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ACTUALIZATION OF PANCASILA AS A LEGAL SOURCE IN THE ESTABLISHMENT OF LEGISLATION REGULATIONS IN INDONESIA

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ABSTRACT

The discussion of the issue of the actualization of Pancasila in the formation of laws is important because it is related to the position of Pancasila itself. For the Indonesian nation and state, Pancasila is the ideology and basis of the state. Ideology is a framework of ideals that contains the vision and mission of the state, which gives orientation to which direction the struggle and development should be directed, while the state basis is a juridical framework for the implementation of the state administration system for the survival of the nation and state. The method used in this paper is normative legal research. In the development of national law, there are still laws that are not in accordance with the values of Pancasila. This can be read, for example, from the evaluation of the National Legal Development Agency (BPHN), which in 2019 found that four of the nine laws evaluated were found to be problematic. The ten results of a study by the Pancasila Ideology Development Agency (BPIP) in 2019 also concluded that 63 of the 84 laws needed to be revised because they conflicted with Pancasila values. Based on the Law for the Establishment of Legislation, the guidelines for actualizing the values of Pancasila in the laws and regulations that are formed are contained in at least five parts.

Keywords: Actualization, Pancasila, Sources of Law, Formation.

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INTRODUCTION

Based on the Law for the Establishment of Legislation, the guidelines for actualizing the values of Pancasila in the laws and regulations that are formed are contained in at least five parts. First, Pancasila is the source of all sources of state law. This is regulated in Article 2 of Law Number 12 of 2011. Elucidation of Article

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2 emphasizes that the position of Pancasila as a source of law requires the formation of laws to be in accordance with the values of Pancasila. However, this provision still has weaknesses in further elaboration. As stated by Backy Krisnayuda, the formation of laws has not provided space for Pancasila to transform itself into the laws that have been formed. The provisions of Article 2 also stop there, and if it is read in Law Number 12 of 2011, the space for the actualization of Pancasila is still limited. In the stages of law formation, for example, which consists of planning, drafting, discussing, ratifying or stipulating, and promulgation, the space for the actualization of Pancasila is only at the planning stage (Articles 16-23) and preparation in the context of the preparation of Academic Papers, the basis for considering and harmonization activities as regulated in Articles 43-51.[1]

Thus, to realize laws that are in harmony and in accordance with the values of Pancasila, the values of Pancasila need to be interpreted in detail. These details will become indicators, variables, and benchmarks for the values of Pancasila as the source of all sources of state law, so that the laws that are formed can be said to be part of the actualization of Pancasila. In order to have legal force, the formulation of indicators and variables of Pancasila values should be contained in the law governing the formation of laws.

The formulations of the two institutions have also been widely used so far to evaluate the laws that were enacted. By being regulated by law, it is hoped that in the future these indicators and variables will no longer be scattered in various rules outside the law. This applies not only in the evaluation and testing of laws that have been promulgated, but also applies at the stage of law formation.[2]

The previous description shows that there are still laws that are not in accordance with the values of Pancasila after being promulgated, one of which is due to the lack of strong regulation of Pancasila as a guideline in the formation of laws. In the development of national law, there are still laws that are not in accordance with the values of Pancasila. This can be read, for example, from the evaluation of the National Legal Development Agency (BPHN), which in 2019 found that four of the nine laws evaluated were found to be problematic. The ten results of a study by the Pancasila Ideology Development Agency (BPIP) in 2019 also concluded that 63 of the 84 laws needed to be revised because they conflicted with Pancasila values.[3]

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[1] Heri Hardiawanto, Fokky Fuad Wasitaatmadja, dan Jumanta Hamdayana, *Spritualisme Pancasila*, Jakarta: Prenada Media Group, 2018, hlm. xiii.

[2] Jimly Asshidiqie, *Hukum Acara Pengujian Undang-Undang*, Jakarta, Konpres, 2006, p. 5.

