

**PANCASILA AS INDONESIA'S POLITICAL VIEWS TOWARDS
INTERNATIONAL LEGAL NORMS***PANCASILA COMO VISÃO POLÍTICA DA INDONÉSIA SOBRE AS NORMAS JURÍDICAS
INTERNACIONAIS*Mohammad Masduki¹Moh. Fadli²Tunggul Anshari Setia Negara³Ngesti Dwi Prasetyo⁴**ABSTRACT**

In the Indonesian constitutional system, Pancasila has become the philosophical and ideological basis of the state in determining political views and policy directions that affect various aspects of life. In this study, the researcher wants to analyze how Pancasila influences Indonesia's attitudes and policies in implementing international legal norms (*jus cogens*). In addition, it also examines how Pancasila can be an alternative model in developing international legal norms that are more inclusive and oriented towards common welfare. This research uses a conceptual approach, examining the role of Pancasila in Indonesia's international diplomacy, as well as its contribution to the formation of international legal principles that are fair, balanced, and in accordance with human values. The results show that Pancasila, with its five pillars, provides a strong ethical foundation for Indonesia in facing global challenges, fighting for justice, and promoting international peace. In addition, Pancasila serves as a guideline in Indonesia's efforts to uphold state sovereignty while remaining active in international cooperation.

KEYWORDS: Pancasila. International Legal Norms. *Jus cogens*.

1 Doctoral Student Faculty of Law, University of Brawijaya, Mayjen Haryono street 169 Malang – 65145, Indonesia. E-mail: mmasduki1011@gmail.com.

2 Professor at Faculty of Law, University of Brawijaya, Jl. Mayjen Haryono 169 Malang – 65145, Indonesia. E-mail: mfadlilh@ub.ac.id.

3 Professor at Faculty of Law, University of Brawijaya, Jl. Mayjen Haryono 169 Malang – 65145, Indonesia. E-mail: tunggul@ub.ac.id.

4 Associate Professor at Faculty of Law, University of Brawijaya, Jl. Mayjen Haryono 169 Malang – 65145, Indonesia. E-mail: ngesti@ub.ac.id.

RESUMO

No sistema constitucional indonésio, Pancasila tornou-se a base filosófica e ideológica do Estado na determinação de opiniões políticas e orientações políticas que afetam vários aspectos da vida. Neste estudo, o investigador pretende analisar como Pancasila influencia as atitudes e políticas da Indonésia na implementação de normas jurídicas internacionais (jus cogens). Além disso, também examina como Pancasila pode ser um modelo alternativo no desenvolvimento de normas jurídicas internacionais que sejam mais inclusivas e orientadas para o bem-estar comum. Esta investigação utiliza uma abordagem conceptual, examinando o papel de Pancasila na diplomacia internacional da Indonésia, bem como a sua contribuição para a formação de princípios jurídicos internacionais que sejam justos, equilibrados e de acordo com os valores humanos. Os resultados mostram que Pancasila, com os seus cinco pilares, proporciona uma base ética sólida para a Indonésia enfrentar desafios globais, lutar pela justiça e promover a paz internacional. Além disso, Pancasila serve de orientação nos esforços da Indonésia para defender a soberania do Estado, ao mesmo tempo que permanece activa na cooperação internacional.

PALAVRAS-CHAVE: Pancasila. Normas Jurídicas Internacionais. Direito Vinculativo.

INDONESIA'S STATE OF THE PHILOSOPHICAL BASIS

As the philosophical basis of the Indonesian state, Pancasila has long been the main foundation in forming the direction of political and legal policies in Indonesia. Pancasila has five principles under the noble ideals of the Indonesian nation and thus also serve as the basis for the Indonesian government in carrying out all state-based activities, including matters relating to relations with the international world.

According to historical records, Pancasila was first introduced to the world by Ir. Soekarno at the United Nations (UN) General Assembly on September 30, 1960. In his speech entitled (To Build the World A New), Soekarno mentioned the word "Pancasila" 23 times. According to him, Pancasila has five pillars that do not originate from the western or eastern axis, so it is suitable to be used as an international ideology. This offer was conveyed by Soekarno because the values of Pancasila are not only of a national Indonesian nature but are also relevant and even valid for universal implementation. In addition, at that time it was under the momentum of the rise of Asian-African countries from colonialism, so there was a need to reorganize the world, one of which was by implementing Pancasila, which was in line with the spirit of anti-imperialism at that time (Sunoto, 2003).

Soekarno's contribution to the formulation of Pancasila was important. Sukarno envisioned a set of principles that would not only galvanize the population to resist colonial rule but also serve as the foundation for the future Indonesian state. These

principles are intended to reflect the nation's collective aspirations for unity, justice, and sovereignty. The adoption of Pancasila marked a significant moment in Indonesia's journey towards independence because Pancasila provides a shared philosophical and ethical foundation that transcends the diversity of local identities and beliefs.

Throughout the history of the formation of Pancasila, the values contained within it were reconstructed as values that have been inherent in the Indonesian nation since time immemorial. Philosophically, the substance of Pancasila was born from itself. Concrete evidence of this can be seen from the diversity of elements that surround it, both in the form of physical and non-physical evidence in the aspects of culture, customs, religion, and beliefs (Sunoto, 2003). For example, the existence of places of worship, cooperation, and helping each other, where all aspects that exist in society are elements of Pancasila that are relevant to everyone, therefore they are considered universal values. With this concept, of course, the existence of Pancasila has a great influence on the state's perspective on issues both on a national and international scale.

In general, the presence of a state is the most important legal subject (*par excellence*) compared to other subjects of international law. The state plays an important role in implementing rights and obligations under international law. R. Kranenburg argues that a state is an organization of power created by a group of people called a nation (Ali, 2020). In the Montevideo Convention, a country can be called an international subject if it fulfills several elements or conditions, including the presence of a permanent population, a defined territory, a capacity to enter into relations with other states, and the existence of a sovereign government. Therefore, state sovereignty is conceptualized as a *jus cogens* that no one can violate.

