

Pancasila as a Critique of Legal Positivism in National Lawmaking

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ABSTRACT

Legal positivism has contributed to legal certainty in Indonesia, but its dominance in national lawmaking may reduce law to formal legality and procedural validity. This article examines Pancasila as a philosophical critique of legal positivism in the formation of national law. The study employs normative legal research, drawing on philosophical, conceptual, and statutory approaches. The analysis shows that Pancasila should not be treated merely as an ideological symbol or a formal source of legal validity. Rather, it functions as a substantive evaluative standard for testing whether legislation reflects human dignity, democratic participation, social justice, national unity, and moral responsibility. The novelty of this article lies in treating Pancasila not only as the source of all sources of law, but also as a critical framework for correcting legal formalism in legislative practice. In the future, national lawmaking needs to balance legal certainty with substantive justice so that positive law remains rooted in the philosophical ideals of Pancasila.

Keywords: legal positivism, national law, Pancasila, substantive justice, theory of law

INTRODUCTION

Pancasila plays a fundamental role in the Indonesian Constitution. It is not only understood as the basis of the state, national ideology, and the nation's outlook on life but also as a source of value that provides direction for the formation, interpretation, and implementation of national laws. Juridically, this position is affirmed in Article 2 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, which states that Pancasila is the source of all sources of state law. This formulation places Pancasila not just as a political statement, but as a philosophical basis that should animate all positive legal products in Indonesia.

In Indonesian legal doctrine, the relationship between Pancasila and the national legal system has been widely discussed in terms of legal sources, legal ideals, *grundnorm*, *staatsfundamentálnorm*, legal ideology, and the legal state paradigm of Pancasila. Bo'a (2018, pp. 21–49) shows that, as the source of all legal sources, Pancasila entails that the national legal system must be based on Pancasila values. However, the problem arises when Pancasila's presence in the legal system is more often symbolic than a substantive measure that actually works in the legislative process. It is at this point that Pancasila is often formally invoked, but it has not always been used as a critical standard to test the content, direction, and social impact of a regulation.

Criticism of the dominance of legal positivism in Indonesia does not mean rejecting written laws or the procedures for their formation and enforcement. The criticism is more directed at the legal-formal tendency that makes the law seem complete when the competent institutions have ratified it. In this sense, law can easily turn into an instrument of power, especially if its formation is less participatory, less open, or more in the interest of short-term politics than the public interest. Aldyan and Negi (2022, pp. 178–190) highlight that the influence of positivism in Indonesian law enforcement remains strong and can affect the value of justice. In the context of lawmaking, the same problem can arise when formal legitimacy is considered sufficient to close the debate about substantive justice.

Previous studies provide an important foundation for this study. Azhari (2012, pp. 489–505) discusses the Indonesian legal state as a project of decolonization and reconstruction of traditions, so that it should not simply copy the Continental European *rechtsstaat* model. Manullang (2020, pp. 284–301) criticizes the tendency to reduce Pancasila to a *grundnorm* in the sense of a source of formal validity alone, because it contains philosophical values that cannot be reduced to a problem of normative validity. Silalahi (2024, pp. 62–76) also shows a paradox: when Pancasila serves as a source of law, it can turn into a rigid normative justification if it is not placed within an interpretive discourse. Meanwhile, Sihotang and Chansrakaeo (2023, pp. 247–257) emphasized the importance of a prismatic Pancasila legal state that can integrate national law and living laws in society.

Nevertheless, there is still room for study that needs to be emphasized. Many studies have discussed Pancasila as a source of law, the basis of the state, or values in certain areas of law. However, there have been few writings that specifically construct Pancasila as a tool for criticizing the dominance of legal positivism in the formation of national law. As a result, discussions about Pancasila often stop at the normative claim that all regulations must be in accordance with it, without explaining how Pancasila serves as a critical measure for assessing laws that are formal, rigid, elitist, or far from substantive justice.

The gap is important because the formation of national laws is not sufficiently assessed in terms of their procedures and the hierarchy of laws and regulations. Procedurally valid laws can still be problematic if their substance ignores human dignity, weakens public participation, undermines legal pluralism, or widens social injustice. Therefore, this article departs from the question: how can Pancasila be constructed as a philosophical critique of legal positivism in the formation of national law? This question is answered by placing Pancasila as an evaluative framework that connects legal certainty with substantive justice.

