

## The Guardian of The Ideology and The Pancasila by The Constitutional Court Decision

by

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### Abstract

*The Constitutional Court also fulfils its role as guardian of ideology as a judicial institution with special authority. This has been attempted through a number of Constitutional Court decisions that have been the basis for the positioning and repositioning of Pancasila in its proper state. In particular, this paper investigates, reviews and analyses the role of the Constitutional Court as the guardian of ideology, the practice of various Constitutional Court decisions that reflect efforts as the custodian of ideology, as well as the attitude or direction of the Constitutional Court in maintaining the spirit of Pancasila in relation to the role of custodian of ideology. This paper shows that through its role in re-establishing the inseparable relationship between Pancasila and the 1945 Constitution, which is the basis for resolving constitutional cases, the Constitutional Court has endeavoured to uphold Pancasila. Nevertheless, critics argue that the use of Pancasila as a touchstone has led to legal uncertainty, and that elements of the state apparatus still make historical mistakes in the placement of Pancasila.*

**Keywords:** Mahkamah Konstitusi; Putusan; Guardian of Ideology; Pancasila; UUD NRI 1945

### INTRODUCTION

The 1945 Constitution of the Republic of Indonesia underwent a significant revision intended to introduce substantial changes to the country's constitutional framework. Both before and after this amendment, the constitution underwent significant changes, according to I Dewa Gede Atmadja<sup>1</sup>, who characterized the process as a "renewal"<sup>2</sup> rather than a mere "amendment" due to the extensive changes to Indonesia's constitutional system<sup>3</sup>.

The drive for Indonesia's democratisation arose from the political and

legal reform movement of 1998, which spurred numerous changes<sup>4</sup>. These included amendments to the 1945 Constitution, improved law enforcement, human rights protections, the elimination of corruption, collusion and nepotism, regional autonomy, press freedom, and the attainment of democratic values. The context of the reform movement has fostered Indonesia's commitment to significant alterations in the fundamental principles of constitutional governance<sup>5</sup>. This has been pursued by means of amending the 1945 Constitution<sup>6</sup>.

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<sup>1</sup>Atmadja, I.D.G. (2006). *Hukum Konstitusi, Perubahan Konstitusi dari Sudut Pandang Perbandingan*, Denpasar: Lembaga Pers Mahasiswa FH Unud bekerjasama dengan Penerbit Bali Aga, h. 104-105.

<sup>2</sup>Lindsey, T. (2002). Indonesia Constitution Reform: Muddling Towards Democracy, *Singapore Journal of International and Comparative Law*, 6(4), 244-301, p. 276.

<sup>3</sup>Latif, Y. (2016). Pancasila sebagai Norma Dasar Negara Implikasinya terhadap Perumusan Konstitusi, *Jurnal Majelis* 1, 71-82, h. 72.

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<sup>4</sup>Thohari, H.Y. (2016). Beberapa Persoalan di sekitar Upaya untuk Menegaskan Pancasila sebagai Dasar dan Ideologi Negara dalam Undang-undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Majelis* 1, 147-156, h. 152-154.

<sup>5</sup>Herlina, N. (2018). Cita Hukum Pancasila dapat Berkembang dalam Batang Tubuh Undang-undang Dasar Republik Indonesia 1945, *Lex Librum: Jurnal Ilmu Hukum*, 4(2), 673-679, DOI: <http://doi.org/10.5281/zenodo.1286112>, h. 675-676.

<sup>6</sup>Hermanto, B., & Mas Aryani, N. (2022). Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and

Pancasila serves as the cornerstone of Indonesian state philosophy or *philosophische grondslag*<sup>7</sup>, as proclaimed by Sukarno. It is a philosophical foundation that substantiates the crucial role of Pancasila in the nation's and state's existence.<sup>8</sup> Pancasila serves as the foundation for the Indonesian state in unity with the 1945 Constitution<sup>9</sup>. Its amendments entail the inclusion of Pancasila precepts in the preamble of the fourth paragraph of the 1945 Constitution, thereby establishing the central position of Pancasila as the basis of state administration in all aspects of life. The legal-philosophical reality establishes Pancasila as the objective of the Indonesian state, which should be enforced through governmental instruments consisting of laws and policies that embody Pancasila's principles.<sup>10</sup> Nevertheless, several government policies and national activities frequently deviate from Pancasila's ideology and constitution<sup>11</sup>.

The inception of Pancasila as the bedrock of the state is deemed a crucial

element of Indonesia's fight for independence, lacking any subjective evaluations<sup>12</sup>. Its formulation was a result of detailed deliberations amid several dynamics during the struggle for independence<sup>13</sup>, eventually culminating in its inclusion as the state's fundamental principles and spiritual tenets in the fourth segment of the 1945 Constitution<sup>14</sup>.

