

## Pancasila: Looking For the Ideal Format of State Philosophy Embodiment

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### Abstract

Looking for the ideal format of the philosophy of Pancasila embodiment is a scientific article aimed at solving legal problems related to the position of Pancasila in legal construction in Indonesia. It happens because of the inconsistency in the Indonesian legal system. The purpose of this study is to find the most appropriate embodiment of the Pancasila philosophy in the Indonesian legal system. It is an effort in order that the Indonesian legal system has "tools" to ensure or "force" the consistency within Indonesian legal system itself. This study uses a conceptual approach and a legal history approach. The researcher finds that the use of Pancasila philosophy in the construction of the Indonesian legal system is inconsistent. The results of the study conclude that Pancasila needs to be embodied, in order that the law in Indonesia can be more consistent with the goals of the philosophy of the state. The results of this paper recommend that Pancasila, as a philosophy, is the domain of the institution holding the people's sovereignty; that is the House of Representatives and is not an executive domain with the HIP Bill or with the executive-made BPIP institution.

**Keywords:** State Philosophy; Pancasila; Embodiment.

### Abstrak

Mencari format ideal dari filosofi perwujudan Pancasila adalah artikel ilmiah yang bertujuan untuk memecahkan masalah hukum yang berkaitan dengan kedudukan Pancasila dalam konstruksi hukum di Indonesia. Hal itu terjadi karena ketidakkonsistenan dalam sistem hukum Indonesia. Tujuan dari penelitian ini adalah untuk menemukan perwujudan yang paling tepat dari filsafat Pancasila dalam sistem hukum Indonesia. Ini merupakan upaya agar sistem hukum Indonesia memiliki "alat" untuk memastikan atau "memaksakan" konsistensi dalam sistem hukum Indonesia itu sendiri. Penelitian ini menggunakan pendekatan konseptual dan pendekatan sejarah hukum. Peneliti menemukan bahwa penggunaan filosofi Pancasila dalam pembangunan sistem hukum Indonesia tidak konsisten. Hasil penelitian menyimpulkan bahwa Pancasila perlu diwujudkan, agar hukum di Indonesia dapat lebih konsisten dengan tujuan falsafah negara. Hasil tulisan ini merekomendasikan bahwa Pancasila, sebagai sebuah filosofi, adalah domain lembaga yang memegang kedaulatan rakyat; yaitu DPR dan bukan merupakan domain eksekutif dengan RUU HIP atau dengan lembaga BPIP buatan eksekutif.

**Kata kunci:** Filosofi Negara; Pancasila; Perwujudan.

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## Introduction

The Pancasila Ideology Development Agency (*BPIP*), established in 2018 with Presidential Regulation No. 7 of 2018 concerning the Pancasila Ideology Development Agency, is an institution that has the aim of excavating the noble values of the fundamental philosophy of the state within the Unitary State of the Republic of Indonesia. Refreshing the noble values of Pancasila as the philosophy of the nation within the bounds of the Unitary State of the Republic of Indonesia is a necessity in the 77<sup>th</sup> anniversary of the independence of the Republic of Indonesia in 2022. The long journey of 77 years of independence of the Republic of Indonesia should not be the cause of the fading of Pancasila values.

Pancasila in the course of the Unitary State of the Republic of Indonesia was once implemented in the development of *BP7* (Educational Development Agency

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for the Implementation of Guidelines for the Live and Practice of Pancasila) as a result of the formulation of the Presidential Advisory Team regarding the Implementation of Guidelines for the Live and Practice of Pancasila (Team P-7) in the era of President Soeharto's administration.

In essence, Pancasila has been formed through a long process by the founding fathers of the nation. Pancasila as an open ideology reflects an open mind that is able to accept all forms of changes that occur in order to be able to carry out the noble values of Pancasila in a fundamental way (Dayanto, 2013). Soekarno's speech which became the basis for the birth of Pancasila as the philosophy of Indonesia, which emphasized that the Republic of Indonesia does not belong to a group, does not belong to a religion, does not belong to an ethnic group, does not belong to a group of customs, but belongs to all people from Sabang to Merauke, is a very moderate expression and should be proud of. The brilliant idea of state philosophy in the concept of Pancasila deserves to be a collective pride where the spirit and soul of Pancasila needs to be preserved for its thoughts so that it continues to be expressed consistently as the soul of the nation that will bring Indonesia as a developed and great country (Susanto, 2020). Preserving the value of the philosophy of the state is a goal that deserves support so that the Unitary State of the Republic of Indonesia does not lose the dignity of the initial goal of its establishment by the Founding Fathers of Indonesia. Given the importance of the position of philosophy as a barometer of the state, it is not excessive if the study of the philosophical constitution of the Unitary State of the Republic of Indonesia receives more attention to determine the ideal format that is most appropriate in the context of Indonesian originality.

### **Research Problems**

It is important to embody the state philosophy of Pancasila and clarify the position of Pancasila in the construction of law in Indonesia. It is an effort to have "tools" that can "force" consistency in the legal system. Pancasila values should be implemented to ensure that there are no inconsistencies in the Indonesian legal system.

### **Research Methods**

The article on the Ideal Format of Pancasila Embodiment is the legal research that uses a conceptual approach and a legal history approach. The search for legal materials is carried out by inventorying primary legal materials and secondary legal materials which include statutory regulations and tracing historical records of institutions that have been established for the purpose of preserving state philosophy.

### **Discussion**

#### **Pacific War: Background of the Birth of Pancasila**

The historical background of the birth of Pancasila, that is the occurrence of the 1941 Pacific war, known as World War II, cannot be separated from the substance of the struggle for oil and gas natural resources in Southeast Asia. As an industrial country that does not produce oil and gas, Japan is an energy consuming

country that has a high dependence on fuel energy sources. The failure of Japan's oil and gas trade diplomacy cornered Japan into a condition that did not have much choice but to war, control, and occupy, oil and gas energy producing areas, one of which was the Dutch East Indies.

Japan took a solution to increase the amount of fuel exports to Japan by lobbying the Dutch East Indies government in Batavia. Japan, represented by the Minister of Trade and Industry, Yosizawa, failed to realize a lobby oriented towards Japan's participation in exploitation in the oil and gas areas of the Dutch East Indies (Hadi, 2013).

Diplomatic negotiations pursued by Japan always failed, causing Japan to stop its diplomatic efforts on June 17, 1941. Meanwhile, Japan's domestic condition was in a state of fuel crisis, which only had fuel reserves for 18 days of war at sea. On July 12, 1941 Japan decided to invade Southeast Asia with the Dutch East Indies as its main objective. The attack was followed up with a large-scale mobilization of petroleum workers throughout Southeast Asia which they occupied (Hadi, 2013). The transfer of control of the Dutch colonial government to Japan affected the existence of the oil and gas industry in the archipelago. Oil refineries abandoned by world oil giants such as Shell, Caltex, and Stanvac were repaired by Japan, which had previously been destroyed by these companies. Installation repairs are carried out as minimal as possible, using spare parts that can still be used (Hadi, 2013).