This study aims to explain the critical function of Pancasila in the formation of national law. This article is not intended to reject legal positivism entirely, but to place it in proper perspective. Legal positivism is still needed to maintain certainty, legality, and order. However, in a Pancasila state, legal certainty cannot stand alone without justice, humanity, democracy, and social benefits. Thus, the novelty of this article lies in its effort to shift the understanding of Pancasila from merely a formal source of law to a paradigm for critiquing legalism that is overly procedural in the national legislative process.

RESEARCH METHODS

This study uses normative legal research method. The choice of this method is based on the object of study, namely, norms, principles, doctrines, concepts, and philosophical arguments regarding the relationship between Pancasila, legal positivism, and the formation of national law. Normative legal research is appropriate because this article does not examine respondents'

behavior empirically but rather the normative and conceptual structures that shape thinking about law in the Indonesian legal system.

The approach used consists of a philosophical, conceptual, and legislative approach. A philosophical approach is used to describe Pancasila as the basis of values, legal ideals, and moral measures in law. The conceptual approach is used to explain legal positivism, substantive justice, formal legality, and the state of law of Pancasila. The legislative approach is used to examine the position of Pancasila within the system of lawmaking and regulation, particularly through Law Number 12 of 2011, last amended by Law Number 13 of 2022.

The population in this study is not the human population, but rather the entire body of legal materials and scientific literature related to the research theme. The sample or study material was selected purposively based on its relevance to three main issues: Pancasila as a source of law, criticism of legal positivism, and the formation of national law. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011, Law Number 13 of 2022, and related regulations. Secondary legal materials include articles from reputable scientific journals and legal literature that support the construction of arguments.

The research instrument is a concept classification sheet used to group study materials into the categories of Pancasila as a source of law, legal positivism, criticism of formalism, substantive justice, and implications for the formation of national law. The research procedure was carried out through the stages of inventory of legal materials, selection of literature based on relevance and quality of sources, classification of concepts, critical reading, philosophical interpretation, and argumentative drawing of conclusions. The analysis technique used is qualitative-normative analysis, which connects the legal norms, principles, theories, and values of Pancasila to identify argumentative constructions that address the research gap.

RESULTS AND DISCUSSION

Pancasila as a source of laws and philosophical standards

The results of the study show that, in the national legal system, Pancasila has two functions that cannot be separated. First, Pancasila is a source of law that provides values for the formation of laws and regulations. Second, Pancasila serves as a philosophical standard for assessing whether a legal product is in line with the ideals of Indonesian law. The first function is normative-juridical, while the second function is critical-evaluative. So far, the first function has been emphasized more often, while the second has not always been operationalized in the formation of national law.

Pancasila as a source of law means that every positive legal norm must obtain a value direction from the precepts of Pancasila. Godly values guide the law to maintain its ethical basis and moral responsibility. Human values demand that the law respect human dignity and not treat human beings as objects of power. The value of unity requires a law that maintains the nation's integration without closing off diversity. People's values demand democratic, deliberative, and participatory law. The value of social justice affirms that the law must be in favor of the welfare and protection of vulnerable groups.

However, the position of Pancasila as a source of law is insufficient if it is merely included as an opening formulation in an academic manuscript or as a regulatory consideration. According to (Bo'a, 2018), Pancasila can be eroded if it is only used as a symbol in the law. This statement is important because the main problem in the practice of law formation is not just whether Pancasila is mentioned, but whether its value is actually a parameter in the compilation of norms. A law that

includes Pancasila at the beginning can still lose its Pancasila character if its content closes participation, weakens the protection of rights, or widens social inequality.

Pancasila needs to be understood as a philosophical standard that works at a substantive level. This standard asks not only whether an authorized institution has established a law, but also whether it glorifies human beings, strengthens national solidarity, opens up spaces for deliberation, and promotes social justice. In this sense, Pancasila does not stop as a source of formal validity, but becomes the basis for moral judgment of the quality of positive law. This is where Pancasila has the power to criticize legal positivism, which emphasizes form and procedure too much.

