Journal OF CONSTITUTIONAL LAW SOCIETY
E-ISSN: 2829 - 5014

DYNAMICS OF PANCASILA AS A BASIS FOR THE QUALITY OF INDONESIAN LEGISLATION: A POSITIVE LAW PERSPECTIVE AND THE CONSTITUTIONAL COURT'S DECISION

DINAMIKA PANCASILA SEBAGAI LANDASAN KUALITAS LEGISLASI INDONESIA: PERSPEKTIF HUKUM POSITIF DAN PUTUSAN MAHKAMAH KONSTITUSI

Made Subawa[1*], Bagus Hermanto[2], Ni Putu Niti Suari Giri[3]
[1*,2,3] Faculty of Law, Universitas Udayana
* Jalan Pulau Bali Nomor 1, Sanglah, Denpasar

* madesubawafhunud@gmail.com

Volume 3, Number 1, March 2025
Received: January 31, 2025 Accepted: January 31, 2025 Online Published: March 27, 2025.

ABSTRACT
This article interrogates the dimensions of the fifth-generation national philosophy of Indonesia, the 'Pancasila', and its potential to serve as the cornerstone for enhancing the quality of legislation in Indonesia. The prevailing concern is that the quality of Indonesian legislation is frequently compromised in terms of material and formal aspects, irrespective of the multidimensional, multidisciplinary, and even cross-border challenges confronting various developing countries. In order to address these concerns, it is imperative to delve into the fundamental principles of the 'Pancasila', with a view to contributing to the development of a future legal framework characterised by enhanced quality. The present article is limited to two main issues, namely (1) the dynamics of the five principles of the Indonesian state ideology as a legal ideal, and (2) the futuristic dimension based on positive law and the Constitutional Court's decisions related to the aforementioned principles as a basis for improving the quality of future legislation. The results obtained demonstrate that the recognition of the inseparable nature of the five principles of the United Nations as a legal ideal and the primary source of national law is paramount. This underscores the necessity for future

legislative formations to deliberate on the incorporation of the principles of the Pancasila as a consideration in enhancing the quality of future legislation.

Keywords : Quality of Legislation, Pancasila, Lawmaking, Indonesia

ABSTRAK

Artikel ini secara menyoal dimensi keterhubungan Pancasila untuk dijadikan pilar utama dalam mendorong peningkatan kualitas legislasi di Indonesia. Problematik yang tampak bahwa legislasi Indonesia acapkali diperhadapkan dengan persoalan kualitas dari segi materiil maupun formil, terlepas dari isu multidimensional, multidispliner bahkan melintas batas sebagai persoalan yang dihadapi pelbagai negara berkembang, perlunya menelisik kedalam intisari Pancasila yang dapat dijadikan bagian dari pengembangan pembentukan hukum kedepan yang berkualitas. Artikel ini dibatasi dengan dua isu utama yakni (1) dinamika Pancasila sebagai cita hukum, dan (2) dimensi futuristik dengan berbasis hukum positif dan putusan MK terkait dengan Pancasila dijadikan landasan dalam peningkatan kualitas legislasi kedepan. Hasil yang didapat bahwa Pancasila sebagai bagian tidak terpisahkan diakui menjadi cita hukum dan sumber dari segala sumber hukum nasional, hal ini juga yang mendorong pentingnya setiap pembentukan perundang-undangan kedepan wajib mengelaborasikan Pancasila sebagai pertimbangan dalam peningkatan kualitas legislasi kedepan.

Kata Kunci : *Kualitas Legislasi, Pancasila, Pembentukan Hukum, Indonesia*

I. INTRODUCTION

In recent decades, there has been a notable shift in the discourse surrounding the utilisation of legislation as a means to expedite development and enhance the quality of legislation[1]. This phenomenon is particularly evident in the context of globalisation and the competitive environment among nations, wherein lawmakers seek to articulate national interests and exert a positive global influence through the effective application of legislative instruments[2]. Consequently, legislation is increasingly influenced by globalisation, free market movements, liberalisation, privatisation, and what

[1]J. Braithwaite, C. Coglianese, and D.L. Faur, 'Can legislation and governance make a difference?', (2007) 1(1), *Regulation & Governance*, DOI: https://doi.org/10.1111/j.1748-5991.2007.00006.x, 1 at 2, 6.

[2]A, Seidman and R,B. Seidman, 'ILTAM: Drafting Evidence-Based Legislation for Democratic Social Change', (2009) 89(3), *Boston University Law Review*, 435 at 451-456.

is more aptly termed 'legislative capitalism'[3]. The previous paradigm relied on legislation to address various governance, economic and non-economic issues. However, this outdated approach has led to legislative problems, including ineffective, inefficient, and corrupt legislation[4], as well as a lack of sensitivity and responsiveness to underlying legal issues and public demands, as evidenced by obesity legislation[5]. Therefore, a new approach is required. However, within the contemporary paradigm, an alternative argument posits that legislation should be regarded as a tool that addresses development challenges, conforms to legal needs and encourages broader interests and participation[6]. This approach is predicated on an assessment of impact analysis, the configuration and relationship between legal and political considerations, post-legislative evaluation and scrutiny, or a combination of economic and non-economic factors. Adhering to the principles of good legislation, this approach aims to enhance the process of drafting legislation.

Legislation is a critical instrument in the realms of governance, serving a multifaceted role that encompasses redistribution, distribution, and development[7]. It wields the capacity to catalyze social transformation, concurrently addressing both economic and non-economic dimensions. In this particular instance, legislation is devised with the objective of averting potential risks, challenges, or governance failures[8]. Mitigation strategies are embedded within the legislative reform agenda, with legislation itself being intricately linked to the overarching concept of policy. It is imperative to ensure that the regulations fulfil specific public requirements, contain relevant provisions, establish procedural rules that are in line with good governance principles, and come into force as soon as they are promulgated[9].

---

[3]C. Koop and C. Hanretty. 'Political independence, accountability, and the quality of regulatory decision-making', (2018) 51(1), *Comparative Political Studies*, DOI: https://doi.org/10.1177/0010414017695329, 38 at 45-48.

[4]A. Benish and D.L. Faur, 'The Expansion of Legislation in Welfare Governance' (2020) 691(3) *The Annals of American Academy of Political and Social Sciences*, DOI: 10.1177/0002716220949230, 17 at 21.

[5]S.A. Schütte, 'Against the Odds: Anti-Corruption Reform in Indonesia', (2012) 32(1) *Public Administration and Development*, DOI: 10.1002/pad.623, 38 at 42-43.

[6]J. Braithwaite, C. Coglianese, and D.L. Faur, 'Change and challenge in legislation and governance', (2008) 2(4), *Regulation & Governance*, DOI: https://doi.org/10.1111/j.1748-5991.2008.00049.x, 381 at 381-382.

[7]Peter van Lochem, Legislation against the rule of law – an introduction, (2017) 5(2), *The Theory and Practice of Legislation*, DOI: 10.1080/20508840.2017.1387729, 95 at 96-98.

[8]I.C.van der Vlies, 'Legislation in a global perspective', in: J. Arnscheidt, B. van Rooij, and J.M. Otto (eds.), *Lawmaking for Development Explorations into the theory and practice of international legislative projects*, 133-144, (Amsterdam: Leiden University Press, 2008), 133 at 134-135.

[9]A.M. Mudhoffir and R.Q. A'yun, 'Doing business under the framework of disorder: illiberal legalism in Indonesia', (2021) *Third World Quarterly*, DOI: https://doi.org/10.1080/01436597.2021.1967738, 1 at 8-10, 13-15.

From a public policy perspective, the process of drafting laws and regulations is an important aspect of policy formulation. In addition to serving the public interest, legislators must consider various factors such as the quality of legislation, conformity with procedural rules, legal content and language, normative style, implementability, operational style, and jurisdictional context. Furthermore, Maria Mousmouti recognises that legislation is a multifaceted construct, with the quality of legislation being a crucial factor in determining the success or failure of policy formulation[10]. It is crucial to ensure objective evaluation of legislation to achieve the desired results. The complexity of legislation, coupled with the potential for diverse perspectives from stakeholders involved in the drafting process, underscores the necessity for a meticulous evaluation process[11]. The anticipated outcomes and the potential challenges or impacts of legal regulations suggest their efficacy in achieving management policy objectives and legal control capacity. However, it is imperative to emphasise that a clear and logical structure is paramount for ensuring unbiased and effective communication.