Many Indonesian workers were then recruited by the Japanese because of the shortage of petroleum workers. They were taught technical skills and emphasized the importance of the military and discipline. Japan succeeded in repairing and discovering new oil fields, such as those in Lirik in Central Sumatra, Kawengan Cepu, and Minas-1 Riau, which at that time produced up to 65 million barrels (Muhdar, 2015). At the time of the Japanese occupation, the Dutch legal product IMW was not used, what was used was the Japanese law of war in the form of military instructions (Hadi, 2013).

Allied troops consisting of the United States, Britain, France, the Netherlands, and Australia, led by the US, did not remain silent and continued to perform reconnaissance in the waters of the Dutch East Indies. Entering 1944, intensive aerial bombardment was carried out, especially on refineries and oil fields in various regions. Japan, feeling unable to maintain what it had achieved, began sending its petroleum workforce back home to develop the petroleum industry there. The Red Cross ship "Awa Maru" was sunk by the Allies near Philippine waters, because it was the ride for Japanese petroleum workers to return to their home country. Since March 1945, no oil tankers has made it to their destinations. The Allies intensified attacks on Ambon, Makassar, Manado, Surabaya, and other cities in Indonesia (Hadi, 2013).

The proclamation of independence of the Republic of Indonesia on August 17, 1945 was not recognized by the Dutch. The Dutch rode the victory of the Allies to regain control of Indonesia. This intention was met with fierce resistance by the entire Indonesian people and the formation of oil paramilitary units in oil-producing areas (Hadi, 2013).

The history of Pancasila and Indonesia's independence was born with the exploration of state philosophy by Indonesia's founding fathers in *BPUPKI* (Investigating Committee for Preparatory Work for Indonesian Independence) and *PPKI* (Committee for Preparation of Indonesian Independence) in the midst of the two interests of Japan and allied countries, consisting of the Netherlands, Britain and America. Japan, which was under pressure in 1942, took a strategy to win the hearts of the Indonesian people by promising independence. This strategy was intended to gain the sympathy of the Indonesian people in order to defend Japan when they were pressured by the Dutch allies.

The Indonesian fighters refused to say that Indonesia's independence was a gift from Japan, because if Japan were in a free will and not in a state of urgency, Japan would not have offered independence to Indonesia. Thus, this independence is a condition that is the result of the complicated conditions that must be faced by Japan. The complicated background in which history records the house of Laksamana Muda Mada being used in preparations for Indonesian independence does not automatically mean that Japan gave independence to Indonesia (Wirawan, n.d.).

Pancasila as the philosophy of the state is the basic foundation for the formation of the state, in addition to the constitution, the president and the vice president, as well as other attributes of state completeness. Pancasila is the basis of the state which was first discussed and formulated for days at the *BPUPKI* sessions, followed by other discussions about the need for Indonesia's independence as a country. Therefore, discussing and questioning Pancasila means discussing the Indonesian state fundamentally.

### **The Urgency of Philosophy for a Country**

An understanding of the importance of philosophy for a country from various theories, in the context of Indonesia, of course, cannot simply refer to one theory, because it will be more meaningful if the portrait of the state philosophy of Indonesia is directly taken from the pioneers of the Indonesian nation's predecessors (Sudjito, 2018).

*BPUPKI* convened on May 29, 1945-July 16, 1945 while *PPKI* convened on August 18 and 19, 1945, the purpose of establishing *BPUPKI* (Investigating Committee for Preparatory Work for Indonesian Independence) or *Dokuritsu Juunbi Chosakai* and *PPKI* (Committee for Preparation of Indonesian Independence) or *Dokoritsu Juunbi Inkai* was that the function of *BPUPKI* is to review, while the role of *PPKI* is to make decisions. Opinions put forward in *BPUPKI* are offered for discussion and response, are theoretical in nature, therefore they can be changed by other members. In *BPUPKI*, we find a deep elaboration of the philosophy of the state and the rights of citizens. The deepening of the discussion in *BPUPKI* is important to understand the background of the thoughts of the founding fathers of the state. While the opinions put forward in the *PPKI* are negotiations in the decision-making process in the establishment of the state, so there is not much elaboration. The nature of the discussion is final, the review is no longer theoretical, but has a legal character.

Examining the opinions of *BPUPKI* members in pieces is no longer appropriate, in deliberation, there must be a process of giving and receiving opinions before consensus is reached. But what needs to be underlined is that the *BPUPKI* meeting takes a relatively longer time than the *PPKI* meeting. The *PPKI* session was only for 2 days, August 18 and 19, 1945, indicating that exploring the nation's philosophy was an extraordinary endeavor, thoughts that had to be poured out, and drained a lot of energy. Pancasila as the nation's philosophy must be the main patron (pattern) in the state format. Pancasila was not Soekarno's creation, because there were 3 Pancasila concepts that emerged during the *BPUPKI* sessions; the first formulation of Pancasila by Mr. Moh. Yamin, the second formulation of Pancasila by Ir. Soekarno, and the third formulation of Pancasila was compiled by the "Committee of Nine" or "*Panitia Sembilan*" consisting of Ir. Soekarno, Dr. Mohammad Hatta, Mr. A. A. Maramis, Abikusno Tjokrosujooso, Abdulkahar Mudzakkir, Haji Agus Salim, Mr. Ahmad Soebarjo, Wachid Hasjim, and Mr. Moh. Yamin. The committee was formed among the members of *Dokuritzu Jumbi Cosakai*, assigned outside the official assembly to formulate a draft preamble to the basic law. The work of the Committee was completed on June 22, 1945 in the form of a document which was later called the "*Piagam Jakarta*" or "Jakarta Charter" by Mr. Moh. Yamin. If we describe the 3rd formulation of Pancasila, in the "Jakarta Charter" Document, the precepts read as follows:

1. Divinity, with the obligation to carry out Islamic law for its adherents.
2. Just and civilized humanity
3. Unity of Indonesia
4. Democracy led by the wisdom in the deliberations /representatives.
5. Social justice for all Indonesian people. (Yamin M. M., 1952).