The debate about Pancasila as a norm can become narrow if it is treated solely as a source of validity in the Kelsenian sense (Manullang, 2020). Pancasila can indeed serve as a basis for the normative structure, but its philosophical value extends beyond a mere formal requirement for enforcement. It contains a common belief about a form of life that is considered good by the Indonesian people. Therefore, Pancasila should not be reduced to a normative hierarchy, but rather used as a basis for reflection to assess whether positive laws have led to a just and civilized national life.

The problem of legal positivism in the formation of national law

Legal positivism holds that law is a norm set by an authorized authority through a specific procedure. On the one hand, this idea provides great benefits to the modern state as laws become more definite, written, recognizable, and generally enforceable. Gardner (2001, pp. 199–227) explains that legal positivism does not necessarily mean rejecting morality, but emphasizes the importance of the social resources of law. In the Indonesian context, the emphasis on social resources and the written form of law is very visible in the hierarchically arranged system of laws and regulations.

However, legal positivism becomes problematic when it is understood narrowly as legalism. In narrow legalism, the law is treated as identical to its text. Lawmakers feel that formal procedures have been taken, while questions of justice, social benefits, and the impact on vulnerable groups are secondary. This kind of mindset risks undermining the law's basic purpose. The law is no longer seen as a means to bring justice, but as a series of articles that must be obeyed because the state has established them.

In the formation of national law, the dominance of positivism is evident in several tendencies. First, the formation of the law is more oriented towards procedural completeness than the depth of substantive argumentation. Second, academic manuscripts are sometimes treated as an administrative requirement, rather than as a space for critical analysis of the social, philosophical, and constitutional impact of a draft regulation. Third, public participation can become a formality if public input does not really affect the choice of norms. Fourth, the harmonization of regulations is understood more as a technical adjustment of norms rather than as a test of whether the substance of the norm is in accordance with the values of Pancasila.

This tendency cannot be separated from the history of Indonesian law, which inherits the tradition of civil law and colonial experience. Shows that the Indonesian legal state needs to be understood through the process of decolonization and reconstruction of traditions, not just continuing the Western model of the legal state. Highlighting the limits of state law monism in post-colonial countries such as Indonesia (Künkler & Sezgin, 2016, pp. 987–1012). This legacy often places written state law at the center, while social norms, customary law, and the experience of community justice are considered peripheral.

The relationship between national law and customary law in the state of Pancasila law should not be framed in a dualistic manner that negates either (Sihotang & Chansrakaeo, 2023, pp. 247–257). Both need to be integrated because they relate to the community's social practices. This view is important for criticizing legal positivism, which only recognizes state law as legal law. If positive law closes itself off from the laws that live in society, the formation of national laws can lose social context and fail to respond to the needs of concrete justice.

The problem of legal positivism is also seen in the tension between certainty and justice. Legal certainty is needed so that the law does not change and is not subject to the ruler's will. However, legal certainty should not be an excuse to maintain unfair norms. Elaborating on the progressive legal thinking of Satjipto Rahardjo, which puts law for humans, not humans for law (Aulia, 2018, pp. 159–185). This perspective aligns with Pancasila's critique of positivism: written law should be respected but not unquestioningly worshipped when it distances people from justice.

Pancasila as a criticism of formal legality

Pancasila, as a critique of legal positivism, does not reject positive law but tests its limits. The first criticism is that the law should not be judged solely by formal legality. A regulation can meet the requirements for its formation, but it remains problematic if its substance fails to respect human dignity. The precepts of just and civilised humanity demand that the formation of laws always places humans at the center. Thus, regulations that treat citizens as mere objects of regulation, without taking into account their rights, votes, and vulnerabilities, do not fully reflect Pancasila.

The second criticism is that the law should not only be a tool of power and stability. The precepts of the people, guided by wisdom in deliberation/representation, require a process of law formation that includes dialogue, deliberation, and meaningful participation. Hidayat and Arifin (2019, pp. 147–159) emphasized that the pattern of communication and dialogue in the regulatory formation process affects the character of the law; the more transparent and participatory the process, the more responsive the law. Therefore, the formation of laws that are closed, hasty, or fail to listen to the public can be criticized as not in line with Pancasila, even though procedurally they may seem legitimate.

