

## The Legal Meaning and Position of Pancasila as the Source of Legislation Formation in Indonesia

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### Abstract

As the philosophy and ideology of Indonesia, Pancasila has been determined as the source of all sources of state law as set in the decree of MPRS No. XX / MPRS / 1966 concerning Memorandum of DPR-GR Concerning the Regulatory Sources of the Law of the Republic of Indonesia and the Order of Indonesian Legislative Regulations, subsequently in its development, Pancasila remains the Source of all sources of state law, especially in Article 2 of Act No. 10 of 2004 and the latest Act No. 12 of 2011 concerning Formation of Legal Regulations. The development of the Formation of legislation is problematic concerning the field of the formation of Legislation which by several Constitutional Court, it has been declared to be contrary to the 1945 Constitution of the Republic of Indonesia meaning that it is contrary to the Pancasila itself, including the Regulations under the law in which the contents do not reflect the values of Pancasila. It is caused by the missing article, paragraph, or content in the Law of Legislation Formation, PPs, or other rules stating any values that are the basis of the Formation of Laws. This void of Pancasila values must be determined to confirm that Pancasila is the source of all sources of state law, and a comprehensive understanding of the meaning and legal status of Pancasila as the Formation of Laws and Regulations in Indonesia is needed.

**Keywords:** Pancasila, Meaning and Legal Position, Pancasila values.

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### 1. Introduction

Before the state was established, in any part of the country, a basic state developed was called the "*philosofische grondslag*" as the foundation of the nation and state. Universally, it is commonly called the Ideology, which distinguish the characteristics of one country and another, therefore Ideology is a matter that characterizes and is the soul of the nation of a country.

The ideology derived from the Greek word "idien" means seeing and "logia" means word or utterances. Thus, ideology is the science of seeing the future or goals, ideas or thoughts. In the Ensiklopedia Politik Pembangunan Pancasila, ideology is identified as art of phylosophy, because the phylosophy is the basis of all science such as education, ethics, and politics.<sup>1</sup>

According to Alfian as cited in Soeprapto stated that ideology is view of life or phylosophy containing sets of comprehensive norms or basic value systems upheld by certain society or nations. These basic values are usually derived from the culture and historical experience of the community or nation, rooted and live in the reality of their lives, especially when they make a consensus to make it an ideology.<sup>2</sup> Ideology functions as a guide star in the life of the nation and state used as a guideline to achieve the ideals of a country which will later be elaborated or realized in political, security, socio-cultural, economic values, etc.

According to Hamit S Attamimi, Pancasila is determined as the rechs idea by the Founder of The Indonesian state and Nation which dominates the legal foundation of the nation, both written and unwritten basic law.<sup>3</sup> Thus, Pancasila is the foundation to reach the rechs idea of Indonesia.

Rudolf Stalmaller states, the ideal of law (*rechtsidea*) is a construction of thinking that should direct the law to the ideals desired by society. It serves as the guiding star (*leitstern*) for the achievement of the ideals of society. It does not only function as regulative benchmarks, which test whether a positive law is fair or not. According to Gustav Radbuch, the ideal of law also functions as a constitutive to determine that without a legal ideal, law loses its sense as a law.<sup>4</sup>

Mahfud MD opines that the background and consequences of position of Pancasila as the state foundation and ideology is identified from three aspects namely political, philosophical, and juridical (law and legislation). In the political aspects, Pancasila is considered as the *modus vivendi* or agreements that unites all primordial

<sup>1</sup> Soeprapto, *Pancasila*, Konstitusi Press, Jakarta, 2013, p. 46

<sup>2</sup> *Idem*, p. 47

<sup>3</sup> A. Hamid S. Attamimi, *Peranan Keputusan Presiden RI dalam menyelenggarakan Pemerintahan Negara*, Disertasi, Fakultas Hukum Pascasarjana Universitas Indonesia, Jakarta, 1990, p 308

<sup>4</sup> Ahmad Basarah, *Bung Karno Islam dan Pancasila*, Konstitusi Press, Jakarta, 2017, halaman, 75

ties into one nation and the whole Indonesian diverse communities in the principle of unity. The philosophical aspect sees Pancasila as the basis of beliefs of ideal societies and basis for the implementation of a nationalized state values developed and rooted from the life of Indonesian ancestors.<sup>1</sup>

Based on the legal aspect, Pancasila becomes a legal ideal (*rechtsidee*) which is determined to be the basis and objective of all Indonesian Law. Therefore, every law established in Indonesia should be made based on Pancasila by containing consistencies of the lowest to the highest hierarchy. The Laws should also be aimed at achieving the state objectives as stated in the Preamble to the 1945 Constitution of Indonesia. The state objectives are identified as political orientation of development and legal politics, thus legal politics is considered as an effort to make the law as an achievement of the state goals from time to time in accordance with the stages of community development.<sup>2</sup>

Furthermore, formation of Legislation in Indonesia should be based on Pancasila. The Pancasila must be a benchmark in the Formation of Regulations in Indonesia to achieve the state goals as contained in the preamble to the 1945 Constitution of the Republic of Indonesia.

Article 2 of the Act of the Enactment of legislation stating that "Pancasila is the source of all sources of state law". Bagir Manan sees the source of law means, First; the source for or which determines the content of the law. It determines whether the content of the law is correct and fair *vis versa*. Second; the source to determine the power to bind to a rule.<sup>3</sup>

The legal sources, both written and unwritten forms, are used as material for legal drafting. Thus, any form of legislations in Indonesia should be based on the value of Pancasila. Pancasila as the source of all legal sources emerged from the MPRS Decree No. XX / MPRS / 1966 concerning the Memorandum of DPR-GR on the Regulatory Sources of Law of the Republic of Indonesia and the Order of Laws and Regulations of the Republic of Indonesia.

There are number of Laws enacted by the People's Representative Council (DPR) and the President have been materially tested in the Constitutional Court (MK) and were declared to be contrary to the 1945 Constitution of the Republic of Indonesia. On the other hand, there are Legislations in form of Regional Regulations (*Perda*) which regulates some private matter such as the beliefs of the people as well as to initiate movements to change the value of Pancasila.<sup>4</sup>

Article 2 of the Act of Legislation Formation that mandates Pancasila as the source of all sources of state law is not followed by a clear follow-up concerning the provision. the Article 2 clearly mandates that the content of each Formation of the Regulations of the Legislation must not conflict with the values of the Pancasila. However, the Pancasila values in question have never been found in all the existing Articles (Article 1 to Article 104 along with their explanation). Pancasila values are not found as the basis for the establishment of a statutory regulation.

That fact creates a vague norm and even a legal vacuum. The obscurity and emptiness of this norm is specifically about the basis for the Formation of Legislation to determine the Pancasila values referred to in Article 2 along with their explanation in the Law on the Formation of Legislation. In this research that will be carried out, it will be directed to a legal discovery (value or principle) which will be able to be used as a basis for the Forming of Regulations and also answer the legal vacuum referred to in Article 2 and its explanation.

The issue of this legal vacuum needs to be further investigated because Article 2 of the Law on the Formation of Legislation and its explanations mandates that any material content to be made in the Formation of Laws and Regulations may not conflict with the values of the Pancasila. However, on the other hand there is

<sup>1</sup> *Ibid*, p 78-79

<sup>2</sup> *Ibid*, p, 79

<sup>3</sup> Widodo Ekatjahjana & Totok Sudaryanto, *Sumber Hukum Tata Negara Formal di Indonesia (Kilas Balik Ketetapan MPR RI No. III/2000, Perubahan UUD 1945, Ide Pemisahan Kekuasaan Kepala Negara dan Pemerintahan, Maklumat Presiden 28 Mei 2001 dan Ide Dekrit Presiden Abdurrahman Wahid)*, PT Citra Adi Bakti, Bandung, 2001, p 3

<sup>4</sup> Serang City Regulation No. 2 of 2010 concerning Prevention, Eradication and Community Disease Management is a controversial issue in the country because of the actions of the Civil Service Police Unit (Satpol PP) to enforce the government Regulation by disciplining the roadside during Ramadan. Indeed these actions have received a lot of criticism from various parties. This regulation is claimed to have violated human values and involve deeply into the realm of religion. Riant Nugroho (University of Indonesia public policy observer) stated that the closing of the stall in the Ramadan month is inappropriate and contradictory to the 1945 Constitution of the Republic of Indonesia and Pancasila, especially the second principle of Pancasila nasional.kompas.com/read/2016/06/12/08343121/aturan.penutupan.warung.selama.ramadhan.dianggap.menabrak.nilai.kemanusiaan.&ei accessed on October 22, 2017 at 1:00 p.m.)

The General Election Commission of the Republic of Indonesia still includes requirements to be able to read the Qur'an for Aceh Regional Head candidates. It was conveyed directly by KPU commissioner Idha Budianti, these requirements were included in the draft of KPU Regulation (PKPU) regarding the election of the Regional Heads of Aceh, DKI Jakarta, Papua and West Papua. (Nasional.kompas.com, KPU Continues to include Al-Qur'an Reading Requirements for Candidates of Aceh Regional Head, 7 June 2016, accessed on 24 September 2017 at 09.44).

The Government of the Republic of Indonesia issues Government Regulation in Legislations (*Perpu*) Number 2 of 2017 concerning Amendment to Act Number 17 of 2013 concerning Community Organizations. The government considers the provisions in the Community Organization Act Number 17 of 2013 to require adjustments in current conditions and in view of the national situation, in the Act only defines teachings that are contrary to Pancasila, limited to Atheism, Communism, Marxism, and Lennism.

nothing in all the provisions of the Law and Regulations governing it (the Pancasila values referred to in Article 2).