On the fourth day after the others presented their views, Soekarno expressed his views in a speech, "*Namanja bukan Pantja Dharma, tetapi tetap saja namakan ini dengan petunjuk seseorang teman kita ahli bahasa -- namanya ialah Pantjasila*" (Its term is not *Panca Dharma*, but name it with what is suggested by a friend of ours who is linguist—It is *Pantjasila*) (Yamin M., 1959). The originator of the name Pancasila, Sukarno's friend who is a linguist, has not been revealed until now. Pancasila means, sila means azaz or basis, *panca* means number which is a number of 5 (five), Indonesia is built on these five principles. Two other Pancasila concepts are the ideas of Moh Yamin and Ir. Sukarno, Sukarno's concept of Pancasila was (Indonesia).

1. The Principle of Indonesian Nationality
2. The Principle of Internationalism, or Humanity
3. The principle of Consensus or Democracy
4. The principle of Social Welfare
5. The principle of Indonesian independence by fearing God

Moh. Yamin got the first opportunity to convey his ideas, explaining the basics of the state including: (Indonesia)

- 1) Nationality
- 2) Humanity
- 3) Divinity

- 4) Democracy (deliberation on representatives of wisdom, loyalty to the country and independence)
- 5) People's Welfare (Social Justice)

*BPUPKI's* long agenda illustrates that exploring and exploiting the basic philosophy of the state is an extra effort in extracting the essence of the spirit of Indonesian people's life. Pancasila as the precepts reflecting the values of the spirit of the Indonesian people with such depth of meaning must be reflected and give meaning to the life of the state in the pattern of legal construction which is the foundation of the state.

#### **P4 Upgrading Concept in 1978**

Document Archive of the Presidential Advisory Team Regarding the Implementation of Guidelines for the Appreciation and Practice of Pancasila (Team P-7) dated August 11, 1978, as a follow-up to *MPR* Decree No. II/1978 concerning Guidelines for the Appreciation and Practice of Pancasila (P4), submitted a proposal for the concept of institutionalizing the P-4. Team P-7 Document Archive No. 130/K/T.P7/VII/1978 which was addressed to the President of the Republic of Indonesia which was signed by Roeslan Abdulgani at that time, informed the design of the President's policy concept regarding the main points of implementing the P-4. Roeslan Abdulgani, the head of Team P-7, recommended in his report that the institutionalization of the P-4 be carried out as well as possible while still based on the prevailing laws and regulations in accordance with Article 5 of *MPR* Decree No. II/1978 on P-4. Roeslan then recommended that the President's policy on the main points of the P-4 implementation be set out in the form of a Presidential Decree. The follow-up to the Presidential Decree is a Presidential Instruction to each Department and Non-Departmental Government Agencies to prepare a P-4 program based on the Presidential Decree according to their respective fields. The results of the preparation of the P-4 implementation program (Guidelines for Practicing Pancasila) by each Ministry and Non-Departmental Institutions are compiled and rearranged by B.P.7 so that they are national, single and integrated regarding the implementation of P-4. P-4 is valid for a period of 5 years and is integrated with the III *Repelita*.

The concept of the Presidential Policy in the Team P-7 report reiterated in the introduction to the concept section of the basic understanding that what is meant by Pancasila is Pancasila as stated in the preamble to the 1945 Constitution which is a unanimous, unified whole of the five precepts, namely Belief in One God, Just and Civilized Humanity, the Unity of Indonesia, Democracy led by the Wisdom of the Deliberations among Representatives, Social Justice for All Indonesian People. P-4 is not an interpretation of Pancasila as the basis of the state, nor is it intended to interpret the Pancasila as the basis of the state as stated in the preamble to the 1945 Constitution, body and explanation. The appreciation of Pancasila as meant by the concept of the 1978 BP-7 Report, is the pervasiveness of Pancasila into the conscience and attitude of Indonesian people, which in turn is manifested in their daily attitudes, behavior and actions. While the meaning of the practice of Pancasila is the sincerity of the Indonesian people to implement Pancasila as the basis in the life of society and the state, which stems from the

deepest awareness that Pancasila is the view of life of the Nation and the Basic State of the Republic of Indonesia and to appreciate that Pancasila is the source of the psyche of the people and the state of the Republic of Indonesia. The concept of the Presidential Policy proposed in the BP-7 report in the Basic Understanding introduces the guarantee for every citizen to embrace religion by stating that Pancasila and the 1945 Constitution guarantee the freedom of every resident to embrace their own religion and worship according to their religion and beliefs. Freedom of religion in the BP-7 report is defined as one of the most basic rights among human rights, because freedom of religion is directly rooted in human dignity as God's creatures. The right to freedom of religion is not a gift from the state or group.

Claims on the situation and condition of the community at the time of the MPR Decree No. II/MPR/1978 concerning P-4 was issued that, first, Pancasila has basically become the property of society in general, but only in the form of basic knowledge that has not yet grown in everyday life as an ideology. The second claim is that the understanding of the ideology of Pancasila varies and some of them are even different. The existence of various phases of Pancasila that are highlighted creates a "blurred understanding" and in the end becomes inaccurate, so that appreciation and practice cannot be performed. The facts in the BP-7 report do not only occur among the general public but also among education and government officials. The third claim, regarding the formulation and sequence of Pancasila, there are similarities between the general public, education, and government officials. However, there are still various views and highlights regarding Pancasila as a philosophy, Pancasila as a doctrine and Pancasila as a "why of life", there are even those who highlight Pancasila from an ethnic-religious perspective or from a philosophical-doctrinal perspective.

From the three claims to the condition of the community above, in BP-7's view, it is necessary to create a period of time to reach the appreciation and practice of Pancasila as required by MPR Decree No. II/MPR/1978 concerning P-4. BP-7 in the Team-7 report recommends that the P-4 targets cover all aspects of community life from the city center to the countryside, the *Rukun Warga* and *Rukun Tetangga*, all government agencies and political parties, including educational institutions at all levels.

### **BPIP Concept Differences**

The New Order which ended in 1998 was marked by the resignation of President Soeharto and was replaced by the Reform Order. Four presidential terms passed, Habibie, Abdurachman Wachid, Megawati, Susilo Bambang Yudoyono, until finally under the leadership of President Jokowi, the idea of Pancasila Ideology Development was re-initiated.

In the context of actualizing the values of Pancasila in the life of the nation and state, the government of the Republic of Indonesia feels the need to develop the Pancasila ideology for all state administrators in a planned, systematic and integrated manner. (Asmaroini, 2017) On May 19, 2017, the President signed Presidential Regulation Number 54 of 2017 concerning the Presidential Working

Unit for the Development of Pancasila Ideology (UKP-PIP). The organization as well as the tasks and functions of UKP-PIP in its journey need to be refined and revitalized. Presidential Regulation Number 54 of 2017 needs to be replaced in order to strengthen the development of the Pancasila ideology in the life of society, nation and state. Based on these considerations, on February 28 2018, President Joko Widodo signed Presidential Regulation Number 7 of 2018 concerning the Pancasila Ideology Development Agency. With the revitalization from a work unit into an agency, it is hoped that BPIP will continue to exist even though the government continues to change. (BPIP, n.d.) With the issuance of Presidential Regulation Number 7 of 2018 concerning *BPIP*, Presidential Regulation Number 54 of 2017 concerning the Presidential Working Unit for the Development of Pancasila Ideology is revoked and declared invalid.

