



HANS Kelsen'S PURE THEORY OF LAW AS A THEORETICAL PILLAR IN THE DYNAMICS OF THE MODERN LEGAL SYSTEM IN INDONESIA

¹M. Iskandar,²Anggi Purnama Tradesa,³Titi Tantri

^{1,2,3}Universitas Nahdlatul Ulama Nusa Tenggara Barat, Indonesia,

E-mail: iskandarmuhammad919@gmail.com, anggitradesa9@gmail.com, tititantri66@gmail.com

Abstract

This research was conducted with the aim of determining how Hans Kelsen's Pure Legal Theory fits into the Modern Legal Paradigm Based on Humanity and Social Justice. This research is a normative legal research. Normative legal research is often referred to as doctrinal legal research. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The existing legal materials were collected through literature studies, which were then normatively analyzed to answer the problems studied. The results of this research are that the application of Hans Kelsen's Pure Legal Theory in Indonesian law shows a process of adaptation and contextualization. Kelsen's stufenbau theory concept is relevant in explaining the hierarchy of laws and regulations. However, in terms of basic norms, Indonesia does not adhere to a neutral grundnorm, but rather places Pancasila as the source of all sources of law. In addition, customary law also plays an important role as part of Indonesia's legal pluralism, which is recognized by the constitution.

Keywords: Legal Theory, Dynamics, Legal System, Modern Law.

Abstrak

Penelitian ini dilakukan dengan tujuan untuk mengetahui bagaimana Teori Hukum Murni Hans Kelsen dalam Paradigma Hukum Modern Berbasis Kemanusiaan dan Keadilan Sosial. Penelitian ini berjenis penelitian hukum normatif. Penelitian hukum normatif sering disebut sebagai penelitian hukum doktriner. Bahan hukum yang dipakai adalah bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Bahan hukum yang ada dikumpulkan melalui studi kepustakaan, yang selanjutnya dianalisis secara normatif untuk menjawab permasalahan yang dikaji. Hasil dari penelitian ini adalah penerapan Teori Hukum Murni Hans Kelsen dalam hukum Indonesia menunjukkan adanya proses adaptasi dan kontekstualisasi. Konsep stufenbau teori kelsen relevan dalam menjelaskan hierarki peraturan perundang-undangan. Namun, dalam hal norma dasar, Indonesia tidak menganut *grundnorm* yang netral, melainkan menempatkan Pancasila sebagai sumber dari segala sumber hukum. Selain itu, hukum adat juga berperan penting sebagai bagian dari pluralisme hukum Indonesia yang diakui oleh konstitusi.

Kata kunci: Teori Hukum, Dinamika, Sistem Hukum, Hukum Modern.

A. Introduction

In the dynamics of modern legal systems characterised by complexity and pluralism, the need for a consistent normative approach is increasingly being felt. Societal developments and global interactions have compelled legal systems to adapt to various values and social pressures. However, such integration often leads to legal uncertainty when norms are no longer understood within a systematic rational framework. In this context, Hans Kelsen's Pure Theory of Law (Reine Rechtslehre) serves as an important

reference point in maintaining the objectivity of law as an autonomous and normative system.¹

Hans Kelsen sought to construct law as a science free from the intervention of external values such as religion, morality, and politics. For Kelsen, law should be understood as a system of norms, not as a reflection of particular social or ethical values. He explicitly stated that "legal science does not judge, but explains the law as it is."² This theory rejects the natural law theory, which mixes legal descriptions with moral judgements. Instead, Kelsen believes that the validity of a norm can only be explained internally within the legal system itself. Hans Kelsen introduced two main concepts in the framework of Pure Kelsenian Legal Theory: the Fundamental Norm (Grundnorm) and the hierarchy of norms (Stufenbau). The Grundnorm is a hypothetical norm that underlies the validity of all legal structures. Although it cannot be verified empirically, the Grundnorm is assumed to explain why legal norms have binding force.³

On the other hand, the Stufenbau concept emphasises that legal norms have a hierarchical structure, whereby the validity of lower-level rules is determined by higher-level rules. This concept provides a systematic framework for the legal structure from the constitution to technical regulations.⁴ In the Indonesian legal system, the hierarchical structure referred to by Kelsen can be found in lower-level regulations being determined by higher-level regulations, as stipulated in Article 7 of Law No. 12 of 2011 in conjunction with Law No. 13 of 2022 on the Formation of Legislation. The highest norm is the 1945 Constitution, followed by laws, then regulations issued by the government, and regulations from the president. The Constitutional Court of the Republic of Indonesia even emphasises that the Preamble to the 1945 Constitution contains the fundamental values of the state that have been established and become fundamental principles in the national legal system.⁵

However, in practice, a purely normative approach faces challenges from various directions. First, society's need for substantive justice encourages the legal system to not only adhere to formalities, but also to consider moral values, human rights, and social justice. Second, modern court decisions, especially those of the Constitutional Court and human rights courts, often use teleological legal interpretations, emphasising the social and humanitarian objectives of the law. This shows that legal rules cannot be entirely divorced from values outside themselves. Thus, the role of pure legal theory remains significant in creating a rational, logical, and consistent legal structure. Hans Kelsen offers a logical structure that guarantees the stability and consistency of the legal system. In this case, the law would be prone to chaos because it is too open to subjective

¹ Robi Assadul Bahri, "DINAMIKA SISTEM HUKUM DALAM MASYARAKAT PLURALISTIK: MENGUJI VALIDITAS TEORI LUHMANN DALAM KONTEKS GLOBAL," *Jurnal Penelitian Hukum Galunggung* 1, no. 3 (3 Desember 2024): 44–53, doi:10.1234/JPHGALUNGGUNG.V1I3.34.