## 2. Research Methods

This study is a normative and doctrinal legal research. Normative is used because of the distinctive character of law science that lies in the method of research that is normative.<sup>1</sup> Doctrinal research is used to analyze the principles of law (civil procedure law), legal literature, expert opinion (doctrine).<sup>2</sup>

This study uses a statute approach, conceptual approach, and history approach. The statute approach carried by reviewing all the rules and regulations which is related to legal issues This approach has a direct correlation with the Act Number 12 of 2011. This legal research also uses a conceptual approach. A conceptual approach is an approach by referring to legal principles by the law scholars or legal doctrines and it can also be found in the court decision.<sup>11</sup> This approach is used to correlate some relevant concepts in the science of law to take Pancasila as the source of the formation of legislation. The historical approach is also used by examining the birth of Pancasila. This approach is consistent with the view of law as a norm, theorem, and rules that apply in society in accordance with the principles of law. The method analysis of legal materials is covering legal concepts, legal norms, technical law concepts, law institutions, law figures, law functions and legal sources.<sup>3</sup>

## 3. Results and Discussion

These results and discussions will analyze some of the problems described above, so to be coherent this discussion will describe one by one the issue with the following results:

### 3.1 The Meaning of Pancasila as Source of Formation of Legislation in Indonesia

#### A. The Obligations For The Formation Of Legislation To Be Based On Pancasila

Firstly, the meaning of Pancasila as the source of all sources of state law means that all forms of legislation formed must refer to, be guided by, and be based on Pancasila. The form of legislation can be in the form of the Constitution, MPR Decree, Law / Legislation, PP, Presidential Decree, Provincial Regulations and Regional Regulations.

The formation of these laws and regulations should be ensured to be based on Pancasila. in other words the Legislation and Government Regulation, etc., must be established based on the values of Pancasila. As the source of all sources of law make Pancasila to be obeyed by all state institutions/ organizations to form legislations and they are even obliged to make Pancasila as a legal source in the formation of law and regulations. The formation of legislation has at least three fundamental reasons, namely philosophical, juridical and sociological foundation. The philosophical foundation is a foundation based on the philosophy of a nation, while the philosophy of Indonesia is Pancasila. Juridical foundation is normative reasons for the establishment of legislations, to see whether the existing provisions are weak or there exist vacuum rules, and the sociological foundation is related to the need and development that occurs in the community that the legislation is required.

Philosophical foundation is a consideration or reason which illustrates that the regulations formed considered the way of life, awareness, and legal ideals which include the atmosphere of mysticism and the philosophy of the Indonesian nation which originates from the Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia.

Sociological foundation is a consideration or reason that illustrates regulations are formed to meet community needs in various aspects. The real sociological foundation involves empirical facts about the development of problems and the needs of society and the state.

Juridical foundation is a consideration or reason that illustrates regulations are formed to overcome legal problems or fill any legal vacuum by considering existing rules, which will be amended, or which will be revoked to ensure legal certainty and a sense of community justice. Juridical foundation involves legal issues related to the substance or material that is regulated so that new legislation needs to be formed. Some legal issues are for example: outdated regulations, disharmonious or overlapping regulations, types of regulations that are lower than the Law having a weak force, inadequate existing rules, or the regulations are not existed<sup>4</sup>

The Formation of Legislation should consider the philosophical basis, indirectly based on the description above, Pancasila becomes a philosophical foundation in the Formation of Law and Regulations. Being a

<sup>1</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, Yuridika, Vol. 16, Nomor 1, Maret-April 2001, p. 103. (selanjutnya disingkat Peter Mahmud Marzuki I).

<sup>2</sup>*Ibid.*

<sup>3</sup>Philipus M. Hadjon, *Pengkajian Ilmu Hukum Dogmatik (Normatif)*, Makalah, Fakultas Hukum Unair, Surabaya, 1994, p. 3-4. (hereinafter called as Philipus M. Hadjon II).

<sup>4</sup> See CHAPTER IV Philosophical, Sociological and Juridical Foundations in the Act Number 12 of 2011 concerning Formation of Legislation.



philosophical basis, Pancasila will automatically become a source in the formation of legislation.

there are two considerate in the Formation of Legislation, namely considering and regarding. in the formation of legislation, the considering considerate should elaborate/ describe philosophical, juridical, and sociological reasons. whereas, the regarding considerate is related to legal norms or rules which form the basis / birth of an authority to form Legislation Regulations, for example, Regarding Article 20, 21, Article 22A of the 1945 Constitution of the Republic of Indonesia.

The legal basis is always preceded by the word Regarding, based on the provisions in the Act Law on Formation of Legislation and Legal Basis of the Establishment of legislation is regulated in appendix to Chapter I Letter B.4 concerning Legal Basis. At least the legal basis contains 2 things namely a. the basis of authority for the formation of laws and regulations, b. Legislations ordering the formation of Regulations

Based on these 2 (two) reasons, the formation of the current legislation should not only be fixed on the articles in the 1945 Constitution of the Republic of Indonesia. But also directly to Legal Regulations that expressly and clearly regulates and instructs the formation of legislation, the law is the Act no. 12 of 2011. The legal basis for the formation of legislation either the Act, Legislation, PP, Presidential Decree or Government Regulations, refers to the provisions of the Article in the 1945 Constitution of the Republic of Indonesia.<sup>1</sup> Regarding the existing separate law governing the Formation of Regulations, then the Act No. 12 of 2011 concerning the Formation of Legislations which can be used as a legal basis in the regarding considerate/legal basis of the Formation of Regulations after regulating the legal basis of the Articles in the 1945 Constitution of the Republic of Indonesia.

With the inclusion of Act Number 12 of 2011 in the consensual basis of law in view of the Formation of Laws and Regulations, normatively the provisions of Article 2 "Pancasila is the source of all sources of state law" can also be included, so that from the beginning the Formation of Laws and Regulations normatively get legalization that the Formation of Regulations made is based on Pancasila. For example, the following researchers include basic examples of considerations that are not only based on the provisions of the articles in the 1945 Constitution of the Republic of Indonesia.

Regarding : Article 15, Article 20 and Article 21 of the Indonesian Constitution. Article 2 of Act Number 12 of 2011 concerning Formation of Legislations.

With the inclusion of Article 2 of Act Number 12 of 2011 concerning Formation of Regulations and the incorporation of Article 2, indirectly the Formation of Regulations is bound to specific Legislation governing the Formation of Regulations, more importantly Pancasila as a source from all sources of state law that have been reminded in the introduction / beginning of the Formation of Regulations and Regulations, it has become more binding on the Formation of Regulations.

Thus the meaning contained in Pancasila as the source of all sources of state law is an obligation to make Pancasila as the legal source of the Formation of Laws and Regulations. Pancasila is the source of law. Formation of Laws and Regulations must be consistent, especially on the substance / material of Laws and Regulations. The provisions of Legislation which are not based on Pancasila means that the rules are made and formed not based on the provisions of prevailing laws and regulations, in other words, thr regulations made is unconstitutional.<sup>2)</sup>

In the context of Pancasila as the source of all sources of state law in material terms means it is a necessity, an obligation as explained above, but in fact, the number of legal products in the form of laws that are tested by the Constitutional Court are varied, Many of these tested laws were declared to be unconstitutional or contradictory to the 1945 Constitution.

This fact indicates that the Formation of Legislation does not consistently make the Pancasila legal source as the source of all sources of the Formation of Legislation. Laws that are contrary to the 1945 Constitution are logically legal, the Law also automatically contradicts Pancasila, as explained and described in the previous article that the 1945 Constitution consists of the Preamble and articles, the relationship between the Preamble of the Constitution and Articles of the 1945 Constitution has an organic relationship especially in paragraph IV which contains the values or principles of the Pancasila and the Articles in the 1945 Constitution constitute emission / reflection / derivatives of the values of the Pancasila itself.

Suko Wiyono said that the function of the ideals of the Pancasila law as a testing stone for the legislation is

<sup>1</sup> In some Formation of Laws and Regulations, It also contains a legal basis ordered directly from an Act to be regulated further in a PP. a sample legal basis for PP 61 of 2010 concerning the implementation of Act No. 14 of 2008 concerning Public Information Openness. Previously, several Legislation Regulations never mention Act No. 12 of 2011 as a legal basis for the formation of legislation, such matter is wrong.

<sup>2</sup> The judicial review of the Law on the Constitution is under the Constitutional Court, the judicial review of the statutory provisions under the Law on the Act is under the authority of Supreme Court. See Article 24A Paragraph (1) The Supreme Court has the authority to adjudicate at the cassation level, examine the statutory provisions under the law against the Act and have other powers granted by law. Article 24C Paragraph (1) The Constitutional Court has the authority to adjudicate at the first and last level of which the decisions are final to examine the law against the Basic Law, decide upon disputes over the authority of state institutions whose authority is granted by the Basic Law, decide upon the dissolution of political parties, and decide on disputes concerning the results general election."

very possible, therefore we need to realize that the legal product resulted is actually a legal product with a political nuance, but in juridical image, so that a deal is possible to regulate concerning the values of the prohibition (*verbod*), command (*gebod*), permission or dispensation (*toestemming*) and dispensation (*uitzondering*) which is contrary to the main basic values (Pancasila), so that juridical review should be taken.<sup>1</sup>

Ahmad Basarah in his dissertation entitled "Eksistensi Pancasila sebagai Tolok Ukur dalam pengujian undang-undang terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 di Mahkamah Konstitusi: Kajian Perspektif Filsafat Hukum dan Ketatanegaraan (The Existence of Pancasila as a Benchmark in testing the law of the 1945 Constitution of the Republic of Indonesia in the Constitutional Court: Study on the Perspective of Philosophy of Law and State Administration)" concluded that The Indonesian Constitutional Court used Pancasila as a benchmark for testing the Law on the 1945 Constitution

Although based on this research, the Constitutional Court has measured the Pancasila in testing, but the one of the Article tested by the Constitutional Court which contradicted one of the values or the principles of the Pancasila is not found in the Constitutional Court verdict. The Constitutional Court Judges should have more courage in the future to elaborate legal reasons clearly in the Constitutional Court's Decision on any facts that the provisions of the law tested are contrary to the value and Principles of Pancasila.

