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Exploring the *Grundnorm* Dilemma: Can Pancasila be Considered the *Grundnorm* in the Context of 'the Pure Theory of Law'?

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ABSTRACT

As formulated in the Preamble to the 1945 Constitution, Pancasila represents the core values agreed upon during the meetings of the Body of Investigators for Preparatory Efforts for Indonesian Independence and the Preparatory Committee for Indonesian Independence. These values were subsequently adopted as the Foundation of the Indonesian State. However, the question persist regarding whether Pancasila can be considered as the *grundnorm* within Hans Kelsen's framework in *his pure theory of law*. This study finds that the *grundnorm*, as the highest source of legal obligation, is accepted as a necessity by individuals as a necessity through their free will and is inherently perceived as true. It exists in the practical reason of each individual, is a *priori*, and is never formalized through state processes. Pancasila, although fundamental, cannot be equated with the *grundnorm* as its authority as the source of all state laws derives not from its content but from its formal declaration by legislative and executive bodies. Despite this, Pancasila serves as a unifying foundation that reconciles differences in ethnicity, race, and religion, ensuring Indonesia's sustainable existence, transcending merely being a source of legal obligation.

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Introduction

The formulation of Pancasila as the Foundation of the State, which can be found in the Fourth Paragraph of the Preamble to the Constitution of 1945 (Hangabei *et al.*, 2021), is the result of deliberations and discussions led by the founding fathers of the nation in a dialectical manner during the meetings of the Investigation Body for Independence Efforts. The formulation of Pancasila, as it was formulated in the Preamble to the Constitution of the Republic of Indonesia in 1945, has been reaffirmed in the Instruction of the President of the Republic of Indonesia Number 12 of 1968 concerning the order and formulation in writing/reading and pronouncing the Pancasila precepts (Samekto, 2021). This instruction was issued regarding the Pancasila precepts. Affirmation of the State Foundation of Pancasila is included in the Decree of the People's Consultative Assembly Number and Determination of the Affirmation of the State Foundation of Pancasila. This affirmation is similar to the one written in the Preamble to the Constitution of 1945. Even though the decree issued by the People's Consultative Assembly is one that does not require any further action, whether because it is *einmalig* (final) (Hastuti, 2019), has been revoked, or has been completed, this clarification is necessary to reaffirm the position of Pancasila as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (Samekto & Purwanti, 2023).

Now, in Article 2 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, it has been decided that "Pancasila is the source of all sources of state law" (Siagian, 2021). This choice was made because of the reasons stated above. Article 3 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, also determines that "The 1945 Constitution of the Republic of Indonesia is the basic law in the Legislative Regulations" (Septian & Abdurahman, 2021). This becomes a determination made by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (Widodo & Riwanto, 2023).

This explanation was written to test the position of Pancasila in the context of Hans Kelsen's (2009) teachings about *grundnorm*. Considering that Pancasila was formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia and that its values were used as the ideal basis for the articles of the 1945 Constitution of the Republic of Indonesia, this explanation was written. One of the most critical questions is whether Pancasila may be considered a *grundnorm* or not. On this subject, several legal philosophers in Indonesia hold a variety of perspectives, some of which are both in agreement and disagreement. In order to provide a point of reference, the following are present: In 2012, Dani Pinasang (2012) asserted that Pancasila might be classified as a fundamental norm, also known as a *grundnorm*. In both theory and practice, Pinasang thinks that Pancasila, as a *grundnorm*, serves as the foundation for creating legal systems. The Pancasila doctrine is a vital component of the Indonesian legal system, according to this opinion, which supports the notion.

On the other hand, in 2020, E. Fernando M. Manullang (2020) questioned whether Pancasila was suitable to be used as a *grundnorm* or not based on the philosophy of foundationalism. Manullang also claimed that Kelsen's perspective on *grundnorm* was merely a source of validity. In contrast, Pancasila was an idea with philosophical importance and could not be reduced to questions of validity alone. Compared to *grundnorm*

in Kelsen's theory, this demonstrates a significant difference in how Pancasila is understood regarding its function and substance.

Dyah Ochtorina Susanti and A'an Efendi (2021) researched Pancasila in 2021, using Hans Kelsen's notion of degrees of legal norms as their theoretical framework. The researchers concluded that Pancasila is a fundamental norm with five primary characteristics. These characteristics are as follows: it serves as the source of the validity of all state laws; its validity is based on presuppositions; it is a non-legal norm; it represents the juncture at which the series of validity of legal norms comes to an end; and it is the central component of determining the validity of state legal norms. This research demonstrates that Pancasila satisfies the *grundnorm* criteria in Kelsen's theoretical framework. As a result, it offers a solid foundation to justify Pancasila's status as a fundamental norm in the Indonesian legal system.

In contrast, Yogi Sumakto (2012) presented a different viewpoint in 2012. As a result of Sumakto's theoretical investigation into the *grundnorm* notion, the latter discovered that Pancasila needed to satisfy the *grundnorm* criteria that Kelsen had established. According to Sumakto, Pancasila does not fall under the category of *grundnorm* because it does not satisfy Kelsen's four essential norm criteria. These criteria include: it is not an "established" norm; it is not natural law; it provides objective validity to the norms of the constitution without being tied to the content of these norms; and it must close the hierarchy of norms.

There are substantial disparities in perspectives regarding the status of Pancasila as a *grundnorm*, and these are reflected in the methodologies used in the study. Although some research lends credence to the idea that Pancasila can be positioned as a fundamental standard in the Indonesian legal system, other research demonstrates that Pancasila still needs to satisfy the requirements established by Kelsen. This has resulted in an ongoing discussion concerning Pancasila's precise position within contemporary legal theory.