The formulation of policy is a multifaceted process comprising several interconnected steps. It commences with the identification of a social problem and its articulation within the government agenda, following which public participation becomes imperative to frame the problem for action[12]. The process continues with the government's deliberation on the policy alternatives chosen to resolve the legal problem and the endorsement of a particular policy.A significant aspect of policy formulation is public policy agenda setting, which serves as a preliminary step towards the drafting of legislation. The identification of problems and the establishment of an agenda are also necessary to ensure thorough policy formulation, especially taking into account needs, ambitions, wider demands and social impacts. This should follow a prioritisation framework that considers the public's set of problems, demands, wants and aspirations.Based on the scale or list of priorities, the government and legislature should formulate policies to address the identified and prioritised problems. The subsequent enactment of the draft policies, which have been compiled, analysed and organised by designated institutions, into law is a crucial step in the process. Concurrently, the dissemination and presentation of these laws to all stakeholders is

[10]N.Kosti, D.L. Faur, and G. Mor, 'Legislation and legislation: three analytical distinctions', (2019) 7(3), *The Theory and Practice of Legislation*, DOI: 10.1080/20508840.2019.1736369, 169 at 169-172.

[11]M.Mousmouti, 'Operationalising Quality of Legislation through the Effectiveness Test', (2012) 6(2), *Legisprudence*, DOI: 10.5235/175214612803596686, 191 at 193-194, 197, 199-200.

[12]C. Coglianese (2012), Measuring Regulatory Performance: Evaluating the Impact of Legislation and Regulatory Policy, *OECD Expert Paper* No.1 August, OECD Publishing, 1 at 21.

essential for comprehending the implications and objectives of the policies. The implementation of this legislative planning policy is optimised by the persuasion model, which aims to convince individuals of the rectitude and value of the enacted policy, and the bargaining model, which involves a combination of policy advocacy and demands to harmonise and accommodate differences of opinion between interested parties towards a policy that is acceptable to society.

Developing countries are confronted with a multitude of challenges, including poverty, social unrest, inadequate governance, corruption, and structural economic issues, as well as challenges related to resource management[13]. In their efforts to advance their development agenda, these countries seek to utilise the law, with a primary focus on the reform of their national constitutional and statutory systems[14]. The transition from authoritarian to democratic forms of government has resulted in significant upheaval in numerous developing countries, particularly with respect to the establishment of fundamental principles of good governance and the endeavours to ensure the effective implementation of legislative reforms. A plethora of studies have demonstrated that numerous developing countries seeking to amend their constitutions encounter difficulties in expediting their reform agenda, largely attributable to the substandard quality of prevailing legislation[15]. Notwithstanding international benchmarks established by prominent institutions such as the IMF, World Bank, OECD and WFD, many countries have endeavoured to assimilate democratic principles and the rule of law into their legislative drafting processes. These endeavours encompass the enhancement of institutional capacities, the execution of donor projects and the implementation of transplant programmes[16], encompassing the incorporation of imperative clauses within agreements with recipient nations. Furthermore, collaboration with international institutions is undertaken to further augment legislative development between national parliaments and global organisations.

---

[13] Ittai Bar-Siman-Tov, 2018, Temporary legislation, better regulation, and experimentalist governance: An empirical study, *Regulation & Governance*, 12(2), 192-219, DOI: https://doi.org/10.1111/rego.12148.

[14]C. Kirkpatrick, 'Assessing the Impact of Regulatory Reform in Developing Countries' (2014) 34(3) *Public Administration and Development*, DOI: 10.1002/pad.1693, 162 at 163–164.

[15]S. Newton, 'Law and development, law and economics and the fate of legal technical assistance', in: J. Arnscheidt, B. van Rooij, and J.M. Otto (eds.), *Lawmaking for Development Explorations into the theory and practice of international legislative projects*, 1-52, (Amsterdam, Leiden University Press, 2008), pp. 37-39.

[16]A.Seidman, R.B. Seidman, N.Abeyesekera, and J.Seidman, *Assessing Legislation - A manual for legislators*, (Boston, Massachusetts: Boston University School of Law's Program on Legislative Drafting for Democratic Social Change, 2003), 1 at 9.

This phenomenon has become commonplace in many countries that have reformed their constitutional and legislative systems[17], yet demonstrated no concomitant improvement in the quality of legislation. This is attributable to illiberal practices exhibited by parliaments and governments, including executive intervention, dominant factions in parliament, attempts to introduce alternative methods and approaches to legislative drafting, and biased agendas in favour of certain parties, which sometimes result in the bypassing of legislative procedures or rules[18]. In an ideal context, the enhancement of legislative quality is pertinent to ensure its compatibility with democratic principles, the rule of law, the principles of good legislation, and legal needs[19]. Furthermore, legislation should also be effective and efficient, able to address domain issues that require regulation, minimise the potential for conflict or judicial review, and be sustainable in specific settings.

The amendment of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) has been described by Jimly Asshiddiqie as having made significant changes to the constitution in Indonesia[20]. Republic of Indonesia before and after the Amendment, as asserted by I Dewa Gede Atmadja, who contends that these changes represent a 'renews of the constitution' rather than an 'amendment of the constitution'[21]. This assertion is supported by the 'massive' changes to the constitutional system in Indonesia. This was driven by the political and legal reform movement in 1998, which encouraged a number of things to be pushed towards the democratisation of Indonesia[22], namely in the form of amendments to the 1945 Constitution, law enforcement, human rights, eradication of corruption, collusion and nepotism, regional autonomy, freedom of the press and realising democratic life. The backdrop of these reforms has prompted Indonesia to undertake

---

[17] Patricia Popelier, 2008, Five paradoxes on legal certainty and the lawmaker, *Legisprudence*, 2(1), 47-66, DOI: https://doi.org/10.1080/17521467.2008.11424673.

[18]T. Drinóczi and R.Cormacain, 'Introduction: illiberal tendencies in lawmaking', (2022) 9(3), *The Theory and Practice of Legislation*, DOI: 10.1080/20508840.2021.1955483, 269 at 273.

[19]G.M.W. Atmaja, N.L.G. Astariyani, N.M. Aryani & B. Hermanto, et al., *Hukum Kebijakan Publik* (Denpasar: Swasta Nulus, 2022) 1 at 58-62.

[20]Tahun 1999, 2000, 2001 dan 2002 terdapat perubahan secara mendasar *blue print* ketatanegaraan Indonesia di masa reformasi ini, bahkan hanya ada 25 butir saja dari 71 butir ketentuan ayat atau pasal UUD 1945 yang masih tetap sama sekali tidak berubah, sedangkan memunculkan perubahan atas 174 butir baik butir yang diubah, maupun yang baru dalam UUD NRI 1945. Lihat lebih lanjut dalam Jimly Asshiddiqie 2009, *Pengantar Ilmu Hukum Tata Negara*, Edisi Revisi, Jakarta : RajaGrafindo Persada, h. i-ii, 2-3.

[21]I Dewa Gede Atmadja, 2006, *Hukum Konstitusi, Perubahan Konstitusi dari Sudut Pandang Perbandingan, Cetakan Pertama,* Editor : I Gede Yusa, Denpasar : Lembaga Pers Mahasiswa FH Unud bekerjasama dengan Penerbit Bali Aga, h. 104-105.

[22]A.H.Y. Chen, 'Pathways of Western liberal constitutional development in Asia: A comparative study of five major nations', *International Journal of Constitutional Law*, (2010) 8(4), DOI: 10.1093/icon/mor002, 849 at 855-856.

substantial amendments to the 1945 Constitution of the Republic of Indonesia, encompassing pivotal elements of constitutional governance.

Since the 1998 reform, Indonesia has experienced a prolonged period of drafting legislation, spanning almost three decades. During this transition period, there was constitutional and legislative reform, commencing with institutional changes that separated the DPR and DPD[23]. The creation of legislation, academic papers and impact analyses are utilised to establish procedures and rules that comply with the principles of good legislation[24]. The fundamental principles of democracy and the rule of law have been more thoroughly assimilated than in the previous regime. A platform for judicial review has been established, yet concerns have been raised by many academics regarding the persistent challenges encountered in Indonesian legislation, including legal substance that is inconsistent with the constitution, legal principles, and extant norms. In recent years, a trend of laws being annulled post-judicial review by the Constitutional Court has emerged[25], impeding the accommodation of broader legal needs and interests of certain parties. This process is frequently characterised by inadequate preparation and discussion during the law drafting stage, with procedures and rules being circumvented to deviate from the conventional drafting process. Certain methods and approaches have been implemented without a sufficient consideration of their impact and relevance to Indonesia's legislative framework. Additionally, there is a dearth of meaningful public participation, compounded by corrupt practices within the legislature and government apparatus, aimed at facilitating the passage of contentious norms in draft laws. The absence of a structured process for the evaluation of the law drafting process[26], both prior to and following its enactment, along with the presence of sectoral silos between government agencies and the legislature, represent but a few of the numerous challenges currently being experienced in Indonesia's legislative practice.