[3] Hyronimus Rhiti, *Cita Hukum dan Postmodern: Kajian Gagasan Ekologis Pancasila*, Yogyakarta, Genta Publishing, 2020, p. 17.

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Therefore, it is necessary to have a concept of strengthening in actualizing the values of Pancasila at the stage of forming the law. The results of the BPHN evaluation use the term bill testing with ex ante analysis. Regarding this term, it turns out that there is also another term known as ex ante review. As written by Victor Imanuel W. Nalle, *ex ante review* is a judicial review before it is passed. This mechanism is a preventive scheme to prevent losses that may occur when the law has been enacted.28 This kind of testing model has also been used by other countries, for example France. As said by Jimly Ashidiqie, the testing that applies in France is an ex ante review, but the object of the test is not a bill that has not been passed by parliament, but a draft that has been passed by parliament but has not been ratified and promulgated by the President. In Hungary, as written by Andi Safriani, the Constitutional Court even has the authority to conduct ex ante examination of draft laws, parliamentary regulations before they are enacted, and international agreements before they are stipulated in accordance with the values of Pancasila. In this case, it is recommended that the review of the draft law be carried out at the stage of discussion in level I discussions before being jointly approved into law by the DPR at level II discussions. The recommended institution to carry out this test is BPIP. This is intended to distinguish the examination of the Act against the 1945 Constitution of the Republic of Indonesia by the Constitutional Court through the authority of judicial review. Therefore, the BPIP institution must be strengthened to become an institution that is not part of the government, and its formation is also through a law and not through a Presidential Regulation.[4]

The choice of the title above is motivated by the author's observations as an Indonesian nation who feels the ebb and flow of Pancasila as the only principle in the life of the nation and state, both in the discussion and at the level of its implementation and even its legal politics. Legal politics in our country tends to no longer represent our highest philosophy, namely Pancasila. Pancasila as the basis of legal politics if it is included in political and legal determination, in this case it will focus on the legal determinants of politics because every political agenda must be subject to law, law in this case is defined as a written law or regulation made and determined by the parties. authorities, not the law in another sense, for example court decisions and even those who live in the community. In addition to the release of justice as the spirit of law that comes from the ethics and morals of Pancasila, another problem we face is the relationship between law and politics as two social subsystems. In certain important matters, the law is dominated by politics, so that it is in line with the weakening of the ethical and moral basis. The making and enforcement of law is colored by the political interests of the dominant group which are technical in nature, not substantial and short-term in nature.

[4] Andi Safriani, *Mahkamah Konstitusi di Beberapa Negara Perspektif Perbandingan Hukum* , Al-Qadau Journal, No. 6, (2019), p. 88.

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Actualization means the implementation until it really exists (realized), the realization or embodiment. Which in the context of the actualization of Pancasila here means that together we realize Pancasila as the basis for making new laws (laws and regulations) as well as by replacing old laws (legal politics) so that in practice we can achieve justice which is the ultimate goal of the law. Indonesia was born with Pancasila as the ideology and basis of the state which was born in advance at the Dokuritsu Junbi Cosakai on June 1, 1945. Pancasila is a philosophical system which is the ideal formulation in the wake of Indonesianism that the nation aspires to. Various components of the nation should use and develop the implementation of the Pancasila philosophical system in various fields. But the reality, according to Benny Susetyo, is that Pancasila is often glorified as the nation's philosophy, guidelines for action, national identity, source of law, and national ideals, but in reality it is more often seen as a symbol.[5]

Likewise, Arif Sidharta explained about legal ideals rooted in Pancasila, which was formally included in the Preamble to the 1945 Constitution. Legal ideals can be understood as a construction of thought which is a necessity to direct the law to the ideals desired by the community, functioning as a benchmark that is regulatory and constructive, without legal ideals, the resulting legal product will lose its meaning. Legal ideals are what the law wants to achieve. The ideal of law (*rechtsidee*) implies that in essence the law is a rule of community behavior that is rooted in the ideas, feelings, intentions, creativity and thoughts of the community itself. So the ideals of law are ideas, intentions, inventions and thoughts regarding the law or perceptions of the meaning of law.