² Yati Nurhayati, *BUKU AJAR PENGANTAR ILMU HUKUM* (Bandung: Nusa Media, 2020).

³ Budiarta & Atmadja, "Teori-Teori Hukum," *Setara Press*, 2018, 233.

⁴ Syahrul Fauzan Putra Rinaldi et al., "Hukum Positivisme: Analisis Pemikiran Hans Kelsen Tentang Grundnorm," *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora* 3, no. 01 (30 Juni 2025): 1–1, doi:10.11111/nusantara.xxxxxxx.

⁵ Mei Susanto, "Kedudukan Dan Fungsi Pembukaan Undang-Undang Dasar 1945: Pembelajaran Dari Tren Global," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 184, doi:10.54629/jli.v18i2.739.

interpretations of values.⁶ Therefore, according to Muchsin, the law still requires a normative approach to ensure legal certainty, which is a key requirement for a democratic state based on the rule of law.⁷

B. Research Methode

This study utilises normative legal research. This type of research, often referred to as doctrinal legal research, focuses on the analysis of rules. It is called doctrinal or bibliographic legal research because it is only aimed at examining the opinions of legal experts and relevant laws, thus requiring bibliographic data. This study utilises a normative legal analysis approach, so it does not require the determination of a population or sample. Normative legal studies refer to legal standards found in written laws, regulations or decisions and unwritten laws accepted by society. This study also contains a logical description of the procedure for collecting legal sources, divided into primary, secondary, and tertiary legal materials. To determine a solution to the issue under debate, these legal materials are adapted, presented, and compared with the applicable law.

C. Result and Discussion

1. The Hierarchy of Norms According to Kelsen's Teachings and Its Implementation in Indonesian Jurisdiction

The legal system is interpreted by Hans Kelsen as "Stufenbau des Recht," which is a hierarchical and vertically connected legal norm structure. The formal validity of lower legal norms (*lex inferior*) is derived from higher legal norms (*lex superior*), which ultimately leads to a fundamental basic norm called *Grundnorm*. In the realm of positive law in Indonesia, the 1945 Constitution of the Republic of Indonesia (UUD 1945) has a position equivalent to the *Grundnorm*, given that all regulatory instruments below it derive their legal legitimacy from the constitution. Furthermore, Laws (UU) and Government Regulations in Lieu of Laws (PERPU) are placed at the same level in the hierarchy of legislation, as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 in conjunction with Law Number 13 of 2022.

The coexistence of laws and government regulations in lieu of laws at the same level indicates that, within the framework of Kelsen's Pure Theory of Law, both are secondary norms that derive their justification directly from the 1945 Constitution. Although PERPU is formed by the President in conditions of urgency and necessity based on Article 22 of the 1945 Constitution, in terms of normative function, it has legal force equivalent to that of a law until there is a legislative process of approval or rejection by the House of Representatives (DPR).

Government Regulation in Lieu of Law in the Configuration of the National Legal Normative Structure

⁶ Abdul Aziz Nasihuddin Dkk, *Teori Hukum Pancasila* (Tasikmalaya: CV. Elvaretta Buana, 2024).

⁷ Asep Muhidin, "Legal Certainty Regarding the Execution of State Administrative Court Decisions That Have Permanent Legal Force," *al-Afkar, Journal For Islamic Studies* 6, no. 4 (2 September 2023): 405–28, doi:10.31943/AFKARJOURNAL.V6I4.782.

Hierarchically, the existence of PERPU reflects the dynamic adaptability of Kelsen's theory in the context of national law, emphasising that law is not only static but also responsive to extraordinary situations that require executive discretion. Within the framework of *stufenbau* theory, the legality of PERPU stems from two dimensions: First, Vertical Dimension: The constitutional authority for issuing a PERPU derives from the mandate of Article 22 of the 1945 Constitution. Second, Horizontal Dimension: PERPU shares the same position as laws and regulations and its status is conditional, pending ratification or rejection by the House of Representatives. Therefore, in the modern Indonesian legal system, PERPU is a manifestation of legal flexibility that remains consistent with the Kelsenian model, functioning as a link between the principle of legality (constitutional rule of law) and legal effectiveness (responsiveness to emergency situations).

2. The author's analysis of Hans Kelsen's pure law on the parallelism of laws and government regulations in lieu of laws

Within the framework of *Reine Rechtslehre* or Pure Theory of Law introduced by Hans Kelsen, the validity of a legal norm (*Rechtsnorm*) is not measured based on moral, political, or sociological considerations, but is determined exclusively by formal validity derived from higher norms in the legal hierarchy (*Stufenbau des Recht*). This means that the law acquires binding force not because of its content or value, but because it is formed by an authority that is legitimate according to the applicable legal system.

In the context of Indonesia's national legal system, this principle is concretely reflected in the position of Government Regulations in Lieu of Laws (PERPU). Based on Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the President is given the authority to issue a PERPU "in cases of compelling urgency." This authority is a manifestation of a legitimate constitutional delegation, so that from Kelsen's theoretical perspective, PERPU has the same legal validity as a Law (UU) as long as it is issued within the framework of the authority delegated by a higher norm, namely the 1945 Constitution as the factual *Grundnorm* of the entire national legal system.