The Autonomy of Positive Law: Kelsen's Rejection of Natural Law Theory

The elimination of the concept of natural law made it possible for positive law to be comprehended as an independent entity. Kelsenian legal study conceptualizes this autonomy in a way that preserves the particular normativity of positive legal norms. This was done to prevent any potential retreat into the sociology of law. The term of "to a purely hypothetical basis through basic norms [*grundnorm*]" is the starting point for the theoretical framework of positive legal science, which must begin with an initial methodological restriction to preserve this normativity. A criticism of natural law theory was the impetus for developing Kelsenian legal positivism, which arose in this manner. Further refinement and elaboration of the critique centres on the contrast between the normativity typically associated with positive law and the normativity that is believed to be related to natural law theory. The challenge of natural law theory is brought to light by the question of the realization of the normative order, which refers to the process of transforming natural law into positive legal standards (Langford et al., 2019).

According to Kelsen (2009), this process comprises two components, the difficulty of which is attributed to the presence of human mediators between the base and the norm. Their presence disrupts the assumption that there is a direct and indirect road from the base (absolute material basis) to the general norms of positive law. It also disrupts the idea that there is a separation between the development of positive law and its application.

As per the Kelsenian language, "basic norms" (*grundnorm*) are the most fundamental norms that serve as the foundation for the development of positive legal systems. According to Kelsen's theoretical

framework, it mentioned that "all norms whose validity can be traced back to the same basic norm form a system of norms, a normative order". Thus, if one "conceives of law exclusively as positive law" and refuses to base the validity of norms on "higher meta-legal norms" that are superior to the framework of positive law, it seems logical to presume the existence of these "basic norms". According to Kelsen (2009) and Langford et al. (2019), this is due to the fact that the premise of their existence is of utmost importance from a rational stance.

According to Kelsen's methodology of positive law, the status of the "basic norm", which is also frequently referred to as the "origin", is what determines the correlation between legal science and the existing system of positive law. The establishment of this relationship begins with the assertion of the independence of legal science from politics and the refusal of legal science to be reduced to the formulation of political policy recommendations. Having this level of independence serves as the basis for this partnership. Therefore, it is possible to characterize it as "a general legal theory, not an interpretation of specific national or international norms". Kelsenian legal science places a primary emphasize on "norms that give the character of legal (or illegal) actions to certain material facts, and which are themselves created through such legal actions". The operations of legal cognition are the fundamental focus of Kelsenian legal science. The "basic norm" could be considered as a form of Kant's "regulative hypothesis" or a hypothetical requirement, with the constitutive principle being another possible interpretation. As previously mentioned, the assertion that "the problem of the Pure Theory of Law is the specific autonomy of a domain of meaning", which was discussed earlier (Langford et al., 2019) explains why this situation arises in the present context.

As a consequence of this, the act of posing enquiries concerning the contents of "basic norms" instantly places itself outside the limitations of positive legal research. When it comes to producing norms inside its system, these standards are required to be adhered to. In the context of the authority that is responsible for developing norms, the term of "basic norms" is limited to the authorization system. Fundamental norms are simply responsible to establish the validity of other norms; they do not provide the substantive content of the norms within the legal system. This is their exclusive function. From a methodological perspective, the Pure Theory of Law completely rejects the noyion of "evaluating positive law". The theory's focys is confined to understanding the structure of positive law, which holds that "basic norms" underlie "legal norms within a legal order created by" those basic norms. Consequently, any content can potentially become law. Based on this perspective, the Pure Theory prohibits "legal science from either claiming positive law as a higher system or justifying positive law based on a higher system" (Langford et al., 2019).

The idea of "basic norms" cannot be divorced from the fundamental notion that law ought to be seen as an independent normative system when it is considered within the framework of the Pure Theory of Law. This indicates that the law should not be regarded as a tool that is beholden to external ideals, such as politics or morality, but rather as a system that possesses its inherent logic and validity. When it comes to the study of law, Kelsen emphasized the significance of distinguishing between "is" (*das sollen*) and "ought" (*das sein*). This would enable legal science to examine law in an objective manner, free from the influence of subjective values.

For this reason, the basic norm does not supply the substance content of legal norms; instead, it just provides a framework for the legitimacy of legal norms. In this context, the basic norm serves as an epistemic presupposition necessary for understanding and applying the law as a cohesive system. A logical starting

point that gives favourable law structure and consistency is the basic norm, which acts as a starting point for positive law.

Positive law can cover a wide variety of content, depending on the social and political context in which the law originates. According to this theory, positive law can encompass a wide range of content. Favourable legislation, on the other hand, must be considered as a component of a normative system, the validity of which is derived from the fundamental norm, regardless of the substance of the favourable law. As a result, the objective of legal science is not to determine whether the law is right or unjust; instead, it is to comprehend how the law operates within the context of a more comprehensive normative framework.

The theory of law developed by Kelsen has had a profound impact on contemporary legal philosophy, particularly with regard to the emphasis placed on the independence of law as a field of study. Kelsen did not subscribe to the viewpoint that the law ought to be an instrument for accomplishing particular political or social goals. Instead, he emphasized the importance of considering law as a normative system that possesses its internal logic, which legal experts are obligated to obey.

On the other hand, this idea has also been subjected to criticism, notably from individuals who contend that the social, political, and moral circumstances in which law operates cannot be divorced entirely from the law itself. Critics argue that Kelsen overlooks the influence of external values and individual interests on the law by focusing too heavily on its self-referential nature. In the context of international law, for instance, it is difficult to ignoere that the legal norms are frequently formed by the global power dynamics of the global community as well as the political objectives of particular governments.

In addition, criticism of the Pure Theory can also be found in the context of changes in social regulations and legal policies. The law frequently needs to be modified in order to accommodate new developments in society, which may include changes in moral and social ideals. This is because the world is in a state of perpetual evolution. In this regard, Kelsen's approach to law, which is characteriaed by a high degree of formality and rigidity, may be less receptive to the requirement for legal change that is in accordance with the changing times.

In spite of this, Kelsen’s intellectual impact continues to be considered significant in contemporary legal theory. Although the basic norm is an abstract term, it provides legal scholars with a theoretical framework that helps them comprehend how the law functions as a coherent system. Additionally, Kelsen's focus on the significance of the autonomy of legal research has assisted in the separation of legal analysis from extraneous influences that have the potential to obfuscate the objectivity of legal studies.