The Pancasila Ideology Development Agency (*BPIP*) is an institution that carries out Pancasila ideology development with the task of assisting the President in formulating general policy objectives for Pancasila ideology development and carrying out coordination, synchronization, and control of Pancasila ideology development in a comprehensive and sustainable manner. *BPIP* carries out the preparation of standardization of education and training, organizes education and training, and provides recommendations based on the results of studies on policies or regulations that are contrary to Pancasila to high state institutions, ministries/institutions, regional governments, socio-political organizations, and other components of society. *BPIP* is a revitalization of the Presidential Working Unit for the Development of Pancasila Ideology (UKPIP).

Improvements and arrangements continue to the point where it is deemed necessary to provide a stronger legal basis in the form of a bill (RUU), considering that so far the revitalization of Pancasila values as the nation's philosophy is only in the form of Government Regulations. Pancasila as the nation's philosophical value needs to have a wider spectrum coverage than just a Government Regulation which is a product of executive law, therefore a solid legal basis in the form of a bill (RUU) is needed.

In April 2020, the Pancasila Ideology Bill (HIP) was proposed as a strengthening of the legal basis for Pancasila as the state philosophy, replacing Presidential Regulation Number 7 of 2018 concerning *BPIP*. The process of enacting the *HIP* Bill has brought pros and cons and has not been ratified as a law until 2021. Improvements and inputs need to continue to be discussed so that the philosophical values of the nation contained in Pancasila can be embodied in the life of the nation and state.

A number of notes for improving the substance of the regulation of the Pancasila philosophy and its institutionalization include those listed in Article 7 of the *HIP* Bill concerning Trisila and Ekasil. Pancasila, which is an extraction of Indonesian culture rooted in the nation's personality, is a reflection and essence of values. The essence of values and cultural extraction are terminology that shows that Pancasila, as the five reflections of values in the life of the Indonesian people, is the essence that already represents the value of crystallization. The presence of the provision of crystallization has reduced the five precepts to the three principal



precepts, and from the three precepts, the principal characteristics have been crystallized again into one precept (*ekasila*). Article 7 of the *HIP* Bill with its trisila and *ekasila* provisions seems to convey that Pancasila is not perfect and needs to be perfected, therefore Pancasila needs to be changed to *ekasila*. Pancasila is the core value of the nation's culture that was obtained from a long process by the Founding Fathers of Indonesia in *BPUPKI* and *PPKI* meetings. The change of Pancasila to *Eka-sila* is a "treason" to history and the nation's predecessors. The spirit to change Pancasila, of course, caused debate, noise, and rejection by the Indonesian people.

The provisions for the main characteristics of Pancasila into three precepts and the provisions for crystallization of Pancasila into one principle do not just stop there, in Article 6 another terminology appears, namely "sendi pokok" or basic principle that is social justice. As a result, in total there are three terms whose uses and benefits the public does not know; basic principle terminology, basic characteristic terminology, and crystallization terminology. The three terms are permeated by the public as an effort to change Pancasila consisting of five precepts into certain precepts with a classification that cannot explain its usefulness and purpose rationally.

Article 9 of the *HIP* Bill describes the order of the Pancasila society to be realized; adequate food and clothing, adequate housing, health, education, employment, and social security. Draft Article 9 of the Bill contains guarantees for the fulfillment of many variables in the needs of people's lives to ensure a sense of social justice by fulfilling basic rights as human beings and citizens. The description of the government guarantees is coherent and continues until it comes to the following articles, which is referred to in Article 12 as a form of human embodiment based on Pancasila.

Similar guarantees to the draft of Article 9 of the Bill which is contained in a series of laws and regulations are a matter of a particular concern. Why? Because in fact, these norms are norms that are intended and binding on the government, it is the government that has the authority to regulate people's lives through the regulation of legislation in all lines of citizens' lives. When norms or provisions in regulations are not implemented or even violated, the law should have sanctions and a mechanism for sanctions enforcement procedures. They are then referred to in legal science as legal protection, which means that if there are provisions in the law that are not implemented or violated by law, there are sanctions and mechanisms for sanctions enforcement procedures (Hadjon, 1987).

When norms or provisions in regulations are not implemented or even violated, the law should have sanctions and a mechanism for sanctions enforcement procedures, because if not, there will be many protection provisions in laws and regulations whose enforcement cannot be accounted for or whose implementation is just a figment. This is a challenge for the concrete implementation of norms enforcement in the Draft Articles 9 to 29 of the *HIP* Bill.

Furthermore, in the provisions of Article 38 paragraph (2), additional ministerial slots appear specifically to ensure the implementation of the Pancasila Ideological Direction in the national population and family system. The number of

existing ministry slots is already quite a lot, let alone adding another ministry agency or structure for this matter, because apart from being ineffective, the burden on the state budget is also increasing. The budget that was originally prepared to finance the operations of the new ministry should be channeled to free up education and health costs or at least allocated for real public services.

The construction of the *HIP* Bill designs the executive as a superpower institution above all state power organizations, this is proven in the editorial of Article 41 regarding the scope of development, Article 41 places the executive as a coaching institution making the executive higher than the legislature and judiciary. The provisions in Article 41 are of course unconstitutional because they place the executive higher than other power organizations while the 1945 Constitution of the Republic of Indonesia does not stipulate that. The 1945 Constitution of the Republic of Indonesia places the executive, legislature and judiciary as equal institutions, that is as high state institutions.

Institutionally, the duties and authorities are not mentioned in detail, only stating that they will be further regulated in a Presidential Regulation. Institutional agency that carries out the affairs of fostering the Pancasila ideology will consist of directors and implementers, with details of the directors consisting of elements of the Central Government, the Indonesian national army, the state police of the Republic of Indonesia, state civil apparatus, or retirees, elements of academics, experts, as well as elements of community leaders. Meanwhile, the implementing agency that carries out the affairs of fostering the Pancasila ideology consists of the head, deputy head, main secretary, and other deputies established.

Pancasila, as the state philosophy, cannot be treated only as a patron to regulate the people but does not bind and regulate officials and governance. Pancasila is only used as a tool to limit the people, its philosophical values are demeaned and used as a tool for the rulers to control their people according to the will of their single interpretation of truth. Pancasila must also bind and regulate officials and governance in the government. In line with the provisions of Article 5 of the Bill that the purpose of Pancasila is the realization of state goals, this fundamental goal should not only be a recommendation of the law but must be the basis of every legal product which, not only binds the people, but also binds all aspects of the state movement, that is the legal system.

