

Pancasila As A Philosophical Basis Of Law Formation In Indonesia

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Abstract: The role of legal philosophy is huge in law formation in Indonesia. As the source of all legal sources, Pancasila means that every law that applies in Indonesia must be based on Pancasila. Pancasila, the foundation of laws and regulations in Indonesia, comes from the values underlying living law. The writing of this article uses normative legal research methods using a conceptual legal approach. The result of this study is that Pancasila, as the philosophical basis of existing laws and regulations in Indonesia, has a massive role in forming laws in Indonesia. Pancasila is a spiritual principle of Indonesian law as the basis for forming the Indonesian legal system.

Keywords: Pancasila, Philosophy, Formation of Law.

Abstrak: Peranan filsafat hukum sangatlah besar dalam pembentukan hukum di Indonesia. Pancasila sebagai sumber dari segala sumber hukum memiliki makna bahwa setiap aturan perundang-undangan yang berlaku di Indonesia haruslah berdasarkan atas Pancasila. Pancasila sebagai landasan dari peraturan perundang-undangan di Indonesia berasal dari nilai-nilai yang melandasi hukum yang hidup. Penulisan artikel ini menggunakan metode penelitian hukum normatif dengan menggunakan pendekatan hukum konseptual. Hasil dari penelitian ini adalah eksistensi Pancasila sebagai dasar filosofis peraturan perundang-undangan yang ada di Indonesia memiliki peranan yang sangat besar dalam pembentukan hukum di Indonesia. Pancasila merupakan asas kerohanian dari hukum Indonesia sebagai dasar pembentukan tata hukum Indonesia.

Kata Kunci: Pancasila, Filosofis, Pembentukan Hukum.

Introduction

Philosophy is the study of specific problems in a certain way. These problems include the most profound and most important problems that philosophers have discovered. Among them are discussed the true nature of humans, the way we think, the nature of reality, our ability to know that reality, and a set of problems related to one another.¹ The rapid development of science and technology in human civilization has succeeded in solving many complex problems. Complex problems in the reality of people's lives can be solved with a series of fantastic technologies. However, sometimes, questions cannot be answered with science and technology developed by humans. It is in these circumstances that philosophy is present to provide the answer.²

Legal philosophy is a branch of philosophy with a systematic and radical method related to the fundamental and marginal nature and teachings of law in all its aspects, whose review focuses on the core issues of law.³ We can understand that legal philosophy is a science that examines law from a philosophical point of view. Law as an object of legal philosophy will be studied more deeply to the core of the root of the problem. The formation of law in Indonesia is also included in the field of study of legal philosophy. The formation of law must be made with consideration of the embodiment of Justice (*gerechtigkeid*), legal certainty (*rechtszekerheit*), and expediency (*zweckmassigkeit*). These three things, Justice, benefits, and legal certainty, cannot be separated from human rights. In order to create a just rule of law and realize the human rights of its citizens, it is necessary to study the law's philosophy to understand the embodiment of Justice for every individual, group, or society at large.⁴

Research on Pancasila has been done before, including Fais Yonas Bo'a, his research entitled Pancasila as a Source of Law in the National Legal System. As the source of all sources of law, Pancasila has obtained legitimacy legally through the Decree of the People's Consultative Assembly Number XX/ MPRS / 1966 on the Memorandum of the House of Representatives-Gotong Royong Regarding the Sources of Law and the Order of the Republic of Indonesia. After the reformation, the existence of Pancasila was re-confirmed in Law Number 10 in 2004, which was subsequently replaced by Law Number 12 in 2011 on Legislation Regulation. Pancasila is the source of all sources of law, meaning that the national legal system must be based on Pancasila. However, now the existence of Pancasila is increasingly eroded in the national legal system. This is motivated by three reasons: first, the existence of resistance to the New Order that utilizes Pancasila for the sake of perpetuity of authoritarian power. Second, the strengthening of legal pluralism resulted in legal contradictions or disharmony. Third, the status of Pancasila is only used as a symbol in law. Therefore, efforts should be made to implement Pancasila as the source of all sources of law in the national legal system: first, make Pancasila a flow of law to avoid legal this harmonization due to the application of legal pluralism. Secondly, Pretend Pancasila as the top of legislation so that Pancasila has binding power against all kinds of laws and regulations so that it does not violate the Principle of *lex superior derogate inferior*.⁵