The formulation of Pancasila holds objective significance as the precepts reflect general, abstract properties and values. Pancasila's enduring value will persist through Indonesian customs, culture, state administration and the daily life of its people. Furthermore, Pancasila's role as the primary fundamental state rule establishes it as the ultimate source of all legal regulations in Indonesia<sup>15</sup>. The existence of Pancasila values depends on the will of the Indonesian people, given that these values emanate from the Indonesian people themselves. Pancasila values represent the Indonesian people's outlook on life and embody their spiritual values, conscience, and personality. It is important to maintain objectivity and avoid subjective evaluations when discussing Pancasila values<sup>16</sup>.

The term "guardian of ideology" refers to the institution responsible for overseeing the

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Serbia practice. *The Theory and Practice of Legislation*, 9(3), 425-450, DOI: <https://doi.org/10.1080/20508840.2022.2027162>.

<sup>7</sup>Rosadi, O. (2010). Hukum Kodrat, Pancasila dan Asas Hukum dalam Pembentukan Hukum di Indonesia”, *Jurnal Dinamika Hukum*, 10(3), 282-290, DOI: <http://dx.doi.org/10.20884/1.jdh.2010.10.3.98>, h. 288.

<sup>8</sup>Amarini, I. (2017). Evaluasi Aktualisasi Pancasila melalui Harmonisasi Hukum, *Kosmik Hukum*, 17(2), 80-92, DOI: 10.30595/kosmikhukum.v17i2.2326, h. 89-90.

<sup>9</sup>Prasetyo, T. (2014). Membangun Hukum Nasional berdasarkan Pancasila, *Jurnal Hukum dan Peradilan*, 3(3), 213-222, DOI: <http://dx.doi.org/10.25216/jhp.3.3.2014.213-222>, h. 215-217.

<sup>10</sup>Yusa, I.G., Hermanto, B. & Ardani, N.K. (2021). Observing Pancasila and Hindu into Indonesia's Law Reform: Part of National Resilience, *Paper* was presented at International Conference for Democracy and National Resilience conducted by Universitas Sebelas Maret, 7 October 2021, 1-12.

<sup>11</sup>Rahayu, D.P. (2015). Aktualisasi Pancasila sebagai Landasan Politik Hukum Indonesia, *Yustisia*, 4(1), 190-202, DOI: <https://doi.org/10.20961/yustisia.v4i1.8634>, h. 193-196.

<sup>12</sup>Sudjito, S. (2016). Pancasila sebagai Philosophische Grondslag dan Ideologi Pemersatu Bangsa, *Jurnal Majelis* 1, 60-70, h. 67-69.

<sup>13</sup>Fransisco, W. (2017). Pancasila sebagai Landasan Hukum di Indonesia, *Progresif: Jurnal Hukum*, 11(1), 1828-1837, DOI: <https://doi.org/10.33019/progresif.v11i1.196>, h. 1835-1836.

<sup>14</sup>Kurnia, T.S. (2016). Pancasila dan Pembangunan Sistem Hukum Indonesia, *Jurnal Majelis* 1, 167-176, h. 168-170.

<sup>15</sup>Omara, A. (2019). The Functions of the 1945 Constitutional Preamble, *Mimbar Hukum*, 31(1), 140-156, DOI: 10.22146/jmh.30076, pp. 145-151.

<sup>16</sup>Prayitno, K.P. (2011). Pancasila sebagai “Screening Board” dalam Membangun Hukum di Tengah Arus Globalisasi Dunia yang Multidimensional, *Jurnal Dinamika Hukum*, 11(Edsus), 150-166, DOI: <http://dx.doi.org/10.20884/1.jdh.2011.11.Edsus.271>, h. 159-160.

establishment of Indonesia's national ideology. This is currently fulfilled by the Constitutional Court, a direct result of Pancasila, which holds political significance as a national ideology, ethical significance as a source of the state's ethical norms<sup>17</sup>, and legal significance as a source for all other sources of law. Pancasila serves as the foundation for the coherence and consistency of Indonesia's legal system<sup>18</sup>. It has been placed in the Preamble of the 1945 Constitution of the Republic of Indonesia as the fundamental norm of the state (staatsfundamentalnorm)<sup>19</sup>, which is then derived into the verfassungsnorm of the constitution, grundgesetznorm of the MPR Decree, and gesetznorm of the Law within the Indonesian national legal framework.<sup>20</sup>

The use of Pancasila as a touchstone is being investigated as a way to unify the Preamble and articles of the 1945 Constitution, incorporating Pancasila's values. This study aims to show that the norms in the Constitution's articles cannot be separated from Pancasila, and that religious interpretation should be based on textual and contextual evidence, using Pancasila as a touchstone in all constitutional cases.