The law should not be used for any purpose other than the ideal with the community, nation and state. Abdul Hakim Garuda Nusantara defines the legal political system as a *legal policy* / legal policy that is to be implemented or implemented optimally by a certain state government which can include the implementation of the constitution and existing legal provisions, legal development with the core of reforming existing laws and making new laws, affirmation of filling in law enforcement agencies as well as fostering members and increasing public legal awareness according to the perception of the policy-making elite. There are 3 models of the relationship between law and politics. First, the determinant law of politics. The reality of this kind of relationship is based on the assumptions and views of das sollen, what should be. In addition, legal politics is also defined as a legal policy or official line (policy) regarding the law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals. Satjipto Rahardjo defines legal politics as the activity of choosing the way to be

[5] Mardalis, *Metodologi Penelitian Suatu Pendekatan Proposal*, (Jakarta: Bukit Aksara, 1990), p.43.

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understood to achieve certain social and legal goals in a society. [6]In addition, legal politics is also defined as a legal policy or official line (policy) regarding the law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals. Satjipto Rahardjo defines legal politics as the activity of choosing the way to be understood to achieve certain social and legal goals in a society.

The term legal politics contains 2 words, namely politics and law, viewed from an etymological perspective, the relationship between politics and law in terms of legal politics can be explained as follows: The term legal politics in Dutch is called *rechtspolitiek which* is a compound word consisting of the words *recht* and politiek. The word *recht* means law. Law is a set of rules of behavior that apply in society. While the word politiek or "belied" means politics (policy).

METHOD

This research uses socio-legal research methods by conducting research in the field with a direct interview method to the residents of Wadas village. Empirical studies are studies that view law as reality, covering social reality, cultural reality, etc., the empirical study of the world is das sin (what is reality). Empirical legal research focuses on behaviors that develop in society, or the workings of law in society. So the law is conceptualized as actual *behavior* which includes actions and their consequences in social life relationships. Therefore, the approaches and often used in empirical legal research include on The approach of sociology of law, The approach of legal anthropology, The approach of legal psychology.[7]

DISCUSSION

Pancasila as a Political Basis

The Indonesian nation is a nation that was born because of diversity and pluralism united by the sincere intention and awareness of the people themselves to live as an independent and sovereign nation. Through a long struggle to unite, passed with so many challenges, bitterness, and even physical struggles. It is not an easy thing for *the founding fathers* to agree on Pancasila which is the crystallization of the noble values of the nation and establishes it as the basis of the state.1 As the philosophy of the state, of course Pancasila is an incomparable gift from God Almighty to the Indonesian nation. . Pancasila is a source of light for all Indonesian people in building their civilization in the future. Based on the historical data of the struggle of the Indonesian people, during the Revolution for the independence of the Indonesian Nation in the period 1945-1950, then on June 1, 1945, Ir. Soekarno,

[6] Soejadi. *Pancasila sebagai Sumber Tertib Hukum Indonesia*, (Yogyakarta: Lukman Offset, 1999), p. 22.

[7] Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, (Malang: Intrans Publishing, 2022), hlm. 48.

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with his nickname Bung Karno, at the request of dr. Rajiman Wedyodiningrat as the Head of the Investigating Business Entity for the Preparation of Independence (BPUPK) to deliver his speech regarding the provision of the foundations of the Indonesian state to be established. Bung Karno's speech on June 1, 1945, later called the birthday of Pancasila, was uttered in the trial of the Investigating Business Entity for the Preparation of Independence (BPUPK). In his speech, Bung Karno expressed his opinion that the basis of the state consists of: "Indonesian Nationality, Internationalism or Humanity, Consensus or Democracy, Social Welfare, and Fear of God Almighty.