Jus cogens is one of the most fundamental concepts in international legal discourse. This concept expresses the idea of the existence of *lex superior* in the international legal system, namely norms that have a higher status compared to ordinary international law. *Jus cogens* is believed to be a norm that has authority that goes beyond the rules of general international law so that it cannot be deviated from or set aside through international treaties or agreements between countries (Linderfalk, 2020).

The existence of *jus cogens* norms has a significant impact on the construction of international legal arguments because the classification of a norm as *jus cogens* substantially increases the strength of the legal proposition that is based on that norm. As a non-negotiable norm, *jus cogens* forces all states to comply without exception, so that violations of it are considered serious violations that require a firm and immediate legal response.

Before the introduction of the concept of *jus cogens*, international law experts generally did not recognize the existence of a hierarchy among international legal norms. International law is considered to be a series of horizontal rules where countries have broad freedom to choose whether or not to be bound by these rules. However, with

the recognition of *jus cogens* as a legal norm that has the highest authority and cannot be challenged, this concept introduces a hierarchy of norms within the international legal system. As a result, some norms are recognized as fundamental and cannot be violated by states, regardless of their agreement or will.

The implications of recognizing *jus cogens* as the norm with the highest status are very broad for the formation and interpretation of the international legal system. It creates a framework for establishing legal norms deemed essential to maintaining a just and stable international order and guides the development and application of a more coherent and structured international law.

In the discussion regarding the context of international legal norms, researchers found fundamental issues related to the position of Pancasila concerning international legal norms. This is related to whether Pancasila can be an empirical validity that is truly capable of being applied universally or not. Researchers are also interested in analyzing in more depth the extent to which Pancasila plays a role in being a basic guideline for the nation and state, as well as its ability to manifest as the spirit of the Indonesian state on the international stage (Linderfalk, 2020).

Based on these, the researcher conducted a scientific comparison with some relevant previous research to find legal issues that were new (novelty) in this study. First, the research written by H. Hari Triasmono entitled "Peran Pancasila dalam Hukum Internasional" where there are similarities in studying Pancasila globally, but in this study, the novelty is emphasized in its correlation as a basic state norm with *jus cogens* as an international legal norm. Second, a journal by Ulf Linderfalk entitled "The legal consequences of *jus cogens* and the individuation of norms," conceptually analyzes the legal vacuum in the *jus cogens* norm, but the difference lies in the core of the discussion, where in this study the emphasis is on the comparison of *jus cogens* with Pancasila as the norm that is the guideline for the nation and peace in the world. Thus, researchers can analyze newly discovered issues related to the position of Pancasila in international legal norms in a holistic and comprehensive manner

RESEARCH METHODS OF THE PANCASILA'S AS INTERNATIONAL LEGAL NORMS

This research is a type of normative legal research based on literature studies conducted to examine the relationship between Pancasila and international legal norms and to analyze the implications of Pancasila as a determinant of the international political policies of the Republic of Indonesia. This research uses a conceptual approach (conceptual approach) through a review of legal and non-legal literature materials to explore answers to questions in the focus of the problem (Mahmud Marzuki, 2005).

THE CONCEPT OF INTERNATIONAL LEGAL NORMS: PANCASILA'S CONCEPT AND ITS IMPLICATION TO DETERMINE INTERNATIONAL POLITICAL POLICIES

The norm comes from Greek *nomos*, which means law, in English it becomes the norm, which means a model, rule, or standard of behavior. In terminology, the term norm refers to guidelines formed through mutual agreement between members of society that must be obeyed by each individual (Amin et al., 2023). Hans Kelsen, in *The Pure of Law*, explains norms as rules that are established to regulate how a person behaves so that their implications are closely related to the extent to which the norm applies (Adam, 2008).

According to Finnemore and Sikkink, the concept of norms in international law is born through a series of processes known as the norm cycle. First, norm emergence that is, the phase where norm entrepreneurs (the part that raises international issues) are trying to convince the international community to form new norms. To realize this, an international platform is needed as a promoter of norms, such as the United Nations (UN). Second, the norm cascade, which is identical to the socialization process of international norms, aims to invite norm breakers to become norm followers through the socialization mechanism. Third, the internalization phase, where the debate regarding norms begins to end and the behavior of accepting norms begins (Hariyadi, 2021). This series of processes has helped form *jus cogens* as the highest or peremptory norm in international law.

Jus cogens is adopted from Latin, which means "compelling law." The existence of *jus cogens* refers to norms that are recognized by the international community and hold the highest position in international law. It means that all legal regulations will be void if they conflict with *jus cogens*. Rozakis believes that although countries are free to create laws, this freedom has limits. There are legal rules that restrain and threaten the invalidity of any interstate agreement made contrary to it. These norms are then called *jus cogens* (Rozakis, 1976). Rozakis stated that:

"In all major system subject are free, it is true, to contract out of rules of law in their inter se relations; that freedom, however, is conditional. There are general rules of law which exclude the conclusion of particular contractual arrangements of conflicting with them by actually prohibiting derogation from their content and by threatening with invalidity any attempt of violation of that prohibition. These rules are usually called *jus cogens*."

On the other hand, Lord McNair identified *jus cogens* as a legal norm that is imperative or coercive (Luhulima, 2018). In the general legal system, *jus cogens* include norms that have an imperative character, which means that these legal provisions cannot be changed or ignored through a contractual agreement between the parties. In other words, *jus cogens* function as a superior legal principle and cannot

be deviated from by the will of the parties to the agreement because these norms are binding in the interests of the wider community. McNair distinguishes *jus cogens* from *jus dispositivum*, where *jus dispositivum* is the norm that can be reduced or set aside through a private contract. *dispositivum*. In the context of international law, *jus cogens* set limits that are not negotiated by lawmakers, even when they determine the content of international agreements.