On the other hand, the applicant for judicial review of the 1945 Constitution at the Constitutional Court should no longer limit the review of the Act only on the 1945 Constitution to Articles in the 1945 NRI, but he could also ask for an examination of the Law against the constitution declared contrary to the values / principles of Pancasila which has been stated in paragraph IV of the 1945 Constitution of the Republic of Indonesia in 1945. Applicants for judicial review can further describe that the provisions of Article, Paragraph or Content in the Act to be tested with legal arguments can clearly explain that the norm is contrary to the principles / values of Pancasila contained in paragraph IV of the 1945 Constitution of the Republic of Indonesia.

This fact must be accepted because from the standpoint of legal science it cannot be blamed and is in the category of the correct legal track. Normatively the 1945 Constitution of the Republic of Indonesia indeed states that the testing of the Law against the 1945 Constitution (not Pancasila), however the 1945 Constitution of the Republic of Indonesia is divided into 2 (Preamble and articles) and both are integrated in the 1945 Constitution of the Republic of Indonesia.

Another juridical reason is that Pancasila has been established as the source of all sources of state law, thus there is an obligation for the Formers of Legislation to comply and implement it. When the Laws and Regulations are not made and based on legal sources (Pancasila), then legally the form of the Laws and Regulations is judged and tested materially to the authorized institutions

### **B. Pancasila as the Basis to Examine the Act on the 1945 Constitution of the Republic of Indonesia**

The meaning inherently contained in Pancasila as the source of all sources of state law is that Pancasila is the main basis for the examination of legislation in Indonesia. It happened as the a legal consequence of the enactment of Pancasila as the source of all sources of state law in the provisions of Article 2 of Act Number 12 of 2011.

Based on the previous description on Pancasila as a source of all sources of state law obliged the institution or the regulator to use Pancasila as source of law in the formation of legislation. As obligatory, the use of Pancasila as the legal source for legislation formation has legal consequences that its negation may cause the products to be rejected or void by law. Because it may have a potential to violate human rights and indicate its formation does not reflect the values and principles of Pancasila, which is tested by the Constitutional Court.

Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia stated that "The Constitutional Court has the authority to adjudicate at the first and final level in which the decision is final to examine the law against the Constitution". Regarding this clause, Pancasila as an instrument to try the Law on the Constitution is not clearly mentioned. However, to answer this mater, constitutional theory and legal source theory is applied.

Constitutional theory defines constitutions are positive and highest norms in the hierarchy of statutory regulations. K.C. Wheare<sup>2</sup> states that the existence of a constitution in any part of the earth does not only places the constitution as a rule of law, but is also placed as the highest law of a state. Since the product is born by the legislative power, the legislative legal product has to be placed under the constitution, and the constitution itself is the highest law of a state.

Thus, the constitution is placed as the basic and highest law in a state. Sri Sumantri stated that the constitution is a supreme law or the highest law that must be obeyed by the institutions mentioned in the constitution or by citizens. This fact shows that the position of the constitution is a fundamental law of a state, then all forms of legislation should not conflict with the Constitution.

<sup>1</sup> Suko Wiyono, *Reaktualisasi Pancasila dalam Kehidupan Berbangsa dan Bernegara*, Universitas Wisnu Wardana Malang Press, Edition VIII, Malang, 2016, p.203-204. See H.A.S Natabaya, *Manifestasi (perwujudan) Nilai-nilai Dasar Peraturan Perundang-undangan*, Jurnal Konstitusi, Numberr 2 Mei 2006, Constitutional Court, p. 19-20

<sup>2</sup> K.C.Where, *Konstitusi-Konstitusi Modern (penerjemah Muhammad Hardani)*, Pustaka Eureka, Surabaya, 2003, p. 85

Based on the constitutional theory, the existence of the Constitution is the highest law in a country as well as in several countries that adhere to the supreme law system or the supremacy of the constitution. Referring to the theory, the formation of legislation in Indonesia must not be in conflict with the Constitution. A contrary Legislation can be requested to be examined by the court institution (MK). Thus, this theory has indicated that Indonesia has adopted a supreme law system and placed the Constitution in the highest position of positive law, and made the constitution as a test stone for testing the Law on the Constitution.

In Indonesia, the Constitution has certain character and uniqueness which is shown in the contents of the Constitution. The 1945 Constitution of the Republic of Indonesia contains preamble and contain of the constitution containing Articles which are manifestations of the translation of the values, principles contained in the preamble of the Constitution, specifically the elaboration or reflection of the principles of Pancasila in paragraph IV of Preamble of the Constitution. Thus in the context of the Indonesian Constitution, 1945 Constitution of the Republic of Indonesia is divided into two namely Preamble and Articles.

Additional rules of Article II of the 1945 Constitution of the Republic of Indonesia is "with the enactment of amendments to this Constitution, the 1945 Constitution of the Republic of Indonesia, consisting of Preamble and Articles". Constitutionality, it has been clearly stated that the 1945 Constitution of the Republic of Indonesia is divided into the Preamble and Articles. Thus, to refer the 1945 Constitution does not merely consider the Articles contained but also the Preamble of the 1945 Constitution of the Republic of Indonesia.

According to Arief Hidayat, the existence of the Constitutional Court as the guardian of the constitution is in fact also as the guardian of the state ideology. It means that the Constitutional Court in examining, adjudicating, and deciding cases of judicial review of the Law based is on the authority granted by Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court also used the Pancasila benchmarks as a instrument in testing the Act at the Constitutional Court.<sup>1</sup>

### C. Pancasila as the Basis for Examining Legislation under the Law against the Act

As an instrument for testing the Law on the Constitution, Pancasila as the source of all sources of state law is also used as a basis for testing the statutory regulations under the law against the Act. While, the institution given constitutional authority to test legislation under the Act is the Supreme Court (MA).<sup>2</sup>

As explained in the previous discussion, in the context of judicial power in Indonesia, testing the validity of Legislation product is given to the Constitutional Court and the Supreme Court. The Constitutional Court was limited to the authority to examine the Law on the Constitution and the Supreme Court is testing the Legislation under the Law on the Act. The basic material for testing the legislation under the law is the Act, but in the fact of the constitution, there is never a legal product tested to the Supreme Court on the basis of Act no 12 of 2011, Legislation that is tested in the Supreme Court is tested with laws that regulate linear matter to the legislation being tested, for example regulation that regulate wages are tested with labor laws that are always linear with higher laws.

In this study, the examination of the Act on the Constitutional Court at the Court is free of charge, . While the testing of the Legislation under the Law on the Act conducted by the Supreme Court is charged for a legal fee of Rp. 1,000,000 (one million rupiah).<sup>3</sup>

Basically, examination of legislation proposed at the Supreme Court is always tested with a higher law and has a direct organic relationship with the rules to be tested. Whereas Act 12 of 2011 itself is rarely used by an applicant to postulate that the provisions of these laws and regulations are contrary to the law. In fact, all forms of legislation made (including legislation under the law such as Legislation, Presidential Decree, Regional Regulations) have the potential to be made without the provisions of the Act on the Formation of Legislation

<sup>1</sup> Arief Hidayat, *Konsepsi Negara Hukum Indonesia Berdasarkan Pancasila* (Conception of the Indonesian Law State Based on Pancasila). The Paper is presented at the National Seminar on the theme of the Indonesian State Administration System which was held on April 24, 2013 at the MPR, p. 6. See also Ahmad Basarah, *The Existence of Pancasila as a benchmark in testing the law of the 1945 Constitution of the Republic of Indonesia in the Constitutional Court* (a perspective study of the philosophy of law and state administration), Doctor of Law Study Program, Diponegoro University, Semarang, 2016, p.2.

The Constitutional Court as the guardian of the constitution and as the guardian of ideology. Delivered by Arief Hidayat in the "Continuing Legal Education" program *The Role of the Constitutional Court as the Initiator of the Constitution and Guard of Democracy in Election Disputes*, Jakarta May 3, 2013, page 2

The same point was stated by Hamdan Zoelva, the Constitutional Court of the Republic of Indonesia is a form of democratic reform as a guardian of the country's ideology. See [www.mahkamahkonstitusi.go.id](http://www.mahkamahkonstitusi.go.id), Hamdan Zoelva: MK as Guard of the State Ideology, accessed on March 12, 2018 at 3:00 p.m. Thus the Constitutional Court in examining, adjudicating and deciding a constitutional case, then in addition to basing its test stones on the articles in the Constitution, it must also base on Pancasila as the basis for the test stone in testing in the Constitutional Court.

The Constitutional Court in the Asian National Symposium held the "Constitutional Court as the Guardian of Ideology and Democracy in Compound Societies" symposium, held by the Constitutional Court in the International Symposium on the Constitutional Court at Sebelas Maret University Solo, August 9, 2017, See <http://m.liputan6.com/news/read/3051860/fly-to-solo-jokowi-open-symposium-mk-in-all-Asia>, Fly to solo, Jokowi Open Symposium MK in Asia, August 9 2017, accessed on March 12, 2018 at 3:00 p.m.

<sup>2</sup> See Article 24A Number (1) "Mahkamah Agung berwenang mengadili pada tingkat kasasi, menguji peraturan perundang-undangan di bawah undang-undang terhadap undang-undang, dan mempunyai wewenang lainnya yang diberikan oleh undang-undang."