From these five principles, Soekarno gave the name Pancasila, then squeezed it into three precepts, namely; Socio-Nationalism, Socio-Democratie, and Divinity. Then squeezed into one precept, namely; Gotong Royong or Eka Sila" [8]Then, it was refined on June 22, 1945 by the Small Committee which resulted in the Preamble/Preamble to the Constitution, which was further legitimized on August 18, 1945 by PPKI by ratifying the Preamble to the Constitution of the Republic of Indonesia. For approximately 20 years since the reformation, without realizing it or maybe unintentionally, the discourse on the precepts of Pancasila has been increasingly excluded from public discussion. Maybe because the freedom given since the reformation period has made everyone forget themselves. Freedom is enjoyed to the maximum possible point. Whereas freedom without order must create chaos in social life. Freedom will only benefit people's lives if it is accompanied by upholding justice as contained in legal and constitutional instruments as a common guide in the life of the state. The law in its highest position is what is called the constitution but which becomes the spirit and body of the constitution, namely the values of Pancasila and the Purpose of the State. In the life of the state, Pancasila and the Purpose of the State must be translated seriously in every public policy. However, if it is traced since the independence of the Indonesian nation on August 17, 1945. Be it, the Old Order period in the years 1945-1965, the New Order in 1966-1998, and the reform era in 1999 until now there are still many legal products in the sense of Laws that do not yet reflect the spirit, soul, or morals of the Indonesian nation, namely the values of Pancasila are independent. These include the Criminal Code, the Civil Code, the Election Law, the Water Resources Law, and so on.[9]

Two things that cannot be separated but must work together and strengthen each other, such as the expression "law without power is wishful thinking and

[8]Amarini, Evaluasi Aktualisasi Pancasila Melalui Harmonisasi Hukum, *Cosmic Journal of Law*. Vol. 17, 2017, p. 80.

[9]Rahayu, D. P, Aktualiasasi Pancasila Sebagai Landasan Politik Hukum Indonesia. *Yustisia Journal*, vol. 4, 2015, p. 191

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power without law is despotism". However, the reality at the level of law implementation is often a reflection of the will of the holder of political power so that not a few people view that law is the same as power. Apeldoorn, for example, notes that there are some followers of the notion that law is power. First, the Sophists in Greece said that justice is what benefits the stronger. Second, Gumplowics said that the law is based on the subjugation of the weak by the strong, the law is an arrangement of definitions formed by the strong party to maintain its power. In connection with the stronger political energy when dealing with the law, the law is often intervened by politics. That is why, it is not surprising if people often refer to law as a political product, then politics will greatly determine the character of what kind of legal product is produced. In relation to the legal politics of Mahfud MD, in his book "Legal Politics in Indonesia" often uses the terms democratic political configuration and authoritarian political configuration, as well as legal products that are responsive and conservative in character. If the political configuration is democratic, it will produce legal products with a responsive character, on the other hand, if the political configuration is authoritarian, it will produce legal products with a conservative character. Democratic Political Configuration can be reflected in every national legal product if law makers use the Ideal Political Law approach. In this case what is meant by Ideal Legal Politics is a policy of law formation in the sense of a law that must refer to and be in accordance with legal ideals (*recthsidee*) and State Goals.[10]

According to "A. Hamid S. attamimi" quoting *Juridish woordenboek* , the word legislation (*wetgeving*) has two meanings, namely; First, the process of forming state regulations from the highest type, namely laws (*wet*) to the lowest ones, which are produced by attribution or delegation of statutory powers; Second, the whole product of the country's regulations. The formation of laws and regulations is a method or method for developing national laws, in addition to law enforcement and law enforcement. Legal development will only be carried out comprehensively if it includes legal substance, legal institutions , and legal culture and is accompanied by consistent law enforcement while still upholding human rights, so that the function of law as a means of national reform and development is expected to run according to the ideals. Law and State Goals. If it is guided by the technique of Formation of laws and regulations in Indonesia, it must at least contain three main foundations, namely; Philosophical, Juridical, and Sociological. Items that should be contained in the philosophical foundation are legal ideals (rechtside), namely Pancasila values and State Goals (Preamble to the 1945 Constitution). Pancasila in social life functions as a *way of life* , Pancasila in the life of the nation

[10]MD, Mahfud, *Politik Hukum di Indonesia*, (Depok: Rajawali PERS, 2012), p. 20-22.