Furthermore, McNair states that he prefers to provide illustrations or examples of provisions that are considered to be *jus cogens* rather than trying to provide a rigid definition of what is meant by *jus cogens*. Examples of commonly recognized *jus cogens* norms include the prohibitions on torture, genocide, and slavery, which are fundamental norms that states cannot ignore.

The history of the emergence of *jus cogens* begins with the view of the natural law school, which has long tried to create a master norm that no other law can oppose. The school of law itself is one of the oldest flows of thought in the philosophy of law, which considers that law must be based on inherent and universal moral principles. The concept of natural law has been a prominent concept since Ancient Greece time, with the thoughts of philosophers such as Aristotle and Christian thinkers such as Saint Thomas Aquinas. The natural law school argues that there are universal and eternal laws that come from human nature and the universe and apply to everyone, regardless of the positive laws that apply in a particular area.

In this context, natural law is not just a human legal system but is a reflection of universal moral and ethical principles. These natural law norms are considered higher than positive law because they are believed to come from a higher source such as God, human rationality, or the universe itself. Proponents of the natural law school, such as Grotius (Hugo Grotius) in the 17th century, began to formulate the idea that there was a law higher than the law made by the state. Grotius is known as the “Father of Modern International Law” because of his view that international law should be based on rational and universal principles of natural law. According to Grotius, some laws bind all states, even without the explicit consent of those states (Rahmat, 2019). This idea created the basis for the concept of the development of *jus cogens* norms.

Schwarzenberger had the opposite view, in 1965, he argued that in the context of international society, international law cannot prove the existence of *jus cogens*. He believes that the *jus cogens* concept can only be applied in legal systems with complete structures, such as executive, legislative, and judicial bodies that have full authority to enforce the law. According to Schwarzenberger, international law does not have such completeness because of its decentralized nature and is based on consensus between countries, so no single authority is capable of establishing or enforcing rules with *jus cogens* status (Luhulima, 2018).

On the other hand, several international law experts such as Verdross, Brierly, Lauterpacht, Milan Bartos, and Gregorii Tunkin admit that jus cogens are a real part of international law. They argue that there are fundamental norms in international law that are binding and cannot be ignored by countries. However, although these experts recognize the existence of jus cogens, there seems to be no consensus regarding the precise criteria for determining the content and application of these norms. These disagreements reflect the complexities and challenges faced in attempting to identify and codify jus cogens norms within the international legal system.

Generally, no literature or agreement between countries in the world clearly states what norms are included in jus cogens. The absence of normative qualifications makes jus cogens a problematic concept in the international law study, which makes it very difficult to identify. However, several experts try to provide their views, such as Christos L. Rozakis in his book *The Concept of Jus cogens in the Law of Treaties*, Waldock formulated several situations in international agreements that could lead to the cancellation of the agreement if it violates the jus cogens norm (Luhulima, 2018). Waldock stated that violations of jus cogens norms include several acts, for example, the use of force that is contrary to the principles of the United Nations Charter, actions that are categorized by international law as international crimes, and actions that require international cooperation in the imposition of sanctions or suppression by each country. In other words, agreements that violate these norms can be declared null and void because they are contrary to the basic principles recognized by the international community as jus cogens.

In contrast to Waldock's conceptual approach, L. Rozakis provides a more concrete example of the norms of jus cogens. He mentioned the prohibition of the use of force, the principle of freedom of the seas, and human rights, including the right to self-determination, as some of the concrete manifestations of jus cogens. Thus, Rozakis emphasized that these norms have binding status and cannot be set aside by countries through agreements.

Besides Waldock and Rozakis, Nahklik also expressed his views regarding jus cogens. He stated that jus cogens can be identified through concrete practices, such as the prohibition of genocide, recognition of freedom of the high seas, and compliance with the provisions of the Charter of the United Nations. According to Nahklik, these norms are a real example of jus cogens, which have an imperative nature and bind the international community as a whole (Luhulima, 2018).

Overall, these views suggest that despite differences in approach or emphasis, international law experts generally agree that jus cogens are basic norms that have the highest status and must be respected and upheld in all situations, both in the context of international agreements and in international legal practice.

The logical consequence of the emergence of international legal norms is the existence of universal jurisdiction, namely a special principle in international law that allows a country to prosecute perpetrators of serious crimes such as genocide, war crimes, crimes against humanity, and torture, without regard to the location of the crime, the nationality of the perpetrator or victim, or the country's relationship to the crime committed. This principle emerged as a response to the need to overcome impunity for crimes deemed to violate basic humanitarian norms (*jus cogens*), where the courts in the country where the crime occurred or international courts were unable or unwilling to take action.

According to Amnesty International (Langer & Eason, 2019), universal jurisdiction is a legal jurisdiction that allows a state to try people for serious international crimes, regardless of the place of the crime, or the nationality of the perpetrator and victim. This principle is based on the idea that certain crimes are so serious that they pose a threat to the international community as a whole so all states have an interest in bringing the perpetrators of these crimes to justice. Universal jurisdiction is regulated by various international legal instruments, such as the UN Convention Against Torture, the Genocide Convention, and the Geneva Conventions. This concept is also recognized in customary international law, which reflects the general practice of states accepted as law.

National law and international law are two legal domains that on the one hand, are often seen as a single entity but, on the other hand, are positioned as two different legal system entities (Firdaus, 2015). Both are legal systems, where one applies nationally while the other is international (universal). Pancasila as the pinnacle of legal norms in Indonesia, of course, is a reference in the formation of legislation, including that resulting from international agreements or conventions.

As a basic norm (*grundnorm*), Pancasila is the philosophical and ideological foundation that provides legitimacy to all legal rules, including the constitution, laws, government regulations, and other policies in Indonesia. Pancasila guides the formation and implementation of laws to be in line with the values embraced by the Indonesian nation, such as divinity, humanity, unity, democracy, and social justice.