The third criticism is that the law should not be absolutely uniform. The precept of Indonesian unity does emphasize national integration, but unity in Pancasila is not uniformity that negates diversity. The state of Pancasila law must maintain unity while recognizing the social, cultural, religious, and legal plurality that exists in society. Pancasila, within the framework of pluralism agreements that historically seek to manage Indonesia's diversity (Chia, 2022, pp. 91–98). Thus, national laws that are too centralistic and insensitive to local conditions can be criticized for ignoring the pluralistic dimension of Pancasila.

The fourth criticism is that the law should not ignore social justice. In the Pancasila state, the law is not only a means of ordering society but also an instrument for reducing inequality and strengthening welfare. The importance of Indonesia's welfare-state model is that it is constitutionally mandated and does not follow the minimal state model Elviandri et al. (2019, pp. 252–266). The precepts of social justice require the formulation of laws that ensure equitable distribution of burdens and benefits. Seemingly neutral regulations can remain unfair if they impact the poor, indigenous peoples, informal workers, women, children, or other vulnerable groups.

The fifth criticism is that the law should not lose its moral dimension. The precepts of the One God are not only interpreted as a recognition of religious life, but also as a reminder that the law has an ethical dimension. Formally legitimate laws can still lose moral legitimacy when used to

normalize injustice. In this case, Pancasila connects legality to moral responsibility. Positive law does not stand in a space, but must always be tested against the value of the common good that is the basis of the life of the nation.

With these five criticisms, Pancasila becomes a framework that changes the question of law formation. The question is no longer just whether the draft regulation has entered the legislative process, been discussed by the competent institutions, obtained approval, and been promulgated. The more fundamental question is whether the draft respects human dignity, is participatory, maintains unity in diversity, promotes social justice, and has moral legitimacy. This shift in question is the core of Pancasila's criticism of legal positivism.

Table 1. Pancasila's Critique Framework for Legal Positivism

The Value of Pancasila	Criticised the positivist problems	Evaluative questions in the formation of laws
Divinity	Law is rigidly separated from moral responsibility.	Do the norms that are formed have an ethical basis and do not legitimise injustice?
Kemanusiaan	Human beings are reduced to the object of state regulation.	Do norms protect human dignity, rights, and vulnerability?
Unity	Legal uniformity is imposed on a pluralistic social reality.	Are the norms of maintaining national integration without eliminating the plurality of society?
Citizenship	Formal procedures replace meaningful participation.	Does norm formation open up space for dialogue and take public input into account?
Social justice	Legal certainty is prioritised without testing the distributional impact.	Do norms fairly share burdens and benefits, especially for vulnerable groups?

The table shows that Pancasila can be operationalized as an evaluative question tool in the formation of national law. Pancasila is not merely a general phrase in the considerations but is translated into criteria for reading the substance and process of norm formation. In this way, Pancasila becomes a more concrete tool for criticizing the tendency of legal positivism to stop at procedures.

The framework also shows that Pancasila criticism is not abstract. It can be used from the planning stage, preparation of academic manuscripts, harmonization, discussion, public participation, and post-invitation evaluation. For example, in preparing academic manuscripts, lawmakers must show not only the urgency of the regulation but also how the draft norm responds to the values of humanity, democracy, and social justice. In the discussion stage, lawmakers need to ensure that public participation is not only open but also responded to in an argumentative manner.

Implications for the formation of national law

The first implication of treating Pancasila as a criticism is the need to strengthen the philosophical dimension in academic texts. Academic papers should not consist solely of problem descriptions, regulatory comparisons, or technical justifications. It must present a philosophical argument explaining why a norm is needed from the perspective of Pancasila. The philosophical argument must show the relationship among the regulated social problems, the relevant values of Pancasila, the chosen norms, and the expected impact on social justice.

The second implication is the need to develop a substantive test of Pancasila conformity. So far, testing of regulations is more often carried out through hierarchical, authority-based, procedural, and consistency-based mechanisms. These aspects are still important, but they are not enough on their own. The conformity test of Pancasila needs to ask whether the norm is fair to vulnerable groups, whether the process is participatory, whether it respects the plurality of society, and whether it creates balanced social benefits. In this case, Pancasila is a bridge between the legality test and the public morality test.