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functions as the ideology of the nation (a tool to unify the nation), and Pancasila in the life of the state functions as the basis of the state (*staatsfundamentalnorm*). Pancasila as a fundamental norm of the state and as a legal ideal is the source, basis, and guideline for the formation of laws and regulations under it so that Pancasila in the legal order in Indonesia has two dimensions, namely "(1) as a critical norm, namely being a touchstone for norms in Indonesia. underneath.[11]

By placing Pancasila as a staatsfundamental norm, the formation of law, the application of law, and its implementation cannot be separated from the values of Pancasila. However, placing Pancasila as a *staatsfundamentalnorm* means placing it above the 1945 Constitution. If so, Pancasila is not included in the definition of the constitution because it is above the constitution. So in this case, the *Stunffenbau des Rechts* "Hans Kelsen" theory can be used as a barometer. According to "Kelsen", that the legal system is a rung with tiered legal rules where lower norms must adhere to higher norms and higher norms must adhere to basic norms.[12]

Reconstruction of Pancasila Value

A long history of testing the Act against the Constitution whose basic idea was born by John Marshall from America (1803) which later gave birth to the term *Judicial Review* . With the judicial review, laws originating from the political process can be assessed or tested for their constitutionality against the Constitution which is the highest regulation in a country. Meanwhile, the institution authorized to assess and test the law is placed with the judiciary. In Indonesia, the judicial institution in question is the Constitutional Court.14 The existence of the Constitutional Court as the executor of judicial power that maintains and oversees the purity of the constitution (the guardian of the constitution) as the guardian of the constitution The Constitutional Court has the duties and authorities as regulated in Article 24C of the Constitution of the Republic of Indonesia. Indonesia in 1945. Among others, the Constitutional Court has the authority to examine laws.

The judicial review from a time perspective can be divided into the judicial review before the law takes its formal form and has not been properly promulgated. This test is known as a priori testing or judicial preview. This a priori test is carried out to avoid mistakes or asynchronous and inconsistent between laws and regulations hierarchically or even contrary to the values that live in society. [13]Furthermore, the procedure for judicial review of the 1945 Constitution has been regulated by the Constitutional Court in Constitutional Court Regulation Number 6 of 2005 concerning Procedures for Judicial Review of Laws. Since the existence of

[11] *Ibid* , p. 24
[12] *Ibid* , p.28.
[13] Hamidi, J. et al, *Pembukaan UUD 1945 Sebagai Norma Hukum Dalam Etika Politik Guna Mencapai Tujuan Negara*, (Jakarta: Salemba, Humanika, 2012), p. 149-150

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the Constitutional Court in Indonesia in 2003, many parties, including academics, legal practitioners, and NGOs, have competed to fight for constitutional rights and their respective interests through the mechanism for reviewing laws against the 1945 Constitution. in the Constitutional Court. However, upon closer inspection, the main petition of the Petitioners is often only asking the Court to assess and review the Act against the Articles (Body) of the 1945 Constitution. However, it should be reminded again that the 1945 Constitution of the Republic of Indonesia does not only consist of Articles torso) but consists of the Preamble and the Articles which are an inseparable unit.