Reviewed from the context of the formation of legislation, Pancasila functions as a benchmark for assessing whether a legal regulation is under national identity and goals. Every law and regulation in Indonesia, whether national or international (such as international agreements or conventions), must reflect and not conflict with the principles contained in Pancasila. This provision is also regulated in Articles 2 and 3 of Law Number 12 of 2011 concerning the Formation of Legislation, which states that Pancasila is the source of all sources of state law.

In terms of international agreements or conventions, Indonesia must ensure that the provisions adopted from international law do not conflict with the values of

Pancasila. Even though Indonesia is bound by the principles and norms of international law, ratification or implementation of these international agreements must remain in line with the basic norms of Pancasila. If there is a conflict between international law and Pancasila, Indonesia can choose not to adopt or adjust these provisions so as not to disrupt national interests based on the basic values of Pancasila.

Hans Kelsen's hierarchy theory of norms states that the relationship between norms is superordinate and subordinate, starting from the superior norm and continuing downwards. So, in determining a norm (inferior norm), one must pay attention to the norm above it (superior norm). According to Kelsen, legal norms are coercive or coercive norms, which differentiate legal norms from other norms. The meaning of law is a compelling order. Legal norms as coercive norms result in a correlation with coercive actions carried out by the state in the form of punishment by force both in civil and administrative law, in which case there has been an act that violates legal norms (Kelsen, 1992).

In reality, in a country, the formulation of norms does not apply coordinatively to the same position but rather hierarchically. The legal norm at the highest level is a basic norm that is abstract and is also known as a *grundnorm*. Basic norms (*grundnorm*) Besides being abstract, based on this theory, it is also assumptive, beyond the provisions, but it can be a basic foundation, and meta-juristic. Thus, according to this theory, the formulation of inferior norms must not violate superior norms and in this case, it becomes valid for the legal system existing in a country (Heinrich, 1998). Through this theory, a study is carried out on the position of Pancasila in the hierarchical system of the Indonesian nation to determine the urgency of its establishment as a legal basis for the implementation of the creation of laws and regulations or for implementation in political activities in Indonesia.

According to Kelsen, sources of law can be understood as the whole method of creating law, including the forming norms process by legitimate authorities such as parliament and courts. In addition, legal sources also refer to the hierarchy of norms, where higher norms provide the basis for the validity of lower norms. In Kelsen's view, the source of law at the highest level is the "basic norm" or *Grundnorm*, an abstract concept that gives legitimacy to the entire legal system. Within the framework of positivist legal theory, Kelsen affirms that the source of law is the law itself, and not in other forms, such as morality or custom, unless it has been integrated into positive law.

On the other side, Thomas Erskine Holland argues that the term "source of law" is ambiguous and has four meanings. First, legal sources are places where legal knowledge is found, such as textbooks, case reports, and legal treatises. Second, the source of law can be interpreted as the highest authority, namely the state, which has the power to give binding force to the law. Third, sources of law related to the causality of regulations, such as customs, religious norms, and scientific discussions, can

influence legal formation. Fourth, legal sources can also refer to state organs that have the authority to recognize or create new laws, for example through the adjudication process or the issuance of statutory regulations. So, Kelsen and Holland's views reflect different approaches to understanding the sources of law; Kelsen focuses on the legitimacy of law based on a hierarchy of norms, while Holland recognizes the diversity of elements that influence the formation and recognition of law.

In general, Pancasila and the 1945 Constitution contain guidelines for the state government policies (state policies) with a level of abstraction of value formulation that is still general and has not been implemented in operational regulations. The formation of values and ideas contained in the state's guidelines in the formulation of Pancasila and the 1945 Constitution is carried out by and through people's consultative institutions, while at the level of supervision and monitoring in practice, it is carried out by judicial institutions (Asshiddiqie, 2020).

Pancasila is a norm that is often used as the basis of philosophy, or the basis of state philosophy (*Philosophische Grondslag*), where in this sense it is implied that Pancasila is the basic value for regulating all state administration, especially about the legal system and all its reforms, namely that it must be based on the values of Pancasila (Maulida et al., 2023). So, the position of Pancasila is clear as the source of all sources of law, as stated in the preamble to the 1945 Constitution. As the basis of the state, Pancasila is a spiritual principle that includes a spiritual atmosphere or legal ideals, so it is a source of values, norms, and rules, both moral and state law.

Even though the term "Pancasila" is not explicitly mentioned in the Opening of the 1945 Constitution of the Republic of Indonesia, Pancasila conceptually still exists and is the basis of the Indonesian state, as is the principle of *communis opinio doctorum*. The formulation of Pancasila that stated in the preamble to the 1945 Constitution of the Republic of Indonesia has given Pancasila the right position and standing in the structure of national and state life. The constitution itself has been recognized as "the system of fundamental principles according to which a nation, state, corporation, is govern, the document is embodying these principles." In general, a constitution is considered to be a system that contains the basic principles that govern a state and is a document that contains these fundamental principles (Prabandani, 2022).

A country has an ideological concept adopted in every rule and implemented policy as one of the country's characteristics, namely making and enforcing laws (law-making and law enforcement) (Fadli, 2001). There are many ideologies in every country, there are the ideologies of capitalism, communism, socialism, liberalism, and fascism (Hasanah, 2021). Ideology in a country cannot be separated from itself and is a necessity considering that the existence of ideology is the spirit that contains the dreams, vision, mission, and country's ideals. So if there is no ideology then no state guidelines (Freedden et al., 2013).

Between these two terms, there are different definitions and this influences their strength in implementation in society. Ir. Soekarno himself interpreted Pancasila as a deep thought that later became the foundation for the establishment of an eternally independent Indonesia. The definition by Ir. Soekarno has been firmly within the corridor of *Weltanschauung*, compared to the definition of Ideology (Usman, 2010).