The backdrop of philosophical thought that a philosopher teaches is inextricably correlated to the dimensions of place and time, namely the geographic location and historical period in which a philosopher or at least that thinker lived. This way of thinking has come about by considering the reality of space and time. Until today, the teachings of Hans Kelsen (1881-1973), who supported the Legal-Positivism School of Legal Thought, have yet to be interrupted in any way (Stewart, 2023). Hans Kelsen’s manner of thinking about law is a consequence of the emergence of the rationalist school of thought in the 17th century (Paulson, 2019) and this expansion occurred during the period. The following is an explanation of how the distinction between rationalism and empiricism can be grasped. According to Paul Kleinman’s (2013) viewpoint, the rationalist interpretation of the world, reason, not the senses, is the source of knowledge. Rationalists argue that if humans did not possess a set of rules and categories, they would not be able to organize or comprehend the information presented by their senses. In light of this, rationalism asserts that for people to be able to

utilize deductive reasoning, they must first possess innate notions. The philosophy of empiricism asserts that all knowledge is derived from one's various sensory experiences. It is suggested that humans only have a posteriori knowledge, which means "based on experience." This is in contrast to the idea that humans are born with an innate understanding that they possess.

Hans Kelsen's legal philosophy was shaped by his defense of the legal and political ideals emerging from the French Revolution of 1789, his alignment with the Neo-Kantian school of thought, and his deepening commitment to the influence of Positivism Philosophy in law. These three factors came together to form the basis of his legal philosophy (Hofmann, 2016).

A significant historical turning point in the formation of constitutional, legal, and political teachings is the French Revolution of 1789, which can be considered as an important historical milestone today. As a result of the French Revolution of 1789, countries all over the world were exposed to the concepts of popular sovereignty, government by the people (democracy), a state organized based on law (nomocracy), human equality (equality), human rights, free market, and the modern legal system. Some concepts from the French Revolution in 1789 were implications of the prevalent empirical thinking methods during the Enlightenment. These approaches significantly impacted the dialectic of thought prevalent in Western Europe since the seventeenth century. The way of thinking that prevailed throughout the Age of Enlightenment was essential in dismantling the prevalent ideas during the Mediaeval Period, which were regarded as being rife with speculative and mysterious ideas.

It is concluded that Hans Kelsen's theories include his support for the concepts of popular sovereignty, government by the people (democracy), a state organized based on law (nomocracy), human equality (equality), human rights, and free market, even though these concepts are not expressly expressed in his works. Considering that Hans Kelsen (2013) was a proponent of contemporary thought due to the French Revolution of 1789, a legal rule should be formulated on an agreement founded on the same principles of human equality. In addition, democratic procedures must be followed to obtain this agreement, as the fundamental principle of the agreement is the acknowledgement of the equal position of all persons. Furthermore, after the formulation of legal principles and rules through a democratic process, the following step is for the rules to be certified for their validity by the highest legitimate authority. This is one of the processes that follows the democratic process.

Reassessing Legal Philosophy: the Renewed Interest in Kelsen's Approach

The interest recent surge in Kelsen can be attributed to the search for an alternative to the dominant empirical and natural law methods in English-language legal philosophy (Dedek, 2021). Contrary to empiricists who believe that law may be simplified to social facts, Kelsen asserts that legal interpretation encompasses non-empirical standards (Kähler, 2017). The standards possess an essential framework that constrains legal interpretation. Unlike natural law theorists, Kelsen contends that moral factors do not limit law. Any activity, regardless of its moral repulsiveness, can be legally required. Kelsen's approachon legal interpretation is procedural rather than substantive. Despite the increasing interest in Kelsen's work, significant debate regarding the effectiveness and exact nature of his proposed "third way" between empiricism and natural law. The difficulty in fully appreciating Kelsen's work largely stems from the complex nature of his Kantian technique (Schuett, 2022).

The Neo-Kantian school of thinking originates from the writings of Immanuel Kant (1724-1804) (Hirsch, 2023). He resided in the period of the historical transition from the Enlightenment Era, spanned from the seventeenth century to the Modern Era, which emerged after the Post-French Revolution Era of 1789 (Delaney, 2020). The spatial and temporal aspects of that transition had an impact on his cognition, which was founded on the recognition of humans as entities who possess the ability not only to perceive and interpret the world (passive thinking) but also the capacity to modify the environment through sensory perception and rationality actively. The interplay of space and time throughout the shift from the Enlightenment to the Modern Era gave rise to Immanuel Kant's belief that persons possess free choice and an equitable standing in freedom, necessitating equal treatment. Everyone is entitled to equal treatment and is also responsible for treating others equally. Immanuel Kant (1998) is keenly aware that everyone possesses autonomy and freedom to act, which aimed to elucidate that human understanding of the cosmos is invariably a product of combining *a posteriori* and *a priori* parts, and this capacity can go beyond the confines of sensory perception.

Immanuel Kant's thinking is derived from the naturalistic philosophies of Plato (427-347 BC) and Aristotle (384-322 BC), but it also incorporates elements from Rationalism and Empiricism (Pomerleau, 1997). In the philosophies of Plato and Aristotle, the cosmos is believed to composed of two fundamental realms: the realm of ideal life, which encompasses spiritual existence and abstract concepts that concepts representing absolute truths, and the realm of empirical reality, which pertains to the mundane and ordinary occurrences of everyday life (Vlastos, 2006). The domain of perfection is indisputable truths exist as the dwelling place of the supreme ideal that rules the entire cosmos. Plato and Aristotle believed that existence in the realm of facts should be governed and restricted by laws (teachings) that originate from the ideal realm (*ideos*). According to their perspective, individuals in objective reality should not deviate from these fundamental principles (Law, 2013). This is in line with Plato and Aristotle, human thought represents or reflects reality. Immanuel Kant developed a philosophy that integrates the naturalist-idealist tradition of Plato and Aristotle with the empirical tradition of Francis Bacon and David Hume. The teachings he espouses are commonly referred to as Transcendental Idealism (Samekto & Purwanti, 2017).