II. METHOD

The objective of this research is to provide a novel perspective on enhancing the quality of legislation, with a particular focus on developing

---

[23]H. Sanborn, 'Popular support for legislatures in Asia', (2019) 25(2) *The Journal of Legislative Studies*, DOI: 10.1080/13572334.2019.1603197, 188 at 192-195.

[24]Louay Abdulbaki, 'Democratisation in Indonesia: From Transition to Consolidation', (2008) 16(2) ,*Asian Journal of Political Science,* DOI: https://doi.org/10.1080/02185370802204099, 151 at 151-152, 154, 157-158.

[25] Simon Butt, 2011, Anti-corruption reform in Indonesia: an obituary?, *Bulletin of Indonesian Economic Studies*, 47(3), 381-394, DOI: https://doi.org/10.1080/00074918.2011.619051.

[26]Vedi R. Hadiz, 'Decentralization and Democracy in Indonesia: A Critique of Neo-Institutionalist Perspecives', (2004) 35(4), *Development and Change*, DOI: https://doi.org/10.1111/j.0012-155X.2004.00376.x, 697 at 703-705.

countries such as Indonesia. This objective is pursued by integrating fundamental concepts pertaining to issues impacting parliamentary efficiency and enhancing the quality of legislation. The research also encompasses the utilisation and dynamics of legislative planning instruments (notably Prolegnas) in various periods following reform in Indonesia. Moreover, the paper puts forward a number of alternative factors and methods that could be used to effectively utilise legislative planning instruments for the purpose of improving the quality of legislation and the deliberate reform agenda. These factors and methods are considered in relation to the development of the philosophy of law studies in relation to the revamping and improvement of lawmaking in Indonesia in the future.

III. ANALYSIS AND DISCUSSION

a. Pancasila Scientifically According to the Philosophy of Legal Studies

The concept of Pancasila, which serves as the foundational principle of the Indonesian state and is embedded within its constitutional framework, necessitates a rigorous examination within the domain of legal scholarship. The scientific study of law represents a distinctive academic pursuit, hence it is often referred to as legal science, a term denoting its distinct nature and characteristics. The 'Sui Generis' nature of legal science encompasses both its object of study and its methodological framework. Consequently, the methodology employed in the study of legal science must not be merely adapted from other scientific disciplines. Instead, it is characterised by its distinct and unique approach, which is often referred to as its 'personality'.

The study of Pancasila, as an ideological formula (nationality) regarding the basis of the state, is outlined in the 1945 Constitution. The status of Pancasila as the basis of the state has been widely discussed, including:

1. Notonagoro in his speech entitled: Some Matters Regarding the Philosophy of Pancasila, argues that Pancasila is: Pancasila, argues that entscheidung van de staatfundamentalnorm.
2. A.Hamid S. Attamimi in a paper entitled: Rechtsidee van de vijftien principes in de rechtslevens van de Indonesische natie (1991).
3. Bung Karno, in his speech, stated that the term 'Panca Sila' is equivalent to 'Philosophische Grondslag', which translates as the basis of philosophy, signifying the deepest thoughts on which the Indonesian state is founded.

The three sources cited above demonstrate a divergence in their respective approaches and conclusions. However, the necessity for a comprehensive study that positions the five principles of the Indonesian state and the Constitutional Law of the Republic of Indonesia remains paramount.In his work, Philipus M. Hadjon elucidates that the evolution of the status of these principles can be categorized into three distinct phases. National ideology regarding the basis of the state (BPUPKI).

1. National ideology poured into the basis of the state in the constitution (18 August 1945).
2. The criticism phase, in this criticism phase there is an explicity of the status of the five principles as the basis of the state, the source of law and national ideology (A.M.W.Pranarka, 1985: pp.320,321).

The following detailed description of the position of the five principles of the Indonesian state, or 'Pancasila', as the basis of the state is provided herewith:

1. Bung Karno: Said Pancasila as 'Philosophische Grondslag'.
2. Notonagoro: Presenting Pancasila as 'Staats Fundamental Norm'.
3. A. Hamid. S. Attamimi: Presenting Pancasila not only as a 'Staatsfundamental norm' or 'Grund Norm' but also as a 'Rechtsidee'.

Of the aforementioned explanations, the first and third are to be used as the basis for the study of the Constitution of Indonesia.

It is therefore the contention of this study that the position of the Five Principles of the United Indonesian Republic (hereafter referred to as the 'Pancasila') as 'Philosophische Grondslag', is of great importance and serves as a fundamental basis for the study of the aforementioned principles. The present study posits that the study of the Five Principles of the United Indonesian Republic has hitherto been limited to 'normative' studies or mere memorisation. There has been no serious and in-depth study of the Five Principles as:

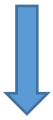
1. The personality of the Indonesian nation.
2. The study commences with the enlightenment of the soul of Pancasila and the Pancasila perspective on life.
3. Pancasila as the foundation of the state and as Indonesian Constitutional Law.
4. Pancasila as 'Legal Science in the broad sense in the layer of Legal Science'.
5. Pancasila as the origin of all sources of state law.

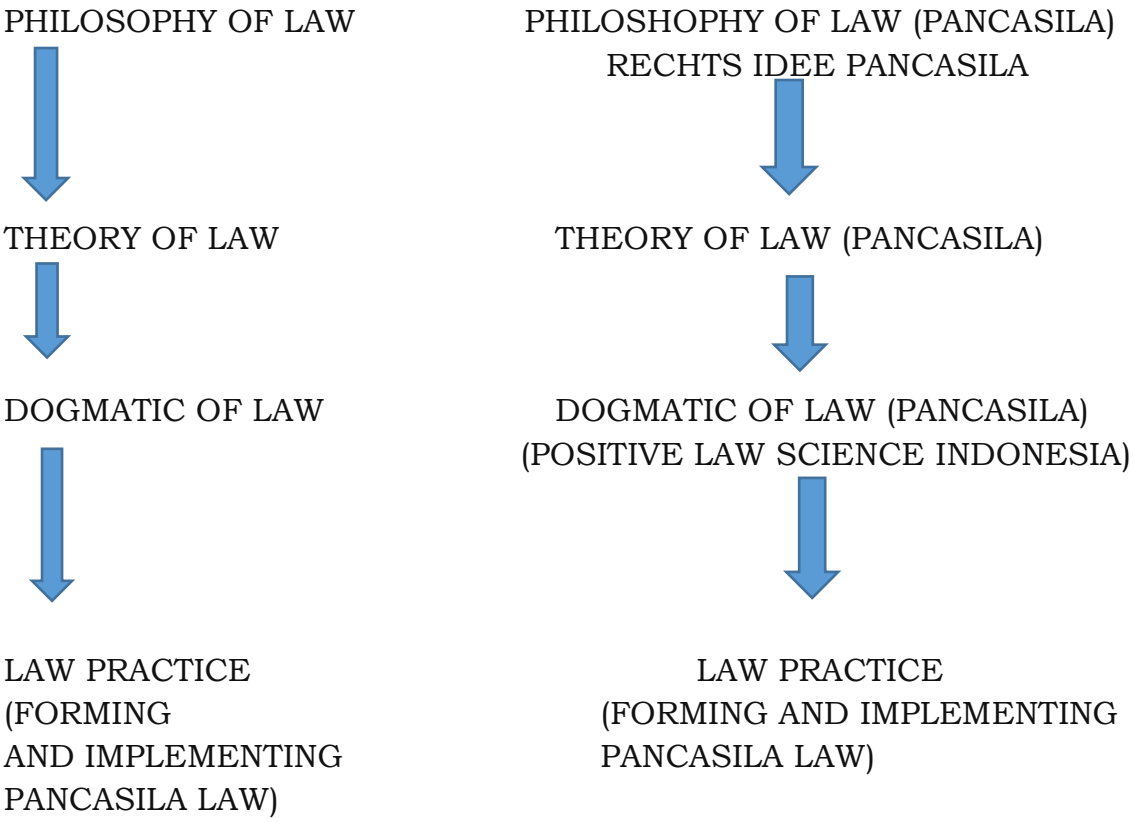
In the author's opinion, the proposal is more in-depth regarding the study of Pancasila as constitutional law in the layer of legal science. The foundation of state and constitutional law, as well as the study of constitutional law in other areas of law, is established on the following scheme.

Scheme 1 : Pancasila in the Layer of Law

LAYER OF LEGAL SCIENCE **PANCASILA**

(PHILOSOPHISCHE GRUNDSLAG)





(Retrieved from Philipus M. Hadjon, 1998 : h. 9-11).