When read in Article 24C Paragraph (1) of the 1945 Constitution, it has confirmed that the Constitutional Court has the authority to examine the Act against the 1945 Constitution of the Republic of Indonesia. Article II Additional Rules of the 1945 Constitution remind again that the 1945 Constitution of the Republic of Indonesia consists of the Preamble and Article -Chapter.[14]

The preamble of the 1945 Constitution in the fourth paragraph reads as follows, "Then from that to form a Government of the State of Indonesia which protects the entire Indonesian nation and the entire homeland of Indonesia; and to promote the general welfare; enrich the life of a nation; and participate in carrying out world order based on independence, eternal peace, and social justice, the Indonesian National Independence is drawn up in a Constitution of the State of Indonesia, which is formed in the composition of the Republic of Indonesia which is sovereign by the people based on the One Godhead, Humanity just and civilized, Indonesian Unity and Democracy led by wisdom in Deliberation/Representation, and by realizing a social justice for all Indonesian people. The preamble to the 1945 Constitution of the Republic of Indonesia, precisely the fourth paragraph, is the ideal touchstone for the Constitutional Court to judge whether or not a law contradicts the 1945 Constitution of the Republic of Indonesia because that is where the values of Pancasila (*rechtsidee*) and the purpose of the state are contained. Interestingly, on February 18, 2015, the Constitutional Court in its Decision Number 85/PUU-XI/2013 regarding the case for reviewing Law No. 7 of 2004 concerning Water Resources.

The government is also obliged to manage and utilize water for the greatest prosperity of the people, not otherwise used by the government for commercial or business interests. More specifically, according to "the Court, Article 33 of the 1945 Constitution is a form of constitutionality of the adoption of economic democracy, in addition to political democracy, which is related to the administration of the state as referred to in the fourth and fifth precepts of Pancasila. Regarding the implementation into the constitution, Article 33 Paragraph (3) of the 1945

[14] *Ibid*, p.160

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Constitution does not only show it as the basis of the state, but also as the goal of the state. In other words, the fifth principle of "social justice for all Indonesian people" as the basis of the state is implemented in the 1945 Constitution regarding the administration of the state in the economic field is a form of economic democracy with the aim of realizing the greatest prosperity of the people. That is actually the core meaning of social justice, which is also interpreted as a just and prosperous society. 19 That is why, the Constitutional Court expressly annulled the a quo Natural Resources Law as seen in its Decision No. 3 & 4 which states that "Law No. 7 of 2004 concerning Water Resources (State Gazette of the Republic of Indonesia of 2004 Number 32, Supplement to the State Gazette Republic of Indonesia Number 4377) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. As a judicial institution that is given the responsibility to enforce the constitution.

The Constitutional Court has several special characteristics that are different from general or ordinary courts. This specificity, among others, lies in its decision which is final and binding, meaning that when the Constitutional Court's Decision is read out in a trial which is open to the public, from that moment it is immediately published in the state news, the legal consequence is that there are no other legal remedies that can be taken to annul the decision. the. The legal consequences of the Constitutional Court's decision give birth to rights and obligations.[15]

Therefore, the legal consequences of such a Constitutional Court decision, if it is also possible to ask some critical questions. First, is the Water Law which has been re-enacted by the Court is still relevant to the dynamics of Indonesian people's lives today. Second, if the Irrigation Law is still relevant to the dynamics of Indonesian people's lives today, by whether the Government makes a guideline for implementing/implementing the a quo Law because the Implementing Regulations are only intended for Law Number 7 of 2004 which incidentally has been annulled by the Constitutional Court. Third, in consideration of the Constitutional Court's decision stating that the six Implementing Regulations have lost their relevance or become invalidated automatically, the question is whether the Constitutional Court has the authority to declare so, because constitutionally to cancel laws and regulations under the Act is the domain of the Supreme Court's authority (vide Article 24A of the 1945 Constitution of the Republic of Indonesia), and in fact there are many more questions that can be asked in response to the Court's Decision.