Immanuel Kant posited in his theory of Transcendental Idealism as the combination of reason and experience is crucial for human beings to comprehend and manipulate the universe (Saunders, 2016). Transcendental Idealism, is a synthesis of Empiricism and Rationalism. Empiricism, a philosophical doctrine, posits that knowledge is derived from direct experience or observation of an object. Empiricism highlights the significance of a *posteriori* features, which are acquired through sensory experience. Rationalism is a philosophical doctrine that posits human reason as the subjective source of knowledge. This prioritizes the significance of a *priori* components in perception, making it inherently subjective (Hanna, 2015).

According to Immanuel Kant, humans' understanding of the cosmos may be divided into three primary stages: sensory perception, intellectual comprehension (*verstand*), and rational understanding (*vernunft*) (Willaschek, 2018). These stages describe the cognitive process by which humans assimilate information and acquire an understanding of the world, progressing from firsthand encounters to intricate abstract thinking.

The initial phase is the sensory stage, characterized by a *posteriori* knowledge acquisition, which occurs after experiencing. At this stage, humans depend on their senses to perceive the external reality. At this

stage, all knowledge is derived from empirical experience. Humans passively receive inputs from the external world, using their senses of sight, hearing, smell, touch, and taste to acquire information and build an initial understanding of their surroundings. While the sensory stage is crucial for building our knowledge of the world, it has its limitations as it only encompasses what people can directly perceive. Therefore, it is the initial step in a more intricate recognition process.

Following the acquisition of information by sensory perception, the intellect stage is considered a priori. At this point, the human mind starts to take on an active role. Humans initiate the process of establishing associations between sensory information and interpreting the significance of these encounters. This approach entails utilizing fundamental principles to structure and analyse data. Humans not only describe the world as it exists but also contribute to the development of understanding. Intellect enables individuals to comprehend and classify their experiences. For instance, following the sensory stage of perceiving that fire is hot, people employ their intellect to comprehend that heat is an inherent characteristic of fire and can pose a threat. The intellect stage involves the process of organizing sensory experiences in order to create more coherent and meaningful understandings. This stage serves as the basis for developing scientific knowledge and rational thinking.

The ultimate phase in Kant's theory of cognition is the reason stage, also known as a *priori* (Schafer, 2023). During this phase, individuals acquire the capacity to draw inferences based on the knowledge acquired in the preceding phase. The reason enables individuals to engage in abstract reasoning and critical thinking regarding cause-and-effect connections. Humans progress from basic world comprehension to engaging in arguments and analysis. The human mind engages in actively researching and experimenting with ideas and hypotheses. Humans inquire about the reasons and methods behind observed occurrences to uncover more profound answers. The stage is a fundamental component of the scientific method and philosophy, reflecting the human desire to go beyond superficial comprehension and pursue more profound and extensive knowledge. After comprehending that fire can cause burns (cognitive stage), people employ rational thinking to explore the characteristics of combustion and want to manage it.

Kant describes three recognition levels to elucidate humans' progression from passive experience to active thinking. The sensory perception, cognition, and logical reasoning phases serve as the foundation for the intellectual growth of humans, progressing from a basic awareness of the world to a more profound and organized comprehension. Kant highlights the significance of every phase in the progression of knowledge. The sensory stage is responsible for collecting fundamental facts, including the intellect stage is responsible for organising and assigning significance to this material; and the reason stage facilitates the process of investigation and the emergence of new findings. The amalgamation of these three phases establishes the base for scientific enquiry and the advancement of human knowledge in comprehending the cosmos. This study prompts us to contemplate our comprehension of the world and how the expansion of knowledge may be achieved via critical thinking and reasoning. It offers a comprehensive framework for us to investigate the boundaries and capabilities of human intelligence.

During the reasoning stage, Immanuel Kant distinguishes reason into two distinct categories: theoretical reason and practical reason. Humans utilize theoretical reasoning to derive conclusions, utilizing the understanding acquired from the Intellect Stage and developing arguments, forming what is commonly called Science. At the highest level of human reasoning, known as practical reason, individuals actively uncover what Immanuel Kant referred to as the categorical imperative through their ability to make choices.

This refers to ideas regarded as absolute truths and contain commands or directives, such as the belief in God as the supreme ruler of the universe, the inherent freedom of human beings, and the eternal nature of the soul. Therefore, the categorical imperative is not derived from empirical or external a *posteriori* experience but rather from accepting an a *priori* imperative through free will.

Immanuel Kant's teachings on the progression of human understanding of the cosmos, leading to practical reason, served as the foundation for developing Hans Kelsen's legal concept of the *grundnorm*. According to Hans Kelsen's (2009) doctrine, the *grundnorm* is an authoritative source that is assumed to exist, established via voluntary choice, but not generated through official governmental operations. When analyzed through the lens of Immanuel Kant's philosophy, the grundnorm serves as the foundation for practical reason and is considered the ultimate authority for the legitimacy of legal norms. Therefore, the substance included within the *grundnorm* results from practical reasoning that carries a sense of obligation and is willingly embraced by individuals according to their own volition. The *grundnorm*, therefore, is not a source of urgency derived from people's sensory experiences. Hans Kelsen asserts that the *grundnorm* is the ultimate legal imperative, devoid of political influences and psychological factors (Bindreiter, 2002).

In order to comprehend the progression of human comprehension of the cosmos, specifically the transition from theoretical to practical reason, this refers to Immanuel Kant's philosophical ideas. Kant specifiedhuman understanding of the universe into two primary phases: the theoretical stage of reason and the practical stage of reason.