Secondly, Muhammad Taufiq and Pramono Suko Legowo conducted research entitled "Pancasila as a source of law and its elaboration in the 1945 Constitution". Pancasila is put as a source of all sources of law; hence any rule of law that has a position under Pancasila as groundwork should base the ratio logically on Pancasila and may not contrary to it. Meaning substantial Pancasila as the basis state means Pancasila is the source of all sources of law, that Pancasila is the highest law in Indonesia which must be used as a source in the formation of legislation.⁶ This research was conducted using the type of juridical research normative by using several approaches that include the conceptual Approach (Conceptual Approach), statutory approach invitation (Statute Approach), and, to be precise, Constitutional Law (Constitutional Approach). Based on the results and discussion, it can be concluded that the 1945 Constitution as the state constitution is a detailed description of the values Pancasila or the 1945 Constitution sourced and or animated by Pancasila so that with outlines the main points thoughts of the Preamble of the Constitution 1945 sourced from Pancasila into Articles UUD 1945. Not only is Pancasila a legal ideal, but

¹ Peter Gibson, *Segala Sesuatu Yang Perlu Anda Ketahui Tentang Filsafat*, (Jakarta: Gramedia Pustaka Utama, 2020), p. 1

² Teguh Prasetya and Abdul Halim Barkatullah, *Filsafat, Teori dan Ilmu Hukum: Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*, (Jakarta: Raja Grafindo, 2020), p. 1.

³ Abdul Hakim, "Maxim Law Fiqh And Its Application During The Covid-19 Pandemic," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 14, 2022), p. 7.

⁴ Bakir, *Peran Filsafat Hukum dalam Pembentukan Hukum di Indonesia*, *Jurnal At-Turas: Jurnal Studi Keislaman*, Vol. 4, No. 1 (2018), p. 58.

⁵ Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Jurnal Konstitusi* 15, no. 1 (March 29, 2018), p. 28, <https://doi.org/10.31078/jk1512>.

⁶ Dwi Astuti Wahyu Nurhayati and Novi Tri Oktavia, "Relevance Of Al Mawardi's Reflection In The Development Of Islamic Economic Activities," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022), p. 42.

it also has become positive law and has a binding force for every Indonesian citizen.⁷

Third, Riva Daulah and friends conducted a study entitled "Pancasila, the source of all sources of law." Pancasila is the basis of the Indonesian state and the source of all sources of law. Pancasila seems to be a concept that is discussed every day but does not have a written name in the Indonesian constitution. Therefore, in this article, the author intends to explore the position of Pancasila as the source of all sources of law and formulate steps for its implementation in building the rule of law in Indonesia. The research method used in this article is a literature study approach, using facts and supporting sources such as related journals, e-books, articles, and magazines. The purpose of this writing is to explore the concept of Pancasila as the source of all the various laws and regulations of the Indonesian legal state, to explain the application of Pancasila as all sources of state law in building a legal state in Indonesia so that it is known how Pancasila is positioned as the source of all state law regulations, and how application of Pancasila as all sources of law.⁸