However, what is interesting is that after the a quo Court Decision, three years later, the latest Water Resources Law (SDA) was born, namely Law Number 17 of 2019 concerning Water Resources. So, the first question that will be asked is

[15]Arfa'I, Pembukaan UUD 1945 Sebagai Norma Hukum Dalam Etika Politik Guna Mencapai Tujuan Negara. *Journal of Legal Studies*. Vol.6, 2015, p. 91-92

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whether the formation of the latest Natural Resources Law was formed through a political process.[16]

Phenomenon The Constitutional Court's decision on the review and cancellation of the whole spirit of the Natural Resources Law (UU No 7 of 2004) as described above has actually become a nightmare for the DPR and the Government because they have failed in making policies. The President's policy is to stipulate Presidential Regulation Number 7 of 2018. This Government policy is the Government's response to the incompatibility or incompatibility of current legislation with the values of Pancasila. The presence of BPIP in the presidential system aims to assist the President in formulating policy directions for the development of the Pancasila ideology, carrying out coordination, synchronization, and controlling the development of the Pancasila ideology in a comprehensive and sustainable manner, and carrying out the preparation of standardization of education and training as well as providing recommendations based on the results of studies on policies or regulations in Indonesia. Indonesia that is contrary to/incompatible with the values of Pancasila to high state institutions, ministries/non-ministerial institutions, local governments, socio-political organizations, and other components of society. If it is juxtaposed with the role of BPIP and the Constitutional Court in maintaining and supervising the purity of Pancasila values (*The Guardian of Ideology*).

Thus, institutionally BPIP acts as a state institution that carries out preventive supervision, meaning that BPIP is positioned as a controlling institution that assesses and prevents inconsistencies between regulations in Indonesia and the values of Pancasila, and harmonizes all regulations in the sense of harmonizing the Draft Law. the bill) before becoming a law in order to remain in accordance with its corridor, namely the values of Pancasila.[17]

The preamble to the 1945 Constitution of the Republic of Indonesia, precisely in the fourth paragraph, is the ideal touchstone for the Constitutional Court to judge whether or not a law contradicts the 1945 Constitution of the Republic of Indonesia because that is where the values of Pancasila (rechtsidee) and the purpose of the state are contained. Interestingly, on February 18, 2015, the Constitutional Court in its Decision Number 85/PUU-XI/2013 regarding the case for reviewing Law No. 7 of 2004 concerning Water Resources. Indirectly, the Constitutional Court has recalled its function as *The Guardian of Ideology*. That is why, when examined in its legal considerations, the Court states that the *a quo Law* is not in accordance with the spirit or heart of the Indonesian nation, namely the values of

[16]Ibid, p. 98

[17]Aritonang, D. M, Pola Distribusi Urusan Pemerintahan Daerah Pasca Berlakunya UU No 23 Tahun 2014 tentang Pemerintahan Daerah, *Indonesian Legislation Journal*. Vol.13, 2016, p. 48

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Pancasila because according to the Constitutional Court water is a basic need of the Indonesian people that must be met by the Government and should not be hampered by administrative mechanisms.[18]

The Indonesian nationality is in a Constitution of the Indonesian State, which is formed in the composition of the Republic of Indonesia which is sovereign by the people based on God Almighty, just and civilized Humanity, Indonesian Unity and Democracy led by wisdom in Deliberation/Representation, and by realizing a social justice for all Indonesian people. In addition, the material content of the law as described above. The author agrees with Backy Krisnayuda who explained that the law must reflect the principles, rules, morals, and roots of the nation itself, including:

(1) Every law must shape and reflect a nation's personality who is devoted to God Almighty.
(2) Every law must reflect human values and uphold human dignity.
(3) Every law must create a sense of security and peace with the spirit of national unity and integrity.
(4) Every law must provide space for the representation of members of the public in the formation, implementation and testing of laws.
(5) Every law must be able to prosper the community.