After a thorough analysis and review of previous literature, it appears that there are no publications or studies that directly address the

concerns outlined in this paper. However, there are limited discussions and studies in related fields that focus on two key areas: the authority of the Constitutional Court with regard to constitutional review and the dissolution of political parties that uphold Pancasila as the guiding principles of the 1945 Constitution of the Republic of Indonesia, as stated in the preamble. In order for Pancasila to be a necessary point of reference in examining, judging, and deciding constitutional cases, it must be used as a foundation alongside the 1945 Constitution, and therefore it is imperative that Pancasila serve as a guide for all Constitutional Court cases. In addition, the esteemed and concrete values of Pancasila will be used as a standard of evaluation in every decision made by the Constitutional Court<sup>21</sup>.

The study of using Pancasila as a touchstone promotes the unification of Pancasila's values with the constitutional norms embedded in the articles. The norms are inseparable from the fundamental principles of Pancasila, and their interpretation is confirmed textually and contextually within a religious framework. Pancasila serves as a touchstone in every constitutional case, thus providing the foundation for unity and animating integration<sup>22</sup>.

Third, the pursuit of legal reform as a fundamental aspect of national resilience entails the ideology of Pancasila as an indissoluble basis for both the formulation and execution of law. The Constitutional Court also adopts this approach by incorporating

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<sup>17</sup>Hermanto, B. (2021). Penguatan Pengaturan Kelembagaan Badan Pembinaan Ideologi Pancasila, Perlukah?, *Jurnal Legislasi Indonesia*, 18(2), 204-221, DOI: <https://doi.org/10.54629/jli.v18i2.742>.

<sup>18</sup>Tim Redaksi Majalah Parlemenaria (2017). Membumikan Pancasila Menjaga Indonesia, *Majalah Parlemenaria*, 150(XLVII), h. 6-7.

<sup>19</sup>Susilowati, C.M.I. (2016). Pancasila sebagai Sumber Segala Sumber Hukum dan Kekerasan atas Nama Agama di Indonesia, *Masalah-masalah Hukum*, 45(2), 93-100, DOI: 10.14710/mmh.45.2.2016.93-100, h. 94-95.

<sup>20</sup>Kaelan, K. (2017). *Inkonsistensi dan Inkoherensi dalam Undang-undang Dasar Negara Republik Indonesia Tahun 1945 Hasil Amandemen (Kajian Filosofis-Yuridis)*, Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, Jakarta, h. 39-41.

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<sup>21</sup>Hidayat, A. (2019). Negara Hukum Berwatak Pancasila, Makalah disampaikan pada kegiatan "Peningkatan Pemahaman Hak Konstitusional Warga Negara Bagi Guru Pendidikan Pancasila dan Kewarganegaraan Berprestasi Tingkat Nasional" pada tanggal 14 November 2019 di Hotel Grand Sahid Jakarta, 1-13, h. 4-5, 9-12.

<sup>22</sup>Madalina, M., Laxamana, M.R.F.I. & Aldian, K. (2020). Penegakan Hukum Progresif dalam Perkara Judicial Review : Telaah Pancasila sebagai Batu Uji Pengujian Undang-Undang terhadap Undang-Undang Dasar, *Jurnal Majelis* 4, 1-28, h. 4, 19, 21.

Pancasila as a foundation when deliberating on various constitutional cases<sup>23</sup>.

This paper examines the Constitutional Court's role as the guardian of ideology in various decisions, directions and Constitutional Court rulings, and builds on previous research by providing a comprehensive analysis of this role within the context of the Court. This paper examines the Constitutional Court's role as the guardian of ideology, focusing on its decisions and practices, and also examines the Court's attitude towards preserving the spirit of Pancasila in relation to this role.

### RESEARCH METHOD

This paper is based on normative legal research that focuses on a system of norms in legislation<sup>24</sup>. It uses a statutory, conceptual and case approach. In the statutory approach, in order to find an appropriate concept related to Pancasila in the Constitutional Court decision, international and national legal instruments are examined. The conceptual approach is the conceptualisation<sup>25</sup> of the Constitutional Court's guardianship of ideology in its decisions. The case approach examines several decisions of the Constitutional Court. These decisions reflect the role of the Constitutional Court as the guardian of ideology.