<sup>3</sup> See <http://Law-justice.co>, *Bayar Satu Juta Uji Materil di Mahkamah Agung*, accessed on April 15, 2018 at 10.00 p.m.



especially in matters that conflict with values or the principles of Pancasila.

The meaning of Pancasila as the source of all sources of state law indicates that Pancasila under any circumstance will always be able to be used as a testing stone for the statutory regulation under the Law conducted by the Supreme Court. The fundamental reason is that the values, the principles of Pancasila have become the basis in The Act No 12 of 2011 in the Formation of Laws and Regulations. There are two basis for testing the law, first the Law is used as testing stone that regulate directly the emergence of regulations under the law to be tested, second Acts of Legislation Formation is the basis for the test.

#### **D. The Rule or Law for the Establishment of State Objectives.**

The meaning of Pancasila as the source of all sources of law from the grammatical point of view, the phrase means that Pancasila is beneficial for the Formation of Legislation, i.e., the legal drafting based on Pancasila will definitely spread benefits for the Indonesian People, this benefit is related to Formation of Legislation such as Constitution, Legislation, Laws and Regulation, Government Regulation having the correct source of value, namely Pancasila.

The benefits specifically means that the formation of legislation protects the whole of Indonesian blood, to provide benefits for the equality of national welfare, non-discrimination and the achievement of legal ideals, as to guarantee the state's objectives listed in the Preamble to the 1945 Constitution.<sup>1</sup>

According to Mahfud MD, as a rule of law, Pancasila as the source of all sources of state law contains 4 very important meanings. First, the law made in Indonesia must aim to build and guarantee the integration of the Indonesian state and nation, both territorially or ideologically. So the Legislation that were born and made for the Indonesian nation and State must not contain substance that can cause disintegration of the region or ideology, because it is contrary to the objectives of the Indonesian state in the framework of unity.<sup>2</sup>

Second, the laws / regulations that are formed must be based on a democratic system and monarchy. Democracy which is the basis of popular politics requires the formation of legislation must be based on a people's agreement (in this case through representatives who have been chosen by the people), either through acclamation agreement or based on majority votes, if the unanimous agreement cannot be reached. Whereas monarchy as one of the pillars and principles of the rule of law requires that the formation of legislation in Indonesia should be made, formed based on legal substance philosophically in accordance with the *Pancasila rechtisde* and with the correct procedures. Thus, legal products produced through the Formation of Regulations cannot be made on the basis of "indeed handling" the number of supporters in parliament, but must contain the Pancasila philosophy and through the procedures or stages of the Formation of Legislation.<sup>3</sup>

Third, laws made in Indonesia should aim at creating social justice for all Indonesian people. Therefore, the formation of legislation should not motivate the emergence socio-economic gaps due to the exploitation of dominant groups without the state protection. Therefore, the formation of legislation should be able to avoid those problems. The laws should provide special protection to weak groups to narrow the socio-economic gaps that may arise.<sup>4</sup>

Fourth, the law / the formation of legislation made in Indonesia must be based on a religious tolerance that the law must not privilege or treat people differently which discriminates against certain groups based on large or small religious adherents. It is due to the fact that Indonesia is not a religious state (a country that only has a basis / recognizes one religion) and not a secular state (a country that does not care or has no religious spirit). Indonesia as a Pancasila state is a religious nation state that provides strong protection for each of its citizens to belief and implement their respective religious teachings without interfering with each other's religious adherents, which especially leads to the disintegration of the nation.<sup>5</sup>

Officials / institutions / agencies given the authority have been given the guidelines to Form Legislations. The formation of Indonesian Laws and Regulations may not contain rules that can disintegrate the Unitary State of the Republic of Indonesia. Considering that the Indonesian state is an archipelagic state in which there are many ethnics, cultures, religions, the direction of the formation of Indonesian laws and regulations must lead to the unity of Indonesia, or be able to maintain diversity, so that laws or legislation should lead to protection of the entire nation and all of Indonesia's blood bound by "A unity".

In addition, the formation of legislation in Indonesia must lead to "maintaining regional integration", and should also lead to the integration of ideology. As previously stated, the Indonesian Ideology is the Ideology of Pancasila, thus the direction of the formation of legislation must lead to its formation so as not to give chance for radicalism, liberalism etc.,.

<sup>1</sup> The formation of legislation provide benefits since the legal source is based on the Pancasila, thus the country's goals can be achieved to protect all Indonesian people and to advance public welfare, develop the life of the nation, and participate in carrying out world order based on independence, eternal peace and social justice.

<sup>2</sup> Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu*, PT Rajagrafindo Persada, Jakarta, 2012, p 52-53

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*, p. 54

### 3.2 Pancasila as the Source of All Sources of State Law

#### A. Pancasila as Philosophical Product

The relationship of Pancasila as a philosophical basis is proven by the principles of Pancasila that contain elements of anthropological basis (Human Nature), Epistemological basis (knowledge), and axiological basis (values).

First Pancasila as philosophical product based on anthropological basis (human nature) means Pancasila as a unified system of philosophical thinking results concerning the value of principle of Pancasila and the basic nature of human beings, or philosophically includes the ontological basis (nature) of the principles of Pancasila. The Principles of Pancasila are not independent, it has a basic ontological unity. The ontological basis of Pancasila is essentially a human being who possesses the absolute nature of monopluralist, therefore this basic nature is also called the anthropological basis.<sup>1</sup>

The main supporting subject of Pancasila Principles is human being, it is explained as follows:

1. Believe in God Almighty (almighty God)
2. A just and civilized humanity
3. Unity of Indonesia (territorial and people)
4. Democracy under the wise guidance of representative consultations,
5. Social justice for all Indonesian people

Humans as the main supporters of the precepts in the Pancasila and ontologies have a high position, consisting of natural, physical, and spiritual structures of the body and spirit. The nature of human nature is as an "individual being" and social creature, as well as the position of human nature as a personal creature that stands alone and as a Creature of God Almighty. It is because of the position of human nature as one's own being and the creature of God that the first hierarchy of the first precepts of the One Godhead underlies and animates the five other precepts of Pancasila.<sup>2</sup>

The first principle of the Pancasila "Believe in God Almighty" is an organic entity that locks the other principles of the Pancasila, because humans are individual and social beings. Both as individual and social beings are inseparable from the absolute nature of God, the existence of human being absolutely due to the existence of God Almighty, even the existence of a state (an independent Indonesian state) is also absolutely because of the existence of God.

Second, Pancasila is the epistemological basis (knowledge). Pancasila as a philosophical system is essentially in the form of guidelines or the basis of the Indonesian nation in viewing the reality of the universe, humans, communities, nations and countries about the meaning of life, and as a basis for humans to solve problems of their life. Pancasila has become a practical system of ideals or beliefs, because it is used as a basis for the way of life of humans or a group of people in various fields of life.<sup>3</sup>

The epistemological basis of the Pancasila is essentially inseparable from its ontological basis, Pancasila as an ideology is based on its basic values, namely the philosophy of Pancasila itself. Because the basic epistemological basis of Pancasila cannot be separated from the basic concept of human nature, which humans are the ontological basis of Pancasila, then it has implications for the epistemological building, which is placed in the building of human philosophy.<sup>4</sup>

This epistemological basis is broadly inseparable from the ontological basis or the basis of humanity itself, the epistemology in Pancasila is a guideline and basis for the people, nation and state in viewing the reality of life. This epistemological basis makes Pancasila a way out to solve problems in dealing with human life. Pancasila as the science means the source of the values of knowledge comes from the Indonesian people themselves.

The composition of the Pancasila principles is in a hierarchical and pyramid-shaped, where the first principle is based on and animates the other four principles, and the second principle are based on the first and third principle underlying and animates the fifth principle, while the fifth principle are based and inspired by the first principle, the second, the third and the fourth principles. Thus the arrangement of the Pancasila principles has a logical system both concerning the quality and quantity. The logical rational basics of Pancasila also involve the content of the meaning of the Pancasila principles.<sup>5</sup>

Third, Pancasila is an axiological basis. the principles of Pancasila are also a philosophical system that has a basic axiological basis, so that the values contained in the Pancasila are essentially a unity. therefore, Pancasila principles can expressly provide a basis for the benefits of the people, nation and state from various

<sup>1</sup> Kaelan, *Pendidikan Pancasila (pendidikan untuk mewujudkan nilai-nilai Pancasila rasa kebangsaan dan cinta tanah air)*, Paradigma, Yogyakarta, 2014, p. 56

<sup>2</sup> *Ibid*, lihat juga Notonagoro, *Pemboekaan Oendang-Oendang Dasar 1945, Pokok Kaidah Fundamental Negara Indonesia*, Pidato Pada Dies Natalis 11, Universitas Airlangga Surabaya, 1975, p. 53

<sup>3</sup> Kaelan, *Pendidikan Pancasila.....*, op.cit., p. 60

<sup>4</sup> *Ibid*, lihat juga AWM. Pranarka, *kesinambungan, Penataan, dan Ideologi*, Analisa, 1985, Jakarta, p. 40

<sup>5</sup> *Ibid*



perspectives. Basically, everything is valuable, but the value must be able to be explained well, especially the values that are directly related to humans.

The values contained in the first, second, third, fourth and fifth principles of the Pancasila constitute the ideals, hopes and dreams of the Indonesian people that will be realized in their lives, since their lives have been longed for by the Indonesian people to realize a lively society of *gemah ripah loh jinawi, tata tentrem karta raharja* in the behavior and actions of Indonesian People.<sup>1</sup>

In this case the attitudes and manifestations of the axiology of the Pancasila principles were derived and reflected the spirit of Indonesian Laws and Regulations. By the adoption of the Pancasila principles in the Formation of Legislation, the axiological character will naturally be achieved namely the aspirations of the coveted Indonesian people through legal instruments, attitudes and behavior of the Indonesian people governed by the form of legislation in which these laws and regulations should reflect the values contained in the Pancasila principles.