It has been amended by Law No. 15 of 2019 concerning the Establishment of Legislation. If the legislators have agreed to make Pancasila the source of all sources of state law, then every legal policy issued by the authorities in its formal form, namely laws and other statutory regulations, must actually reflect the values of Pancasila and the objectives of the law. patriotic. Further, regarding the substance of the content that must be contained in a Law, it contains, among others:[19]

(1) Further regulation regarding the provisions of the 1945 Constitution of the Republic of Indonesia.
(2) An order for a law to be regulated by law.
(3) Ratification of certain International Treaties.
(4) Follow-up on the decision of the Constitutional Court.
(5) Fulfillment of legal needs in society.

These five things must be considered and contained in one law. Therefore, every draft of legislation must reflect the values of Pancasila and the goals of the state. Reconstruction the Pancasila value is to submit the substance integration in the law.

[18] *Ibid*.
[19] *Ibid*, p.49

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CONSLUSION

Based on the discussion above, it can be concluded that the placement of Pancasila as the *staatsfundamentalnorm* was first conveyed by Notonagoro. Pancasila is seen as a legal ideal (*rechtsidee*) is a guiding star. This position requires that positive law makers are to achieve the ideas in Pancasila, and can be used to test positive law, by placing Pancasila as a *staatsfundamental norm* , the formation of law, the application of law, and its implementation cannot be separated from the values of Pancasila, within the framework of positive law. Indonesia Pancasila is placed as the source of all sources of state law. If we consider that Pancasila is the source of all sources of state law, then every law formation in the sense of laws and other laws and regulations must reflect the values of Pancasila. If a legal product is in accordance with the values of Pancasila, then that is what is called ideal legal politics. The Pancasila Ideology Development Agency (BPIP) is placed as an institution that carries out preventive oversight functions, which means preventing the occurrence of asynchronous regulations.

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REFERENCES

Aritonang, D. M, *Pola Distribusi Urusan Pemerintahan Daerah Pasca Berlakunya UU No 23 Tahun 2014 tentang Pemerintahan Daerah*, Jurnal Legislasi Indonesia. Vol.13, 2016.

Amarini, *Evaluasi Aktualisasi Pancasila Melalui Harmonisasi Hukum*, Jurnal Kosmik Hukum. Vol. 17, 2017.

Arfa'I, *Pembukaan UUD 1945 Sebagai Norma Hukum Dalam Etika Politik Guna Mencapai Tujuan Negara*. Jurnal Ilmu Hukum. Vol.6, 2015.

Andi Safriani, *Mahkamah Konstitusi di Beberapa Negara Perspektif Perbandingan Hukum*, Jurnal Al-Qadau, No. 6, 2019.

Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, Malang: Intrans Publishing, 2022.

Heri Hardiawanto, Fokky Fuad Wasitaatmadja, dan Jumanta Hamdayana, *Spritualisme Pancasila,* Jakarta: Prenada Media Group, 2018.

Hyronimus Rhiti, *Cita Hukum dan Postmodern: Kajian Gagasan Ekologis Pancasila*, Yogyakarta, Genta Publishing, 2020.

Hamidi, J. dkk, *Teori Hukum Tata Negara A Turning Point of The state*, Jakarta, Salemba, Humanika, 2012.

Jimly Asshidiqie, *Hukum Acara Pengujian Undang-Undang*, Jakarta, Konpres, 2006.

Mardalis, *Metodologi Penelitian Suatu Pendekatan Proposal*, Jakarta, Bukit Aksara, 1990.

MD, Mahfud, *Politik Hukum di Indonesia*, Depok, Rajawali PERS, 2012.

Rahayu, D. P, *Aktualiasasi Pancasila Sebagai Landasan Politik Hukum Indonesia*. Jurnal Yustisia, vol. 4, 2015.

Soejadi. *Pancasila sebagai Sumber Tertib Hukum Indonesia*, Lukman Offset, Yogyakarta. 1999.