During the theoretical reasoning stage, individuals seek to comprehend natural facts and derive conclusions by analyzing causal relationships. This technique employs human rationality (*Verstand*) to understand and elucidate natural occurrences logically and systematically. At this stage, humans employ rationality to derive inferences from their knowledge of natural occurrences. For instance, witnessing an apple's descent towards the earth reveals the law of gravity. Furthermore, throughout this phase, individuals acquire scientific information subject to experimentation and empirical validation. Science is the outcome of human endeavours to comprehend the cosmos using methodical experiments and observations. Humans exercise their agency to deliberately formulate arguments and hypotheses that can be substantiated by empirical evidence and logical reasoning. This enables scientific knowledge's ongoing growth and evolution as discoveries emerge.

In the practical reason stage, people develop categorical imperatives, concepts that must be accepted as facts without scientific proof, unlike theoretical reason. The categorical imperatives encompass moral and ethical convictions as the foundation for human behaviour. Humans establish categorical imperatives by exercising their free will, such as the belief that God is the supreme ruler of the universe and possesses all knowledge, that humans are inherently free, and the soul is everlasting. These postulates are not empirically validated but are universally acknowledged as axioms that serve as the foundation for ethical conduct in human society. These ideas are derived from human autonomy and frequently function as principles for ethical and moral conduct. For instance, the conviction that individuals possess inherent worth and entitlements that demand universal reverence. Free will is essential in influencing moral and ethical convictions as, according to Kant, a morally just action is carried out according to a freely chosen categorical imperative.

Comprehending the phases of human perception of the cosmos through theoretical and practical reasoning holds substantial consequences in multiple facets of human existence. Within the realm of science,

theoretical reasoning propels the progress of science and technology, resulting in significant advancements in our comprehension of the cosmos and our capacity to harness natural resources. Conversely, practical reason is the foundation for the moral and ethical principles that direct human behaviour in everyday situations. Humans frequently transition between these two stages in their daily lives. When confronted with challenges that necessitate analysis and answers based on facts,theoretical reasoning was used to formulate strategies and arrive at sensible judgements. Nevertheless, when faced with moral or ethical quandaries, frequently depend on pragmatic reasoning to direct our behaviour by the principles and ideals embraced.

Utilizing reason and autonomy, humans can cultivate logical and empirical scientific understanding and construct moral and ethical convictions that serve as the foundation for their behaviour. The distinction between theoretical and practical reason highlights the distinct capacity of humans to seek truth via different means, be it through empirical evidence or by accepting beliefs driven by personal volition. Immanuel Kant's ideas on the progression of human comprehension of the cosmos via theoretical and practical reason offer a profound understanding of how humans see and engage with the world (Minkkinen, 2023).

Hans Kelsen identifies the highest authority for legal obligation as a component of the categorical imperative, drawing from Immanuel Kant's views on the progression of human understanding of the universe, ultimately leading to practical reason. Hans Kelsen's lectures on the Pure Theory of Law, developed in the early 1920s, continue to be widely recognized in legal education. It is evident from the previous explanation that Immanuel Kant's teachings, specifically his Transcendental Idealist Philosophy, significantly impacted the teachings of the Pure Theory of Law (Jestaedt et al., 2020).

The term of "Kantian edifice" refers to the conceptual framework that Kelsen adopted from Kant's Critique of Pure Reason. Kant greatly influenced Kelsen's philosophy during the extensive classical period from approximately 1920 to 1960. Given Kant's significant influence on Kelsen's legal philosophy, it is not unexpected that Adolf Julius Merkl, Kelsen's highly skilled colleague at the Vienna School of Legal Theory who possessed an extensive understanding of Kelsen's work, highlighted Kant's profound impact on Kelsen.

Kelsen initially dismissed fact-based legal positivism and natural law theory, which were conventional alternatives to Kant's approach. Kelsen's ideal of purity in legal science rejects both naturalism and psychologism, as well as any value theory, such as moral, political, and theological philosophy (Paulson, 2017).

By renouncing the Kant-inspired fundamental principle, Kelsen relinquished a significant portion of the Kantian framework in his legal philosophy. Consequently, other important principles that were originally part of Kant's framework also vanished, as they were shown to be inconsistent with the outcomes of Kelsen's significant change in using logic in the context of law. Kelsen's most significant Kantian principle, besides the basic standard inspired by Kant, is the "Kantian filter" (Paulson, 2017).

According to Kantian epistemology, legal science is a constitutive form of knowledge, meaning it "creates" its object by understanding it as a meaningful whole (Kletzer, 2011). Knowledge in science organizes sensory perception into a coherent system, while knowledge in legal science organizes legal norms issued by legal officials into a consistent legal system.

The Kantian filter emphasizes the importance of unity in terms of consistency in the world of norms, while Kelsen refers to the concept of non-contradiction. When he starts questioning the importance of logic

in law and stops following the principle of non-contradiction, he moves towards the Kantian filter, which is now influenced by Kelsen's sceptical viewpoint (Gragl, 2018).

To summarize, Kelsen's thought in this part can be divided into two routes, which collectively mark the beginning of what is commonly referred to as the late period. Kelsen's refusal to accept the role of logic in law and his decision to leave the Kantian framework, particularly his rejection of the Kant-inspired fundamental norm and removing the Kantian filter, were the key changes in his legal philosophy over forty years. These developments only happened randomly in succession. Instead, these interactions are inherently interconnected, with non-contradiction as the foundation for each of them (Viola, 2017).

Kelsen's transformation yields a form of legal empiricism. It is noteworthy that Kelsen's later legal philosophy, which is based on "conceptual empiricism," directly stems from experience, in stark contrast to his previous legal philosophy, which was influenced by Kantian principles. In the later period, Kelsen derives the notion of conflict between legal norms from observing "two opposing forces acting at the same point" (Heidemann, 2004). In the earlier Kantian-influenced classical period, Kelsen's understanding of the conflict between legal norms focused on the principle of non-contradiction, where one of the conflicting norms was deemed invalid. The explanation of this claim and the principle of non-contradiction itself cannot be elucidated by relying on the conceptual framework of empiricism (Paulson, 2008).