Kelsen asserts that legal legitimacy derives solely from higher norms, not from political reasons or practical needs underlying its formation. Thus, as long as the PERPU is formed in accordance with the procedures and processes stipulated in the 1945 Constitution, then the norm is legally valid without considering the political substance, policy motives, or moral values that may be attached to it. This principle is in line with the principle of *lex superior derogat legi inferiori*, whereby lower norms derive their validity from higher norms and cannot deviate from the normative source of authority on which they are based.

The parallelism of norms between laws and PERPU is explicitly regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, as amended by Law Number 13 of 2022. Based on this provision, PERPU is placed at the same level as laws in the national legal hierarchy. This placement has legal consequences in that both types of regulations have the same binding force and can be used as the basis for the formation of implementing regulations below them, such as Government Regulations (PP), Presidential Regulations (Perpres), and Regional Regulations (Perda).

With reference to Kelsen's thinking, the relationship between laws and PERPUs can be explained as follows:

- a. The 1945 Constitution as the Fundamental Norm The 1945 Constitution serves as the fundamental norm that is the highest source of legitimacy for the entire national legal system. In this context, the President's authority to issue a PERPU is a form of delegated authority from the 1945 Constitution, which has the highest position in the hierarchy of legal norms in Indonesia.
- b. Laws and Government Regulations in Lieu of Laws as Equal Norm Levels Laws and Government Regulations in Lieu of Laws occupy the same normative level in the legal hierarchy. This equal standing indicates that PERPU is not a norm below the Law, but is conditional in nature: it comes into force immediately upon promulgation, but must still obtain the approval of the House of Representatives in the next session as stipulated in Article 22 paragraphs (2) and (3) of the 1945 Constitution. This mechanism demonstrates a balance between the principles of legal effectiveness and legality in Indonesia's constitutional system.
- c. Implementing Regulations as Lex Inferior Implementing regulations such as Government Regulations, Presidential Regulations, and Local Regulations derive their validity from the laws or Government Regulations in Lieu of Laws that form the basis for their creation. In the perspective of Stufenbau Theory, these regulations are derivatives of higher regulations and cannot stand alone without a valid legal basis.

Thus, PERPU can be understood as a legal instrument that is responsive to extraordinary circumstances but still operates within the framework of a closed and hierarchical legal system as outlined by Kelsen. The existence of PERPU does not create an anomaly in the legal system, but rather demonstrates the ability of the national legal system to remain rational and consistent even in emergency situations.

As stated by Prof. Jimly Asshiddiqie, the flexibility in the formation of PERPU demonstrates a balance between the "supremacy of law" and the constitutional need to ensure the effectiveness of government without deviating from the principle of legal hierarchy. Furthermore, Prof. Mahfud MD emphasised that PERPU is a form of emergency legislation that must be viewed as the embodiment of the principle of *rechtstaat*, not *machtsstaat*, so that its validity must always be bound by political and legal oversight mechanisms through the legislative and judicial institutions.

Conceptually, the normative equality between laws and government regulations demonstrates the synchronisation between Kelsen's pure theory of law and Indonesia's national legal system, in which legal certainty is maintained through formal procedural validity, while constitutional flexibility remains available to respond to urgent legal needs. Thus, Indonesia's legal structure can be said to be a creative adaptation of Kelsen's theory, combining normative rationality with constitutional social responsiveness, resulting in a legal system that is not only hierarchically orderly but also adaptive to the dynamics of modern state administration.

3. Hans Kelsen's Pure Theory of Law in the Modern Legal Paradigm Based on Humanity and Social Justice

From the perspective of modern legal theory, law cannot be separated from its social and humanitarian context. The presence of Articles 28A to 28J of the 1945 Constitution, which explicitly regulate human rights, Article 34 of the 1945 Constitution on social welfare, as well as various sectoral laws such as Law No. 39 of 1999 on Human Rights and Law No. 8 of 2016 on Persons with Disabilities, demonstrate the existence of a value dimension in the formation and application of law.⁸ Hal tersebut menegaskan bahwa perkembangan paradigma hukum modern tidak hanya berlandaskan pada asas legalitas formal semata, melainkan juga mengedepankan realisasi keadilan substantif sebagai tujuan utama penegakan hukum.⁹

Within the framework of legal thinking, Hans Kelsen's Pure Theory of Law has normative limitations. Kelsen does not provide space to examine whether the content of a legal norm contains justice or protects human rights. This theory is value-neutral, so that in situations of legal injustice legalised by the state, Kelsen's theory still considers the norm to be legally valid as long as it is issued by a legitimate authority and follows the applicable procedures.¹⁰ However, Pure Theory of Law does not rule out the possibility of law incorporating human values. As long as norms governing human rights and social justice are produced through legitimate legal procedures, these norms remain valid in Hans Kelsen's theory.¹¹ Methodologically, Pure Legal Theory can still be applied in examining the formal validity of norms containing material on individual fundamental rights and social justice.¹²

In Indonesian legislation, a number of provisions have integrated the values of humanity and social justice, as reflected in Articles 39 and 103 of the National Criminal Code, which regulate legal protection for criminals with mental disorders, a form of human rights protection that is in line with the principle of social justice.¹³ In this case, legal protection based on Articles 39 and 103 of the National Criminal Code can be seen as the embodiment of the principle of fundamental human rights (HAM), which provides certainty that everyone, without exception, has the right to be treated fairly and humanely. In line with the principle of social justice in Pancasila, this regulation emphasises that law enforcement must not ignore the personal circumstances of the perpetrator, especially those with mental disabilities. Thus, Articles 39 and 103 of the National Criminal Code not only enforce the law but also reflect the state's commitment to maintaining a balance between legal certainty, justice and benefit.¹⁴

⁸ Jimly Asshiddiqie, "Pengantar ilmu hukum tata negara jilid II," 2006.