The third implication is that establishing national law must limit practical political dominance. Narrow legal positivism can provide lawmakers with a refuge behind formal procedures, even though the substance of norms serves the interests of power rather than the public interest. Pancasila, as a criticism, requires that every political and legal choice be tested against the interests of the nation as a whole. The precepts of the people and social justice reject the formation of laws that only benefit certain groups, especially if they harm the wider community.

The fourth implication is the need to recognize the law that lives in society as part of the national legal ecosystem. This recognition does not mean allowing all social norms to apply indefinitely, but placing them as important considerations in the formation of laws. The state of law under Pancasila is prismatic because it neither adopts the positivism of the modern state nor rejects the need for written law. He sought to find a balance between state law, societal values, protection of rights, and the goal of achieving justice. This approach aligns with the emphasis on integrating national law and customary law from the perspective of the Pancasila law state.

The fifth implication is the need to expand the meaning of legal certainty. Legal certainty should not only be understood as a certainty of the text, but also a certainty that the law is formed in a fair, understandable, non-discriminatory, and enforceable manner. Legal certainty that is based solely on text can result in a law that is formally neat but socially uneven. On the contrary, legal certainty, read in the light of Pancasila, requires that written laws provide citizens with a sense of security and justice. In this framework, certainty and justice are not two values that negate each other, but two values that must be synthesized.

The sixth implication is the importance of opening up a responsible interpreting space. The construction of the state of law should not depend on legal rigidity (Silalahi, 2024, pp. 62–76). Pancasila as a source of law should not be used to shut down discourse, but should open up a space for rational, argumentative, and democratic interpretation. Because Pancasila contains general values, its translation into legal norms requires public debate. The debate is not a weakness but a condition that Pancasila does not turn into a closed doctrine that can be easily used to justify the ruler's will.

The seventh implication is the need to strengthen the legal orientation as a means of liberation and protection. The progressive legal thinking discussed by Aulia (2018) can serve as a conceptual partner to the legal philosophy of Pancasila. Both reject the legal way of worshipping the text and forget the human being. The difference is that Pancasila provides a more specific national value base, while progressive law provides methodological encouragement to make the law more

responsive to human suffering. If combined, the formation of national laws can move from mere legal drafting to the formation of civilized laws.

The eighth implication is the need to protect Pancasila from the instrumentalization of power. Pancasila can be susceptible to authoritarianism if used uncritically in the discourse of constitutional change (Nugraha, 2023, pp. 379–404). The same risks can occur in the formation of ordinary laws. Pancasila can be used as a label to justify norms that are actually not participatory or unfair. Pancasila must be criticized not only by the community but also by the state and lawmakers. Pancasila must control power, not become a tool of power to shut down criticism.

Operationalisation of Pancasila in the stages of law formation

For Pancasila not to stop at the level of slogans, its values need to be operationalized at every stage of law formation. At the planning stage, Pancasila can be used to assess whether the community indeed needs a draft regulation or whether certain administrative needs and political interests merely drive it. Pancasila legislation planning must begin with the honest identification of public problems. The problems to be regulated should not be formulated solely from the perspective of the state, but also from the experience of citizens who are directly affected by the norm. Thus, Pancasila shifted the orientation of legal planning from a government-centered to a people-centered one.

At the stage of preparing academic manuscripts, Pancasila can serve as a basis for more serious arguments. An academic manuscript should not only explain the background, juridical foundation, and setting options, but also contain a value analysis. The value analysis needs to answer the relationship between the norm design and the five precepts of Pancasila. For example, lawmakers need to explain how the draft norm safeguards human dignity, protects vulnerable groups, does not undermine unity, is structured through a participatory process, and distributes benefits fairly. If this analysis is not carried out, Pancasila will only become an ornament in academic texts.

At the discussion stage, Pancasila criticism requires meaningful participation from all parties. Participation should not be understood as a socialization activity after the choice of norms is almost complete. Meaningful participation must provide opportunities for the community to know and understand, give input, and obtain answers to their submitted input. From the perspective of Pancasila, deliberation is not just a decision-making technique, but a way to maintain the political dignity of citizens. Therefore, the formation of laws that only chase speed can be problematic at the expense of the deliberative process necessary to find public wisdom.