The Preamble to the 1945 Constitution can be regarded from a philosophical perspective as the modus vivendi (noble agreement) of the Indonesian people, signifying their aspiration to coexist as a unified nation. This preamble can be likened to a birth certificate, which encompasses a declaration of independence (proclamation), in addition to self-identity and a foundation for achieving the nation's ideals and objectives. The Preamble to the 1945 Constitution, in its capacity as the foundation of the state philosophy[27], has given rise to legal ideals (rechtsidee) and the basis of its own legal system, in accordance with the spirit of the Indonesian nation.In this context, its placement is interpreted within the framework of Pancasila, as well as the source of all sources of law, a term that has been included legally and formally, and historically, from time to time. The significance of the term 'Pancasila' as the foundation for all legal sources is intrinsically linked to its role as the cornerstone of the independent Indonesian state. In this context, 'Pancasila' as the basis of the state philosophy carries three implications: firstly, political implications (Pancasila as a national ideology); secondly,

[27]Arief Hidayat, "Negara Hukum Berwatak Pancasila", *Makalah* disampaikan pada kegiatan "Peningkatan Pemahaman Hak Konstitusional Warga Negara Bagi Guru Pendidikan Pancasila dan Kewarganegaraan Berprestasi Tingkat Nasional" pada 14 November 2019 di Hotel Grand Sahid, Jakarta, h. 5.

ethical implications (Pancasila as a source of ethical norms of the state); and thirdly, legal implications (Pancasila as a source of all legal sources)[28]. These principles are further delineated in the articles of the NRI Constitution as fundamental legal norms of the state, and are subsequently elaborated upon in subsequent legislation, which is arranged in a hierarchical structure.

The formulation of the five principles of the Indonesian state, collectively known as 'Pancasila', along with their inclusion in the Preamble of the 1945 Constitution of the Republic of Indonesia, which is widely regarded as the nation's highest legal authority, constitutes a comprehensive declaration of independence. In this context, the Preamble serves as a legal foundation, delineating the ideological underpinnings of the Indonesian nation. The fundamental matters of the state (goals, forms and spiritual principles of the state) as the foundations of the establishment of Indonesia are set out in the 1945 Constitution of the Republic of Indonesia. This document is regarded as the highest legal order and a detailed declaration of independence for Indonesia. It is therefore considered an absolute factor for the existence of the national legal order and the basis for the regularity of laws and regulations (inside and outside the hierarchy) under the 1945 Constitution of the Republic of Indonesia. In this way, the concept of the five principles of the Indonesian state (Pancasila) is established as the source of all sources of law. Janedjri M. Gaffar has asserted that the opening of the 1945 Constitution holds historical significance in the establishment of the state, as it was originally intended as a text for the declaration of independence. Therefore, the values of the five principles of the Indonesian state system (Pancasila) were indeed intended by the founders of the nation as the basis for an independent Indonesia. These foundations were established definitively and are the basis for all national legal systems[29] .

It is evident that the values of the Pancasila as the foundational principles of the state represent a fundamental consensus that has remained unaltered throughout Indonesia's journey towards independence. Despite the evolution of the constitution as the paramount positive law, the fundamental values of the Pancasila remain constant. Indeed, it is imperative that every constitution and applicable legal regulations be predicated on the values of the Pancasila. The formulation of the Pancasila embodies both objective and subjective dimensions. From an objective standpoint, the formulation of the

---

[28]Kaelan, 2017, *Inkonsistensi dan Inkoherensi dalam Undang-undang Dasar Negara Republik Indonesia Tahun 1945 Hasil Amandemen (Kajian Filosofis-Yuridis)*, Cetakan Pertama, Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, Jakarta, h. 39-41.

[29]Janedjri M. Gaffar, "Pancasila dan Perlindungan Hak Konstitusional Warga Negara", *Makalah* disampaikan pada kegiatan "Sosialisasi Pemahaman Hak Konstitusional Warga Negara bagi Dosen Pendidikan Pancasila dan Kewarganegaraan wilayah Sulawesi Selatan", Makassar pada 19 September 2016, h. 3.

five principles of the state's fundamental values possesses profound significance, signifying the presence of universal and abstract characteristics that serve as values. The values of the five principles endure throughout time, manifesting in customs, culture, statecraft, and the life of the Indonesian nation. Consequently, the five principles of the state's fundamental values become the foundational principle of all legal sources in Indonesia. From a subjective standpoint, the existence of these values is contingent on the volition of the Indonesian people, as they are believed to be the progeny of Indonesian society itself. The values of the Indonesian people are regarded as the foundation for values, truth, goodness, justice, wisdom in the nation and state. Furthermore, the values of the Indonesian people are considered to encompass spiritual values, conscience, and the Indonesian people's identity.

Mahfud M.D. emphasised that the acceptance of the five principles of the state (the 'Panca Dharma') as the basis of the state carries the consequence of accepting and enforcing guiding principles in making state policies, especially in national legal politics. From this basis, at least four guiding principles were born in making legal politics or other state policies, namely:[30]

1. General policies and legal politics must maintain the integration or integrity of the nation, both ideologically and territorially.
2. General policies and legal politics must be based on efforts to build democracy (people's sovereignty) and nomocracy (a state based on law) concurrently.
3. General policies and legal politics must be based on efforts to build social justice for all Indonesian people. Indonesia does not adhere to liberalism, but rather, it is ideologically aligned with the prismatics between individualism and collectivism, with an emphasis on general welfare and social justice.
4. Furthermore, it is crucial to emphasise the necessity of civilised religious tolerance as a fundamental principle underpinning general policies and legal politics. It is imperative to acknowledge that Indonesia does not constitute a religious state; consequently, it is not permitted to formulate policies or legal frameworks that are dominated by a specific religion, irrespective of its nomenclature. However, it is equally essential to recognise that Indonesia is not a secular state that is devoid of religion. It is therefore incumbent upon us to ensure that every policy or legal policy is inspired by the noble teachings of various religions that have a commendable vision for humanity.

[30]Mohammad Mahfud MD., "Pancasila sebagai Hasil Karya dan Milik Bersama", *Makalah* Pelengkap atas Naskah "Keynote Speech" pada Kongres Pancasila I yang diselenggarakan dalam Kerjasama antara Mahkamah Konstitusi Republik Indonesia dan Universitas Gadjah Mada, di Yogyakarta, 30 Mei 2009, h. 16-18.

In this particular instance, the term 'Pancasila' is designated as the 'grundnorm' or basic norm of the Indonesian nation. This concept signifies the highest norm that serves as the unifying foundation for the norm system within an orderly society, including the state. It is noteworthy that the nature of the state is considered to be unchanging[31]. In the legal unity order of the state (staatsfundamentalnorm), legal norms are binding regulatory provisions that exhibit a hierarchical or tiered nature. This means that legal norms are based on higher legal norms, which are in turn sourced from even higher legal norms, and so on until the basic norm/highest norm in a state called grundnorm. The state philosophy, thus, constitutes a fundamental norm in the organisation of the state, serving as the origin of all legal principles and the legal ideal (rechtsidee), encompassing both codified and uncodified elements [32]. This legal ideal is said to guide the law in accordance with the common ideals of the populace, reflecting the shared interests and aspirations of the citizenry[33].

The 1945 Constitution of the Republic of Indonesia, which is the foundational document of the state of law in Indonesia, is the basis for this system. It encompasses the Preamble and Article 1 paragraph (3) of the 1945 Constitution, which form the foundation for the legal framework of the state. The Indonesian state of law[34], which also commences by maintaining the Preamble to the 1945 Constitution of the Republic of Indonesia, including the Fourth Paragraph, which constitutes the formal legal formulation of the Five Principles into the national legal order and as the source of all sources of national law. The 1945 Constitution of the Republic of Indonesia contains the Preamble to the 1945 Constitution of the Republic of Indonesia, which contains the ideals of the state or rechtsidee in the form of five points[35]. This is further reinforced by the objectives of the Indonesian state as outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia, which are intended to encapsulate the aspirations of the nation and state. This is particularly evident in the ability to place the fundamental principles that are

---

[31]Tim Redaksi Majalah Parlementaria, 2017,"Membumikan Pancasila Menjaga Indonesia", *Majalah Parlementaria*, Edisi 150 Tahun XLVII, h. 6-7.

[32]Dyah Hapsari Prananingrum, 2016,"Pancasila sebagai Dasar dalam Kehidupan Sosial Budaya", *Jurnal Majelis: Media Aspirasi Konstitusi*, Edisi 01 Tahun I, 24-34, h. 31.