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<sup>23</sup>Yusa, I. G., Hermanto, B., & Ardani, N. K. (2021, December). Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan, *Proceeding on International Conference For Democracy and National Resilience (ICDNR 2021)*, 1-10, DOI: <https://doi.org/10.2991/assehr.k.211221.001>.

<sup>24</sup>Terry Hutchinson "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law" (2015) 8 *Erasmus Law Review* 133 DOI: <https://doi.org/10.5553/ELR.000055>.

<sup>25</sup>Sudiarawan, Kadek Agus, Putu Edgar Tanaya, and Bagus Hermanto. "Discover the Legal Concept in the Sociological Study." *Substantive Justice International Journal of Law* 3.1 (2020): 94-108.

### RESEARCH RESULTS AND DISCUSSION

#### The Constitutional Court and the Guardian of Ideology

The Guardian of Ideology is a concept that has evolved over the last few decades, especially as Indonesia's democratisation process and various post-reform transformations continued to strengthen<sup>26</sup>. The Guardian of Ideology has been institutionally embedded in the authority of the Constitutional Court, especially in terms of placing Pancasila as an integral part of the 1945 Constitution of the Republic of Indonesia, which is the Constitutional Court's touchstone in exercising its constitutional review power, as well as the basis for other Constitutional Court powers.

Since its establishment, the role of the Constitutional Court has been based on three realities: firstly, the need for institutions with the authority to review legal products formed through a democratic process, in order to maintain the framework of the rule of law, to consolidate the rule of law and to guarantee the constitutional rights of citizens in line with the ongoing democratisation efforts. Secondly, the absence of the supreme state institution<sup>27</sup>, combined with a paradigm shift from the dominance of the MPR to the primacy of the Constitution, necessitated the presence of institutions that can resolve disputes of authority between state institutions. Thirdly, the establishment of the Constitutional Court as the guardian of the Constitution through its derived authority was finally consolidated by the influence of legal reasoning in the

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<sup>26</sup>Hermanto, B. (2021). Quo Vadis Badan Pembinaan Ideologi Pancasila: Dilematis Usulan Penguatan Pengaturan Kelembagaan dalam Meneguhkan Pancasila di Era Kekinian, *Paper* ini disampaikan dalam Seminar Nasional Bedah Akademik Kelompok DPD pada MPR RI, Perpustakaan Setjen MPR, dan Universitas Mahendradatta, 6 Oktober 2021, 1-20.

<sup>27</sup>Latif, Y. (2011). Revitalisasi Pancasila di Tengah Dua Fundamentalisme, *Jurnal Dignitas*, VII(2), h. 79-80.

impeachment process<sup>28</sup>, which previously did not reflect democratic values and adherence to the rule of law. The institution acts as the final interpreter of the Constitution, safeguarding democracy and protecting the constitutional and human rights of citizens, as well as the guardian of ideology<sup>29</sup>.

The responsibilities of the guardian of ideology are determined by the constraints of the ideology of Pancasila, which comprises ideas, aspirations and fundamental values that form a comprehensive and integral value system<sup>30</sup>, reflecting the national outlook and philosophy of life of the Indonesian people<sup>31</sup>, as well as firm political convictions derived from the collective will<sup>32</sup>.

In this context, the role of the Constitutional Court is to oversee the state ideology or the guardian of the ideology, especially Pancasila. This includes examining, judging and deciding various constitutional cases. In addition, the Court is obliged to use Pancasila as a touchstone in every constitutional case, in accordance with the provisions of the body of the 1945 Constitution<sup>33</sup>. In cases of judicial review of

laws against the 1945 Constitution, the position of Pancasila and the entire content of the preamble of the 1945 Constitution serve as a "benchmark"<sup>34</sup> or "primary criterion"<sup>35</sup>, based on the idea that there is complete unity between the preamble of the 1945 Constitution and the articles in the body. This includes the philosophical presentation of Pancasila in the preamble and its significance as a benchmark or primary criterion. Technical terms are explained when they are first used.

Substantively, Pancasila should be pursued for the achievement of substantive justice, especially through its application in the decisions of the Constitutional Court<sup>36</sup>. In normative terms, Pancasila is the fundamental basis of the Indonesian state and the Indonesian nation<sup>37</sup>. Since Pancasila is used to test the legality of a law's norms, it is perceived more as a value in this context. The translation of Pancasila in this case implies that the Constitutional Court is the result of an amendment effort that is imbued with a revival of the values of Pancasila.