⁹ Dwidja Priyatno dan M. Rendi Aridhayandi, "Resensi Buku (Book Review) Satjipto Rahardjo, Ilmu Hukum, Bandung: PT. Citra Aditya, 2014," *Jurnal Hukum Mimbar Justitia* 2, no. 2 (7 Juni 2018): 881–89, doi:10.35194/JHMJ.V2I2.36.

¹⁰ *Ibid.*

¹¹ Iskandar Iskandar et al., "Analisis Kritis Terhadap Teori Hukum Murni Dalam Perkembangan Hukum Kontemporer," *TERAJU* 7, no. 01 (2025): 48–65.

¹² Nurul Ani Mustafa, "INTERVENSI PENERAPAN HUKUM MURNI PADA PENETAPAN PUTUSAN PERADILAN," *WICARANA* 4, no. 1 (2025): 21–30.

¹³ Herliaman Harefa, "Pertanggungjawaban Pidana Bagi Pelaku Pembunuhan yang Mengalami Penyakit Skizofrenia Paranoid (Studi *Komparatif* Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana dengan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana)," 2024, <https://repositori.uma.ac.id/handle/123456789/26474>.

¹⁴ Ade Azharie, "Pemanfaatan Hukum sebagai Sarana untuk Mencapai Keadilan Sosial," *Lex Aeterna Law Journal* 1, no. 2 (2023): 72–90.

4. Hans Kelsen's Purely Normative Principle in the Context of the Indonesian Legal System

Legal theory serves as an important pillar for understanding a country's legal system. Among modern legal theories, Hans Kelsen's Pure Theory of Law (*Reine Rechtslehre*) has had a major influence on the development of legal science around the world. Kelsen emphasised that law must be understood in its pure form, i.e. free from political, moral, religious or other social factors. According to Kelsen, law has the status of a hierarchical system of rules, in which lower rules derive their validity from higher rules, until they rest on a basic rule (*Grundnorm*) that is uncertain and cannot be further tested for validity.¹⁵

Indonesia adheres to a constitutional state system as explained in Article 1 paragraph (3) of the 1945 Constitution, and has a unique and complex legal system. On the one hand, the Indonesian legal system adopts a normative structure similar to Kelsen's theory, namely the existence of a hierarchy of legislation. However, on the other hand, the Indonesian legal system is also influenced by the values of Pancasila and customary law that exist within society.¹⁶ This shows the adaptation and modification of Kelsen's thinking in accordance with the social, political, and cultural realities of the Indonesian nation. Hans Kelsen (1881–1973), an Austrian legal scholar, introduced Pure Theory of Law as an attempt to purify legal science from the influence of other disciplines. According to Kelsen, law should be studied as it is, as an autonomous system of norms, not as a product of morality, politics, or sociology.¹⁷ Hans Kelsen, through his theory of *Stufenbau des Rechts* or the theory of hierarchical structure of law, asserts that law has a hierarchical structure in the form of a pyramid. In this structure, lower regulations are constrained by higher regulations, thereby creating order and continuity in the legal system. At the top of the hierarchy is the *Grundnorm* or basic norm, which serves as the source of legitimacy for the entire legal system. This concept attempts to present law in its pure form (pure theory of law), free from moral, political, or religious interference, so that law is understood solely as a system of norms.¹⁸

However, Kelsen's thinking is not without criticism. One of the main criticisms is that his theory tends to ignore the substantial dimension of law, particularly the values of justice. According to Kelsen, justice is not the object of legal analysis, but rather an ethical issue that lies outside the boundaries of law.¹⁹ This creates a gap with the legal traditions that have developed in many countries, including Indonesia, which place justice as a fundamental aspect of law. This is reflected in Pancasila, the 1945 Constitution, and various regulations that integrate the principles of social justice and humanity as an integral part of legal norms. Thus, although Kelsen's theory has made an important

¹⁵ Wahyu Prianto, "Analisis hierarki perundang-undangan berdasarkan teori norma hukum oleh Hans Kelsen dan Hans Nawiasky," *Jurnal Ilmu Sosial Dan Pendidikan* 2, no. 1 (2024): 8–19.

¹⁶ Zaka Firma Aditya, "Romantisme sistem hukum Di Indonesia: kajian atas konstruksi hukum adat dan hukum islam terhadap pembangunan hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 37–54.

¹⁷ Rinaldi et al., *op. cit.*

¹⁸ Muhammad Suhenriko, "Implementasi Teori Hierarki Hans Kelsen Terhadap Perumusan Kebijakan Di Indonesia," *Jurnal Ilmiah Multidisipin* 1, no. 2 (2023): 64–71.