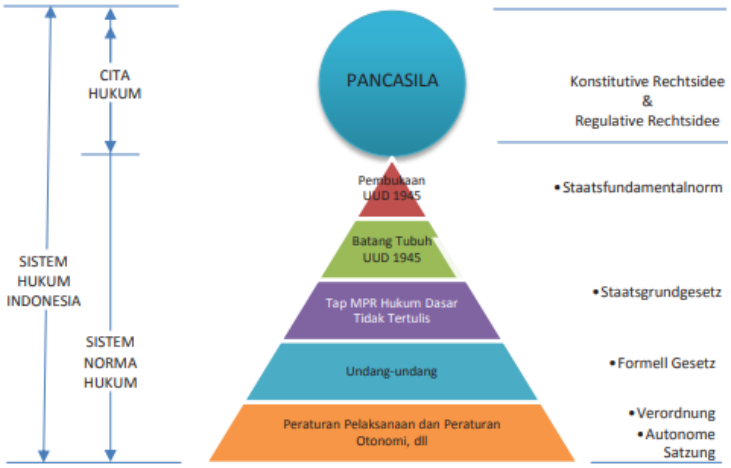
[33]Arief Hidayat,"Pancasila sebagai Kaidah Penuntun dalam Pembentukan Hukum Nasional", *Makalah* disampaikan dalam kapasitas sebagai Wakil Ketua Mahkamah Konstitusi pada Seminar Nasional dengan tema,"Menyoal: Pengaturan Tenaga Kesehatan dalam Rancangan Undang-undang Tenaga Kesehatan", 16 November 2013 di Universitas Katolik Soegijapranata, Semarang, h. 6-7.

[34]Philipus Mandiri Hadjon, 1998, Pancasila sebagai Dasar Negara dan Hukum Tata Negara, *Majalah Hukum Yustika*, Surabaya, Fakultas Hukum Universitas Surabaya, Volume XVII, Nomor 1, h. 11.

[35]Andy Omara, 2019,"The Functions of the 1945 Constitutional Preamble", *Mimbar Hukum*, Volume 31, Nomor 1, Februari, 140-156, DOI: 10.22146/jmh.30076, pp. 145-151.

intrinsic to the concept of Indonesia as a State of Law, thereby ensuring the paramountcy of national law[36].

Figure 2. Pancasila as the Source of All Sources of Law (Interpreted as the Idea of Law) in National Legislation



Source: Processed by the Author fro, Various Literature

The National Legal Ideal comprises five bases to achieve the goals of the state. The law, as a tool to achieve these goals, must also function and be based on the principles of legal ideals (rechtsidee), namely protecting all elements of the nation (nation)[37]. The four principles of legal ideals, as outlined above, serve as the foundational tenets that govern the realisation of the state's ideals and objectives[38]. It is imperative to recognise the normative and constitutive nature of legal ideals, which serve as a framework for belief systems that guide the establishment and maintenance of the nation's legal and political integrity. The legal ideal is normative in the sense that it serves as the basis and ideal prerequisite for every positive law. It is also constitutive in the sense that it directs the law towards the goals to be achieved by the state[39]. In order to maintain the integration or integrity of the nation, general policies and legal politics must continue to be based on efforts to build democracy and nomocracy at the same time; general policy and legal politics

[36]Yudi Latif, 2017,"Pancasila adalah Titik Temu, Titik Pijak dan Titik Tuju", *Majalah Parlementaria,* Edisi 150 Tahun XLVII, h. 16-17.

[37]Muhammad Hanafi, 2013,"Kedudukan Musyawarah dan Demokrasi di Indonesia", *Jurnal Cita Hukum*, Volume 1, Nomor 2, Desember, 227-246, DOI: 10.15408/jch.v1i2.2657, h. 238-241.

[38]Putera Astomo, 2014,"Pembentukan Undang-undang dalam Rangka Pembaharuan Hukum Nasional di Era Demokrasi", *Jurnal Konstitusi*, Volume 11, Nomor 3, 577-599, DOI: https://doi.org/10.31078/jk%25x, h. 581-583.

[39]Wahyu Nugroho, 2013,"Menyusun Undang-undang yang Responsif dan Partisipatif berdasarkan Cita Hukum Pancasila", *Jurnal Legislasi Indonesia*, Volume 10, Nomor 03, September, 209-218, h. 211-212.

are based on efforts to build social justice based on the principle of civilized religious tolerance, and are framed by national legal ideals for the direction of law that will be enforced by the state to achieve state goals both by creating new laws and replacing old laws in Indonesia[40].

b. Pancasila in teh Future: In the Trajectory of Positive Law and Constitutional Court Decisions in Relation of the Qualaity of Indonesian Legislation

In Law Number 12 of 2011, in conjunction with Law Number 15 of 2019 concerning the Formation of Legislation (UU P3 2011), specifically in Article 2 of Law P3 2011, emphasis is placed on the fact that the five principles of the Indonesian state (Pancasila) are the source of all sources of state law, as in Part II. The Article-by-Article Explanation of Article 2 of Law P3 2011 asserts that the aforementioned placement of the principles of the United Nations (UN) is consistent with the Preamble to the 1945 Constitution of the Republic of Indonesia, specifically paragraph four, which emphasises the following: Belief in the One Almighty God, Just and civilized humanity, Unity of Indonesia, Democracy guided by the wisdom of deliberation/representation, and Social justice for all Indonesian people[41]. The placement of the five principles of the United Nations (the five principles being: belief in the one almighty God, just and civilised humanity, unity of Indonesia, democracy guided by the wisdom of deliberation/representation, and social justice for all Indonesian people) as the basis and ideology of the state, as well as the philosophical basis of the state, means that any material contained in legislation must not conflict with the values contained in the aforementioned principles.

The inclusion of reflections of the values contained in the five principles of the Constitution in the principles of the formation of laws and regulations is also a key factor in this process. This is stipulated in Chapter II, Principles of Laws and Regulations, Article 6, paragraph (1) and (2) of Law P3 2011. The content of laws and regulations must reflect the principles of: a. protection; b. humanity; c. nationality; d. kinship; e. archipelago;f. unity in diversity;g. justice;h. equality before law and government; i. order and legal certainty;

[40]Kuat Puji Prayitno, 2011,"Pancasila sebagai "Screening Board" dalam Membangun Hukum di Tengah Arus Globalisasi Dunia yang Multidimensional", *Jurnal Dinamika Hukum*, Volume 11, Edisi Khusus, Februari, 150-166, DOI: http://dx.doi.org/10.20884/1.jdh.2011.11.Edsus.271, h. 159-160.

[41]Wawan Fransisco, 2017,"Pancasila sebagai Landasan Hukum di Indonesia", *Progresif: Jurnal Hukum*, Volume 11, Nomor 1 (Juni), 1828-1837, DOI: https://doi.org/10.33019/progresif.v11i1.196, h. 1835-1836.

and/or j. balance, harmony, and alignment[42]. In addition to reflecting these principles, certain Laws and Regulations may contain other principles in accordance with the legal field of the Laws and Regulations concerned.

The aforementioned principles have been identified as the fundamental tenets underlying the legal framework of the state, as outlined in the Preamble to the Fourth Paragraph of the 1945 Constitution. This preamble is widely regarded as a paradigm of a state founded on the principles of divinity (theism), humanity (humanism), nationality (nationalism), democracy (democracy), and socialism (socialism). These principles encapsulate the values of universality and particularity that are deeply entrenched in the traditions of the Indonesian nation [43].

In the context of the ontological perspective, the existence of the five principles of the Indonesian state, known as "Pancasila", can be regarded as having a substantial dimension. This is due to the fact that the aforementioned principles are regarded as the foundation for all legal sources in Indonesia. Therefore, Pancasila can be considered the highest law in Indonesia, and thus must be used as a source in the formation of legislation. A minimum of several decisions can be identified as embodying the concept of the unity of the Preamble to the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia, as a tool for the Constitutional Court in constitutional review. The concept of Pancasila as the foundational principle of all legal principles has garnered attention and acknowledgement from the judicial institution, manifesting in the form of interpretation by the Constitutional Court through the deliberations of constitutional judges in numerous Constitutional Court Decisions. These decisions are intended to reinforce the fundamental tenets of Pancasila within the national legal framework.

1. Constitutional Court Decision Number 82/PUU-XVI/2018 (PUMK 82/PUU-XVI/2018)

PUMK 82/PUU-XVI/2018 was conducted for the purpose of testing Article 7 of Law P3 2011 against Article 1, paragraph (1), (2) and (3), of the 1945 NRI Constitution. As for Point [3.10] Legal Considerations, the Constitutional Justice emphasised the existence of the five principles of the 1945 NRI Constitution, which are regarded as the source of all laws. This assertion is supported by several points in Point [3.10], including:1. The inclusion of the text of the Explanation of Article 2 of Law P3 2011. The

[42]Teguh Prasetyo, 2016, *Sistem Hukum Pancasila (Sistem, Sistem Hukum dan Pembentukan Peraturan Perundangundangan di Indonesia, Perspektif Teori Keadilan Bermartabat*, Bandung, Nusa Media, h. 43.