At the harmonization stage, Pancasila requires lawmakers not only to check the technical suitability of regulations. Harmonization must be extended to values. The question is not only whether a draft is contrary to higher regulations, but also whether it is contrary to the principles of social justice, humanity, democracy, and unity. In this way, harmonization does not stop at the legal aspect of drafting but becomes a philosophical testing space. Such harmonization can prevent the birth of regulations that are structurally neat but poor in value.

At the stage of ratification and promulgation, Pancasila demands accountability through argument. Any controversial norm choices must be explained publicly. Lawmakers alone cannot say that a regulation has been constitutionally approved. Lawmakers need to show why such norms are necessary, how public objections are considered, and why other alternatives are not chosen. Argumentative accountability is important so that legality does not become a shield against criticism. Under the Pancasila law, the power to make laws must always be accompanied by the obligation to provide reasons that the public can test.

At the post-promulgation evaluation stage, Pancasila can be used to assess the real impact of a regulation. This assessment is important because the law does not just live on paper. A law may appear good at the time of its passage, but it can have an unfair impact during implementation. Pancasila's evaluation needs to assess whether the law effectively strengthens the protection of rights, reduces inequality, enhances access to justice, and does not impose an undue burden on certain groups. If an impact is found to be contrary to Pancasila's values, the lawmaker has a moral and constitutional obligation to revise it.

Operasionalisasi tersebut sekaligus menunjukkan batas dari kritik Pancasila. Pancasila should not be used as an excuse to reject every politically undesirable norm. Pancasila criticism must be carried out through rational, open, and debatable arguments. Thus, Pancasila does not become a subjective postulate or a tool for justifying power. Pancasila, as a matter of criticism, actually demands argumentative discipline: each party defending Pancasila must be able to explain which values are violated, who is affected, what data support it, and what alternative norms are fairer.

With this approach, Pancasila does not weaken the legal certainty. On the contrary, Pancasila deepens the meaning of legal certainty. Legal certainty is strengthened when the public sees that the law is enacted in an open, fair, and responsible manner. Certainties that rely solely on text can lead to formal compliance, but certainties grounded in substantive justice can lead to legitimacy. This is Pancasila's main contribution to the formation of national law: it gives moral depth to positive law without removing the need for procedures, forms, and hierarchy of norms.

Pancasila, substantive justice, and the future of national law

The above discussion shows that the main gap in the study of Pancasila and national law lies in the weak construction of Pancasila as a tool of criticism. Many studies of Pancasila as a source of law have been conducted, but its critical role in legal positivism needs to be emphasized. By placing Pancasila under critique, this article fills the gap by arguing that Pancasila can judge the law not only from the perspective of formal enforcement but also from its moral, social, and democratic qualities.

The formation of national laws must not stop only at formal legality. Laws enacted through legitimate procedures can still produce injustice if their formation is not transparent, their substance is inhumane, or their impact is unbalanced. Therefore, formal legality should be placed as a prerequisite, not an end goal. The ultimate goal of national law is the realization of a just, humane, democratic, united, and prosperous national life. This goal can only be achieved if the value of Pancasila is truly the spirit of the law formation.

Legal positivism cannot serve as the sole basis for the formation of national laws. It can provide a framework of certainty, but it is not sufficient to answer the question of value. Is a norm fair? Does the norm protect human dignity? Is it on the side of vulnerable communities? Is the process of hearing the voice of the public? These questions cannot be answered by legal positivism in a formalistic manner. Pancasila exists to fill a space of values that narrow legalism cannot reach.

Pancasila should also not be reduced to an ideological symbol. If Pancasila is mentioned only in legal documents, without serving as the basis for assessing substance, it loses its transformative power. In the practice of lawmaking, Pancasila must serve as a parameter that compels lawmakers to explain their normative choices. Why was the norm chosen? Who is most affected? Is there a fairer alternative? Has the community been allowed to participate in the project? Do these norms strengthen or weaken social justice? This question makes Pancasila work concretely.