¹⁹ Mancur Sinaga, Ahmad Ahmad, dan Indah Nur Shanty Saleh, *Filsafat Hukum: Teori, Prinsip dan Hukum di Indonesia: Teori, Prinsip dan Hukum di Indonesia* (PT. Sonpedia Publishing Indonesia, 2025).

contribution to the systematic formulation of the structure and legitimacy of legal norms, its implementation in the Indonesian legal system is closely related to the philosophical foundations of the nation, which emphasise that the law should not only serve as a means of normative certainty, but must also contain values of justice and benefit for society.²⁰

5. Indonesian Legal Structure and the Adoption of Kelsen's Theory

Upon closer examination, the Indonesian legal system shares fundamental similarities with Hans Kelsen's theory, particularly in terms of the hierarchical structure of legal rules and principles. Kelsen's scientific concept of *Stufenbau des Rechts* asserts that law is a layered and hierarchical system of norms. In this construction, lower legal rules derive their validity from higher norms, thereby creating consistent order throughout the legal system. This view essentially seeks to maintain legal certainty, as each norm does not stand alone but must be traced back to its legitimacy and applicability from the norm above it.²¹

This principle is reflected in the Indonesian legal system, as stipulated in Law No. 12 of 2011 on the Formation of Legislation, which was subsequently amended by Law No. 13 of 2022. Article 7 paragraph (1) of the law confirms the hierarchical structure of legislation, namely:²²

- a. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
- b. Ketetapan Majelis Permusyawaratan Rakyat (MPR);
- c. Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang (Perppu);
- d. Peraturan Pemerintah;
- e. Peraturan Presiden;
- f. Peraturan Daerah Provinsi; dan
- g. Peraturan Daerah Kabupaten/Kota.

The above structure clearly shows that Indonesia's legal system is multi-layered and hierarchical. With this hierarchy in place, every piece of legislation must comply with higher-level regulations. This principle is in line with the principle of *lex superior derogat legi inferiori*, namely that higher regulations override lower regulations in the event of a conflict of norms. This is very important in maintaining legal consistency, because without a hierarchy, there would be overlapping regulations that could potentially lead to uncertainty and injustice in legal practice.²³

When linked to Kelsen's theory, the 1945 Constitution can be viewed as a "basic norm" (*grundnorm*) that serves as a source of legitimacy for the validity of the entire national

²⁰ Muhamad Zaky Djauzie, "PANCASILA SEBAGAI GRUNDNORM MENURUT TEORI HUKUM MURNI HANS KELSEN DAN TEORI HUKUM RESPONSIF OLEH PHILIPPE NONET DAN PHILIP SELZNICK," *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 11, no. 1 (2025): 239–52.

²¹ Prandy A L Fanggi, "ANALISIS KONSEPTUAL STUFENBAU THEORY TERHADAP TATA PERATURAN PERUNDANG UNDANGAN DI INDONESIA," *Jurnal Rekomendasi Hukum* 1, no. 2 (2025).

²² "Pasal 7 Undang Undang No 13 Tahun" (2022).

²³ Ismarini Della Purnama et al., "Urgensi Penataan Ulang Mekanisme Pengujian Peraturan Perundang-Undangan di Indonesia:(Analisis Normatif terhadap Kewenangan Lembaga Yudikatif)," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 3, no. 2 (2024): 37–59.

legal system. However, there is a significant difference between Kelsen's concept of *grundnorm* and its application in Indonesia. In Kelsen's thinking, the *grundnorm* is hypothetical and abstract, namely an unwritten assumptive norm that is the source of legal validity. Meanwhile, in the Indonesian context, the *grundnorm* is not abstract, but finds its concrete form in Pancasila. Pancasila, as the foundation of the state, is positioned as the source of all sources of law, so that every piece of legislation not only derives its formal validity from the 1945 Constitution, but must also reflect the philosophical values contained in Pancasila.²⁴

Thus, the Indonesian legal system adopts Kelsen's hierarchical model, but also develops it further. While Kelsen emphasises legal certainty through the validity of hierarchical norms, Indonesia adds the dimensions of morality, ethics and justice through Pancasila. This confirms that Indonesian law is not purely positivist, but has an integrative character that unites legal certainty and substantive justice. Therefore, although Kelsen's theory provides a strong structural framework, its application in Indonesia cannot be separated from local values that are constitutive of the national legal system.²⁵

In addition, Indonesia's multi-level legal structure also functions as a control mechanism for the formation of legal norms at the lower levels. For example, there are many cases in which regional regulations (*Perda*) have been overturned by the Supreme Court because they were deemed to be in conflict with higher laws or inconsistent with the spirit of the constitution. This shows that the legal hierarchy is not merely a theoretical concept, but also has practical implications in maintaining the supremacy of national law. In other words, the Indonesian legal system proves that the existence of a hierarchy of legal norms is an effective means of controlling the quality of legislation while preventing the abuse of authority in law formation.²⁶

Furthermore, the application of Kelsen's theory in the Indonesian legal structure also demonstrates a synthesis between universal legal thinking and national philosophy. If, in Kelsen's theory, the *grundnorm* is a hypothetical norm that lies outside ethical debate, Indonesia affirms that the true *grundnorm* is Pancasila, which embodies the values of humanity, justice, democracy, and faith. This shows that the national legal system is not only built on a foundation of formal rationality, but is also based on fundamental values that reflect the nation's identity. Thus, the compatibility of the Indonesian legal system with Kelsen's theory lies not only in its formal hierarchical structure, but also in the strengthening of its philosophical dimension, which distinguishes it from purely positivistic models. Indonesia combines the advantages of Kelsen's pure legal theory with the noble values of Pancasila, resulting in a legal system that not only guarantees certainty but also upholds justice and humanity.²⁷

²⁴ Tanti Kirana Utami et al., "PENGARUH TEORI PERUNDANG-UNDANGAN TERHADAP DINAMIKA NORMA HUKUM DALAM SISTEM HUKUM INDONESIA," *Jurnal Hukum Ius Publicum* 5, no. 2 (2024): 264–93.

²⁵ Ery Setyanegara, "Kebebasan Hakim Memutus Perkara Dalam Konteks Pancasila (Ditinjau Dari Keadilan 'Substantif')," *Jurnal Hukum & Pembangunan* 43, no. 4 (2013): 434–68.