The Stufenbau Theory and the Evolution of Legal Positivism

Although it is a broad doctrine within the Legal Positivism school, which emphasizes the formal components of the law, the Stufenbau Theory is essentially a general doctrine (Bergmann & Zerby, 1945). The fundamental idea is that the law is a collection of regulations formulated by the highest authority, including commands and sanctions. Legal positivism is a school of thought primarily founded by John Austin (1790–1859), as a positivist empiricist. It is predicated on the idea that the empirical positivist paradigm is the foundation for legal systems(Rumble, 1981).

The following characteristics distinguish legal positivism: it rejects natural law because its origin is ambiguous and speculative; the law must contain orders from a sovereign ruler and explicit sanctions; a definite, sovereign authority forms law (Hall, 2001). A derived opinion developed by John Austin (1995), which states that law is the command of a sovereign power asan authority not subject to any other authority. As a result, laws are obligatory rather than voluntary, and the members of society need to negotiate their terms accordingly.

According to John Austin's teachings, law debates are not tied to whether something is good or not, just or unjust; rather, they are related to instructions from a sovereign and actual force. Therefore, in his conception of law, John Austin substituted the concept of justice, an ideal present in natural law, with the concept of certainty that results from command. In order words, the philosophy of Legal Positivism that Austin teaches places a greater emphasize on establishing legal certainty to attain predictability. This indicates that if a person is found to violate a law established by a sovereign power, they will undoubtedly be punished if they are found guilty following empirical evidence verification (Freeman & Mindus, 2012).

A new spirit centred on honouring the human position, in living life, relies not only on sensory experience but also on reason and rationality, took on the challenge of challenging the way of thinking that was prevalent in the Legal Positivism school of thought over time. According to what was discussed before, this is represented in the teachings that Hans Kelsen contained inside the Pure Theory of Law.

The teaching of Stufenbau Theory, first presented by Hans Kelsen in 1923, is further refined by the *grundnorm* theory, which emphasizes that the highest source of law is an imperative-categorical necessity that does not need to be established by theoretical reason (Kammerhofer & D'Aspremont, 2014). The imperative-categorical substance is the underlying cause (*causa prima*) that gives rise to concrete directives. There is a normative relationship between the concept of causa prima and the consequences of this concept. The development of legal principles resulted from this normative interaction. On the other hand, this normative relationship is not founded on psychological will because of experience-based reality (the domain of theoretical reason). However, it is founded on a will that is truly neutral inside humans (the realm of practical reason).

The term of "objective will" was used by Hans Kelsen to describe the situation in which most individuals follow (Von Bernstorff, 2010). The following is a description of the causal relationship that exists between the *grundnorm* and the concretization of legal concepts, which is intended to simplify understanding: In the first place, the imperative-categorical assertion that humans are creatures with free will emphasizes that this freedom must be safeguarded. This means everyone can express their views without coercion, and agreements do not bind third parties (*pacta tertiis nec nocent nec prosunt*). Second, the requirement that people must behave according to what they say emphasizes that people must not give false testimony, which means that everyone must give truthful testimony. Finally, "law" pertaints to the conditions necessary for harmonizing individuals' free will with others' will within the framework of common norms. This suggests that the law must be respected as a behavioural control to avoid causing harm to other people, with the principle of *pacta sunt servanda* highlighting that agreements bind the persons concerned. As a result, the connection between the fundamental principle and its application in legal principles demonstrates that the law serves not only as a written rule, but also as a guide to guarantee that the free will of every individual is respected and does not cause harm to one another.

The Presentation of Pancasila and its Philosophical Foundations

At the *Dokuritsu Zyunbi Tyoosakai* Session, also known as the Investigation Body for Independence Efforts, which took place on June 1, 1945, Soekarno for the first time presented Pancasila to the public. It is beyond reasonable question that Soekarno was the first person to present Pancasila, including its fundamental ideas and content (Prawiranegara, 1984). On the other hand, Soekarno asserted that he was merely an explorer of Pancasila. He declared this since, in actuality, the ideals included in Pancasila were already represented in the reality of the existence of the Indonesian people. By adhering to Soekarno's statements, the existence of Pancasila comes after the fact (Soekarno, 1947).

In a momentous speech that was delivered on June 1, 1945, Soekarno laid the groundwork for the establishment of the Pancasila, which is the cornerstone of the Indonesian state. The broad vision that Soekarno had for bringing together Independent Indonesia is expressed through the five key concepts that are mentioned in the speech. First, the principle of nationality emphasizes national unity, which can be understood as the desire to unite. The essence of nationality is the union of humans and the territory in which they reside. Secondly, to be considered internationalism or humanity, it is necessary to have deep roots in nationalism and to have interdependence between national identity and global collaboration. Not only does the suggested democracy involve voting by the majority, but it also involves deliberation in order to arrive

at a consensus on what is best. Achieving political and economic fairness to attain shared prosperity is the fourth goal of the desired social welfare.

Last but not least, the principle of divinity emphasizes the need to worship God Almighty without being forced to do so. This ensures that every citizen is allowed to practice their religion while maintaining mutual respect for one another. As a whole, these five principles reflect Soekarno's objective of establishing a just and affluent society in Indonesia.

The following may be conducted about Soekarno's speech if it is deductively from Hans Kelsen's lessons regarding *grundnorm*: Soekarno utilized terms interchanged multiple times throughout the speech. First, he used the terms of "principles" and "foundations of the state" to describe the content of what he introduced as the Pancasila. Second, in that address, Soekarno never referred to the five "principles" as the General Principles, or at the very least, he did not mean for Pancasila to be the General Principles in Hans Kelsen's teachings. Third, based on the description that Soekarno provided, it is not entirely clear whether these principles are a general portrait of the thoughts of the Indonesian people, which are imperative-categorical, or whether they are Soekarno's original proposals, which he came up with after reflecting on the reality of the pattern of Indonesian society in the time before the country gained its independence.