The status of Pancasila in the realm of Indonesian research is divided into two sides; as a philosophical idea and on the other side as an ideology. Onghokham stated that Pancasila is a political document and not a national ideology. There is also a side that supports the status of Pancasila as an ideology. For example. Koentowijoyo in the concept of Pancasila Radicalization, which assumes that the only way to realize the existence of Pancasila is by making massive affirmation and acceleration plans in the social system covering the material, mental, and political realms based on the principles of Pancasila (Manik et al., 2021).

The view that states Pancasila as the state ideology begins with the interpretation of Soekarno's speech on June 1, 1945, which mentioned *weltanschauung* 31 times. This confirms that Soekarno viewed Pancasila as a worldview, namely a view in a contextual sense that is close to the definition of ideology so it gives rise to the assumption that Pancasila can be interpreted as an ideology (Wirawan, 2022). Meanwhile, the Pancasila ideology was first introduced by Soeharto on November 10, 1986, which was then reaffirmed in his state speech on August 16, 1989 (Soeharto, 1968). Thus, by considering it as the state ideology, Pancasila must contain a holistic system regarding all aspects of life, the universe, and even principled things. Regarding these two statuses, this then makes academic debate about the status of Pancasila among legal researchers.

Kuntowijoyo, in his writing on the radicalization of Pancasila, expressed the important idea of the need for a new spirit for Pancasila so that it can become a driving force in history. This is based on the reality that during the Old and New Order, there was a deviation from the meaning and purpose of Pancasila as the basis of the state (Al-Brebesy et al., 2014). Furthermore, Kuntowijoyo emphasized that the basic values of Pancasila in Indonesia are not yet concrete under shared ideals. For this reason, he proposed concrete efforts so that Pancasila can become a solid force, namely by making its basic values the basic norms and normative sources for the preparation of positive Indonesian state law.

Consisting of five principles that have abstractly penetrated the lines of national life, Pancasila as a way of life is manifested from the original values of the nation (Lalu, 2025). Pancasila is unique, distinctive, and original from the absorption of the values of the Indonesian nation. Alf Ross quotes Savigny's view in *Vom Beruf unsrer Zeit* that law is not made but grows fragrant from the soul of a nation (Ross, 2019). Thus, the implementation of Pancasila shows the true colors of Indonesia, which are diverse but still one.

Looking further, even Soekarno tried to explore the philosophical aspects of the core Pancasila, which later became known as *eka sila* (cooperation). This view is an original result of Soekarno's thoughts as a result of the Pancasila that was explored previously. However, such a concept is unacceptable to Islamic leaders, where the one principle is seen as a threat to the very fundamental teachings of Islam. Roem views that Soekarno went too far in crystallizing the Pancasila. According to him, the first principle, belief in the One Almighty God, cannot be removed or slipped into the phrase "cooperation." Thus, this statement did not make it into the preamble to the 1945 Constitution (Anshari, 1997). Since the era of Bung Karno's leadership until now, the Indonesian people have continued to care about the implementation of Pancasila through various methods. The affirmation of the status of Pancasila will have ethical, political, and legal consequences for the Indonesian nation.

In Western research, Pancasila is an interesting philosophical document to study. Levine and Wolf stated that in pluralistic diversity, it is inevitable that there will be misunderstandings in many things. However, Pancasila managed to reach the hearts of each of the differences and then be ratified, recognized, and used to this day. Robert M Fitch and Sheila Anne Webb, as Western researchers in 1989, re-examined Pancasila as a way of life amidst cultural diversity. Based on the research results, there is a phenomenon of unification of the views of multicultural society towards one idea, namely Pancasila, without coming into contact with the existing cultures in Indonesia (Fitch & Webb, 1989). Pancasila in the results of the two studies is described as the instillation of values that go hand in hand with culture, religion, and differences in Indonesian society.

Diryarkara mapped the values in the five principles of Pancasila as follows: First, human existence as it was created. Humans are the embodiment of the love of the Creator as the first being to exist. Thus, as created beings, humans have a limited, relative, and dependent nature, so they require openness to something transcendent in the discovery of absolute spiritual support (Driyarkara, 2006). Rejection of absolute transcendence carries the risk of absolutizing the relative. Thus, when the spiritual foundation is denied, human beings will look for a replacement by deifying immanent things. Therefore, humans as the embodiment of human love, should also develop ways of worshipping God that are filled with love.

Second, human existence is a collective presence, meaning that humans cannot stand alone and not be isolated from other situations. By being together with others, humans do not have to be together based on love, but there is a development of a sense of humanity that grows from love for others.

Third, in a collective meaning, humans as social beings need a real living space in social interactions that are in harmony with the reality of the diversity of the human

universe. Efforts to foster love in the unity of different people in one region of the country are related to geopolitics along with fostering a sense of nationalism.

Fourth, in developing life together, decision-making regarding mutual benefits is carried out in a spirit of love. The main measure of love is mutual respect. The way to give respect to other humans is from the perspective of humans as sovereign subjects and not objects in acts of manipulation, exploitation, and exclusion, this is stated as democracy in its true meaning.

Fifth, human existence is a spirit that has a body so when understood physically, humans need shelter, clothing, food, and various other material needs. The specific manifestation of humanity is obtained through a sense of love for other human beings by sharing physical needs fairly, which is then understood as social justice.

Searching for the values contained in Pancasila takes a very long time, up to centuries. Even the process of discovering these principles led the nation's founders to think about and feel what their people experienced during the colonial period, and return to reflect the spirit they once dreamed of for liberation, happiness, and a shared identity. Various intellectual efforts as a form of synthesizing ideologies and movement groups to achieve a common core of independence. Freedom in Driyarkara's view means freedom from bonds, which if examined more deeply, means the power over oneself to do or not to do something. So, based on the spirit of national equality and the desire for independence, this was then realized in the formulation of Pancasila.