The establishment of the Constitutional Court aims to prevent the misappropriation of the values of Pancasila<sup>38</sup>, which is inextricably

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<sup>28</sup>Gaffar, M.J. (2009). Kedudukan, Fungsi dan Peran Mahkamah Konstitusi dalam Sistem Ketatanegaraan Republik Indonesia, *Makalah* disampaikan dalam Seminar Nasional UNS pada 17 Oktober 2009 di Surakarta, h. 8-9, 11-12.

<sup>29</sup>Hermanto, B., Yusa, I. G., & Aryani, N. M. (2020). Constitutional Court of the Republic of Indonesia: Does the Ultra Petita Principle Reflect the Truth of Law?. *Fiat Justisia: Jurnal Ilmu Hukum*, 14(3), 261-286, DOI: <https://doi.org/10.25041/fiatjustisia.v14no3.1902>.

<sup>30</sup>Saifuddin, L.H. (2012). Revitalisasi Nilai-Nilai Pancasila dalam Perspektif Undang Undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Majelis* 4, 1-14, h. 2-4.

<sup>31</sup>Kaelan, K. (2016). Pancasila sebagai Ideologi Kebangsaan dan Kenegaraan, *Jurnal Majelis* 1, 1-59, h. 14-16.

<sup>32</sup>Hadjon, P.M. (1998). Pancasila sebagai Dasar Negara dan Hukum Tata Negara, *Majalah Hukum Yustika*, XVII(1), h. 11.

<sup>33</sup>Hidayat, A. (2013). Peran Mahkamah Konstitusi Sebagai Penjaga Konstitusi dan Pengawal Demokrasi Dalam Sengketa Pemilu, *Makalah* disampaikan sebagai Pointers dalam

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Acara Puslitbang BPHN "Continuing Legal Education" pada 3 Mei 2013, h. 2.

<sup>34</sup>Atmaja, G.M.W., Astariyani, N.L.G., Aryani, N.M. & Hermanto, B. (eds.), (2022). *Hukum Kebijakan Publik*, First Edition, Swasta Nulus, Denpasar, h. 135-138.

<sup>35</sup>Mahfud, M.M.D. (2011). Menguatkan Pancasila sebagai Dasar Ideologi Negara, *Majalah Konstitusi* 52, h. 6-8.

<sup>36</sup>Wiwoho, J. & Kholil, M. (2020). Pembumian Pancasila sebagai Bintang Penuntun Hukum di Indonesia, *Jurnal Majelis* 4, 163-188, h. 183-184.

<sup>37</sup>Sudiarawan, K. A., Tanaya, P. E., & Hermanto, B. (2020). Discover the Legal Concept in the Sociological Study. *Substantive Justice International Journal of Law*, 3(1), 94-108. DOI: <http://dx.doi.org/10.33096/sjijl.v3i1.69>.

<sup>38</sup>Aryani, N.M., & Hermanto, B. (2019). Gagasan Perluasan Lembaga Negara sebagai Pihak Pemohon dalam sengketa Kewenangan Antar Lembaga Negara di Mahkamah Konstitusi Republik Indonesia. *Jurnal Legislasi*

linked to the enhancement of democratic awareness<sup>39</sup>, the expansion of access to guarantees and protection for people's lives, the protection of people's rights, and the consistent upholding of constitutional values and norms in line with the values of Pancasila. The Constitutional Court achieves this through its decisions.

#### **Putusan-putusan Mahkamah Konstitusi yang mencerminkan *Guardian of Ideology***

According to extensive research, the Constitutional Court (hereafter referred to as the CC) is positioned as the protector of the Constitution, democracy (also known as the guardian of democracy), the constitutional rights of citizens, and human rights. The CC exercises its authority under Article 24C of the 1945 Constitution, and its function is to act as the ultimate defender of the Constitution<sup>40</sup>.

In this case, the Constitutional Court has received numerous inquiries regarding the content of Pancasila, which is considered to be a unit that has been legally established in the Fourth Preamble of the 1945 Constitution. This serves as a means for the Constitutional Court to test its constitutional review<sup>41</sup>. The Constitutional Court has interpreted Pancasila through the consideration of constitutional judges in various decisions, which ultimately reaffirmed the essence of Pancasila in the

national legal order. At least three decisions of the Constitutional Court provide evidence that the Court has reaffirmed the attitude and position of Pancasila in the context of the life of the nation and the state.

#### **First, in Constitutional Court Decision Number 82/PUU-XVI/2018 (PUMK 82/PUU-XVI/2018)**

Article 7 of the 2011 P3 Law was compared with Article 1(1), (2) and (3) of the 1945 Constitution. The legal considerations, in particular item [3.10], affirmed the existence of Pancasila as the ultimate source of law.