²⁶ Miftahul Murachim Budy Kushadianto dan Marsudi Dedi Putra, "Implikasi hierarki hukum dalam pembentukan undang-undang: Pengaruhnya terhadap penafsiran dan penegakan hukum," *Syntax Idea* 6, no. 3 (2024): 1476–84.

²⁷ Djauzie, *op. cit.*

6. Pancasila as a Fundamental Norm

The application of Hans Kelsen's theory in the context of the Indonesian legal system cannot be done purely (pure theory of law) because national law is not value-free. Indonesian law is essentially built on the foundation of Pancasila, which functions as the source of all sources of state law. This position is confirmed in MPRS Decree No. XX/MPRS/1966 in conjunction with MPR Decree No. V/MPR/1973 in conjunction with MPR Decree No. IX/MPR/1978, which explicitly states that Pancasila is the material source of all legislation. Thus, every positive legal norm that applies in Indonesia must not conflict with the fundamental values of Pancasila. Conceptually, Pancasila has a different position from the *grundnorm* in Kelsen's theory. The *grundnorm* is hypothetical, abstract, and unwritten, serving only as a basic assumption to explain the validity of norms in the legal system.

Meanwhile, Pancasila is a fundamental norm that is tangible, explicit, and enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, Pancasila not only provides formal legitimacy for the enforcement of national law, but also contains philosophical, ideological, and juridical substance that must colour every piece of legislation.²⁸ In practice, the values of Pancasila provide substantive direction for the formation of law in Indonesia. For example, the fifth principle of Pancasila, "Social justice for all Indonesian people", forms the philosophical and juridical basis for the regulation of labour law, agrarian law and environmental law, all of which emphasise the principles of equity, protection of rights and collective welfare.²⁹ Similarly, the first principle, "Belief in One God", has a clear influence on family and marriage law in Indonesia, which is steeped in religious dimensions in accordance with the principle of religious pluralism.³⁰ Thus, although Indonesia's legal structure formally adopts Kelsen's theory of the hierarchy of norms (*Stufenbau des Rechts*), in substance it does not adhere to pure positivism. The national legal system combines the hierarchical aspects as referred to in Kelsen's theory with the values of Pancasila, thereby producing an integrative legal system: ensuring legal certainty through the hierarchy of norms, while at the same time realising substantive justice based on the values of Pancasila as the fundamental norms of the nation.³¹

7. Customary Law and Legal Pluralism in Indonesia

²⁸ Fatimah Ratna Wijayanthi, "Pancasila sebagai sumber dari segala sumber hukum," *The Juris* 5, no. 1 (2021): 133–45.

²⁹ Ardhia Pramudhawardhani, Sofi Amalia Aulia Jannah, dan Aprila Niravita, "Revitalisasi Nilai-Nilai Pancasila dalam Hukum Pertanahan Nasional," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 3, no. 2 (2024): 125–40.

³⁰ Laksana Arum Nugraheni, "Kajian Filosofis Pencatatan Perkawinan Penghayat Kepercayaan Berdasarkan Nilai-Nilai Pancasila Dan Peraturan Perundang-Undangan Di Indonesia," *Jurnal Paradigma Hukum Pembangunan* 6, no. 1 (2021): 33–58.

³¹ Mhd Himsar Siregar dan Sahri Muharam, "Penataan Sistem Hukum Dan Peraturan Perundang-Undangan Berdasarkan Pancasila Sebagai Sumber Segala Sumber Hukum Negarapenataan Sistem Hukum Dan Peraturan Perundang-Undangan Berdasarkan Pancasila Sebagai Sumber Segala Sumber Hukum Negara," *Yudabiru Jurnal Administrasi Negara* 4, no. 2 (2022): 104–18.

In addition to Pancasila as a fundamental norm, Indonesia's legal system cannot be separated from the influence of customary law that lives and develops within society. According to Van Vollenhoven, customary law is law that originates from local customs and traditions that are dynamic, unwritten, but binding because they are obeyed by the community.

In Soepomo's view, customary law reflects the communalistic and familial character of the Indonesian people, in contrast to Western law, which tends to be individualistic. The existence of customary law is constitutionally legitimised in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that: "The state recognises and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This provision affirms that customary law is not merely a social phenomenon, but rather part of the officially recognised sources of law in the national legal system. The implementation of the recognition of customary law is clearly evident in Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA).³² Article 5 of the UUPA explicitly states that the agrarian law applicable in Indonesia is customary law, as long as it does not conflict with national and state interests, based on national unity, Indonesian socialism, and other laws and regulations.

Thus, customary law is placed as the basis for the formation of national agrarian law, but it is still adjusted to the needs of development and community dynamics. This condition shows that the application of Kelsen's *Stufenbau des Rechts* theory in Indonesia has undergone fundamental modifications. Kelsen's theory emphasises a hierarchy of norms that is neutral and free from social factors, whereas the Indonesian legal system accommodates legal pluralism rooted in local values. In other words, the national legal system is not only based on positive state law, but also opens space for customary law as a legitimate and living source of law.³³

Thus, Indonesia's legal structure can be viewed as a synthesis between Kelsen's normative positivism theory and the sociological reality of the Indonesian people. Customary law, which is constitutionally recognised and enforced in certain areas, shows that the national legal system does not merely emphasise formal validity, but also takes into account the historical, cultural and sociological aspects that have developed within Indonesian society.