As philosophische grondslag, Pancasila has a vital place not only in the scope of government but also in the lives of Indonesian society. Pancasila is present in every paradigm of life, both in development and the way people think in an education system. In the national development paradigm, for example, Pancasila functions as a benchmark for every attitude and action taken in determining national development. Pancasila as a benchmark for taking attitudes and actions is a consequence of the monopluralist nature of humans, namely being individuals who are both individual and social, individuals who are close to God and other humans. Thus, national development aimed at achieving the desired level of dignity and status can succeed or fail depending on the pattern of attitudes and actions that are crystallized in the values of Pancasila (Syamsudin, 2009). This means that Pancasila as a vital value in the life of society must have meaning as the nation's philosophy of life, so that it is necessary to explore the legal implications in the national and state systems.

Reviewing the complexity and density of norms contained in Pancasila, researchers see similarities in the basic values of humanity and social justice, which are in harmony with *jus cogens*. However, at the level of the application of norms, Pancasila functions as a fundamental norm in the context of Indonesian national law, while *jus cogens* is a legal norm that is accepted internationally and binds all countries. The correlation

between the two is seen in the alignment of principles that prioritize human rights, peace, and justice.

Although Pancasila is considered complete and ideal to be used as an international norm that is universal and open to various views, in fact Pancasila still opens up great opportunities for strong rejection from various countries in the world, especially secular-based countries. The simple reason is that not all countries recognize the existence of God or accommodate monotheistic beliefs like Indonesia, so the author is more appropriate in positioning Pancasila as the highest norm of the Indonesian state, which has implications as the breath and determinant of all policies, including the country's international political policies.

In this position, in line with one of the main roles of Pancasila in the international world, it is able to become a basic guideline for the Indonesian nation in maintaining unity amidst diversity. Pancasila was reconstructed as a glue that successfully united the high diversity in Indonesia. This value is also considered very relevant in an international context, where conflicts often arise due to ethnic, religious, or cultural differences. By referring to the concept of Pancasila, this can be a real picture for other countries facing similar challenges, especially in creating an inclusive and tolerant environment.

Not only that, Pancasila also emphasizes the importance of respecting universal human values. In international relations, Indonesia has a role as a mediator and promoter of peace. One example is Indonesia's involvement in the non-aligned movement, which aimed to maintain neutrality and promote peace amidst the Cold War. Indonesia also often plays an active role in resolving international conflicts. The values of Pancasila, especially those related to humanity and peace, provide a moral foundation for Indonesia to become a country that prioritizes peaceful solutions in resolving conflicts. For example, Indonesia actively participates in United Nations (UN) peacekeeping missions and is often involved in conflict mediation in regions such as the Middle East and Southeast Asia.

After the end of World War II, the world was divided into two large groups, known as the Western Axis and the Eastern Axis. Both had superpowers that tried to influence other countries in the world. The Western Axis, led by the United States spread, the ideology of liberalism-capitalism, while the Eastern Axis was led by the Soviet Union (Russia) with their communist ideology. Due to the world ideological turmoil that occurred at that time, Indonesia was faced with a dilemma. On one side, if you don't join one of the axes, you will be considered an enemy, and if you don't join one of the two, you will be branded as having no stance. In a position that could be said to be very disadvantageous, Indonesia, which at that time was represented by Vice President Mohammad Hatta, remained in a neutral position (not taking sides), as well as an effort to support the mission of world peace and order together with the UN (Lukum, 2013).

Although it is not explicitly stated as a political status, this diplomatic step is a concrete manifestation of the spirit of Indonesia's foreign policy, which is under Pancasila and the 1945 Constitution. In this way, the political views of the Indonesian state can stem the flow of western and eastern ideologies because both bring currents that are not in accordance with the living values as contained in Pancasila and the Constitution of the Republic of Indonesia in paragraph IV:

"..to participate toward the establishment of a world order based on perpetual peace and social justice."

In general, the concept of foreign policy aims to fight for the national interests of each country. For example, Indonesia. Implements an active free foreign policy to meet domestic needs through cooperation on various commodities with other member countries. This awareness of geopolitics then leads to the conclusion that no country in the world needs other countries where each country implements a foreign policy concept based on the ideology and goals of its nation.

As the basis for determining all foreign policies, the concept of Pancasila is supported by three pillars of mainstream ideology (trilogy of ideology), namely religious ideology, national ideology (nationalism), and socialist ideology (Latif, 2020). The three finally found common ground in the form of ideological views such as socio-religion, socio-nationalism, and socio-democracy. These three are fundamental principles that are interrelated and support Pancasila. These principles are being built on the values of humanity, social justice, and national unity, and are the foundation for realizing a just and prosperous Indonesian society.

Socio-religious principles signify religiosity based on universal human values, such as compassion, tolerance, and respect for others. This is in line with the spirit of "a God with culture, a God with noble character, a God who respects one another". This principle is stated in the first principle of Pancasila, emphasizing the importance of a harmonious spiritual relationship with God and fellow human beings. Religiosity in Indonesia has an important role in national development in a multi-religious society (Hangabei et al., 2021). This religious dimension frees humans from material domination by showing transcendence towards God Almighty through spiritual meaning that will never run out as a source of inspiration and offers hope and perspective for the future. Pancasila has great value in building relationships between religious adherents in Indonesia. Ginanjar describes universal values that are generally believed to be true by all religions as the basic spiritual nature of humans, such as the ability to love, appreciate, be honest, responsible, and other things (Adlina, 2017).

Meanwhile, socio-nationalism is nationalism that includes political and accommodates economic aspects, which aims to improve the conditions of the wider community to avoid oppression, so that there are no more groups that suffer, and

no more groups that live in misery (Hasanah, 2021). This is reflected in the spirit of nationalism which upholds humanitarian values, both within the country and abroad. This principle, inspired by the second and third principles of Pancasila, opposes narrow nationalism and chauvinism. On the other hand, socio-nationalism embraces the ideals of unity and the establishment of world brotherhood.