Alert Afitro Putra conducted subsequent research titled "Pancasila As The Source Of All Legal Sources (Analysis of Legal History of the Reform Regime)." The Pancasila doctrine, as the source of all current legal sources, can be found in Article 2 of Law No. 12 of 2011 concerning the Formation of Legislation. The elucidation of the article states that the placement of Pancasila as the source of all sources of state law follows the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. This doctrine can also be found in Law No. 10 of 2004 concerning the Formation of Legislation, TAP MPR No. III of 2000 concerning Sources of Law and Order of Legislation, and TAP MPRS No. XX/MPRS/1966 concerning DPR-GR Memorandum Concerning the Sources of Order and Order of the Law of the Republic of Indonesia and the Order of the Legislation of the Republic of Indonesia. If Pancasila is declared as the source of all sources of law, then it is fitting for the national legal system to be built following Pancasila values.⁹ Even though Pancasila is formally accepted as the source of all sources of law, the form of cognition about Pancasila as the source of all sources of law can always be different in specific socio-political contexts. This research seeks to offer an alternative reading of the legal historical narrative of the Pancasila doctrine as the source of all sources of law in the discourse of building a national-style legal order, the precedent of which was set in the New Order regime (1966–1998) and its relevance to the Reform regime (1998–2004), with an emphasis on certain aspects of legal reasoning. This research on the history of legal development in Indonesia uses normative legal research methods using statutory, historical, and conceptual approaches. A literature search containing experts' opinions obtained legal material related to the problem under study. Legal materials obtained are presented in narrative writing in accordance with historical timelines to answer legal issues that have been formulated systematically.¹⁰

This research is different from previous studies; in fact, this research is a continuation of previous studies. This article will discuss the role of Pancasila as the philosophical basis for the formation of the rule of law in Indonesia within the framework of legal philosophy and how significant is the role of Pancasila as a philosophical foundation in the formation of law in Indonesia.

Literature Review

The source of law is essentially a place where we can find and dig; according to Zevenbergen, sources of law can be divided into sources of law material and traditional legal sources. The source of material law is the place where matter comes from, and the law is taken. This source of material law is a factor that helps the formation of law, for example, social relations, political power relations, socio-economic situations, traditions (religious views, decency), international developments, and geographical conditions. Source Formal law is the place or source from which a regulation gains strength law. This relates to the form or method that causes the regulation to be formally applied. When associated with the two types of legal sources above, Pancasila is one of the sources of laws that are material, while those that are formal such as laws and regulations, invitations, agreements between countries, jurisprudence, and customs. Pancasila as a source material law is determined by the content or weight of the material contained in Pancasila.¹¹ There are at least three qualities of Pancasila material: first, the content of

⁷ Muhammad Taufiq and Pramono Suko Legowo, "Pancasila Sebagai Sumber Hukum Dan Penjabarannya Dalam Undang-Undang Dasar 1945," *Jurnal Idea Hukum* 8, no. 1 (August 7, 2022), p. 16, <https://doi.org/10.20884/1.jih.2022.8.1.234>.

⁸ Rifa Daullah et al., "Pancasila Sumber Dari Segala Sumber Hukum," *Gema Keadilan* 9, no. 2 (October 25, 2022), p. 56, <https://doi.org/10.14710/gk.2022.16268>.

⁹ Robi Musthofa Al Ghazali, "Boarding House Rent Refunds During Covid 19 Based On Sharia Economic Law," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022), p. 45.

¹⁰ Aliet Arvitto Putra, "Pancasila Sebagai Sumber Dari Segala Sumber Hukum (Analisis Sejarah Hukum Atas Rezim Reformasi)," *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, (July 11, 2019), p. 37, <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/3445>.

¹¹ Wahyu Ziaulhaq, "Buying and Selling Used Clothing: An Islamic Economy Law Perspective," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022), p. 35.

Pancasila is Indonesian philosophical content. Second, the content of Pancasila as a national legal identity. Third, Pancasila does not determine orders, prohibitions, and sanctions but only determines fundamental principles for forming law.¹² These three material qualities determine Pancasila as a source of material law, as has been explained by Sudikno Mertokusumo above.