[43]Christina Maya Indah Susilowati, 2016,"Pancasila sebagai Sumber Segala Sumber Hukum dan Kekerasan atas Nama Agama di Indonesia", *Masalah-masalah Hukum*, Volume 45, Nomor 2 (April), 93-100, DOI: 10.14710/mmh.45.2.2016.93-100, h. 94-95.

mention of the concept of Pancasila as the foundational principle of all legal principles is significant, as it can be regarded as an "initial premise," representing the basis from which all other legal tenets originate. Consequently, from a doctrinal perspective, its validity can be acknowledged (its validity is presumed, as it is considered to be a fundamental basis for the legal system). The Panel of Constitutional Justices has categorised Pancaila as an element that cannot be incorporated into positive law, on the grounds that it exceeds the scope of the positive legal order (transcendental logic). However, the values inherent within Pancaila are held to serve as the arbiter of the validity of the entire positive legal order. In this particular instance, all laws and regulations cited in Law 12/2011 are required to be sourced from the values of Pancaila. Consequently, all laws and regulations must embody the values of Pancaila. The Panel of Constitutional Justices emphasised that Pancasila is the source of all sources of law; however, it cannot be interpreted as being synonymous with laws and regulations, nor as a type of laws and regulations.

2. Constitutional Court Decision Number 59/PUU-XIII/2015 (PUMK 59/PUU-XIII/2015)

PUMK 59/PUU-XIII/2015 is the subject of this study, with the aim of testing the existence of MPR Decree Number XVIII/MPR/1998 concerning the affirmation of the five principles of the Indonesian state. This is the foundation of the Indonesian state, and it also serves to eliminate P4 through the revocation of MPR Decree II/MPR/1978 concerning P4. This is based on testing the provisions of the Explanation of Article 7 paragraph (1) letter b of the 2011 P3 Law insofar as it relates to the existence of Article 1 of MPR Decree Number XVIII/MPR/1998, which in this case is included in Category VI Article 6 number (91) of MPR Decree Number I/MPR/2003 as an MPR Decree that is categorized as, "it is stated that no further legal action is necessary, either because it is final (einmalig) and has been revoked, or has been completed". The Constitutional Court emphasised the role of the five principles of the Indonesian state ideology, known as the 'Pancasila', as the foundation for all legal principles in Point [3.6] Legal Considerations, as outlined in Article II of the Additional Rules of the 1945 Constitution, which underscores that the 1945 Constitution of the Republic of Indonesia comprises a preamble and articles. In this case, the preamble to the 1945 Constitution of the Republic of Indonesia, which substantively contains the points of the five principles of the Indonesian state (and the source of all national laws), so that the five principles are an inseparable part of the preamble to the 1945 Constitution of the Republic of Indonesia.2. Referring to Article 37 of the 1945 Constitution of the Republic of Indonesia, the Court emphasised that only the articles of the 1945 Constitution are subject to the provisions on amendments to the Constitution, excluding the Preamble to the

1945 Constitution of the Republic of Indonesia. Consequently, the Preamble to the 1945 Constitution of the Republic of Indonesia, which is inextricably linked to the Preamble, inherently lacks the constitutional foundation to modify the principles of the state, as embodied in the Preamble.

3. Constitutional Court Decision Number 100/PUU-XI/2013 (PUMK 100/PUU-XI/2013)

PUMK 100/PUU-XI/2013 was issued for the purpose of evaluating Article 34 paragraph (3b) letter a of Law Number 2 of 2011 as an Amendment to the 2 008 Political Party Law, in this case, the article regulates the priority of utilizing financial assistance to political parties from the APBN/APBD for political education for political party members and the community, including through in-depth study of the four pillars of the nation and state, namely the five principles of the Indonesian state, the 1945 Constitution, the philosophy of Bhinneka Tunggal Ika, and the Unitary State of the Republic of Indonesia. The emphasis requested is on the decline in the status of the five principles of the nation and state, seen as a fundamental error, epistemological chaos, and a fundamental error[44]. In PUMK 100/PUU-XI/2013, the Constitutional Court also reaffirmed the existence and position of the five principles of the nation and state, especially as the foundation of the state (including the source of all sources of law), as started 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:

The phrase "four pillars of the nation and state" is employed as the material for political education by positioning the pillars of the nation and state as equal entities. The term "four pillars" is traced through the meaning of "pillars" according to the KBBI (Bahasa Indonesia for "strengthening pillar, main/parent basis, kap tiang"). In this case, the Court interprets the phrase "four pillars" to signify the four pillars of the nation and state, as well as the four fundamental or primary foundations of the nation and state. This interpretation is deemed unconstitutional from a constitutional perspective. The four political education materials are all encompassed within the 1945 Constitution, specifically the term/name "Pancaca Cita" as mentioned in the Preamble to the 1945 Constitution. However, it is noteworthy that the term

[44]Sejauh ini baru terdapat dua artikel jurnal yang betul-betul memberikan penjelasan cukup baik dalam substansi Pancasila menurut tafsir konstitusi pada Putusan MK Nomor 100/PUU-XI/2013 tersebut, yakni dalam: Bayu Dwi Anggono, 2014,"Konstitusionalitas dan Model Pendidikan Karakter Bangsa Pasca Putusan Mahkamah Konstitusi, *Jurnal Konstitusi*, Volume 11, Nomor 3 (September): 492-514, DOI: https://doi.org/10.31078/jk%25x, h. 500-503. Dapat merujuk juga: Hastangka, Armaidy Armawi dan Kaelan, 2018,"Analisis Putusan Mahkamah Konstitusi Nomor 100/PUU-XI/2013 tentang Pembatalan Frasa Empat Pilar Kehidupan Berbangsa dan Bernegara", *Mimbar Hukum*, Volume 30, Nomor 2 (Juni): 230-245, DOI: 10.22146/jmh.32660, h. 240-243.

"Pancaca Cita" is not explicitly mentioned in the Preamble. Instead, it is implied that "Pancaca Cita" is the basis of the state, as outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia, Paragraph Four. The Constitutional Court's reference to the substance of the five principles of the 1945 Constitution of the Republic of Indonesia is regarded as constitutional. The Preamble to the 1945 Constitution of the Republic of Indonesia establishes the principles of the state as the foundation for the nation. As the foundational principles of the state, the values outlined in the Five Principles of Pancasila (Pancasila) are regarded as the cornerstone for the functioning of the Indonesian state government, which is tasked with ensuring the protection, welfare, intelligence, and active participation of the nation in the global order. The conceptualisation of Pancasila as one of the pillars, in addition to its equal standing alongside other foundational pillars, has the potential to engender epistemological, ontological, and axiological disorder. Pancasila occupies a distinctive position within the framework of Indonesian national and state thinking, as articulated in the constitution. In addition to serving as the foundation for the state, it also underpins the state philosophy, the fundamental norms of the state, the state ideology, and the state's legal ideals, among other crucial elements. Consequently, the strategic placement of pancasila as one of the pillars has the potential to obfuscate its fundamental role and position within the constitutional framework.

Helen Xanthaki posits that the quality of legislation can be evaluated as a tool to assess the efficacy, effectiveness, and efficiency of legislative design, as well as clarity, accuracy, vagueness, and the use of comprehensible and gender-neutral language[45]. Indicators suggest that legislative quality is substandard due to a lack of clarity, ambiguity, inappropriate priority setting parameters, non-compliance with specific procedures and rules regarding legislative design, absence of objections to implementation, inadequate law enforcement mechanisms, lack of apparatus and institutions, and unsatisfactory pre- or post-evaluation mechanisms.In her response to Xanthaki's argument that legislative quality is an important measure of effective government policy in solving social problems. The quality of legislation is characterised by intricacy, contextual perspective, multidisciplinary approach, methodological dependence, and adherence to the country's legal tradition [46]. The government and parliament must ensure that the legislative design process adheres to appropriate techniques, measures, normative structures, strict procedures, rules, and administrative aspects that are in accordance with the principles of legislation and good

[45]H. Xanthaki, 'Drafting Manuals and Quality in Legislation: Positive Contribution towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?', 4(2) (2010), *Legisprudence*, DOI: 10.1080/17521467.2010.11424705, 111 at 113-117.

[46]V.E. Aitken, 'An exposition of legislative quality and its relevance for effective development', (2013) 2(1), *ProLaw Student Journal,* 1 at 2-3, 10-12.

governance. The issue of quality is inherently related to a holistic approach to legal issues that addresses theoretical elements and facilitates practical components in relation to the content and structure of legislation. In order to ensure quality in this context, it is essential to comply with legal procedures. The appropriate methodologies can serve as instruments for social change in achieving formal, material, or substantive legislative quality.