On the other side, socio-democracy refers to a democracy that upholds social justice and people's welfare. This principle, which is a manifestation of the fourth and fifth principles of Pancasila, goes beyond mere political democracy and demands participation and economic emancipation for all the people. Soekarno, as one of the founders of the Indonesian nation, emphasized that people's sovereignty does not only mean "politieke rechtvaardigheid" (political justice), but also "sociale rechtvaardigheid" (Social Justice). This means that people's sovereignty must be realized through a political and economic system that is fair and on the side of the people (Adlina, 2017).

The existence of Pancasila is very central in responding to global issues, which requires Indonesia's views to always be in line with the contents implied in Pancasila. One example is Indonesia's political view on Russia's attack on Ukraine by prioritizing the principle of an active, free foreign policy. Even though it does not have a direct impact, Indonesia continues to use its political rights to re-harmonize relations between the two countries through the momentum of the Group 20 (G20), considering that Indonesia has built various positive relations with both countries in various fields.

Researchers provide 6 characteristics or main features of the international outlook of the Indonesian nation based on Pancasila:

1. Respect for State Sovereignty and Non-Intervention Principles

One of the main characteristics of Indonesia's political outlook inspired by Pancasila is respect for the sovereignty of other countries and the principle of non-intervention. This is reflected in the third principle, "Unity of Indonesia," which emphasizes the importance of respecting territorial integrity and the right of each nation to determine its destiny. This principle is in line with international norms set out in the Charter of the United Nations (UN), which prohibits interference in the domestic affairs of other countries. Indonesia tends to take a diplomatic stance that supports peaceful conflict resolution and rejects any intervention form that violates the sovereignty of other countries.

2. Commitment to International Peace and Security

The second principle, "Just and Civilized Humanity," encourages Indonesia's efforts to maintain world peace and security. Indonesia has played a significant role in various UN peacekeeping missions, sending peacekeeping troops to various conflict areas as

part of its international contribution. This commitment reflects Indonesia's desire to be part of a peaceful and just global order where human rights are respected and conflicts are resolved through peaceful means. This attitude is also reflected in Indonesia's diplomacy, which prioritizes dialogue and negotiation rather than confrontation..

3. Social and Economic Justice in the Global Order

The fifth principle, "Social Justice for All Indonesian People," emphasizes the importance of realizing social and economic justice, not only domestically but also in international relations. Indonesia often takes positions that support developing countries in fighting for their rights to access fair trade, the elimination of trade barriers, and the reduction of international debt. Indonesia also actively participates in forums such as the G20 and ASEAN to promote more inclusive and equitable economic cooperation and reduce global inequality.

4. Multilateral Approach and Active Diplomacy

The fourth principle, "Democracy Guided by the Wisdom of Deliberation/Representation," directs Indonesia to adopt an inclusive and multilateral diplomatic approach. Indonesia is active in various international organizations such as the UN, ASEAN, the Non-Aligned Movement, and the Organization of Islamic Cooperation (OIC). This attitude shows Indonesia's preference for resolving global issues through multilateral forums, emphasizing the importance of deliberation and cooperation between countries. This approach aims to create a global consensus that respects diversity of opinions and interests, in line with the democratic principles espoused by Pancasila.

5. Respect for Human Rights and International Law

Indonesia is committed to respecting human rights and upholding the principles of international law, in line with the second and fifth principles of Pancasila. This attitude is seen in various international agreements ratified by Indonesia, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Besides that, Indonesia also often puts forward human rights issues in international forums, while still paying attention to the local context and the principle of sovereignty.

6. Equality and Solidarity Among Nations

Pancasila provides the basis for Indonesia's political outlook which emphasizes equality and solidarity between nations, regardless of differences in religion, race, or ideology. Indonesia often shows solidarity with countries facing oppression or injustice

and supports the independence movements of colonized nations. This attitude is based on the belief that all nations have the same right to live in freedom, prosperity, and peace.

The alignment of Pancasila with international legal norms has been demonstrated through Indonesia's active participation in multilateral organizations such as the United Nations (UN), where Indonesia consistently promotes democratic principles, human rights, and peaceful coexistence. This interaction reflects Indonesia's efforts to align its national interests with the broader goals of the international community by integrating the principles of Pancasila into its foreign policy, Indonesia tries to contribute constructively to the development of a more just and equitable international order while maintaining its sovereignty and national identity.

CONCLUSION OF PANCASILA'S AS INTERNATIONAL LEGAL NORMS

International legal norms (*jus cogens*) are norms that are imperative and binding between countries, such as the prohibition of torture, genocide, and the use of violence. It is considered the highest legal norm in international legal discourse and cannot be deviated from by agreements between countries. *Jus cogens* comes from the concept of natural law which emphasizes the existence of universal moral principles that apply globally and are recognized by the international community, where if there are regulations that violate them, there will be consequences in the form of the cancellation of the law.

Pancasila as the highest norm of the Indonesian nation and as the *Philosophische Grondslag*, has similar values with the *jus cogens* norm in several respects, namely the similarity of the values of justice and humanity. However, the position of Pancasila cannot escalate into an international legal norm, because it has not been universally agreed upon, and could be rejected by secular countries or countries with socialist or liberal ideologies throughout the world. However, Pancasila is the basic guideline for nationhood and world peace is in line with the *jus cogens* norm. At the implementation level, the harmony between Pancasila and international legal norms is reflected through Indonesia's active role in multilateral forums such as the United Nations (UN), where Indonesia continues to promote the values of democracy, human rights, and peace. This participation demonstrates Indonesia's efforts to balance its national interests with global goals while maintaining national sovereignty and identity.