In his address, Soekarno declared that the five principles he referred to as Pancasila were "*weltanschauung*", meaning they must be understood and implemented in everyday life (Soekarnoputri, 2021). "*Weltanschauung*", translated as "worldview" in English, can be understood as a paradigm that directs an ontological perspective (Naugle, 2002). More specifically, it refers to how the Indonesian people conceptualize their existence about other people. According to the speech that Soekarno delivered on June 1, 1945, based on the ontological perspective of the Indonesian people, it is true that humans are created in togetherness with each other. Based on this conviction, religiosity, fairness, cooperation, deliberation, and acknowledging diversity as a natural phenomenon become the most important for the Indonesian country.

The Institutionalization of Pancasila: The Role of the Investigative and Preparatory Committees

Following Soekarno's presentation on Pancasila on June 1, 1945, the Investigative Body for Preparatory Efforts for Independence established a Committee of Eight. This committee comprised six individuals from national figures, including Soekarno, Mohammad Hatta, M. Yamin, A. A. Maramis, M. Soetardjo Kartohadikoesoemo, and Otto Iskandardinata. Additionally, two individuals from the Islamic group were Ki Bagoes Hadikoesoemo and K.H. Wachid Hasjim. The "Committee of Eight" was led by Soekarno as its person in charge.

Sukarno took the initiative to call for the formation of the "Committee of Nine" when the Pacific War began to spread. In his capacity as chairman of the Committee of Nine, Soekarno altered the composition of the Committee's membership to include four individuals from the national group, namely Mohammad Hatta, Muhammad Yamin, A.A. Maramis, and Achmad Soebardjo, as well as four individuals from the Islamic group, namely K.H Wachid Hasjim, K.H. Kahar Moezakir, H. Agoes Salim, and R. Abikoesno Tjokrosoejoso. Soekarno served as the chairman of the Committee of Nine he convened. This aims to make an effort to bring the perspectives of the two factions regarding the state's foundations into harmony with one another. The draft of the Preamble was referred to as the "Preamble" by Soekarno, the "Jakarta Charter"

by Yamin, and the "Gentlemen's Agreement" by Soekiman Wirsosandjojo. All three of these names pertain to the same document (Latif, 2018).

On June 22, 1945, the Committee of Nine was responsible for studying recommendations for formulating the basis of the state. This investigation culminated in accepting the draft Preamble to the Constitution, which Soekarno called the Preamble. As the Charter, the Preamble text was signed by nine (nine) members of the Committee of Nine. This text is also known as the Charter in Jakarta. The Investigating Committee for Preparatory Efforts for Independence approved the Preamble on July 11, 1945. This marks the beginning of the independence process. The Jakarta Charter outlines the fundamental characteristics of the state in the following manner: The belief in God, along with the need to apply Islamic law for those who adhere to it; a humanity that is just and civilized; the unity of Indonesia; democracy that is guided by wisdom in deliberation and representation; and social justice for all Indonesians (Safa'at, 2010).

The Indonesian Independence Preparatory Committee Session on August 18, 1945, finally altered the agreement that was included in the Jakarta Charter. This was done due to Mohammad Hatta's role in making overtures to Islamic figures who were members of the Committee of Nine. During this meeting, Mohammad Hatta presented the following suggestions for modifications: "Opening" has been substituted for the word "preamble" in this sentence. In the Preamble of the Jakarta Charter, the clause that stated "with the obligation to implement Islamic law for its adherents" was modified to read "based on belief in the Almighty God" (Hosen, 2005).

The phrase of "Belief in God, with the obligation to carry out Islamic law for its adherents" was officially changed to "Belief in the One and Only God" on August 18, 1945, by the Preparatory Committee for Indonesian Independence. This alteration signified an official change in the language of the first principle. As a result, the current Pancasila is the product of the collaborative efforts of the Committee of Nine, which was subsequently ratified by the Preparatory Committee for Indonesian Independence after modifications were made to the wording of the first principle, as noted earlier. Therefore, the formulation of Pancasila, which the nation's founders agreed upon, was the formulation of the Preparatory Committee for Indonesian Independence after the Proclamation of Independence. This formulation was outlined in the Fourth Paragraph of the Constitution's Preamble, ratified in 1945. It is as follows that the formulation is: Belief in a single, all-powerful God; a humanity that is just and civilized; the unity of Indonesia; democracy that is guided by wisdom in discussion and representation; and social justice for all Indonesians (Emmerson, 2015).

The preceding account demonstrates that the core of Pancasila, which Soekarno initially presented on June 1, 1945, was processed and renegotiated through the state's procedures. From the creation of the Jakarta Charter on June 22, 1945, until the ratification of the 1945 Constitution on August 18, 1945 (which included the ultimate articulation of Pancasila in the Preamble to the 1945 Constitution), the process of formalizing Pancasila by the state has been confirmed every step of the way. Pancasila, as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, is essentially the values that were agreed upon in a formal procedure through the Sessions of the Investigating Committee for Preparatory Efforts for Independence and the Preparatory Committee for Indonesian Independence, which are the foundation of the Indonesian State. This is based on the description provided above.

Testing Pancasila as a Grundnorm: a Philosophical and Historical Examination

Based on the description above, Pancasila is a value with the following characteristics: It is a value characterized by its subjective existence within Indonesian people, meaning that it is a value widely accepted by the Indonesian people as a whole. The values in Pancasila contain good things that require the Indonesian people to adhere to them in state, national and social life; it is not a positive law formulated through formal procedures by the state to serve as the State Foundation on August 18, 1945. Based on these characteristics, it is possible to assert that the Pancasila, created by the Preparatory Committee for Indonesian Independence in the Preamble to the Constitution of the Republic of Indonesia in 1945, are definitive or closed values. Furthermore, it has been politically agreed that the Preamble to the 1945 Constitution of the Republic of Indonesia will be the same. As a result, the argument that Pancasila, which refers to the values formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, is a value that cannot be changed, and therefore it is final or closed, becomes more compelling. As a result, Pancasila cannot be considered a *grundnorm* within the context of Hans Kelsen's teachings. This is because the *grundnorm* was not established through official procedures by the state, and this was done for various reasons, which were stated in the discussion presented earlier.

