic of Indonesia as regulated in Article 20 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that the House of Representatives holds the power to form laws. No longer through the People's Consultative Assembly of Indonesia, because this institution no longer has the authority to issue its provisions. As stipulated in Article 3 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that the House of Representatives holds the power to form laws. No longer through the People's Consultative Assembly of Indonesia, because this institution no longer has the authority to issue its provisions. As stipulated in Article 3 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, the People's Consultative Assembly of Indonesia is authorized to amend and enact the Constitution. The sentence stating the outline of the state line has been omitted.

Taking into consideration the three models of oversight of the legal norm, whether judicial review, constitutional review or legislative review, if related to the position of Pancasila as the fundamental norm as depicted in the stufenbau theory of Hans Nawiasky, it is very clear and concrete does not have the position that should be placed in place the highest is still limited to be placed as the way of life of the Indonesian nation which is a moral movement.

**Conclusion**

1. The basic norm theory of Hans Kelsen which is then refined by the hierarchical theory of norms by his student Hans Nawiasky, has explained that in the hierarchy of law and legislation there are 4 (four) groups of norms consisting of the fundamental norms of the state, the basic norms of the state, norms formal laws and norms of implementation and or autonomous norms. The fundamental norm of the state as the highest norm must provide reinforcement to the norms beneath it, and otherwise the norms under it should not be contrary to the above-mentioned norms (lex superior derogate legi priore), so that the legal norms are not mixed from the elements - a non-legal element.

2. The existence of a legal hierarchical system and legislation within the Indonesian legal system is greatly influenced by the great ideas of Hans Kelsen and Hans Nawiasky. This can be seen from the history of the creation of the idea of the importance of law and order, starting with the enactment of MPR Decree No. XX / MPRS / 1966, Tap. MPR No. III / MPR / 2000, Law no. 10 of 2004 and Law no. 12 Year 2011.

3. The position of Pancasila in the implementation of the theories of Hans Kelsen and Hans Nawiasky has not been placed as the fundamental norm of the state, but only considered as the philosophical foundation of the nation and the nation's way of life which is more of a moral movement rather than an implementation movement. This can be seen from the provisions of the 1945 Constitution which until now only regulates the Judicial Review which is the authority of the Supreme Court of the Republic of Indonesia, Constitutional
Review which is the authority of the Constitutional Court of the Republic of Indonesia, then authorized to test the legal norms under the fundamental norms of the country with the fundamental norms of which state institutions. This becomes very important because in the context of the theory of Hans Kelsen and Hans Nawiasky, the position of Pancasila as the material legal source of the Indonesian nation, is in the group of fundamental norms of the state.

References:
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