REFERENCES

- Adam, A. (2008). On Hans Kelsen's Pure Theory of Law. *Jura: A Pecs Tudományegyetem Allam-Es Jogtudományi Karának Tudományos Lapja*, 7.
- Adlina, A. U. (2017). Potensi Keberagamaan Masyarakat Kudus: Upaya Memperkuat Ideologi Pancasila Melalui Local Wisdom. *FIKRAH*, 5(1), 219–244.
- Al-Brebesy, M. M., Cahyono, M., & Sulastri, E. (2014). Radikalisasi Pancasila: merekatkan kebhinekaan bangsa dan membendung radikalisme agama. Pusat Pengkajian MPR-RI.
- Ali, M. (2020). Perbandingan Konsep Negara Hukum. Biro Hukum Sekretariat Jenderal Kementerian, 1–32.
- Amin, F., Susmayanti, R., Faried, F. S., Zaelani, M. A., Agustiwi, A., Permana, D. Y., Yudanto, D., Muhtar, M. H., Hadi, A. M., & Widodo, I. S. (2023). Ilmu Perundang-Undangan. Sada Kurnia Pustaka.
- Anshari, S. (1997). Piagam Jakarta, 22 Juni 1945: sebuah konsensus nasional tentang dasar negara Republik Indonesia (1945-1959). Gema Insani.
- Asshiddiqie, J. (2020). Pancasila: identitas konstitusi berbangsa dan bernegara.
- Driyarkara, N. (2006). Karya lengkap Driyarkara: esai-esai filsafat pemikir yang terlibat penuh dalam perjuangan bangsanya. Gramedia Pustaka Utama.
- Fadli, M. (2001). Peraturan delegasi di Indonesia. Universitas Brawijaya Press.
- Firdaus, F. (2015). Kedudukan Hukum Internasional Dalam Sistem Perundang-Undangan Nasional Indonesia. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 8(1), 36–52.
- Fitch, R. M., & Webb, S. A. (1989). Cultural immersion in Indonesia through Pancasila: State ideology. *The Journal of Educational Thought (JET)/Revue de La Pensée Éducative*, 44–51.
- Freedon, M., Sargent, L. T., & Stears, M. (2013). *The Oxford handbook of political ideologies*. OUP Oxford.
- Hangabei, S. M., Dimiyati, K., Absori, A., & Akhmad, A. (2021). The ideology of law: Embodying the religiosity of Pancasila in Indonesia legal concepts. *Law Reform*, 17(1), 77–94.
- Hariyadi, R. P. (2021). FLEGT License in Indonesia-European Union Cooperation: Norm Life Cycle Analysis. *Global Strategis*, 15(2).
- Hasanah, N. (2021). Sumber sosiologis pancasila sebagai ideologi negara.

Heinrich, R. (1998). *The Natural Law: A Study in Legal and Social History and Philosophy*. Liberty Fund, Indianapolis.

Kelsen, H. (1992). *Introduction to The Problems of Legal Theory*, translated by Bonnie Litschewski Paulson and Stanley L. Paulson. Oxford: Clarendon Press.

Lalu, N. G. (2025). HUKUM DAN KEKUASAAN DALAM PERSPEKTIF FILSAFAT HUKUM PANCASILA. *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 11(1), 1–17.

Langer, M., & Eason, M. (2019). The quiet expansion of universal jurisdiction. *European Journal of International Law*, 30(3), 779–817.

Latif, Y. (2020). *Reaktualisasi Pancasila*. Pusat Pendidikan Pancasila Dan Konstitusi, 1–28.

Linderfalk, U. (2020). The legal consequences of *jus cogens* and the individuation of norms. *Leiden Journal of International Law*, 33(4), 893–909.

Luhulima, H. V. (2018). Identifikasi dan Validitas Norma-norma *Jus Cogens* dalam Hukum Internasional. *Justitia et Pax*, 34(1).

Lukum, R. (2013). *Peran Ideologi Pancasila dalam Kebijakan Politik Luar Negeri Indonesia Sebagai Solusi Menghadapi Pengaruh Globalisasi*. Laporan Penelitian. Universitas Negeri Gorontalo.

Mahmud Marzuki, P. (2005). *Penelitian hukum*. Jakarta: Kencana Prenada Media, 55.

Manik, T. S., Samsuri, S., & Sunarso, S. (2021). Revitalisasi Pancasila Melalui Dusun Pancasila. *Pancasila: Jurnal Keindonesiaan*, 1(2), 225–234.

Maulida, S. Z., Xavier, M., & Elliot, M. (2023). The Essence of Pancasila as the Foundation and Ideology of the State: The Values of Pancasila. *International Journal of Educational Narratives*, 1(2), 95–102.

Prabandani, H. W. (2022). Menelusuri kedudukan Pancasila sebagai sumber dari segala sumber hukum (Discovering the position of Pancasila as the basic norm in Indonesia). *Iblam Law Review*, 2(1), 158–180.

Rahmat, A. (2019). Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi. *Undang: Jurnal Hukum*, 2(2), 433–470.

Ross, A. (2019). *On law and justice*. Oxford University Press.

Rozakis, C. L. (1976). *The concept of jus cogens in the law of treaties*. (No Title).

Soeharto), I. P. (1967-1998: (1968). Pidato kenegaraan Presiden Republic Indonesia Djenderal Soeharto didepan sidang DPR-GR, 16 Agustus 1968 (Vol. 11). Departemen Penerangan RI.

Sunoto. (2003). Mengenal filsafat Pancasila: pendekatan melalui metafisika, logika, dan etika. Hanindita Graha Widya.

Syamsudin, M. (2009). Pendidikan Pancasila Menempatkan Pancasila dalam Konteks Keislaman dan Keindonesiaan. Total Media, Yogyakarta.

Usman, S. (2010). Pokok-Pokok Filsafat Hukum. Suhud Sentra Utama, CV, Cetakan Kesatu, Serang.

Wirawan, V. (2022). Pancasila Sebagai Sumber Tertib Hukum Tertinggi (Suatu Kajian Filsafat): Pemahaman Bagi Mahasiswa UNJAYA, UNIMUGO dan UMK. Abdi Masyarakat, 4(1), 14–22.

Recebido em: 07/10/25
Aprovado em: 25/11/25