### **Pancasila Deviation**

Pancasila is the philosophy of the state, all of which are the noble values of the nation. The idea of appreciating and practicing Pancasila is an idea that has positive values overall (Devi A, 2020) but history records how the deviation of Pancasila values has graded from what was originally an idea of appreciation and practice to become a tool of power. The community is required to live and practice it, but this is actually the opposite of the practice of state officials in running the government. In the midst of the idea of appreciating and practicing Pancasila, violations of the law are brutally immoral, such as the murder of the judge examining the alleged corruption case against the president's son, public memory may clearly record other cases, such as the Marsinah case and many other cases.

Syafiuddin Kartasasmita is the Supreme Court Justice/Young Chair of the Criminal Division of the Supreme Court (MA) of the Republic of Indonesia. In a trial on September 22, 2000, he sentenced Hutomo Mandala Putra, alias Tommy Soeharto, to 18 months in prison and a fine of Rp. 30.6 billion in an appeal in the case of swapping land owned by *Bulog* with PT. Goro Batara Sakti. (Bureni, Justice Dialogue in The Process of Criminal Justice, 2018) After 10 months, Syafiuddin was shot dead by an unknown person on his way to his office. Tommy, the youngest son of former President Soeharto, was suspected of being the mastermind of this murder, and later the allegations were proven by the court. This crime was committed by the ruling family (Sani, 2021).

Syafiuddin works daily as a Judge at the Supreme Court. On July 26, 2001, Syafiuddin Kartasasmita was shot dead by unknown persons on his way to his office. The mystery of the motive for the murder of Supreme Court Justice Syafiuddin was revealed after two suspects in the murder were arrested a month later. Both admitted that they were ordered by Tommy Soeharto to kill Syafiuddin (Sani, 2021). The plot of the story becomes clear. Prior to his death, Supreme Court Justice Syafiuddin Kartasasmita was handling the swap case between PT Goro Batara Sakti (GBS) and *Bulog*, which caused the state to lose Rp 9.5 billion. This case dragged Hutomo Mandala Putra or Tommy Soeharto. Tommy is the main commissioner of PT GBS as a shareholder of 80 percent. Meanwhile, Ricardo Gelael is the president director of the company, which holds a 20 percent stake. They were involved in a swap agreement or ruislag with *Bulog* on February 17, 1995 (Sani, 2021).

The land owned by *Bulog* in the form of land, buildings, offices, and warehouses in the *Bulog* Warehousing Complex in Kelapa Gading, North Jakarta, covering an area of approximately 50 hectares, will be exchanged for an area of approximately 125 hectares, in the Marunda area, North Jakarta, in the form of swamps prepared by Tommy. The case arose after it was discovered that there was no auction process, but through a direct appointment under the authority of Tommy's father (Sani, 2021).

Initially, at the first instance court, namely the South Jakarta District Court, Tommy and Gelael were acquitted on April 19, 1999. However, the Prosecutor requested an appeal and Tommy was found guilty at the Supreme Court cassation level. The chairman of the panel of judges at that time, Syafiuddin Kartasasmita, sentenced him to pay compensation of Rp. 30 billion, a fine of Rp. 10 million, and to 18 months in prison on September 22, 2000 (Sani, 2021).

Tommy had asked for clemency to President Gus Dur. However, Gus Dur rejected Tommy's request for clemency through Presidential Decree No. 176/G/2000 which was released on November 3, 2000. After that Tommy fled. The Cobra Police Team led by Tito Karnavian, the Special Team for Hunting Tommy were trying to hunt him down, there was a shooting incident of Supreme Court Justice Syafiuddin Kartasasmita. Tommy was a fugitive for 1 year and 22 days, luckily he didn't escape with the deterrent mechanism (Setiyono, 2001). The search ended when the police made an ambush on Jalan Maleo II No.9, Bintaro Jaya, Tangerang. On November 28, 2001 Tommy was arrested. The Central Jakarta

District Court finally sentenced Tommy to 15 years in prison. Tommy was proven to have firearms, possess ammunition, kill Supreme Court Justice Syafiuddin, and escape from legal snares (Sani, 2021).

Other abuses of power are in the form of monopolistic practices and criminalization of people who disagree. One of them is Pranoto's conflict with Soeharto, which began when the two were leaders of the Diponegoro IV Territory Army (TT). Soeharto, as the division commander, abused his position by carrying out illegal activities. According to Pranoto, as quoted by Salim Said in Gestapu 65: *PKI, Aidit, Soekarno, and Soeharto*, "the misappropriation committed by (Soeharto) was in the form of illegal barter, clove monopoly from the association of kretek cigarette factories in Central Java (*PPRK*), and the sale of scrap metal sponsored by Chinese people named Liem Sioe Liong, Oei Tek Young, and Bob Hasan" (Mukthi, 2018). Soeharto used the truck facility, owned by TT IV. Pranoto, as chief of staff and commander of CPM TT IV, Lt. Col. Soenaryo, immediately investigated. The results of the investigation were then reported by Pranoto to the Army Chief of Staff - General Nasution, who almost rewarded Soeharto with dismissal. While Soeharto was serving his sentence with a study assignment in Bandung, Pranoto replaced him as commander of Diponegoro. The two met again in Jakarta after Soeharto served as commander of Kostrad and Pranoto as Assistant III (Personal) to Menpangad A. Yani (Mukthi, 2018).

The conflict between the two occurred again following the disappearance of the Menpangad A. Yani who was kidnapped by the G30S. Pranoto, who was appointed by President Sukarno to be the daily executor of the Army (*AD*), could not appear before the president because Soeharto did not give him permission, because Soeharto had taken over the leadership of the Army (Mukthi, 2018). "I cannot face the President/Commander in Chief directly without the permission of Major General Soeharto, who replaced the Army leadership at that time. However, Major General Soeharto always forbade me to appear before the President," said Pranoto in the Memoirs of Major General Raden Pranoto Reksosamodra. Soeharto then "killed Pranoto's career" by making him a high-ranking officer seconded to the Chief of Staff of the Indonesian Army. In February 1966, Soeharto completely killed Pranoto, both career and personal. Soeharto arrested Pranoto through the Warrant of Arrest/Detention No.37/2/1966 dated February 16, 1966 (Mukthi, 2018). Pranoto was accused of being involved in the G30S with evidence in the form of a letter from Colonel Latif who went into hiding after the Gestapu failure. The evidence was obtained from the intel assigned to hunt down Latif. The letter contained a request for protection to Pranoto as an army officer. This raised suspicions for Soeharto that Pranoto might sympathize with the movement. Because personally, Latif knew and was closer to Soeharto than Pranoto (Mukthi, 2018).