In Constitutional Court Decision No. 82/PUU-XVI/2018 (PUMK 82/PUU-XVI/2018), a test was conducted to compare Article 7 of the 2011 P3 Law with Article 1(1), (2) and (3) of the 1945 Constitution. This affirmation was supported by various points presented in item [3.10], including point:

1. By including the explanation of Article 2 of the 2011 P3 Law, the inclusion of Pancasila as the fundamental principle on which all sources of law are based.
2. The inclusion of the Explanation of Article 2 of the P3 Law of 2011 justifies the inclusion of Pancasila as the fundamental principle on which all sources of law are based. Pancasila serves as the "initial premise" from which all other legal principles are derived, and is therefore doctrinally valid by virtue of its presupposed validity.
3. The Panel of Constitutional Judges has concluded that Pancasila cannot be classified as part of positive law due to its transcendent nature, but that the values contained in Pancasila establish the validity of the entire positive legal system. Consequently, all laws and regulations intended by Law 12/2011 must be rooted in the values of Pancasila to ensure their compliance. Thus, all laws and regulations must incorporate the values contained in Pancasila.
4. Pancasila, as confirmed by the panel of judges, is recognised as the fundamental

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*Indonesia*, 16(2),

DOI: <https://doi.org/10.54629/jli.v16i2.475>.

<sup>39</sup>Hidayat, A. (2013). Pancasila sebagai Kaidah Penuntun dalam Pembentukan Hukum Nasional, *Makalah* disampaikan pada acara Seminar Nasional dengan tema, "Menyoal: Pengaturan Tenaga Kesehatan Dalam Rancangan Undang-Undang Tenaga Kesehatan", pada 16 November 2013 di Universitas Katolik Soegijapranata, Semarang, 1-18, h. 8-10.

<sup>40</sup>Subawa, M. Giri, N.P.N.S. & Hermanto, B. (2023). *Dinamika Filsafat Ilmu Hukum Pancasila: Ontologi dan Aksiologis Sumber dari Segala Sumber Hukum di Indonesia*, (Uwais Inspirasi Indonesia, Ponorogo), h. 58-65.

<sup>41</sup>Bagiastra, I.N. (2020). The Ontological of State of Law of Pancasila as the Basis of Welfare State of Indonesia, *Jurnal Magister Hukum Udayana*, 9(4), 701-711, DOI: <https://doi.org/10.24843/JMHU.2020.v09.i04.p03>.

source of all legal foundations and should not be interpreted to mean that Pancasila is the same as or falls under the category of legislation.

**Second, Constitutional Court Decision Number 59/PUU-XIII/2015 (PUMK 59/PUU-XIII/2015)**

PUMK 59/PUU-XIII/2015 examines the validity of MPR Decree No. XVIII/MPR/1998, which affirms Pancasila as the foundation of the Indonesian state and revokes MPR Decree II/MPR/1978 with respect to P4<sup>42</sup>. The examination is based on the provisions of Article 7(1)(b) of the P3 Law 2011 and its relationship to the existence of Article 1 of MPR Decree No. XVIII/MPR/1998. Article 1 of MPR Decree No. XVIII/MPR/1998 is classified as a Category VI item under Article 6(91) of MPR Decree No. I/MPR/2003 and is considered to be an MPR Decree that requires no further legal action, either because it is final, repealed or terminated. In point [3.6] of the Legal Considerations, the Constitutional Judges' Panel emphasised the Pancasila as the primary source of law in this case.

1. Article II of the Supplementary Rules of the 1945 Constitution confirms that the Constitution consists of a preamble and articles. Thus, Pancasila is an integral part of the Preamble to the Constitution of the Republic of Indonesia, which outlines the important principles of Pancasila that serve as the foundation of the country and the source of all national laws.
2. According to Article 37 of the 1945 Constitution of the Republic of Indonesia, the Court has determined that only the articles of the 1945 Constitution are subject to the provisions on constitutional amendment, with the preamble of the 1945 Constitution of the Republic of Indonesia being excluded from this provision. Thus, there is no room in the Constitution to

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<sup>42</sup>Sapriya, S. (2018). Penegasan Pancasila sebagai Dasar Negara, Ideologi Bangsa dan Negara dalam UUD NRI Tahun 1945, *Jurnal Majelis* 9, 25-36, h. 28-29.

amend Pancasila as the foundation of the nation (and the root of all legal sources) because Pancasila is an essential part of the preamble of the 1945 Constitution.