In further context, Tímea Drinóczi emphasised the significance of the quality of legislation in terms of its legality, effectiveness, clarity, transparency and accessibility during the legislative drafting process. This has a substantial impact on the quality of legislation and must be carried out with participation, obedience or compliance with constitutional orders[47]. The coordination of efforts between the majority and minority factions in parliament, along with the various parties comprising the government apparatus, is imperative. This harmonisation process is crucial for the accommodation of the diverse interests encompassed within the political spectrum. It is paramount to maintain the principles of constitutional democracy at every stage of the legislative process, from its pre- to post-legislation stages. This ensures that legislation is crafted to promote and enhance social and economic goals, while adhering to open, evidence-based, constitutional, practical and efficient methodologies. The objective is to address challenges by identifying specific policy alternatives in accordance with the principles of good legislation and governance, as well as the rule of law and democratic values. Furthermore, any proposed bill must not violate the Constitution, national ideology, public interest or national development agenda. It plays a fundamental role in improving the quality of legislation, especially by ensuring the appropriateness, effectiveness, efficiency, clarity and compliance of policy implementation. It provides the best form of accommodation to resolve legal issues. Additionally, it has the potential to mitigate the likelihood of judicial review or legislative issues arising in the future.

Existing studies have exclusively focused on the legislative design process in Indonesia. However, it is imperative to consider the context of the five principles of the Indonesian state (Pancasila) when assessing the quality of legislation. This should not be limited to the parameters set out in Constitutional Court Decision Number 91/PUU-XVIII/2020, which contextualises meaningful participation and formal procedural contexts that must be met in the formation of legislation. In future studies, the five principles of the Indonesian state must also be observed. In this context, the five selected studies demonstrate a paucity of attention to legislative planning (including Prolegnas) in their perspective. Firstly, Arsil et al. posit that the

[47]T.Drinóczi, 'Concept of Quality in Legislation— Revisited: Matter of Perspective and a General Overview', (2015) 36(3) *Statute Law Review*, DOI: 10.1093/slr/hmv008, 211 at 215-220.

position of Prolegnas in the Indonesian legislative model is due to the combination of presidential and parliamentary powers[48]. The President's direct involvement in submitting draft laws and issuing five-year plans for Prolegnas appears to weaken the role of parliament in the law-making process. However, the study does not demonstrate the relevance of legislative planning to improve the quality of legislation, especially in relation to the problems faced by Indonesia in issuing Prolegnas. This assertion is further substantiated by the observations of Wasti et al., which address the function of parliament within the Indonesian constitutional system, particularly in the context of the management of the pandemic [49]. The evaluation conducted by the House of Representatives (DPR) on the Prolegnas underscores this point, highlighting the asymmetric response to the pandemic in terms of legislative drafting processes. In some cases, the ratification of Perppu (Government Regulation in Lieu of Law) has resulted in the permanent enactment of laws.Additionally, the challenges associated with Prolegnas during this period pertain to the ratification of laws not included in the Prolegnas by the DPR, with some of these laws classified as open cumulative laws or non-Prolegnas. This observation suggests that the DPR has not assumed a leading role and has overlooked the pandemic as a matter of emergency. Nevertheless, this study does not provide sufficient evidence to support the hypothesis that legislative planning in the Prolegnas format can enhance the quality of legislation and ensure an effective drafting process conducted by the DPR.

While, Hermanto and Aryani revealed that legislative planning instruments still do not utilise legislative design measurements effectively to address the legal needs and social interests of the community, despite there having been efforts to seek legislative reform[50]. The tendency to prioritise the application of novel methodologies over the utilisation of Prolegnas as a means to address prevailing legislative challenges is evident. However, this study has not incorporated adequate legislative planning that can be executed as a periodic accomplishment by the legislature, with a focus on legislative design aimed at enhancing legislative quality.

IV. CONCLUSION

[48]Fitra Arsil, Qurrata Ayuni & Ariesy Tri Mauleny (2022): The disappearance of the 'legislative model': Indonesian parliament's experience in response to Covid-19, *The Journal of Legislative Studies*, in-press, 1-23, DOI: https://doi.org/10.1080/13572334.2022.2067948, pp. 2-3, 9.

[49]Ryan Muthiara Wasti, Nisrina Irbah Sati & Fatmawati (2022): Law-making in the time of pandemic as a new state of emergency in Indonesia, *The Journal of Legislative Studies*, *in-press*, 1-22, DOI: https://doi.org/10.1080/13572334.2022.2116836, pp. 4-5, 11-14.

[50]Bagus Hermanto & Nyoman Mas Aryani (2021) Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice, *The Theory and Practice of Legislation*, 9(3), 425-450, DOI: https://doi.org/10.1080/20508840.2022.2027162, pp. 435-436.

The present article is limited to two main issues, namely (1) the dynamics of the five principles of the Indonesian state ideology as a legal ideal, and (2) the futuristic dimension based on positive law and the Constitutional Court's decisions related to the aforementioned principles as a basis for improving the quality of future legislation. The results obtained demonstrate that the recognition of the inseparable nature of the five principles of the United Nations as a legal ideal and the primary source of national law is paramount. This underscores the necessity for future legislative formations to deliberate on the incorporation of the principles of the Pancasila as a consideration in enhancing the quality of future legislation.

REFERENCE

A, Seidman and R,B. Seidman, 'ILTAM: Drafting Evidence-Based Legislation for Democratic Social Change', (2009) 89(3), Boston University Law Review.

A. Benish and D.L. Faur, 'The Expansion of Legislation in Welfare Governance' (2020) 691(3) The Annals of American Academy of Political and Social Sciences, DOI: 10.1177/0002716220949230.

A.H.Y. Chen, 'Pathways of Western liberal constitutional development in Asia: A comparative study of five major nations', International Journal of Constitutional Law, (2010) 8(4), DOI: 10.1093/icon/mor002.

A.M. Mudhoffir and R.Q. A'yun, 'Doing business under the framework of disorder: illiberal legalism in Indonesia', (2021) Third World Quarterly, DOI: https://doi.org/10.1080/01436597.2021.1967738.

A.Seidman, R.B. Seidman, N.Abeyesekera, and J.Seidman, Assessing Legislation - A manual for legislators, (Boston, Massachusetts: Boston University School of Law's Program on Legislative Drafting for Democratic Social Change, 2003).

Andy Omara, 2019,"The Functions of the 1945 Constitutional Preamble", Mimbar Hukum, Volume 31, Nomor 1, Februari, 140-156, DOI: 10.22146/jmh.30076.

Arief Hidayat, "Negara Hukum Berwatak Pancasila", Makalah disampaikan pada kegiatan "Peningkatan Pemahaman Hak Konstitusional Warga Negara Bagi Guru Pendidikan Pancasila dan Kewarganegaraan Berprestasi Tingkat Nasional" pada 14 November 2019 di Hotel Grand Sahid, Jakarta.

Arief Hidayat,"Pancasila sebagai Kaidah Penuntun dalam Pembentukan Hukum Nasional", Makalah disampaikan dalam kapasitas sebagai Wakil Ketua Mahkamah Konstitusi pada Seminar Nasional dengan tema,"Menyoal: Pengaturan Tenaga Kesehatan dalam Rancangan Undang-undang Tenaga Kesehatan", 16 November 2013 di Universitas Katolik Soegijapranata, Semarang.

Bagus Hermanto & Nyoman Mas Aryani (2021) Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice, The Theory and Practice of Legislation, 9(3), 425-450, DOI: https://doi.org/10.1080/20508840.2022.2027162.

Bayu Dwi Anggono, 2014,"Konstitusionalitas dan Model Pendidikan Karakter Bangsa Pasca Putusan Mahkamah Konstitusi, Jurnal Konstitusi, Volume 11, Nomor 3 (September): 492-514, DOI: https://doi.org/10.31078/jk%25x.

C. Coglianese (2012), Measuring Regulatory Performance: Evaluating the Impact of Legislation and Regulatory Policy, OECD Expert Paper No.1 August, OECD Publishing.

C. Kirkpatrick, 'Assessing the Impact of Regulatory Reform in Developing Countries' (2014) 34(3) Public Administration and Development, DOI: 10.1002/pad.1693.

C. Koop and C. Hanretty. 'Political independence, accountability, and the quality of regulatory decision-making', (2018) 51(1), Comparative Political Studies, DOI: https://doi.org/10.1177/0010414017695329.

Christina Maya Indah Susilowati, 2016,"Pancasila sebagai Sumber Segala Sumber Hukum dan Kekerasan atas Nama Agama di Indonesia", Masalah-masalah Hukum, Volume 45, Nomor 2 (April), 93-100, DOI: 10.14710/mmh.45.2.2016.93-100.

Dyah Hapsari Prananingrum, 2016,"Pancasila sebagai Dasar dalam Kehidupan Sosial Budaya", Jurnal Majelis: Media Aspirasi Konstitusi, Edisi 01 Tahun I, 24-34.