In short, the axiological manifestation of the Pancasila is to realize the ideals of the established Indonesian state. The axiological basis of Pancasila is the only foundation for the state in realizing the ideals of the state because it has been agreed that Pancasila is the basis in establishing the Unitary State of the Republic of Indonesia.

### B. Pancasila as A Ground Norm

Placing Pancasila in the Preamble to the 1945 Constitution indirectly is actually not in accordance with the nature of the theory opined by Hans Kelsen. He states that a basic norm or ground norm is abstract, meteoric. Another characteristic mentioned by the theory of *stufenbautheorie* is that the basic norms are not formed by law-forming institutions and the existence of basic norms is a guideline and reflection for the birth of the Constitution.

Placing Pancasila in the Preamble of the Constitution according to the researcher indirectly reduces the nature of the basic norms intended by Hans Kelsen. Though he defines Basic Norms as an abstract or meta-juridical value, However according to Hamid S Attamimi, the Preamble of the Constitution shows Pancasila is no longer abstract. The position of Pancasila as the basic norm is essentially being in a position above the Constitution itself, so it is not appropriate to put Pancasila as the ground norm in the Constitution /Preamble of the Constitution.

According to Hans Kelsen, any norm can be called a basic norm if it meets the requirements, first the validity cannot be obtained from other higher norms. All validity norms can be traced to a common basic norm forming a norm system, or a normative order. The basic norm which is the main source is the binding of all norms including a certain norm system into a certain normative system, it can be tested only by affirming that the norm obtains its validity from the basic norms that form the normative system.<sup>2</sup>

Second, according to Hans Kelsen, a norm can be referred to as the basic norm is a juridical meta, not a product (made) by the legislature, not part of the legislation, but a source of all of all the rules and regulations under it. Ground norm is at the top of the *stufebau*. There are no more than two ground norms in the pyramid building. Ground norm makes the rule of law binding as a positive law rule. Therefore, the rule of law has binding power as a rule of positive law. For Hans Kelsen the basic norm is the basis of all power and legality of positive law.<sup>3</sup>

In August 18, 1945 Indonesia was independent and formed a sovereign state. PPKI ratified the Constitution which based on Additional Article II rules it was stated that Constitution consist of the Preamble and Articles. however, the statement stating that Pancasila contained in the fourth (IV) paragraph should be reviewed carefully to put the legal position of Pancasila as the basic norm.

If the statement placing Pancasila at the Preamble of the 1945 Constitution means that the Indonesian state has changed the basis of the country for 3 times. Whereas the basis of a state in a country will never change under any circumstances unless the country dissolves or there is a revolution that changes the basis of a country.

Hans Kelsen and Hans Nawiasky as the discoverer of the *Stufenbautheorie* Theory stated that basic norms are not included in the types or categories of Legislations. Basic norms, according to Hans Kelsen, are the positive source of the Formation of Legislation and becomes the binding material or binding force for positive law.

The researcher opined that Pancasila cannot be occupied or positioned at the Preamble of the 1945 Constitution because the Constitution is a positive law and its establishment by a state institution is given the authority to do so.<sup>4</sup> MPRS NO. XX / MPRS / 1966, TAP MPR NO III / MPR / 2000, Act no. 10 of 2004, and

<sup>1</sup> *Ibid*, p. 66

<sup>2</sup> Ahmad Basarah, *Bung Karno, Islam dan Pancasila*, Konstitusi Press, Jakarta, 2017, p. 62 See Maria Farida Indrati Soeprapto, *Ilmu Perundang-undangan (dasar-dasar dan pembentukannya)*, Kanisius, Yogyakarta, 2000, p. 8

<sup>3</sup> *Ibid*, p. 66 see Ni'matul Huda, *Perkembangan Hukum Tata Negara, Perdebatan dan Gagasan Penyempurnaan*, FH UII Press, Yogyakarta, 2014, p. 9

<sup>4</sup> The Constitution is revised by the MPR based on the provision of Chapter XVI article 37 The 1945 Constitution of the Republic of

Act No 12 of 2011 place the Constitution in the type and form of legislation, so it is not appropriate to put the legal position of Pancasila at the Preamble of the 1945 Constitution (Paragraph IV).

### 3.3 The Value of the Principle of Pancasila

#### 1. The Principle of Believe in God Almighty (The belief that God exists, Value of Religious Freedom, Religious Tolerance)

The first principle of Pancasila is to Believe in God Almighty. It is the basis for other principle since these principle are the basic values or primary causes which then give birth to other things. Furthermore, this principle is the primary causes because it motivates the birth of other principles of Pancasila. The values contained in this principle will be elaborated as follows.

The belief in God is actually occurred in the statements of some figures who have the opportunity to offer their ideas related to the State Basis which will be used for Independence of Indonesia at the BPUPKI meeting May 29-June 1, 1945. In discussing the state an religion, some of the figures lead to the belief that God exists, and the belief that the universe and life is created by God Almighty.

Even though it is divided into 2 groups (nationalist group and religious group), both groups are actually equally believe in God. Religious groups propose that the religion he believes becomes the basis of the State, while the other groups or nationalists try to separate the issues of religion and the state. But both of them believe that God exists and deny the idea of atheism.

The Almighty God is a superior cause, because all at that time (the trial of BPUPKI, PPKI) had talked a lot about the State Basis of the God. There are at least two strong groups that want the Indonesian State Base to use the Divine Foundation based on Islamic Sharia, and the Divine Foundation which guarantees all religions adhered to by the people. The two groups are religious and nationalist groups.

Regarding the two major groups on the Divinity Basis, its primary cause is supported by the agreement of all Indonesian figures that the state that will be established should be based on the belief in God.<sup>1</sup> It means the state acknowledges the majesty of God Almighty. In other words, the figures and Indonesian founding fathers agreed to deny the idea of atheism or idea to not believe in God.

Therefore, this fact automatically places Believe in the Almighty God as the highest thing (without referring to God for any of the religions). All have agreed that the Divine Value is the highest value that must be recognized, respected, and upheld. Recognition of the Almighty God means submitting himself that the origin of life and nature begins with the existence of God, and the existence of life and nature is also the existence of God. One is aware that the life is God's creations. God is an absolute basis because all created or originated from God, including the absolute basis of human or humanity. Essentially, the basis of humanity is to humanize humanity itself with the nature that exists in humans, so that human rights arise

The Formation of Legislation emphasizes more on the religious direction, which means the direction of the Formation of the Legislation must continue to look the power and uphold the existence of God Almighty. Formation of Laws and Regulations may not facilitate or legalize the people upholding the idea of atheism / no god / no faith, because the founding fathers have agreed that the State of Indonesia is a divine State, a State that believes in the existence of an Almighty God.

The form of state belief in God is actually contained in the preamble of the 1945 Constitution of the Republic of Indonesia " Atas berkat rakhmat Allah Yang Maha Kuasa dan dengan didorongkan oleh keinginan luhur, supaya berkehidupan Kebangsaan yang bebas, maka rakyat Indonesia menyatakan dengan ini kemerdekaannya (For the blessing of the grace of God Almighty and by being encouraged by noble desires, so that a free national life, then the people of Indonesia declare hereby their independence)". The state highly respects the existence of God, that the statement of the existence of god is one of the determinants of the independence of Indonesia. In recognition of the existence of God in intervening, it has set Indonesia free from colonialism for so decades, it indicates that all forms of struggle for all elements of the nation that sought Indonesian independence agreed that it is God who makes it easy for these great ideals together. Thus the value of believe in God cannot be rejected for any reasons.

One other value contained in the first principle of the belief in God is the Value of Religious Freedom. The value of freedom is very essential value, in other words the people are guaranteed by the State to adhere to a religion they believe based on their respective beliefs, without having to be directed or forced to profess certain religions

The freedom means free, is not bound to follow certain religion. It is also inseparable from the nature of the belief in God which does not impose belief on all people. All religions teach to respect each other's faiths. Actually this value cannot be separated from the freedom to practice worship according to the religious beliefs, meaning that there must be a role of the state that can guarantee the adherents of religion in Indonesia can carry

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Indonesia.

<sup>1</sup> Regardless the State Base based on the value of Islam or the One God Almighty

out their religious orders well, comfortably, and most importantly, be able to carry out a sense of security in carrying out religious beliefs. .

Regarding the Formation of Laws and Regulations, the value of religious freedom must be truly realized. As explained earlier, the issue of value is an ideal problem / *das sollen* which will then be realized / *das sein*, the State through the Establishment of the Formation of Legislation must be able to guarantee that this value must be realized through legal products made, meaning that the direction of Establishment The formation of regulations is to be able to guarantee that Indonesian people can have freedom in professing religion and carrying out their religious orders.

The Law through the Formation of Legislation officially issued and applied to its citizens must be able to guarantee, if there is a legal product which does not reflect the value of freedom then the legal product does not reflect the value of Pancasila.<sup>1</sup> Formation of Regulations may not be formed at will, this value must be realized in the Formation of Legislation.

The value of mutual respect between religious adherents in the frame of the Unitary Republic of Indonesia is clearly evident from the struggle of the Indonesian Nation to seize independence from colonialism. (regarding the basis of the state that would be used by an independent Indonesia) all elements of the nation, including national figures, have the same ideals, the same desires, the same hopes to form a unitary state of the Republic of Indonesia in which there are diversity, including in the case of diversity or differences regarding the religion and beliefs of Indonesian People.

The struggle of the Indonesian nation is not only carried out by adherents of certain religions. They became one in the name of "the struggle for independence" in order to create an independence aspired together without considering any religious identity. The values contained in the collective agreement, hopes, shared ideals and shared goals automatically oblige the adherents of the religions to respect each other. These consequences were born automatically when all agreed to form the Unitary State of the Republic of Indonesia consisting of adherents of different religions who came together to fight for Indonesian independence.