In the future, national law should be built on a balance between legal certainty and substantive justice. Legal certainty without justice can give birth to rigid laws. Justice without certainty can give birth to uncertainty and arbitrariness. Pancasila offers a middle way by placing the law as a

system of norms that is both orderly and human-oriented. In this perspective, a good national law is not only a legitimate law but also one that deserves to be obeyed because it reflects the nation's basic values.

Thus, the results of this article are not only theoretical, but also practical. Theoretically, this article strengthens the position of Pancasila as a paradigm of Indonesian legal philosophy. In practice, this article offers a way to read the formation of national laws without getting stuck in procedural formalities. Lawmakers, academics, judges, regulators, and civil society can use Pancasila as a common language of criticism to assess whether a law is truly moving towards substantive justice.

Relevance to contemporary legal studies

The Pancasila criticism framework is also relevant for reading contemporary legal issues of concern to law journals. Studies on human organ trafficking (Wartoyo et al., 2026, pp. 284–290) show that the problem is not sufficiently understood as a medical or criminal problem but also as a moral and ideological crisis that is contrary to human dignity. This example shows that positive laws governing prohibitions and sanctions still require a value basis so that law enforcement does not stop at criminalization but also protects human beings from the commodification of the body. This is where Pancasila works as an evaluative basis that connects criminal law, human rights, and a just and civilized humanity.

Similar trends can be observed in the study of criminal law reform related to sexual harassment in the family. Paradigm shift from complaint offences to ordinary offences as a form of criminal law reform (Bawole et al. 2026, pp. 248–256). From the perspective of this article, the change can be read as an example that the law should not be too formalistic when formalities actually hinder the protection of victims. If law enforcement officials wait only for the victim's complaint in situations of unequal power, the law can lose its protective function. Pancasila demands a law that is more sensitive to the dignity of the victim and substantive justice.

Both examples show that Pancasila is relevant not only in abstract debates in legal philosophy but also in concrete issues such as violence, health, bodily protection, and criminal law reform. However, this article takes a different position from that thematic study. If these studies use Pancasila to read certain legal issues, this article seeks to establish a general framework for how Pancasila can be used to criticize positivistic ways of thinking in the formation of law. Thus, this article does not replace sectoral studies but rather provides a theoretical basis for reading various legal issues more consistently.

This connection clarifies the article's novelty. The novelty lies not in the claim that Pancasila is important for national law, because it has been widely accepted. The novelty lies in the way Pancasila is used as a method of critiquing the legalism of law formation. With this method, Pancasila not only states the final value that must be achieved, but also serves as a tool to test the law's process, substance, and impact. This framework can be used in the study of criminal law, constitutional law, administrative law, health law, environmental law, and other legal fields that require a balance between certainty and justice.

This article expands the discussion of Pancasila in legal journals from a purely normative perspective to a methodological perspective. Pancasila is understood as a way to ask questions, assess, and improve the formulation of laws. If this framework is used consistently, every draft regulation can be tested not only for legality but also for its moral and social qualities. The national law born from such a process will be better able to address the community's needs, maintain democratic legitimacy, and avoid the trap of legal positivism, which is devoid of values.

In practice, the framework can help lawmakers, academics, and civil society assess draft laws with more substantive questions than those currently used. Do the norms formulated only increase the state's authority, or really protect citizens? Does the formation procedure only cover the formal stages, or also create space for meaningful participation? Do the sanctions that are formed only affirm power, or at the same time restore human dignity and social balance? These questions show that Pancasila does not work as a slogan, but as a critical reasoning device that connects the legal text with people's life experiences. Thus, Pancasila can prevent national law from becoming a closed legality machine that is deaf to the voice of justice.

CONCLUSION

Pancasila can and should be understood as a philosophical critique of legal positivism in the formation of national law. Legal positivism remains important because it provides certainty, legality, and order, but it should not be the only way to shape law. If the law is understood only as a written norm procedurally valid, it risks losing its connection to justice, human dignity, democratic participation, social plurality, and the welfare of the people. Pancasila addresses these weaknesses by requiring that every legal product be not only legal but also substantively fair and just. Thus, the future of national law formation must be directed towards the synthesis of legal certainty and substantive justice, where Pancasila serves as a source of values, a framework for criticism, and an evaluation standard for the entire legislative process.

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Primary Legal Materials

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.
- Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.