Latif's letter was never received and known to Pranoto, Pranoto had to languish in the Block P Detention Center starting March 1966. After almost a month in Block P, Pranoto was then under house arrest. He was again imprisoned in early 1969 when Soeharto issued Arrest/Detention Warrant No. Print.212/TP/1/1969. Pranoto lives in *INREHAB* Nirbaya with other class A political

prisoners (Mukthi, 2018). Starting January 1975, Pranoto no longer received his rights, such as a salary or other income. Until he was released in 1981 based on the *Pangkopkamtib* Decree No. SKEP/04/KOPKAM/1/1981, Pranoto never received an official dismissal letter from the Army. Pranoto also did not get a pension until the end of his life and his name was never rehabilitated (Dewanto, 2022) - it was only General Nasution who called him immediately to apologize for having misjudged him (Mukthi, 2018).

Another abuse of New Order power in personal criminalization also occurred to General Indonesian Armed Forces AH Nasution who was Soeharto's superior in the Army. Nasution as the Army Chief of Staff knew that Soeharto (the commander of TT VII Diponegoro) had smuggled several commodities with businessmen Liem Sioe Liong, Bob Hasan, and Tek Kiong. Soeharto was almost fired but with the help of the Wa-KSAD, General Gatot Soebroto, the dismissal did not happen (Mukthi, 2018). The anti-*PKI* attitude led Nasution and Soeharto to unite from the second half of Guided Democracy. Nasution and Soeharto worked hand in hand to crush the *PKI* after the G30S incident, Sukarno resigned, and Soeharto became President. Nasution and Soeharto's relationship deteriorated again when Soeharto became President. Soeharto dissolved the Provisional People's Consultative Assembly (*MPRS*) led by Nasution in 1972. Soeharto ordered his officers to burn the books of the *MPRS* led by Nasution, which contained his impressions during his tenure at the Provisional People's Consultative Assembly (*MPRS*), along with the warehouses (Mukthi, 2018).

Nasution's movements were continuously monitored and restricted by the authorities. The Operational Command for the Restoration of Security and Order (*Kopkamtib*) forbade Nasution from speaking on campuses and giving Friday sermons. It is always difficult for students to invite Nasution to be a resource person. The Operational Command for the Restoration of Security and Order (*Kopkamtib*) also banned the mass media from publishing Nasution's writings. Nasution's difficulties grew after he joined the *Petisi 50* group, a group of senior politicians and retired generals who were trying to correct the New Order government, which was deemed to have deviated from a one-sided interpretation of Pancasila. *Kopkamtib* immediately revoked the political rights of the members of *Petisi 50* and banned (prevent and deter) them. *Petisi 50* is a letter of protest that was initiated by 50 national figures which was signed and read in front of members of the House of Representatives of the Republic of Indonesia on May 5, 1980 (Mukthi, 2018).

Nasution had to make his own well at home because the water flow from the Regional Water Company (*PDAM*) was cut off. Nasution is prohibited from appearing in public or attending state events and events attended by government officials. Nasution, experienced a social boycott, during the commemoration of Adam Malik's death, Nasution was pushed by members of the Presidential Security Forces (*Paspampres*) when he was about to pray for the corpse and was ordered to leave. The reason, at that time, was because Vice President Umar Wirahadikusuma, Nasution's aide during the revolution, was about to enter the funeral home. This situation led Nasution to the conclusion that the authorities'

accusations that the signatories of *Petisi 50* conspired to seize power were the same as the *PKI's* accusations against him and the army leadership during Guided Democracy (Mukthi, 2018).

Another signatory to *Petisi 50* is Police General Hoengeng Iman Santoso. Hoengeng and Soeharto's relationship was initially good. Hoengeng's honesty and firmness in eradicating corruption, smuggling, and various other forms of crime disturbed Cendana, which eventually led to misunderstandings between the two. Hoengeng was moved to thoroughly investigate the Sum Kuning case which arose in the late 1960s. Hoengeng believes that the final outcome of the trial for the rape of an egg trader named Sumarijem by several of the officials' children was full of fabrication. Justice is very difficult to achieve, Sumarijem is the victim, but the judge makes him a suspect. Hoengeng immediately formed a team. However, before the team got much results, Soeharto immediately took over the case. When receiving Hoengeng, Soeharto said the handling of the Sum Kuning case was taken over by *Kopkamtib* (Mukthi, 2018). Soeharto was furious when Hoengeng uncovered the luxury car smuggling carried out by businessman Robby Tjahjadi. The smuggling, according to Hoengeng's investigation, occurred due to the intervention of the authorities. "What surprised Hoengeng was that when he wanted to meet Soeharto at his residence to inform him that the car smuggler would be arrested, it turned out that the car smuggler was meeting and talking to Soeharto," wrote Aris Santoso et al, in *Hoengeng: Oase Menyejukkan di Tengah Perilaku Koruptif Para Pemimpin Bangsa* (Mukthi, 2018). Since then, Hoengeng never trusted Soeharto again and was dismissed from his post shortly thereafter. He firmly rejected Soeharto's offer of an ambassadorial position. Their relationship worsened again when Hoengeng joined *Petisi 50*. The group was active in correcting the New Order's abuses for interpreting Pancasila unilaterally for its own sake and accusing parties with different interpretations of Pancasila as anti-Pancasila (Mukthi, 2018). Hoengeng immediately lost his political rights and was forbidden to appear in public. This made many people afraid to approach Hoengeng. Once, a businessman canceled his plan to purchase a painting by Hoengeng because the painting had the initials of the painter's name on it. The businessman had asked him to delete it but Hoengeng refused. Since 1987, the government has not allowed him to attend the National Police Anniversary celebrations (Mukthi, 2018).