**Third, the Constitutional Court ruled on Case No. 100/PUU-XI/2013 (PUMK 100/PUU-XI/2013).**

PUMK 100/PUU-XI/2013 aims to test the regulation of Article 34 paragraph (3b) letter a of Law No. 2 Year 2011 as an amendment to the Political Parties Law of 2008. This regulation concerns the priority use of financial support to political parties from APBN / APBD for political education for political party members and the community,<sup>43</sup> which includes deepening the four pillars of the nation and state: Pancasila, the 1945 Constitution, Unity in Diversity, and the Unitary State of the Republic of Indonesia. The focus is on the diminishing importance of Pancasila as one of the four pillars of the nation and state, which is seen as a significant error that causes epistemological chaos and a fundamental mistake<sup>44</sup>.

In this PUMK 100/PUU-XI/2013, the Constitutional Court through also again provides an affirmation of the existence and position of Pancasila, especially as the basis of the state (including the source of all sources of law), as starting from Point [3.12.1], Point [3.12.2], Point [3.12.3], Point [3.12.4], and Point [3.13] Legal Considerations, as follows:

1. The phrase "four pillars of the nation and the state", which is used as political education material by placing Pancasila on an equal footing with the other pillars, is traced through the meaning of pillar in the KBBI

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<sup>43</sup>Hastangka, H., Armawi, A. & Kaelan, K. (2018). Analisis Putusan Mahkamah Konstitusi Nomor 100/PUU-XI/2013 tentang Pembatalan Frasa Empat Pilar Kehidupan Berbangsa dan Bernegara, *Mimbar Hukum*, 30(2), 230-245, DOI: 10.22146/jmh.32660, h. 240-243.

<sup>44</sup>Anggono, B.D. (2014). Konstitusionalitas dan Model Pendidikan Karakter Bangsa Pasca Putusan Mahkamah Konstitusi, *Jurnal Konstitusi*, 11(3), 492-514, DOI: <https://doi.org/10.31078/jk%25x>, h. 500-503.

(reinforcement pole, main base/main, hood pole). In this case, the Court considers that the expression four pillars as the four pillars that strengthen the nation and the State, as well as the four main or main bases in the nation and the State, and considered from the constitutional perspective, is not adequate. This is because the four political education materials are actually fully covered in the 1945 Constitution, namely **Pancasila as a term / name, although in the preamble of the 1945 Constitution is not explicitly mentioned, but in reference to the content contained therein Pancasila is the basis of the state under Fourth Alinea of the preamble of the 1945 Constitution.**

2. The mention of the content of Pancasila in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia is considered constitutional by the Constitutional Court. **The preamble of the 1945 Constitution of the Republic of Indonesia places what is contained in Pancasila as the basis of the state.** As the basis of the state, Pancasila must normatively be the basis for implementing the Indonesian state government's protection, welfare, intelligence, and participation in world order.
3. It will also cause epistemological, ontological and axiological chaos to place Pancasila as one of the pillars in addition to placing it on the same and equal footing with the other pillars. **Pancasila has its own position in the framework of thinking of the Indonesian nation and state based on the Constitution, namely as the basis of the state,** as well as the basis of state philosophy, state fundamental norms, state ideology, state legal

ideals, etc. Thus, placing Pancasila as one of the pillars may obscure the position of Pancasila in such a sense.

### **The Constitutional Court in Placing the Role of Guardian of Ideology and Upholding the Spirit of Pancasila**

The role of the Constitutional Court as a guardian of ideology is very central in the context of the resolution of constitutional cases, both in the area of constitutional review, dissolution of political parties and other powers of the Constitutional Court. It becomes a relevant basis for the judiciary in safeguarding ideological values and the need for non-judicial institutions to uphold the implementation of Pancasila's ideological values through an examination of a number of Constitutional Court decisions examined in the previous subsections.

Activities in the practical realm of law, namely lawmaking and law application, are related to the relevance of the judiciary<sup>45</sup>. Three examples of Constitutional Court decisions examined in the previous subsections show that the judiciary focuses on the issue of the application of the law, which is actually within the framework of the judicial power and the framework of the rule of law in Indonesia based on Pancasila, in the consideration and final decision of each case.

**Firstly, from a legal point of view, the Constitutional Court reiterated its position and positioned Pancasila as an integral part of the 1945 Constitution,** especially in the 4th Preamble, which animates the whole body of the 1945 Constitution; secondly, the Constitutional Court reiterated its position and positioned Pancasila as an integral part of the 1945 Constitution, especially in the 4th Preamble, which animates the whole body of the 1945 Constitution. **Second,** Pancasila is

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<sup>45</sup>Suartha, I. D. M., Martha, I. D. A. G. M., & Hermanto, B. (2021). Innovation based on balinese local genius shifting alternative legal concept: towards indonesia development acceleration. *Journal of Legal, Ethical and Regulatory Issues*, 24(7), 1-9.



reaffirmed as the foundation of the state. This is the definitive foundation for the existence of the Indonesian nation-state. **Thirdly**, it is placed within its ontological, axiological and epistemological context as the foundation of the life of the Indonesian people and State, both as the basis of the State, the ideology of the people, and the source of all sources of law. **Fourth**, the juridical consequence is that it must be derived into laws and regulations, all of which must be animated by the values of Pancasila, which have been tested in line and explored throughout the centuries of the existence of the Indonesian nation, since Pancasila is the basic norm in the preamble of the 1945 Constitution of the Republic of Indonesia.