D. Conclusion

Hans Kelsen's Pure Theory of Law as a Theoretical Pillar in the Dynamics of the Modern Legal System in Indonesia. Hans Kelsen's Pure Theory of Law (*Reine Rechtslehre*) makes an important contribution to understanding law as a rational, logical, and hierarchical system of norms. Kelsen's concepts of *Grundnorm* and *Stufenbau des Rechts* provide a theoretical framework that guarantees legal order and certainty. However, its

³² Rudy Rudy dan Wijaya Rudi, *Rekognisi hukum adat dan masyarakat hukum adat dalam sistem ketatanegaraan Indonesia* (PT Rajagrafindo Persada, 2021).

³³ Pupu Sriwulan Sumaya Pupu, "The Position of Customary Law in the Indonesian Judicial System: Between Tradition and Modernization," *Jurnal Jembatan Efektivitas Ilmu dan Akhlak Ahlussunah Wal Jama'ah* 6, no. 2 (2025): 401–11.

application in the Indonesian legal system cannot be separated from the philosophical foundations of the nation, namely Pancasila, as well as the recognition of customary law and human values. The Indonesian legal system does indeed adopt Kelsen's hierarchical structure, as reflected in Law No. 12 of 2011 in conjunction with Law No. 13 of 2022 on the Formation of Legislation. However, Indonesia provides an additional dimension in the form of the integration of the values of justice, humanity, and togetherness. Pancasila functions not only as a formal basic norm, but also as a source of substantive values that guide the formation of national law. Meanwhile, customary law has constitutional legitimacy, thereby affirming the pluralistic character of Indonesian law. Thus, the national legal system does not fully adhere to Kelsen's pure positivism. It has developed into a synthesis between modern legal theory and local values, where legal certainty is maintained through a hierarchy of norms, but substantive justice and social benefits are not neglected. This integrative model is also a characteristic of Indonesian law as a democratic, humanistic, and nation-based legal system.

Acknowledgment

The author would like to express his gratitude to his fellow academics and legal experts whose ideas have formed the theoretical basis for this journal, particularly Hans Kelsen, whose Pure Theory of Law has made an important contribution to the development of legal science. The author would also like to thank his family and colleagues for their moral support and motivation, which enabled him to complete this research. It is hoped that this work will contribute to the development of normative legal studies and strengthen the understanding of the integration of pure legal theory with the values of Pancasila and Indonesian legal pluralism.

Reference

- Aditya, Zaka Firma. "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, No. 1 (2019): 37–54.
- Asikin, Amirudin Zainal. "Pengantar Metode Penelitian Hukum." *Jakarta: Raja Grafindo Persada*, 2004.
- Asshiddiqie, Jimly. "Pengantar Ilmu Hukum Tata Negara Jilid Ii," 2006.
- Azharie, Ade. "Pemanfaatan Hukum Sebagai Sarana Untuk Mencapai Keadilan Sosial." *Lex Aeterna Law Journal* 1, No. 2 (2023): 72–90.
- Bahri, Robi Assadul. "Dinamika Sistem Hukum Dalam Masyarakat Pluralistik: Menguji Validitas Teori Luhmann Dalam Konteks Global." *Jurnal Penelitian Hukum Galunggung* 1, No. 3 (3 Desember 2024): 44–53. Doi:10.1234/Jphgalunggung.V1i3.34.
- Budiartha & Atmadja. "Teori-Teori Hukum." *Setara Press*, 2018, 233.
- Djauzie, Muhamad Zaky. "Pancasila Sebagai Grundnorm Menurut Teori Hukum Murni Hans Kelsen Dan Teori Hukum Responsif Oleh Philippe Nonet Dan Philip Selznick." *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 11, No. 1 (2025): 239–52.
- Dkk, Abdul Aziz Nasihuddin. *Teori Hukum Pancasila*. Tasikmalaya: Cv. Elvaretta Buana, 2024.
- Fanggi, Prandy A L. "Analisis Konseptual Stufenbau Theory Terhadap Tata Peraturan