Pancasila is not a religion, but its values contained in Pancasila are not against the teachings of religion; even values that are reflected in Pancasila are part of the values contained in the values religious teachings. Moreover, values should be reflected in all legislation that becomes positive law in the Republic of Indonesia. Pancasila, seen from the theory of Hans Kelsen and Nawiasky placed in the top position in order/ hierarchical order law in Indonesia as Fundamentalnorm or Groundnorm in Hans' terms Kelsen, which means that everything the laws under it must reflect values Pancasila, in a sense based on Pancasila. In MPRS Decree No. XX/MPRS/1966 set Pancasila as the source of everything source of law, Tap MPR No.III/MPR/2000 regarding sources Law and Ordinance Legislation stipulates Pancasila as the source of everything source of law, and in article 2 Law no. 10 years 2004 regarding Establishment Legislation", stated: "Pancasila is the source of everything source of law."¹³

In the history of Indonesian citizenship, the 1945 Constitution of the Republic of Indonesia was the first constitution established by PPKI on August 18, 1945. On developments Furthermore, Indonesia has made four amendments to the 2011 Constitution of the Republic of Indonesia 1945, namely in 1999, 2000, 2001, and 2002. However, one thing permanent in the four constitutions is that Pancasila values remain applied as part of the Preamble, so it can be understood that These values are the national agreement of the Indonesian people to manage their civic life. Until now, several laws and regulations explicitly state that Pancasila is still recognized as a source of positive law formation in Indonesia, so the concretization of Pancasila values must be reflected in the substance of laws and regulations. Its position is the basis of the nation's philosophy, placing Pancasila as a legal ideal (reconsider) that animates the contents of the Constitution NRI of 1945 and all laws and regulations in Indonesia.¹⁴

Method

This article is written using a normative legal research method with a conceptual approach. The legal materials used in this legal research are primary legal materials and secondary legal materials. Sources of legal materials used in this study include primary legal materials, legal materials secondary and tertiary legal materials related to Pancasila as sources of primary law and its explanation in the 1945 Constitution. Legal materials are obtained and then connected to one another according to the main issues studied so that it becomes one unit that is comprehensive, all-inclusive, and systematic. The analytical technique used in this legal research is deductive analysis. Data obtained from books, scientific journals, and other sources will be analyzed in detail to get accurate conclusions.

Results and Discussion

According to the history of the constitution's enactment in Indonesia, Pancasila formulation has been contained in the constitution in the opening section (*mukaddimah*), though with Different editorials, but in Principle, it has almost the same meaning. By loading the formulation of Pancasila in the opening, Pancasila has a position as the Principal Principle of the State fundamental (*staatsfundamentalnorm*), so it becomes the highest legal order and becomes a source from all legal sources in Indonesia. However, the problem is that the terms "Pancasila" and "Pancasila as the source of all sources of law" are not found or not regulated in the constitution of Indonesia. Pancasila as *staatsfundamentalnorm* (source all sources of law) was first put forward by Prof. Notonagoro.¹¹ As a *staatsfundamentalnorm* in the constitution of the Republic of Indonesia, Pancasila should be used as a basic rule in the manufacture and implementation of law in Indonesia. As a source of all sources of law, Pancasila has 4 (four) rules of law that must be used as a guideline in legal politics and the formation of legislation invitations in general.¹⁵ A more detailed explanation can be seen in the table below,

¹² Siti Afifah Nurullah, "Practice Services Between Sale and Purchase of Coffee Syari'ah Economic Perspective," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022), p. 17.

¹³ Anik Kunantiyorini, "Pancasila Sebagai Sumber Segala Sumber Hukum," *Pena Jurnal Ilmu Pengetahuan dan Teknologi* 26, no. 2 (June 29, 2015), p. 102, <https://doi.org/10.31941/jurnalpena.v26i2.112>.

¹⁴ Hendra Wahanu Prabandani, "Menelusuri Kedudukan Pancasila Sebagai Sumber Dari Segala Sumber Hukum (Discovering The Position Of Pancasila As The Basic Norm In Indonesia)," *IBLAM LAW REVIEW* 2, no. 1 (January 31, 2022), p. 164, <https://doi.org/10.52249/ilr.v2i1.63>.

¹⁵ Sholikul Hadi, "Eksistensi Pancasila Sebagai Sumber Segala Sumber Hukum Dalam Konstitusi Indonesia," *Indonesian Journal of Law and Islamic Law* 3, no. 2 (December 27, 2021), p. 314, <https://doi.org/10.35719/ijl.v3i2.128>.

Table 1. legal guiding principles must be used as guidelines in legal politics and legislation in general.