**Second, regarding Pancasila's placement as a touchstone.** The Constitutional Court has not explicitly used Pancasila as a "touchstone" in reviewing laws, according to research by the Epistema Institute and the TIFA Foundation<sup>46</sup>. This is despite the possibility for the Constitutional Court to elaborate on the values of Pancasila that are contained in the fourth paragraph of the preamble of the 1945 Constitution. Pancasila has not been used as a firm testing tool, has not been reflected both symbolically and substantively as the guardian of the ideology).

This is also inextricably linked to the root of the problem in the application of law in Indonesia, which is the absence of official documents that serve as instructions for the implementation of Pancasila explicitly as a touchstone in the form of procedural law and standard operating procedures for law enforcement, This is the root of the problem in the application of the law in Indonesia, which causes legal uncertainty, even though the law

enforcement agencies are given freedom in the context of the principle of freedom of the law, but confirmation in the procedural law is a must, with certainty in the procedural law being proof that the judiciary will rely on the values contained in Pancasila as a legal consideration in various cases in the examination, hearing and decision of cases.

**In the third place, it is observed in accordance with the strengthening of the placement of Pancasila.** The three decisions of the Constitutional Court are evidence and consistency of the role of the Constitutional Court as the guardian of ideology. The adjustment of mistakes made by several state institutions such as the MPR, which previously placed Pancasila among the pillars of the life of the nation and the state, has lowered the level of Pancasila, which should be the highest level of norms for the implementation of the life of the nation, the state, society, and the development of Indonesia. In the same way, the Constitutional Court has established Pancasila as a basic norm that is inseparable from the unity of the 1945 Constitution of the Republic of Indonesia and inspires the formation of laws and regulations, becoming the legal basis for the formation of various policies to always reflect the values of Pancasila<sup>47</sup>, which is referred to as the meeting point, starting point<sup>48</sup> and destination point within the framework of national legal development<sup>49</sup>.

## CONCLUSION

### A. Conclusion

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<sup>47</sup>Ishak, N. (2016). Politik Hukum Pengaturan Amandemen Undang-undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945, *Supremasi Hukum*, 5(2), 116-141, h. 120-122.

<sup>48</sup>Latif, Y. (2017), Pancasila adalah Titik Temu, Titik Pijakan dan Titik Tuju, *Majalah Parlemenaria*, 150(XLVII), h. 16-17.

<sup>49</sup>Bo'a, F.Y. (2018). Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional, *Jurnal Konstitusi*, 15(1), 27-49, DOI: <https://doi.org/10.31078/jk1512>, h. 35-36.

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<sup>46</sup>Arizona, Y., Wijaya, E. & Sebastian, T. (2014). *Pancasila dalam Putusan Mahkamah Konstitusi: Kajian terhadap putusan mahkamah konstitusi dalam perkara yang berkaitan dengan perlindungan hak kelompok marjinal*, Edisi Pertama, Jakarta: Epistema Institute bekerjasama dengan TIFA Institute, 2014.

The role of the Constitutional Court as the guardian of ideology is a fundamental role in the context of upholding the spirit of the 1945 Constitution of the Republic of Indonesia, which also contains a fundamental norm of the state, namely Pancasila. Thus, upholding the spirit of the Constitution is the same as upholding the spirit of the ideology of the Indonesian nation.

Three Constitutional Court decisions reaffirming and placing Pancasila in its function as the nation's ideology, source of all sources of law, fundamental norm of the state, ideals of state law, and inseparable from the body of the 1945 Constitution.

The Constitutional Court's role as the guardian of ideology is reflected in its legal reasoning, which has closely examined various legal interpretations, the facts of Indonesian national life, and the spirit of Pancasila. It is also reflected in its steadfastness in using Pancasila as a touchstone and a standard for decisions that lead to the strengthening and placement of Pancasila as it should be.

#### B. Recommendation

The need to mitigate the annulment of laws and legislation/regulation products by internalising Pancasila from the early stages of legislation/regulation formation.

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