In the context of the Formation of Laws and Regulations, the value of mutual respect between adherents of this religion can subsequently become a principle which can further serve as a guideline in the preparation of the Formulation of Legislation. The principle is a non-discrimination against adherents of religion, the purpose of this principle is to underlie the formation of legislation to be based on the value of this principle.

In this context the researchers assume that there are two points of view to respect adherents of one religion to another. First, regarding the obligation of the state / government in terms of the Formation of Legislation that must be able to guarantee that religious life in Indonesia must run safely and peacefully. Secondly, for the People, they must believe that in life mutual respects is needed in Indonesia.

The consequence of the value of mutual respect among adherents of religion is also effects on the field of law or the formation of legislation. The principle of non-discrimination aim at following up the value of mutual respect between adherents of the religion that has been believed and agreed upon when forming the State of Indonesia's independence. Through the historical approach to state administration, it is recognized that the debate about religion and the state had happened before independence.<sup>2</sup> However, from the various experiences, the life of the nation and state that has placed Pancasila as the Basic State and religion is acknowledged to have "twin tolerance".

The philosophical word "twin tolerance" is a situation of religion and the state are aware of each limits of the authority / power that should be considered. The state / government has freedom in forming a state policy within the framework of human rights and constitution, in other cases certain religions may not have exclusive rights that are not possessed by followers of other religions or exclusive rights that allow or reduce the rights of followers of other religions to carry out their religious orders. By understanding the meaning of twin tolerance it is hoped that there will be no more heretical thoughts of a person, group or certain group to state that the state can intervene fully in religion and vice versa.

Thus the material content of the Formation of Legislation that must be considered for the value of mutual respect between religious adherents is the principle of non-discrimination. A law must not be made without

<sup>1</sup> Although based on the legal regulations, to declare a legal product is contrary to the value of Pancasila and the 1945 Constitution should be decided by the decree of the Court (Constitutional Court on the test of Legislation on the 1945 Constitution)

<sup>2</sup> Agoes Salim wrote in the Fajar Asia No. 170 of 1928 which launched a critique of the idea of "European nationalism in the name of their respective homelands, we see European Nations demeaning European Nations over all Nations exclude Europe On the basis of relations due to world objects and the appearance of the world will not be able to grow the virtues necessary to achieve perfection. On the basis of worldliness that is an object sincere and trust, and which to save lives. Because the objects and appearance of the world are of no use, when lives are gone. Thus for things concerning our world, we should show a higher ideals than all the things and forms of the world, namely to the rights, justice and virtue whose limits and size have been determined by God SWT" Two years earlier Sukarno wrote an essay in the Indonesia Moeda Magazine with the title Nationalism, Islamism, and Marxism. our nationalism is eastern nationalism and never be western nationalm which, according to C.R.Das, is an attacking nationalism, a nationalism that pursues its own needs. A national profit or loss trade. Our nationalism is nationalism which makes us "The God's Instruments" and makes us live in spirit. See Yudi Latif, *Negara Paripurna Historitas, Rasionalitas, dan Aktualitas Pancasila*, PT. Gramedia Pustaka Utama, Jakarta, 2015, p. 67-68



regarding to this principle.<sup>1</sup> This principle is a mandatory guideline for the Formation of the Legislation because it is philosophically the value of mutual respect between religious adherents born of the First Principles of Pancasila.

## 2. The Principle of A just and Civilized Humanity (value of Humanity)

The second principle of Pancasila "A just and Civilized Humanity" raise an important value in human nature, namely the value of Humanity, this principle is very essential and is closely related to human nature and identity as God creatures that must be equally placed with other human being, and is treated whose human rights should be upheld by the state. Humanity is also closely related to the undeniable position of humans as social beings that they have to make interactions.

Actually, human rights is universal. It is a consequence of human values, that human rights as the basic rights of a human being is real and directly born from the result of the existence of these human values. In Human rights were born because of the human values that are purely inherent in human beings, so that the human rights of each person are also attached to a human right which is also automatically born and attached to each human being. human rights have been attached since they were still in the womb of a pregnant mother.<sup>2</sup>

Human values also have the meaning contained "humanize humanity", it means to treat humans as humans who have nature as God's perfect creatures. There should be no treatment of humans that leads to the attitude of not respecting the nature of humanity by the people or from the state / government. Deeply examined, the value "humanizing humanity" in this context is related to the services provided by the state / government to its people. The service referred to is not only limited to public services to the community, but the service or the enactment of the Formation of Legislation made by the state / government to its people must contain the value of humanity. Thus, the formation of legislation that would be made by the state / government should consider the humanity, because the law will be applied to the people who have the value of humanity.

Formation of legislation with the concept of humanity must equalize the treatment of humans regardless of racial background, culture, religion, ethnicity, skin color and types of differences that exist within the territory of the Republic of Indonesia. Because the concept of humanity born from human values truly treats humans equally without discriminating against the background and other differences. Human values that should be reflected in each Formation of Regulations in Indonesia is a guarantee to the achievement of the ideals of the State contained in the Preamble of the 1945 Constitution of the Republic of Indonesia.

Philosophically, humanity values place the highest position in the state / government treatment to its people. Because philosophically humans, as the creation of God Almighty, are perfect beings, who have the highest existence of all other creatures on earth. Philosophically human dignity is placed in the highest position of other creatures because humans have values that are not possessed by other creatures. For example, the ability to think and distinguish between good and bad, humans are given the most complete senses, have creation, taste and intention, etc. in the humanity value, word "human" refers to human being (no other creatures). Thus philosophically, human values are all things related to the actions or behavior of humans towards other human beings placing humans as human beings having high dignity and nature. All human actions and behaviors towards other human beings constitute an inherent obligation which is causal or reciprocal because of the nature of humanity.

From a philosophical point of view the true value of humanity is also included in the soul which is derived from the First Principle of the Believe in God and animates the Third Principle and subsequently in Pancasila. Thus, naturally human nature is the composition of body and soul created by God, that nature is the nature of personal beings and as the nature of God's creatures.<sup>3</sup>

According to Yudi Latif, related to human values contained in this second principle, he used the word "Indonesian Nationalism". Finally, the state / government, citizens and national elements together fight for the common humanity of "humanitarian nationalism". Humanitarian ideals become the soul of independence, it is in accordance with the spirit and principles of the founders of the nation, their thoughts are based on humanitarian thought.<sup>4</sup>

Pancasila is a historical testament that defends the principle of equality in human relations. To uphold human equality in national and inter-national relations, the word humanity in the Second Principle of Pancasila is adhered to in its noble character, which is a just and civilized. Human relations between nations must be based on the values of equality as God's Creatures who uphold civilization as commendable achievements of human

<sup>1</sup> Regardless the formation of legislation made by legislative and executive institutions that have different religious backgrounds, even though the formation of legislation is made on the initiative of the majority of certain religions, it must still pay attention to the principle of non-discrimination, because it is in line with the values contained in the First Principle of Pancasila (mutual respect and respect among adherents of religion). This value is born from the same desires, goals and hopes in fighting for the nation to liberate Indonesia.

<sup>2</sup> See Article 2 Number 1 of the Civil Code "*anak yang ada dalam kandungan ibunya dianggap sebagai telah dilahirkan apabila kepentingan si anak menghendakinya*"

<sup>3</sup> Kaelan, *Pendidikan Pancasila*....., op.cit, p. 73

<sup>4</sup> Yudi Latif, *Negara Paripurna*.....,op.cit., p. 239

civilization.<sup>1</sup>

### 3. The Unity of Indonesia (Value of Unity / Diversity)

In the history of the formulation of Pancasila, each figure has conveyed about the Unity of Indonesia. There is no serious debate on the concept. One debatable matter was the form of government i.e., in form of the Republic or Monarchy, filled by a President or a King. All of the people involved had unified unanimity that Indonesia must unite both the people and the territory.

Soekarno opined the idea of Nationality. Deeply understood, Nationality is the value of Unity which is emphasized on the Indonesian Nationality in the broad sense, namely the nation of one Indonesian nation, not the nation of Borneo, Sulawesi, Bali nor others.

Determining the value of diversity is inseparable from the fact of the Indonesian territory which in fact the territory of Indonesia has such a vast territory, with expanses of sea, islands, lakes, mountains, hills and others. Therefore, a way to unite these areas is within the framework of the Unitary Republic of Indonesia. Based on official data from the Central Statistics Agency of the Republic of Indonesia (BPS RI) until this research was written, Indonesia has 17,504 islands, 1,913,578.68 in size. The number of ethnics based on the 2013 census in collaboration with the Institute of Southeast Asian Studies (ISEAS) was 633 ethnic groups.<sup>2</sup>

Humans as their natures should be in their individual spaces and social spaces, in this case social space needs interaction among humans. As a consequence, it cannot be denied that in a region there will be diversity which is motivated by race, religion, and ethnicity. Thus there must be a value that can unite them to become one, i.e., the Unity or Diversity.

The value of Unity or Diversity is to eliminate the sectorial ego and primordialism to achieve the same goal in forming an institution called the state, therefore differences in class, race, ethnicity and religion must be united into one, and all of them are united in one official institution, the state.

The value of unity is an attitude to put the unity before all individual and group interests and even demanded to be willing to sacrifice for the nation and state, therefore sector egos must be kept away and foster a sense of love for the motherland which ends at a common goal to establish a State that can unite the differences that exist. As a philosophical discussion, it cannot be separated from the issue of the concept of pluralism. The concept of pluralism is a determining factor for the existence of the Unity Value contained in the Third Principle of Pancasila.