No	The rule of law
1	Protecting the homeland and the Indonesian nation means that all laws made and enforced must be able to maintain the integrity of the nation's unity both territorially and ideologically.
2	Building the rule of law (nomocracy) and sovereignty of the people (democracy) in an integrated manner means that the law must be able to limit the implementation of democracy, and the law must be formed democratically. Decisions in a democratic way that violate the constitution can be annulled by a nomocratic institution such as the Constitutional Court or the Supreme Court, according to the level.
3	Realizing Social Justice for all Indonesian people, which means that the applicable law must close the opportunity for the growth of a system of exploitation by the strong against the weak and must always try to reduce inequality in society
4	Building tolerance of humane religious life means that law in Indonesia should not discriminate against religious adherents based on anything. The state also does not make certain religions a source of law, but the state must protect all adherents of religions in practicing their religion.

The Application of Pancasila as the Basis of State Philosophy provides a fundamental and comprehensive answer to basic philosophical problems concerning the Indonesian state, a just and prosperous society based on Pancasila.¹⁶ Philosophically, the Preamble of the 1945 Constitution, which there is the basis of the Pancasila state, is the result of the agreement of the nation's founders to live together in the bonds of a plural nation. The Preamble of the 1945 Constitution, besides Pancasila,¹⁷ also contains a statement of Indonesian independence as well as national identity and a stepping stone in achieving the nation's ideals and state goals. From a legal point of view, the Preamble to the 1945 Constitution contains Pancasila as the basis of the state philosophy, which gave birth to a legal ideal (*rechtside*) and the basis of a separate system following the soul of the Indonesian nation.¹⁸ Pancasila, as the basis of the state, is the source of all legal sources that provide legal guidelines and overcome all statutory regulations, including the constitution.¹⁹ The Preamble of the 1945 Constitution and the Pancasila it contains become *staatsfundamentalnorms* or basic principles of the state, which are fundamental and cannot be changed by law unless changes are made to the identity of the Indonesian nation, which was born in 1945.

Based on the view that Pancasila is a guideline in the life of the nation and state, Mubyarto said that all people living in Indonesia must adapt and implement Pancasila principles in all areas of life. Implicitly, Mubyarto's opinion said that Pancasila is the source of all sources of law governing the nation's life and state for the entire Indonesian nation. Pancasila, as the nation's view of life, consists of a series of noble values constituting a comprehensive insight into life. As a way of life, Pancasila functions as a frame of reference for managing personal life and interactions between people in society and the natural surroundings. In addition, Pancasila is a guide and direction for the Indonesian people in all activities and activities of life in Indonesia in all fields.²⁰

Philosophy of law is tasked with explaining the philosophical basis of legal values, which can realize the ideals of Justice, and order in society related to existing laws; for this reason, legal philosophy can be said to be suitable for building a better legal situation. Regarding the function of Legal Philosophy, he argues that philosophers try to find answers to problems regarding the idea of making a perfect law, then showing the public that if the law has been determined, its power is not questioned anymore. Legal philosophy provides a logical explanation of law to meet legal developments that guarantee continuity in the future. Realizing a sense of Justice following abstract and concrete legal principles, legal philosophy pays more attention to the philosophical side of the law, which is more directed to functional issues, and legal philosophy to make changes to the order of resolving disputes and making changes for the better. Philosophy of law has a very positive impact because it carries out an in-depth analysis of all legal issues that often exist in society or conducts studies on the development of the science of law itself

¹⁶ Jhon Tyson Pelawi, "Pancasila Sebagai Sumber Dari Segala Sumber Hukum," *Jurnal LPPM* 10, no. 3 (June 12, 2020), p. 87, <https://jurnal.ugn.ac.id/index.php/jurnalLPPM/article/view/471>.

¹⁷ Meta Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majelis Ulama Indonesia," *Journal of Nusantara Economy* 1, no. 1 (December 9, 2022): 10.

¹⁸ Muhammad Kurtubi, "Child Playing Online Game in the Sadd Al-Zari'ah's Perspective," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 14, 2022), p. 15.