Pancasila cannot be considered as a *grundnorm* within the context of Hans Kelsen's teachings, as stated in the preceding description; nonetheless, this does not imply that Pancasila's validity has been diminished in any way. Therefore, Pancasila was initially positioned as "*philosofische grondslag*", which means the principles, philosophy, deepest thoughts, soul, and deepest desire for the "building" of Independent Indonesia to be built upon (Prawiranegara, 1984). Soekarno initially introduced Pancasila. The ideals that are stated in Pancasila are a combination of values that are found in Western philosophy (such as democracy, nomocracy, human rights, modern legal system, and republic) as well as the values that are found in Eastern philosophy (such as religion, cooperation, and the sense of togetherness (communalism). Besides that, Pancasila was constructed based on the ontology-based conviction that Indonesian persons are social creatures whose existence cannot be divorced from the existence of other humans. A factor that binds together the contrasts and variety that make up the Indonesian nation is the formalization of Pancasila principles by the state, and this is a must. It is abundantly obvious that the presence of the state is necessary for the presence of Pancasila and its strengthening.

On the other hand, *grundnorm* was initially conceived by Hans Kelsen within the framework of the rational-individualist school of thinking in society—this school of thought positions individuals, along with their rationality, as the focal point of change. Hans Kelsen's thinking about law and politics is heavily influenced by his conviction that the outcomes of the French Revolution 1789 are accurate. These outcomes include individualism, democracy, nomocracy, human rights, the modern legal system, republic, and free market. Therefore, according to Hans Kelsen's teachings, it is impossible to discuss Pancasila within the framework of the *grundnorm*.

According to some other languages, Pancasila can be understood as a collection of concepts that represent and reflect the ontological views of the Indonesian people. These concepts are believed to have originated from experiences that the Indonesian people have had in their lives. The Pancasila values result from the crystallization of historical and cultural experience. These values originate from a variety of sources, including the religiosity of the Indonesian people, local wisdom, customs, the views or philosophy

of thought and ideology that developed at the time that Pancasila was born, culture that grows in the life of the nation, and the conception of the relationship between individuals and society that has become ingrained in Indonesian society. According to the Indonesian thinking style, reality is not interpreted with the preponderance of empirical (factual) reasoning; rather, it is always balanced by involving divine qualities (religiosity). From the point of view of the Indonesian way of thinking, humanism is conceived of as a spirit that places an emphasis on humanity and is founded on the spirit of working together with one another. A humanist belief in Indonesia differs from the conventional way of thinking, which holds that an individual is a component of society as a whole and that God is the creator of society.

In another way, according to the beliefs of the Indonesian people, as reflected in Pancasila, humans are inherently communal beings. The earlier ontological perspective discussed that, in the view of the Indonesian people, humans are created by the Almighty God and exist as social creatures living together. In contrast to the Western viewpoint on human existence, which holds that people are born free and have the freedom to choose their own destiny. In the Indonesian context, while people possess the ability to make their own choices, their existence is fundamentally understood as communal and interconnected with others.

Conclusion

Grundnorm means a doctrine developed by Hans Kelsen. It is incorporated into his theory and called the Pure Theory of Law. Its origins can be attributed to the belief in the valifity of Immanuel Kant's philosophical teachings regarding the rational-practical character inherent in every human being. It can be concluded that the *grundnorm* does not come from a psychological will triggered after an individual has seen reality, compelling them to comply with demands. It is the highest step in human recognition of the cosmos since it is based on free will to accept necessity, which does not need to be presented. This makes the most advanced stage.

Grundnorm is the highest source of legal necessity, accept by every human being, based on his free will, to submit to orders that are no longer argued since they are acknowledged as fact. This is because people have come to accept them as they are. Because of this, it is referred to as an a *priori grundnorm*. Therefore, the substance that is contained within *grundnorm* is neither something that is established by the state through formal constitutional processes nor something that is formed as a result of political processes that occur inside a country. Regarding human recognition of the universe, which is imperative-categorical, *grundnorm* is considered the peak of human achievement.

Pancasila cannot be considered a *grundnorm* as it is derived from the experiences of the people of Indonesia. Therefore, the values that are outlined in Pancasila are a reflection of reality. Pancasila is also considered to be in the realm of rational theory when it is connected to the teachings of Immanuel Kant. This is because a cause-and-effect phenomenon already present in the Indinesian people live. The formulation of Pancasila, which is enshrined in the Preamble to the Constitution of the Republic of Indonesia, which was ratified in 1945, constitutes the result of formalization processes carried out by the state. Legally and officially, the sequence of events that took place between June 1, June 22 and August 18 1945, was a political process formalized as an Indonesian constitutional process that resulted in the establishment of Pancasila as the State Foundation.

It is not because Pancasila is a *grundnorm* that it is considered the source of all sources of state law; rather, this is because Pancasila has been approved by the state (by legislative and executive powers) through

statutory regulations. This is the reason why Pancasila is considered to be the source of all sources of all sources of state law. The reason that Pancasila is considered the foundation of all sources of state law is not due to the concepts included within it but because the state has validated it in the form of statutory rules.

It is impossible to minimize the significance of Pancasila in the process of ensuring the continued viability of the Unitary State of the Republic of Indonesia, even though it cannot be positioned as a *grundnorm*. Because Pancasila is the common denominator, or the point that brings together the disparities in ethnicity, race, and religion in Indonesia, its significance extends beyond only serving as a source of the legitimacy of legal rules. This is because Pancasila is the point that brings this diversity. Pancasila is not a religion but a set of principles that should be followed in social, national, and state affairs. On top of that, Pancasila serves as a source of motivation for Indonesia in its efforts to contribute to the establishment of a global order that is founded on social justice and unending peace.

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