Fitra Arsil, Qurrata Ayuni & Ariesy Tri Mauleny (2022): The disappearance of the 'legislative model': Indonesian parliament's experience in response to Covid-19, The Journal of Legislative Studies, in-press, 1-23, DOI: https://doi.org/10.1080/13572334.2022.2067948.

G.M.W. Atmaja, N.L.G. Astariyani, N.M. Aryani & B. Hermanto, et al., Hukum Kebijakan Publik (Denpasar: Swasta Nulus, 2022).

H. Sanborn, 'Popular support for legislatures in Asia', (2019) 25(2) The Journal of Legislative Studies, DOI: 10.1080/13572334.2019.1603197.

H. Xanthaki, 'Drafting Manuals and Quality in Legislation: Positive Contribution towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?', 4(2) (2010), Legisprudence, DOI: 10.1080/17521467.2010.11424705.

Hastangka, Armaidy Armawi dan Kaelan, 2018,"Analisis Putusan Mahkamah Konstitusi Nomor 100/PUU-XI/2013 tentang Pembatalan Frasa Empat Pilar Kehidupan Berbangsa dan Bernegara", Mimbar Hukum, Volume 30, Nomor 2 (Juni): 230-245, DOI: 10.22146/jmh.32660.

I Dewa Gede Atmadja, 2006, Hukum Konstitusi, Perubahan Konstitusi dari Sudut Pandang Perbandingan, Cetakan Pertama, Editor : I Gede Yusa, Denpasar : Lembaga Pers Mahasiswa FH Unud bekerjasama dengan Penerbit Bali Aga.

I.C.van der Vlies, 'Legislation in a global perspective', in: J. Arnscheidt, B. van Rooij, and J.M. Otto (eds.), Lawmaking for Development Explorations into the theory and practice of international legislative projects, 133-144, (Amsterdam: Leiden University Press, 2008).

Ittai Bar-Siman-Tov, 2018, Temporary legislation, better regulation, and experimentalist governance: An empirical study, Regulation & Governance, 12(2), 192-219, DOI: https://doi.org/10.1111/rego.12148.

J. Braithwaite, C. Coglianese, and D.L. Faur, 'Can legislation and governance make a difference?', (2007) 1(1), Regulation & Governance, DOI: https://doi.org/10.1111/j.1748-5991.2007.00006.x.

J. Braithwaite, C. Coglianese, and D.L. Faur, 'Change and challenge in legislation and governance', (2008) 2(4), Regulation & Governance, DOI: https://doi.org/10.1111/j.1748-5991.2008.00049.x.

Janedjri M. Gaffar, "Pancasila dan Perlindungan Hak Konstitusional Warga Negara", Makalah disampaikan pada kegiatan "Sosialisasi Pemahaman Hak Konstitusional Warga Negara bagi Dosen Pendidikan Pancasila dan Kewarganegaraan wilayah Sulawesi Selatan", Makassar pada 19 September 2016.

Jimly Asshiddiqie 2009, Pengantar Ilmu Hukum Tata Negara, Edisi Revisi, Jakarta : RajaGrafindo Persada.

Kaelan, 2017, Inkonsistensi dan Inkoherensi dalam Undang-undang Dasar Negara Republik Indonesia Tahun 1945 Hasil Amandemen (Kajian Filosofis-Yuridis), Cetakan Pertama, Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, Jakarta.

Kuat Puji Prayitno, 2011,"Pancasila sebagai "Screening Board" dalam Membangun Hukum di Tengah Arus Globalisasi Dunia yang Multidimensional", Jurnal Dinamika Hukum, Volume 11, Edisi Khusus, Februari, 150-166, DOI: http://dx.doi.org/10.20884/1.jdh.2011.11.Edsus.271.

Louay Abdulbaki, 'Democratisation in Indonesia: From Transition to Consolidation', (2008) 16(2) ,Asian Journal of Political Science, DOI: https://doi.org/10.1080/02185370802204099.

M.Mousmouti, 'Operationalising Quality of Legislation through the Effectiveness Test', (2012) 6(2), Legisprudence, DOI: 10.5235/175214612803596686.

Mohammad Mahfud MD., "Pancasila sebagai Hasil Karya dan Milik Bersama", Makalah Pelengkap atas Naskah "Keynote Speech" pada Kongres Pancasila I yang diselenggarakan dalam Kerjasama antara Mahkamah Konstitusi Republik Indonesia dan Universitas Gadjah Mada, di Yogyakarta, 30 Mei 2009.

Muhammad Hanafi, 2013,"Kedudukan Musyawarah dan Demokrasi di Indonesia", Jurnal Cita Hukum, Volume 1, Nomor 2, Desember, 227-246, DOI: 10.15408/jch.v1i2.2657.

N.Kosti, D.L. Faur, and G. Mor, 'Legislation and legislation: three analytical distinctions', (2019) 7(3), The Theory and Practice of Legislation, DOI: 10.1080/20508840.2019.1736369.

Patricia Popelier, 2008, Five paradoxes on legal certainty and the lawmaker, Legisprudence, 2(1), 47-66, DOI: https://doi.org/10.1080/17521467.2008.11424673.

Peter van Lochem, Legislation against the rule of law – an introduction, (2017) 5(2), The Theory and Practice of Legislation, DOI: 10.1080/20508840.2017.1387729.

Philipus Mandiri Hadjon, 1998, Pancasila sebagai Dasar Negara dan Hukum Tata Negara, Majalah Hukum Yuridika, Surabaya, Fakultas Hukum Universitas Surabaya, Volume XVII, Nomor 1.

Putera Astomo, 2014,"Pembentukan Undang-undang dalam Rangka Pembaharuan Hukum Nasional di Era Demokrasi", Jurnal Konstitusi, Volume 11, Nomor 3, 577-599, DOI: https://doi.org/10.31078/jk%25x.

Ryan Muthiara Wasti, Nisrina Irbah Sati & Fatmawati (2022): Law-making in the time of pandemic as a new state of emergency in Indonesia, The Journal of Legislative Studies, in-press, 1-22, DOI: https://doi.org/10.1080/13572334.2022.2116836.

S. Newton, 'Law and development, law and economics and the fate of legal technical assistance', in: J. Arnscheidt, B. van Rooij, and J.M. Otto (eds.), Lawmaking for Development Explorations into the theory and practice of international legislative projects, 1-52, (Amsterdam, Leiden University Press, 2008).

S.A. Schütte, 'Against the Odds: Anti-Corruption Reform in Indonesia', (2012) 32(1) Public Administration and Development, DOI: 10.1002/pad.623.

Simon Butt, 2011, Anti-corruption reform in Indonesia: an obituary?, Bulletin of Indonesian Economic Studies, 47(3), 381-394, DOI: https://doi.org/10.1080/00074918.2011.619051.

T. Drinóczi and R.Cormacain, 'Introduction: illiberal tendencies in lawmaking', (2022) 9(3), The Theory and Practice of Legislation, DOI: 10.1080/20508840.2021.1955483.

T.Drinóczi, 'Concept of Quality in Legislation— Revisited: Matter of Perspective and a General Overview', (2015) 36(3) Statute Law Review, DOI: 10.1093/slr/hmv008.

Teguh Prasetyo, 2016, Sistem Hukum Pancasila (Sistem, Sistem Hukum dan Pembentukan Peraturan Perundangundangan di Indonesia, Perspektif Teori Keadilan Bermartabat, Bandung, Nusa Media.

Tim Redaksi Majalah Parlementaria, 2017,"Membumikan Pancasila Menjaga Indonesia", Majalah Parlementaria, Edisi 150 Tahun XLVII.

V.E. Aitken, 'An exposition of legislative quality and its relevance for effective development', (2013) 2(1), ProLaw Student Journal.

Vedi R. Hadiz, 'Decentralization and Democracy in Indonesia: A Critique of Neo-Institutionalist Perspecives', (2004) 35(4), Development and Change, DOI: https://doi.org/10.1111/j.0012-155X.2004.00376.x.

Wahyu Nugroho, 2013,"Menyusun Undang-undang yang Responsif dan Partisipatif berdasarkan Cita Hukum Pancasila", Jurnal Legislasi Indonesia, Volume 10, Nomor 03, September, 209-218.

Wawan Fransisco, 2017,"Pancasila sebagai Landasan Hukum di Indonesia", Progresif: Jurnal Hukum, Volume 11, Nomor 1 (Juni), 1828-1837, DOI: https://doi.org/10.33019/progresif.v11i1.196.

Yudi Latif, 2017,"Pancasila adalah Titik Temu, Titik Pijak dan Titik Tuju", Majalah Parlementaria, Edisi 150 Tahun XLVII.