¹⁹ Yusi Tasika and Giyarsi Giyarsi, "The Effectiveness of the Discussion Method to Increase Students' Understanding and Activeness in Islamic Religious Education Subjects," *Nusantara Education* 1, no. 1 (December 15, 2022), p. 98.

²⁰ Any Ismayawati, "Pancasila Sebagai Dasar Pembangunan Hukum Di Indonesia," *YUDISLA : Jurnal Pemikiran Hukum Dan Hukum Islam* 8, no. 1 (April 8, 2018), p. 57, <https://doi.org/10.21043/yudisia.v8i1.3231>.

theoretically, and its scope is expanding broadly and comprehensively.²¹

In the formation of laws made by the state, the law certainly has a target or achievement to be achieved in the sense that there is not a single statutory regulation that is formed with no goal to be achieved by the law. The formation of a mandatory legal system is based on the values of Pancasila, where we know that Pancasila is the basis of the thinking of the Indonesian nation. The definition of the formation of the law is to trace the basic rules that apply to society. Law No. 12 of 2011 concerning the formation of laws and regulations, the types of hierarchies for legal formation in Indonesia have been regulated in the formation of law, where one of them discusses the theory of legal philosophy.²²

The rearrangement of the hierarchical composition of the laws and regulations in force in Indonesia is deemed appropriate. This is because the New Order era, which initially took steps to purify the philosophy of Pancasila and the implementation of the 1945 Constitution for 32 (thirty-two) years, has not produced results. Efforts to rearrange the sources of law and order and the order of legislation have not been successful in determining a qualified legal system in the future.²³ Indonesian legal philosophy must be directed to the formation of the Pancasila philosophy. Pancasila is the foundation of the state which at the same time forms the basis of the national legal philosophy in Indonesia, which is a guideline in the preparation and development of a legal philosophy relevant to and related to the fundamental values contained in Pancasila.²⁴ Every essential value contained in Pancasila must also be contained in the formation of legal rules in Indonesia in the future and also determine the development of the legal system in Indonesia.²⁵

In the formation of law in Indonesia, legal philosophy plays a role in making the formation of laws that the people of Indonesia very much need. In addition, legal philosophy has also replaced several legal systems in Indonesia. The philosophy of law replaced several laws and regulations, starting from Tap XX/MPRS/1966 to the order of laws and regulations based on the Law of the Republic of Indonesia No. 12 of 2011. Philosophy of law can guide and realize legal needs following the level of progress of development in all fields; for this reason, it is essential to examine more profoundly and more deeply the philosophy of law more specifically by all this nation, especially to the holders of power and interests in this country. That way, in the future, it will be better able to understand and know the content contained in the philosophy of law, both in terms of the law itself and its positive impact on the life of this nation.

Philosophy examines all the philosophical values of law. Then the law is all norms or rules and regulations, written or not, consisting of orders, prohibitions, and sanctions for those who violate them. In other words, the law can be a tool or guide in social life. Laws were created to create critical societal values such as Justice, happiness, and prosperity. Philosophy is called a science because philosophy has an object of study. The object of study from the science of law itself is the norm. To understand the law as a rule, one must also recognize that law is a science. If the law is recognized as the norm, then the law must be obeyed. Legal theory teaches that law is a set of principles or rules that make society maintain order and freedom.²⁶

Indonesia has Pancasila as a philosophical basis that guides the nation's life. Pancasila can be said to be a legal philosophy because it fulfills the qualifications to be called a philosophical system which includes several things, namely the existence of a unitary value, regularity of interrelationships and dependencies between precepts, the existence of a common goal between Pancasila and the 1945 Constitution, and so on.²⁷ The formation of legal regulations in the form of laws and regulations in Indonesia must be based on and following Pancasila as the basis of the state. Legal philosophy is a determinant of direction and guidance in law formation in Indonesia, which is a means to achieve people's welfare.