The same thing happened and was experienced by Lieutenant General *KKO* (Ret.) Ali Sadikin and Lt. Gen. TNI H.R. Dharsono because of his criticism that made the rulers uncomfortable. Ali Sadikin is prohibited from attending state events or celebrations of national days. The government even asked foreign embassies in Jakarta not to invite Ali to their events. Ali was also not allowed to attend the celebration of the opening of the Jakarta Fair (*PRJ*) even though the annual event was his idea during his time as governor of Jakarta. Through *Kopkamtib* (The Operational Command for the Restoration of Security and Order) led by Admiral Sudomo, Ali's junior in the Navy, Soeharto ordered to arrest Ali. Sudomo refused and turned it into *persona non grata* or declared civil death of Ali Sadikin. *Persona non grata* not only happened to Ali personally, but also all his family members (Mukthi, 2018). Lt. Gen. H.R. Dharsono was one of Soeharto's

mainstay commanders who tried to overthrow Sukarno and clearly had a very good relationship with the President. Soeharto appointed Dharsono as commander of Siliwangi – replacing Ibrahim Adjie, a commander with a reputation for anti-corruption, a supporter of Sukarno – as a reward for the services he had rendered (Mukthi, 2018). Dharsono's relationship with Soeharto worsened after Soeharto served as president for 10 years and Dharsono as secretary general of ASEAN. When giving a speech in front of Exponent 66 in Bandung, January 1978, Dharsono criticized the government through the *ABRI* (Armed Forces of the Republic of Indonesia) which he considered increasingly deviated. Dharsono's criticism sparked the anger of the authorities. The situation got worse because Dharsono refused to accept the government's demand for an apology. As a result, Dharsono had to lose his position at the Secretary General of ASEAN (Mukthi, 2018).

### **The position of Pancasila in Indonesian Legal Construction**

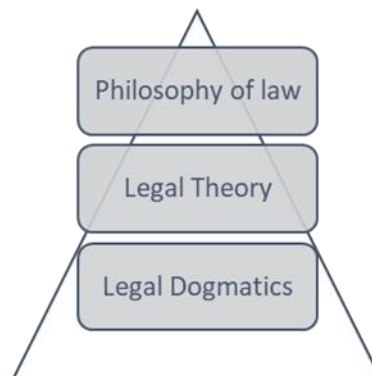
Indonesian legal construction is stated in Law no. 12 of 2011 concerning the Preparation of Legislation. The construction of Indonesian law is divided into two broad lines, namely the construction of laws and regulations whose hierarchy has been determined in Article 7 of Law no. 12 of 2011 and the construction of laws and regulations whose hierarchical structure is not determined as stated in Article 8. The hierarchy of the legal structure in Indonesia, starting with the 1945 Constitution of the Republic of Indonesia as the highest legislation, followed by Decrees of the People's Consultative Assembly, Laws, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/Regional Regulations. The provisions of the hierarchical arrangement of Indonesian legislation consist of 7 (seven) hierarchical levels from the highest to the lowest, that is Regional Regulations.

Other Indonesian legal constructions are laws and regulations whose hierarchical order is not specified by law as stated in Article 8 of Law No. 12 of 2011 concerning the Preparation of Legislations. These other legal structures include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agencies, institutions, or equivalent commissions established by the Act or the Government on the orders of the Act, the Provincial Regional People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent. The legal construction in Article 8 whose hierarchical order is not specified includes 17 different kinds of institutions, which may still increase if they are stated definitively and concretely. The same thing is re-explained in Article 8 paragraph (2) which states that the recognition of other institutions that may not have been mentioned in Article 8 paragraph (1) whose existence is recognized and has binding legal force as long as it is ordered by a higher Legislation or is formed based on the authority.

The construction of Indonesian law thus creates a legal wilderness that causes the potential for overlapping laws in its regulation. Putting Pancasila as a value that must be maintained in every series of laws and regulations is expected to be

able to help the chaos and overlapping laws and regulations. The government only needs to strengthen its goodwill in fixing the complexities of laws and regulations by emphasizing in the Law on the Drafting of Legislation that every product of legislation must be in one spirit with the precepts of Pancasila. The next step is to place Pancasila as a test tool to assess the coherence of the products of laws and regulations in the Constitutional Court to examine the Law and the Supreme Court to test the products of regulations under the Act. Such a situation automatically requires Pancasila as the highest source of law which is above the 1945 Constitution of the Republic of Indonesia. Hans Kelsen, in the theory of legal norms (*stufentheorie*) states that legal norms are tiered and layered in a hierarchy (organization), lower norms apply, originate, and are based on higher norms to norms that cannot be traced further and are hypothetical and fictitious, that is the basic norm (*Grundnorm*). (Farida, 2007) Pancasila as the philosophy of values in Hans Kelsen's *stufentheorie* should occupy the position of *Grundnorm*, which is a norm that cannot be traced further and is hypothetical and fictitious, that is the basic norm. This is in line with Pancasila as the basis of the state.

Pancasila, in terms of legal science according to meta-theory, still does not shift its position as a source of law (meta-meta-theory). Meta-theory is a theory in which another theory is contemplated. According to Van Hoekcke, legal theory is a meta-theory for legal dogmatics, (philosophy of law is a meta theory for legal theory), to the most fundamental theory as the end point. Van Hoekcke explained that the layer of law consists of the highest layer, namely philosophy, followed by legal theory, and the lowest layer after legal theory is legal dogmatics. Philosophy of law is a theory that explains its own theory and has no metatheory on it. (Brugink, 2015)



Pancasila as the state philosophy automatically becomes a source of meta-norms by occupying the top position as a legal philosophy. As a state philosophy that occupies the level of philosophy that should occupy a position as a source of meta-norms for legal theory and meta-meta-norms for legal dogmatics, Pancasila is a goal orientation for legal theory and legal dogmatics. Pancasila as the state philosophy and the philosophy of the Indonesian legal structure should have a clear body in the Indonesian legal structure.

As the thoughts of legal philosophies, which represent the ideal orientation for legal theory and dogma, Pancasila should be the reference for the structure of the Indonesian legal system. As a reference for the purpose of law in Indonesia,



perhaps not many people deny it or even consider it a cliché; Pancasila philosophy should be placed between the structure of legal science and the structure of the legal system. (Brugink, -)

The basic question as a form of scientific thinking is, can the urgency of the position of Pancasila as the state philosophy have a consistent influence on the structure of legal science and the structure of the Indonesian legal system? What is the embodiment of Pancasila as a state philosophy that represents the purpose of the legal structure and legal system of Indonesia?

Pancasila as the basis of the state, the basis of state philosophy, state ideology, and the ideals of state law need to be mentioned in the consideration for every Indonesian legal product in addition to the 1945 Constitution. This indicates that the spirit of Pancasila must be a spirit that is present in every law made by all state institutions so that every statutory regulation does not lose the spirit of its state philosophy. For example, the regulation on the import of salt in Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers and is described in Government Regulation No. 9 of 2018 concerning Control of Imports of Fishery Commodities and Salt Commodities as Raw Materials and Industrial Auxiliary Materials. The lack of clarity on the control mechanism and legal protection for salt farmers in the midst of the invasion of imported salt commodities is a portrait of legislation that has lost the spirit of Pancasila, both the 2nd principle of just and civilized humanity or the 3rd principle of Social Justice for all Indonesian people.