Before Indonesian independence, we were familiar with the slogan "*Bhinneka Tunggal Ika Tan Hana Dharma Mangrua*" (unity in diversity), which is a symbol of Hindu-Buddhist pluralism that this Nation has built. The concept of pluralism was later expanded not only in the context of religion but became a frame of the Indonesian Unity which had a plurality of cultures, customs, languages, and then crystallized in a political consensus called Pancasila. The agreement on the acceptance of the State Base as well as the ideals of this State actually shows that this Nation has matured in understanding diversity.<sup>3</sup>

Based on the concept of pluralism, the value of Pancasila was formed based on past experiences that are still heavily influenced by the teachings of Hindu-Buddha "*Bhinneka Tunggal Ika Tan Hana Dharma Mangrua*". Furthermore, the important thing from the teaching is the awareness of the differences that exist, but the most important matter is to set the same goal. In the context of the value of unity is the goal of uniting all the diversity in to a "Nationality", having one Nation, namely the Indonesian Nation.

In philosophical studies, the teaching of "*Bhinneka Tunggal Ika Tan Hana Dharma Mangrua*" which emphasizes the same goal above various different ways (in this case pluralism / differences in culture, language, customs, ethnicity and even religion) is not the main point and fundamental factor to achieve a common goal. Thus philosophically the value of unity is a value that discards away and ignores the existence of differences in order to achieve a common goal, because these goals are believed to be a common goal to be achieved.

Pancasila First Principle inspires Second Principle and so on, Second Principle inspired First Principle and animates Third Principle and so on, thus regarding Third Principle in which contains a value of Unity or Diversity which contains the concept of pluralism, it cannot be separated from the value of God and the Third Principle and so on, thus when speaking of the First and Second principle of Pancasila. Thus, the concept of pluralism in the viewpoint of Pancasila is the concept of pluralism that moves away from the concept of pluralism "secular humanism" which only focuses on the existence of humans, but in this case Pancasila pluralism is pluralism that cannot be separated from the value of God and Humanity, so pluralism intended is an intact and strong pluralism when humans truly become God's nature (united with their god and united with other

<sup>1</sup> *Ibid*, p. 240

<sup>2</sup> Data updated on November 21, 2017 released by the Central Statistics Agency (including Kalimantan and Sumatra) supported by 1. Ministerial Regulation of the Republic of Indonesia Number 56 of 2015 dated June 29, 2015, 2. Ministry of Internal Affairs Information 2004, 3. Act No. 20 of 2012 concerning the Establishment of the Province of North Kalimantan, November 16, 2012 [www.bps.go.id/statictable/2014/09/051366/luas-daerah-dan-jumlah-pulau-menurut-provinsi-2012-2016.html?hl=id-ID](http://www.bps.go.id/statictable/2014/09/051366/luas-daerah-dan-jumlah-pulau-menurut-provinsi-2012-2016.html?hl=id-ID) accessed on 18 July 2018 at 11:00 WIB [www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-Indonesia.html](http://www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-Indonesia.html) accessed on July 18, 2018 at 11:00 WIB

<sup>3</sup> Arqom Kuswanjono, *Pluralisme Pancasila*, Jurnal Filsafat Vol. 39, Number 1, April 2016., p. 84

humans).

Indonesia is an archipelago, a country with a very wide territorial area, which has various ethnics, languages and religions, philosophically these conditions cannot be denied or *conditio sine qua non*. Thus, these conditions must be united in a unity in diversity.

The value of Unity has actually been formed as a real embryo of *Sumpah Pemuda* on October 28, 1928 in Surabaya. *Sumpah Pemuda* is the beginning of the nation's pledge (especially Indonesian youths) to unite or to become one, namely Indonesia. The Second Youth Congress as youth elements such as PPPI (Indonesian Student Association), *Jong Java*, *Jong Sumatra*, *Jong Batak*, *Pemuda Indonesia*, *Jong Celebes*, *Ambon and Pemuda Betawi*.<sup>1</sup>

The *Sumpah Pemuda* on October 28, 1928 produced 3 agreements or trilogy namely, *Pertama* kami putra dan putri Indonesia mengaku bertumpah darah yang satu, tanah air Indonesia (First, to declare as one blood, the homeland of Indonesian), *Kedua*, kami putra dan putri Indonesia mengaku berbangsa yang satu, Bangsa Indonesia (to declare one nation of Indonesia), *Ketiga*, kami putra dan putri Indonesia menjunjung bahasa Persatuan, Bahasa Indonesia (to declare the language of Unity, Bahasa Indonesia).<sup>2</sup>

Philosophically, the words or phrases of unity already exist and embedded in the form of the three statements of the *Sumpah Pemuda*, Indonesian Youth are aware that the struggle to achieve a shared ideal can only be achieved by joint efforts as well by pledging themselves clearly that they must unite. This pledge has the value of awareness that pluralism exists. Thus, the only way to unite the pluralism is through the Unity.

The philosophical approach to the incident was actually born of self-awareness of the nature of a person or human being. "Who I am" is a form of a deep statement for every individual, especially for those educated people who understand and unite to achieve common goals. "Who I am" is a deep thought that we are living and are in the midst of a society that has a background of differences that exists but is bound by a struggle or shared ideals. The realization that the struggle and ideals cannot be realized alone is the awareness of the nature of who I am that realize a unity should be built.

Regarding the value of unity, the deepest meaning contained in the *Sumpah Pemuda* can be interpreted as a declaration to have one single nation namely the Indonesian Nation, meaning that it is establishing the Indonesian Nation and not another Nation. The Indonesian nation has been agreed to become a common goal to fight for the Nation of Indonesia.

One language namely Bahasa Indonesia as Unity Language is a very profound meaning. Though various languages exist, they all unite and declare that the unity language used is Bahasa Indonesia. This statement or pledge on the language of unity automatically states that all languages exist in Indonesia, but they are aware that there must be one language to use as a unity language, namely Bahasa Indonesia. Thus, the October 28, 1928, was one of the events which became the basis or inspired the founding fathers of the nation who at that time wanted to formulate the Basis of State for an independent Indonesia. Researchers intentionally embed the *Sumpah Pemuda* (Youth Pledge) because it has a major contribution to determine the value of Unity in the Third principle of Pancasila (Indonesian Unity Value).

#### **4. Democracy Under the Wise Guidance of Representative Consultations,**

The Consultative Value is a special and distinctive value that distinguishes Indonesia's democratic system from other countries. Moh. Hatta was one of those who had thought about the concept of deliberation to reach consensus, although the concept of democracy was actually a concept that lived in Greek times and was widely used by several countries in Europe, but the fact that the actual democratic values already existed in the existing values of Indonesian people, which was presented by consensus-agreement of village democracy in order to reach agreement on some differences of point of views.<sup>3</sup>

Before the independence day, Moh. Hatta was one of the figures who aggressively disclosed democratic issues. some of his works are "Indonesia Merdeka" tahun 1928, Pengantar untuk Daulat Ra'jat (1931), "Kedaulatan Ra'jat bukan anarki" (1933), "Hak Bersidang dan Berkumpul dalam teori dan praktik" (1933) and "Kolektivisme Tua dan Baru" (1933).<sup>4</sup>

Thus, we do not discard what is good on the old principles, do not replace the original democracy of Indonesia with imported goods. We revive the original democracy, not in an old-fashioned place, but at a higher level, according to the will of the present social

<sup>1</sup> Supardi, *Sumpah Pemuda Sebagai Puncak Kesadaran Nasionalisme Indonesia*, Makalah disampaikan dalam acara seminar Ikatan Himpunan Mahasiswa Sejarah Indonesia (IKAHIMS) wilayah jawa tengah dan DIY, Senin 27 Oktober 2008 di Yogyakarta.

<sup>2</sup> Pledges or statements in the *Sumpah Pemuda* have been adjusted to the spelling of *Bahasa Indonesia*, but the original text of the statement of *Sumpah Pemuda* is as follows: *Pertama* kami poetera dan poeteri Indonesia, mengaku bertumpah darah jang satoe, tanah Indonesia, Kedoea kami poetera dan poeteri Indonesia mengakoe berBangsa jang satoe, Bangsa Indonesia. *Ketiga* kami poetera dan poeteri Indonesia mendjoendjoeng bahasa persatoean, bahasa Indonesia.

<sup>3</sup> Yudi Latif, *Negara Paripurna*....., op.cit., p. 414

<sup>4</sup> *Ibid*, hal 413-414. Beberapa tulisan-tulisan Mohammad Hatta tersebut juga bisa dilacak dan dibaca pada Karya lengkap Bung Hatta, *Kebangsaan dan Kerakyatan*, LP3ES, Jakarta, 1998



association.<sup>1</sup>

Based on the above statement of Bung Hatta, it indicates that the good principles indeed cannot be immediately discarded, and should be maintained in the old democratic concept, but in fact that some of these democracies actually already exist in a typical Indonesian democracy. This democracy is elaborated by considering the good points in the previous democracy, it also includes increasing the position or "old-fashioned" place for Indonesian democracy and increasing its position in accordance with the association of Indonesian people.

Moh. Hatta was related to the idea of a typical Indonesian democracy, in other words the sovereignty of the people became the highest of democratic deliberation. Democracy by placing people's sovereignty means that it is the people who determine the mechanism of the people should be governed and regulated in a legitimate governmental frame formulated into the form of the content of the legislation.

Decisions that involve the people's voice by deliberation will later become a guideline or norm that will bind the government and also include the people themselves. However, the basic foundation in all decisions applied both for the government that will implement the decisions of the people and the people over the object of those decisions is based on the basis of "consultation value".