Legal philosophy is also influential in changing aspects of the formation of laws and statutes in Indonesia. Law No. 12 of 2011 concerning the hierarchy of statutory regulations explains several things in all written regulations that apply in Indonesia. In their definition, most experts define law in a broader and more numerous domain.

²¹ Bambang Hermoyo, *Peranan Filsafat Hukum Dalam Mewujudkan Keadilan*, Jurnal Wacana Hukum, Vol. 9, No. 2 (2010), p. 32.

²² Muhammad Khambali, *Fungsi Filsafat Hukum Dalam Pembentukan Hukum di Indonesia*, Jurnal Supremasi Hukum, Vol. 3, No. 1 (2014), p. 9.

²³ Kurnia Parluhutan Hutapea, *Peranan Filsafat Hukum dalam Pembentukan Hukum di Indonesia*, *Jurnal Dunia Ilmu*, Vol. 2, No. 4, (2016), p.11.

²⁴ Khairudin, "The Practice of Buying and Selling Black Market Goods on The Perspective of Islamic Economic Law," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (2022), p. 82.

²⁵ Any Ismayawati, *Pancasila sebagai Dasar Pembangunan Hukum di Indonesia*, *Jurnal Hukum Yudisia: Pemikiran Hukum dan Hukum Islam*, Vol. 8, No. 1 (2017), p. 56.

²⁶ Suteki, *Masa Depan Hukum Progresif*, (Yogyakarta: Thafa Media, 2015), p. 3.

²⁷ Ali Imran, *Pendidikan Pancasila Di Perguruan Tinggi*, (Depok: Rajawali Pers, 2017), p. 5.

Indonesia has a legal system that applies to all citizens without exception. This is because it has been mandated in our constitution, which states that Indonesia is a constitutional state. Therefore, every Indonesian citizen must comply with the laws that apply and are made in Indonesia.²⁸

All laws formed in Indonesia must be guided by the state ideology and the 1945 Constitution. Pancasila is the Principle and is the basis of the state philosophy, which is the determining element for enacting the legal order in Indonesia. Pancasila also contains several principles of normality, which consist of several norms that must be obeyed and are positive. The meaning of positive law here can be in the form of the 1945 Constitution, laws, government regulations instead of laws (Perppu), government regulations, presidential regulations, and regional regulations. All these are written regulations (Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation).

Pancasila as the source of all sources of law implies that all sources of law or regulation, starting from the 1945 Constitution and all other implementations, must be based on Pancasila as the foundation, and not a single legal product may deviate from it. The existence of Pancasila as a legal philosophy is very influential and plays a significant role in the formation of law in Indonesia. This is because Pancasila is a pillar of outstanding achievement in a circle for a legal state like Indonesia. If a law is formed without being guided by Pancasila, it will give birth to several legal problems and the emergence of an unstructured legal structure. The legal system of Pancasila is the legal system of Indonesia. Therefore, Pancasila is not only known as the State Philosophy and Ideology but Pancasila is also known as a written regulation in Indonesia containing living laws that the Indonesian people desire.²⁹ Law is based on the values of belief in God, Humanity, Unity, Populist values, and the values of Justice for all Indonesian people.

Conclusion

Legal philosophy plays a role as a director for the formation of law in Indonesia and as something that is needed in Indonesia. It plays a role in explaining the basis of philosophical, legal values, which is able to realize the ideals of Justice and order in a society that relates to legal reality. In the formation of law in Indonesia, legal philosophy plays a role in forming laws that are very much needed for Indonesian society. Legal philosophy is also influential in changing aspects of formation laws and regulations in Indonesia. The existence of Pancasila as a legal philosophy was very influential and played a significant role in the formation of law in Indonesia. This matter because Pancasila is a pillar of outstanding achievement in a circle of the country laws like Indonesia. The legal system of Pancasila is the legal system of Indonesia. Pancasila is a spiritual principle and is the philosophical basis of the state, which is an element emergence of the legal system in Indonesia

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²⁹ Amran Suadi, *Filsafat Hukum: Refleksi Filsafat Pancasila, HAM dan Etika*, (Jakarta: Kencana Prenada Media Group, 2019), p. 19.

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