- Perundang Undangan Di Indonesia.” *Jurnal Rekomendasi Hukum* 1, No. 2 (2025).
- Harefa, Herliaman. “Pertanggungjawaban Pidana Bagi Pelaku Pembunuhan Yang Mengalami Penyakit Skizofrenia Paranoid (Studi Komparatif Undang-Undang Nomor 1 Tahun 1946 Tentang Peraturan Hukum Pidana Dengan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana),” 2024. <https://Repositori.Uma.Ac.Id/Handle/123456789/26474>.
- Iskandar, Iskandar, Shinta Azzahra Sudrajat, Ryan Fachryan Lesmana Putra, Hamdan Purnama, Muhammad Rosyid Ridho, Dan Diah Nurafifah. “Analisis Kritis Terhadap Teori Hukum Murni Dalam Perkembangan Hukum Kontemporer.” *Teraju* 7, No. 01 (2025): 48–65.
- Kushadianto, Miftaful Murachim Budy, Dan Marsudi Dedi Putra. “Implikasi Hierarki Hukum Dalam Pembentukan Undang-Undang: Pengaruhnya Terhadap Penafsiran Dan Penegakan Hukum.” *Syntax Idea* 6, No. 3 (2024): 1476–84.
- Meidanasari, Annisa. “Teori Hukum Normatif Dalam Perspektif Aliran Pemikiran Neo Kantian.” *Lex Renaissance* 10, No. 1 (2025): 1–29.
- Muhidin, Asep. “Legal Certainty Regarding The Execution Of State Administrative Court Decisions That Have Permanent Legal Force.” *Al-Afkar, Journal For Islamic Studies* 6, No. 4 (2 September 2023): 405–28. Doi:10.31943/Afkarjournal.V6i4.782.
- Mustafa, Nurul Ani. “Intervensi Penerapan Hukum Murni Pada Penetapan Putusan Peradilan.” *Wicarana* 4, No. 1 (2025): 21–30.
- Nugraheni, Laksana Arum. “Kajian Filosofis Pencatatan Perkawinan Penghayat Kepercayaan Berdasarkan Nilai-Nilai Pancasila Dan Peraturan Perundang-Undangan Di Indonesia.” *Jurnal Paradigma Hukum Pembangunan* 6, No. 1 (2021): 33–58.
- Pasal 7 Undang Undang No 13 Tahun (2022).
- Pramudhawardhani, Ardhia, Sofi Amalia Aulia Jannah, Dan Aprila Niravita. “Revitalisasi Nilai-Nilai Pancasila Dalam Hukum Pertanahan Nasional.” *Litra: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 3, No. 2 (2024): 125–40.
- Prianto, Wahyu. “Analisis Hierarki Perundang-Undangan Berdasarkan Teori Norma Hukum Oleh Hans Kelsen Dan Hans Nawiasky.” *Jurnal Ilmu Sosial Dan Pendidikan* 2, No. 1 (2024): 8–19.
- Priyatno, Dwidja, Dan M. Rendi Aridhayandi. “Resensi Buku (Book Review) Satjipto Rahardjo, Ilmu Hukum, Bandung: Pt. Citra Aditya, 2014.” *Jurnal Hukum Mimbar Justitia* 2, No. 2 (7 Juni 2018): 881–89. Doi:10.35194/Jhmj.V2i2.36.
- Pupu, Pupu Sriwulan Sumaya. “The Position Of Customary Law In The Indonesian Judicial System: Between Tradition And Modernization.” *Jurnal Jembatan Efektivitas Ilmu Dan Akhlak Ahlussunah Wal Jama'ah* 6, No. 2 (2025): 401–11.
- Purnama, Ismarini Della, Novaranty Zura Dwiputri, Wicipto Setiadi, Dan Kaharuddin Kaharuddin. “Urgensi Penataan Ulang Mekanisme Pengujian Peraturan Perundang-Undangan Di Indonesia:(Analisis Normatif Terhadap Kewenangan Lembaga Yudikatif).” *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 3, No. 2 (2024): 37–59.
- Rinaldi, Syahrul Fauzan Putra, Lyestie Marlya Anggrainy, Cindy Livia Malva, Tiara Desita Sari, Dan Mohammad Alvi Pratama. “Hukum Positivisme: Analisis Pemikiran Hans Kelsen Tentang Grundnorm.” *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 3, No. 01 (30 Juni 2025): 1–1. Doi:10.11111/Nusantara.Xxxxxxx.

- Rudy, Rudy, Dan Wijaya Rudi. *Rekognisi Hukum Adat Dan Masyarakat Hukum Adat Dalam Sistem Ketatanegaraan Indonesia*. Pt Rajagrafindo Persada, 2021.
- Setyanegara, Ery. “Kebebasan Hakim Memutus Perkara Dalam Konteks Pancasila (Ditinjau Dari Keadilan ‘Substantif’).” *Jurnal Hukum & Pembangunan* 43, No. 4 (2013): 434–68.
- Sinaga, Mancur, Ahmad Ahmad, Dan Indah Nur Shanty Saleh. *Filsafat Hukum: Teori, Prinsip Dan Hukum Di Indonesia: Teori, Prinsip Dan Hukum Di Indonesia*. Pt. Sonpedia Publishing Indonesia, 2025.
- Siregar, Mhd Himsar, Dan Sahri Muharam. “Penataan Sistem Hukum Dan Peraturan Perundang-Undangan Berdasarkan Pancasila Sebagai Sumber Segala Sumber Hukum Negarapenataan Sistem Hukum Dan Peraturan Perundang-Undangan Berdasarkan Pancasila Sebagai Sumber Segala Sumber Hukum Negara.” *Yudabiru Jurnal Administrasi Negara* 4, No. 2 (2022): 104–18.
- Suhenriko, Muhammad. “Implementasi Teori Hierarki Hans Kelsen Terhadap Perumusan Kebijakan Di Indonesia.” *Jurnal Ilmiah Multidisipin* 1, No. 2 (2023): 64–71.
- Sumaryanto, Djoko. *Buku Ajar Teori Hukum*. Surabaya: Ubhara Press, 2011.
- Susanto, Mei. “Kedudukan Dan Fungsi Pembukaan Undang-Undang Dasar 1945: Pembelajaran Dari Tren Global.” *Jurnal Legislasi Indonesia* 18, No. 2 (2021): 184. Doi:10.54629/Jli.V18i2.739.
- Utami, Tanti Kirana, Ardelia Lananda, Cindy Claudia Simbolon, Mila Arastasya Rahmah, Nayla Ratu Baidhowi, Dan Pusfa Januwati. “Pengaruh Teori Perundang-Undangan Terhadap Dinamika Norma Hukum Dalam Sistem Hukum Indonesia.” *Jurnal Hukum Ius Publicum* 5, No. 2 (2024): 264–93.
- Wijayanthi, Fatimah Ratna. “Pancasila Sebagai Sumber Dari Segala Sumber Hukum.” *The Juris* 5, No. 1 (2021): 133–45.
- Yati Nurhayati. *Buku Ajar Pengantar Ilmu Hukum*. Bandung: Nusa Media, 2020.