Philosophically the basis for making people's decisions based on the value of deliberation is primarily aimed at preventing a decision making that will only benefit a group of people. The basis of deliberation as the basis for making all decisions according to Hatta's great orientation in the context of "national politics" is oriented to social justice and the public interest, because of the enormous foundation of collectivity culture that exists in rural communities in Indonesia.<sup>2</sup> The spirit of village community collectivity, further Moh. Hatta addressed it in the following statement:

The first signs of collectivism appear in the "*tolong menolong* (mutual assistance)" character. In all his endeavors and in the way he used his energy, the village people still thought of themselves as a member of the group ... The signs of collectivism were clearer in "ownership rights on land". Living in villages in the beginning did not recognize someone's right to land; the land is "common property".

The Consultative Value in the Fourth Principle of Pancasila is also inseparable from the ideas conveyed by Sutan Sjahrir.<sup>3</sup> Sutan Sjahrir who is also a friend of Moh. Hatta since at the Indonesian Association in the Netherlands who at that time learned about law, dreamed of a real and equitable welfare like the rich and modern Western Nation due to the success of the concept of socialism.

Sutan Sjahrir strongly rejects the concept of Western Socialism in the sense that the state takes care of all the economic affairs of the people and negates personal rights as practiced in Communist-style socialism in Russia. Such concept will only place the state institution as a totalitarian institution that manage all the people's economy and negates personal matters and seeks to control what is thought by its citizens. The socialism aspired by Sutan Sjahrir is a socialism that seeks to elevate humanity through the system of economic relations while still providing space for the freedom and independence of each individual and understanding democracy as one of liberation of individual freedom.<sup>4</sup>

Sutan Sjahrir named the idea of socialism he proposed by a Populist Socialism. Sjahrir is critical of all actions that lead to sovereignty (feudalism), in this case the people have the highest sovereignty in a country, in the context of Indonesia it means that the holder of the highest sovereignty is the Indonesian people, but the mechanism of sovereignty and how to surrender the form of people's sovereignty certainly need to be regulated, so that it can be run well.<sup>5</sup>

Based on the popular socialist ideas conveyed by Sutan Sjahrir, the concept of populist socialism focuses on the common welfare while still considering and giving freedom to individual rights. These individual freedoms mean that the highest sovereignty was the people. However, an appropriate method or mechanism is needed to carry out the sovereignty of the people in order to run a country / government.

The value of deliberation was born due to the freedom intended by Sutan Sjahrir, from that freedom the people have sovereignty in determining political direction and achieving shared goals. With the freedom possessed by each individual then the freedom is used by the people to carry out the desired government. Sutan Sjahrir also stressed the concept of popular socialism that there will be an equality among the individuals.

Equality or equalization of the rights of individual freedom subsequently gave birth to a mechanism of deliberation, because an equality means that each private right among individuals is the same. Thus, consensus agreement becomes the only mechanism to guarantee the equality of each individual and also in accordance with

<sup>1</sup> Mohammad Hatta, *Kebangsaan dan Kerakyatan: Karya Lengkap Bung Hatta*, LP3ES Vol.1, 1998, p. 347

<sup>2</sup> Yudi Latif, *Negara Paripurna*....., op.cit., p. 415

<sup>3</sup> Sutan Sjahrir is known as the youngest and most liberal figure in Indonesia, because of his great concern for individual freedom of the teachings of his socialism he is also known as "Right-side Socialism"

<sup>4</sup> Yudi Latif, *Negara Paripurna*....., op.cit., p. 415

<sup>5</sup> *Ibid*, p. 418

the character of the Indonesian Nation.

In more simple ways, the concept conveyed by Sutan Sahrir is that the freedoms possessed by each individual give rise to an equality. With an equality, all forms of decisions taken specifically in terms of policies carried out by the state must be done by way of deliberation or involving all individuals who already have equality in their rights.

##### **5. Social Justice for All Indonesian People ( Value of Social Justice and Equality)**

In a more specific context, the value of justice is the value of human justice with humans, people with relations in society, people with the state, and also includes the value of justice that must be given by the state to its people in terms of relations with their God. It is the true nature meant by the value of social justice in the Five Principles of Pancasila.

According to Kaelan, the consequences of the values of social justice exist in the five principles of the Pancasila include 3 types of justice. First, Distributive Justice, a relationship between the state and its people, in other words the State has the obligation to fulfill justice for establishing justice, dividing justice in the form of welfare, assistance, subsidies and opportunities in living together based of rights and obligations.<sup>1</sup>

Based on distributive justice, relating to the context of the formation of legislation in Indonesia, then the law formed must be able to provide a reflection of justice by distributing justice to all Indonesian people or at least on the subject of the regulations made . The justice provided by the state / government through the media Formation of Legislation must always consider proportional rights and obligations.

Second, legal justice (Kaelan calls it obedient justice), which means a relationship of justice between The People and their countries, in this case it is the People who are obliged to fulfill justice in the form of obeying the Formation of the prevailing laws and regulations. Third is cumulative justice, which means a relationship of justice between among the people with a reciprocal relationship.<sup>2</sup>

In this form of legal justice, researchers named it with another term namely "the compliance justice". this kind of justice is meant for the People to comply with all form of Legislations made and enforced by the state/ government. The exception to compliance justice is toward the form of legislation formation which is considered to violate the human rights of People, indeed by the manner stipulated in the constitution, namely conducting a judicial review (for regulations in the form of laws which is tested by the Constitutional Court, the Regulations under the Act tested by the Supreme Court).

The exception above is applied after the decision of the legal testing declared by the court. As long as the testing regarding the regulations that conflicted the rights of the people is held and the decision declared, the "compliance justice" addressed to the People on the legal compliance should be constantly handled. because the principle of validity is applied in the science of formation of legislations that the formation of legislation is valid before it is rejected or revoked by the author. Based on the above explanation, the value of social justice of the fifth principle of Pancasila is inspired by the values of the first, second, third, and fourth of the Principles of Pancasila. thus, the justice value contained in fifth principle is the value intended for the justice of all the people of Indonesia.

Formation of legislation formally established by the state / government should not only provide a sense of justice for certain groups, but it must be able to provide justice reflected or set forth in the form of the Formulation of these Legislation with the goal of justice for all Indonesian people. The value of justice in the Fifth Principle is expected to be a guideline that must be truly held and implemented by a person / institution who is given the authority to form legislation.

The Equality / Equity Value referred to in the Fifth Principles is related to the equality of the people of Indonesia, meaning that every people has the same degree from the State's point of view. No single individual or group that can claim to have a higher degree than other individuals or groups.

The value of this equality is the most important value to build a common goal of establishing an Indonesian state that provides prosperity. This value will develop a common and unanimous idea to prepare a strong foundation for the achievement of a common goal of establishing an aspired Indonesian State. This Value of equality will automatically be able to eliminate the nature of the exclusiveness of individuals or certain groups. Because individual exclusivity may lead to social and treatment jealousy by the state toward individuals. Thus, this condition must be avoided since it is not in accordance with the ideals of the founders of the Indonesian Nation.

The value of this equality must be reviewed from a philosophical point of view to see that with this equality is the foundation or basis of a state to realize the ideals and welfare of its people. Philosophically, the need for equality of each individual / Indonesian people is an absolute condition, because the uniformity of the position will lead to equal treatment of the state against its people.

The value will foster a non-discriminatory nature of the actions of the state / government towards its people.

<sup>1</sup> Kaelan, *Pendidikan Pancasila* ....., op.cit, p. 77

<sup>2</sup> *Ibid*

The philosophical approach means that the existence of equal treatment and non-discriminatory actions can grow a strong sense of togetherness, a person or individuals who are placed in the same position will foster the same feeling, burying an excessive ego, and the most important is the feeling of unity that grows inside the individuals, they feel everyone is equal by the state. therefore the welfare and ideals of a state could be obtained by this value of equality.

The most visible and very important thing in seeing an equality in the context of the state life is the equality before the law. This equality is an absolute requirement of a state (especially, the State of Indonesia). A State is claimed as a rule of law by some characteristics that cannot be separated, namely the existence of an equality before the law and government. A rule of law that upholds the law is an instrument to achieve the ideals and prosperity of its people.

In value of equality context that exists in the Five Principles of Pancasila is an inseparable link from the value of justice that must be given by the state / government to its citizens. It means that these forms of justice must be felt by all the Indonesian people because the people have equal position and rights. The state should not only provide values of justice to certain people or groups. the value of equality is stick to the value of justice of the state to its people. Thus the values of equality exist in the Fifth Principles of Pancasila are the basis for the people to get a guarantee of justice, in accordance with the ideals of the establishment of the Indonesian state.

#### 4. Conclusion

1. The Meaning of Pancasila as a source of Formation of Legislation in Indonesia namely First, the obligation for the formation of legislation to be based on Pancasila. Second, Pancasila is the basis for testing the Law on the 1945 Constitution of the Republic of Indonesia. Third, Pancasila is the basis for testing the Legislations under the Law toward the Law. Fourth, Pancasila as a guiding principle for the achievement of the country's goals.
2. The legal position of Pancasila as the source of all sources of state law is as a result of philosophy and as a basic norm (Ground Norm) in the Formation of Legislation in Indonesia.
3. The values contained in the principles of Pancasila are First (the value of the belief in God, the value of religious freedom, the value of mutual respect among religious communities). Second (humanity values), Third (unity / diversity values), Fourth (consultative / representative values), Fifth (social justice values / equality values).

#### 5. Suggestion

The above conclusions show that there are still weaknesses normatively related to the impose of *verstek* verdict and its legal efforts, therefore the author suggests several things, as follows:

Formulation of legislation should comply to the provisions of Article 2 of the Act Number 12 of 2011, so that the material content will not deny the values of Pancasila. The Constitutional and Supreme Court may use the values of Pancasila as the basis for the test. The Pancasila values of this research can be used as a reference in determining the values in the principles of Pancasila and to encourage the values to be included in Article in the Act on the Formation of Laws and Regulations through amendment carried out by the government and the legislative assembly.

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