Law No. 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers is only one legal product among many, maybe even dozens of legal products that promise "protection" but do not actually protect, instead create misery. for the Indonesian people. The word "protection" becomes an ornament of legislation but the substance of the regulation actually gives "law" to the people. That is why the meaning of just and civilized humanity in Pancasila needs to be positioned so that it has the power of law to maintain linearity, synchronization, and harmonization of Indonesian laws and regulations so that society can grow and develop in humanity and justice.

### **Ideal Format for Pancasila Embodiment as the State Philosophy**

Pancasila is the basis of the state philosophy which unites all diversity in the archipelago, final, all elements of the nation accept it completely by acclamation (Nurgiansah, 2022). Pancasila is a solid foundation that should strengthen the life of the state. If the life of the state falters, the question that arises is, where is the actual existence of Pancasila in the life of the state? or have we misplaced it due to being too proud of Pancasila? Something that should act as a foundation is instead placed on the wall of the living room as a show of pride without having any meaningful function, that is as the deepest foundation embedded in the base of the building (Pahlavi, 2016). A legal construction, the basis of all laws and regulations refers to a higher source of law to a source of law that cannot be traced anymore, stems from the philosophical values of the community itself, according to the Stufenbau theory which was initiated by Hans Nawiaski and refined by Hans Kelsen (Indarti, 2013). Then it will be a common question if our state philosophy,

Pancasila, actually disappears from the hierarchy of the highest legislation (Hasym, 2017). The state philosophy of Pancasila does not have any meaning other than artificial meaning, with the negation of Pancasila from the highest hierarchy of laws and regulations, the legal force of Pancasila as a source of law actually has no meaning and loses its function and strength (Bo'a, 2018).

The Constitutional Court reviewing the law does not use the reference to Pancasila, it only suffices to test it with the Constitution, while the 1945 Constitution of the Republic of Indonesia is a political product that is very likely to contain weaknesses in interest-laden compromises (Bureni, Justice Dialogue in the Process of Criminal Justice, 2018). Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that sovereignty is in the hands of the people and is carried out according to the Constitution, but does the 1945 Constitution of the Republic of Indonesia have a further explanation of the mechanism for how the people's sovereignty is enforced? The 1945 Constitution of the Republic of Indonesia itself is not able to explain the essence of people's sovereignty, let alone put people's sovereignty back into its proper meaning. The 1945 Constitution of the Republic of Indonesia is a political product that really needs to coexist with Pancasila as the eternal value of the nation's philosophy. Pancasila needs to emerge as a source of all sources of law and a source of linearity in testing the coherence of laws and regulations to the lowest level of legislation. A good legal system should be able to disqualify norms that are not in line with the spirit of the highest philosophy, namely Pancasila.

"Sovereignty is in the hands of the people and implemented according to the Constitution," reads Article 1 paragraph (2) of the Basics of the Indonesian Constitution, therefore there should be Articles of the 1945 Constitution that explain in detail if the sovereignty is misinterpreted and causes it to be carried away and dragged by the flow of interests without control (Anggraeni, 2016). As when the Constitutional Court in 2012 ordered the return of oil and gas management to the Ministry of Energy and Mineral Resources to cancel the function of *BP Migas*, but the government did not comply by maintaining *BP Migas* with *SKK Migas*, how much of the state budget was wasted to finance wasteful institutions that could have actually been minimized?

Similarly, disobedience was again vestivalized when the Supreme Court canceled the increase in *BPJS* health insurance payments as of January 1, 2020 on Thursday, February 27, 2020, but the government again resisted by continuing to increase *BPJS* contributions in July of the same year as Presidential Decree No. 64 of 2020. Indonesia's legal construction system with its constitution, once again is unable to explain and anticipate legal disobedience committed by the branches of state power (Kana Purwadi, 2021). The Constitution is not able to filter violations of the law committed by the state itself as violators. The Constitution and all laws and regulations as legal products as well as political products need to be ascertained whether they are actually aligned with the basic philosophical foundations of the country's philosophy, Pancasila, so that the practice of state life remains solid (Fathorrahman, 2021). Pancasila should be placed as the highest hierarchy to examine laws or regulations under the law.

The law as the legal basis that regulates the Pancasila ideology as a guideline in the nation and state has not been owned by Indonesia since the end of the New Order, however, Pancasila has been included in the preamble to the 1945 Constitution, although Law Number 12 of 2011 does not mention it as a source of law itself, nor as the highest source of law. Law Number 12 of 2011 concerning the Formulation of Legislative Regulations states in Article 7 that the 1945 Constitution occupies the highest hierarchy in the composition of legislation, which means the highest source of law is the 1945 Constitution. Pancasila as the nation's philosophy which is the foundation of the state, needs to emerge as a separate and highest source of law, which must also be a reference for any agreements and amendments to the 1945 Constitution. This indicates that the articles in the 1945 Constitution must not oppose Pancasila. This means that Pancasila, in the preamble of the 1945 Constitution, is a separate legal product which is higher than the 1945 Constitution. This should place Pancasila independently in addition to the 1945 Constitution.

This is in line with the consideration of the *HIP* Bill which states that Pancasila is the basis of the state, the basis of state philosophy, state ideology, and the ideals of state law. Direction, philosophy, ideology and legal ideals are keywords which mean that Pancasila must be a legal instrument that should not be derived under the 1945 Constitution. The reference patron for every legal product should be Pancasila in addition to the 1945 Constitution. In fact, the elaboration of the articles in the body of the 1945 Constitution must not conflict with Pancasila, let alone contradict it.

Pancasila as a value should function concretely in the statutory hierarchy, both within the authority of the Constitutional Court to examine the Act under the 1945 Constitution and within the authority of the Supreme Court to examine legal products under the Act, so that the existence and influence of Pancasila is concrete and clear. Pancasila is not merely an "ornament" with no concrete meaning as the basis of state philosophy. Placing Pancasila as the highest hierarchy in the laws and regulations means giving meaning to Pancasila, which is legally binding on the life of the nation and state. Placing Pancasila as the highest source of law also means keeping the laws and regulations on track so that they are in accordance with the philosophy of the state. It is the hope of all people that Pancasila becomes a shelter that provides peace and is able to realize a just and civilized humanity. Pancasila which reflects democracy led by the wisdom of deliberations among representatives. Pancasila which radiates social justice for all Indonesian people. An established and solid legal construction is a source of strength to get through everything without causing many problems, such as the pandemic that Indonesia is currently facing

## **Conclusion**

The researcher finds that Pancasila is placed as the philosophy of the state but its position in the construction of the Indonesian legal system is inconsistent. The results of the study conclude that Pancasila needs to be embodied, so that the Indonesian legal system can be more consistent with the goals of the philosophy of the state. Pancasila, as the state philosophy, is the domain of the House of Representatives as a legislative institution holding the people's sovereignty.

Pancasila is not the domain of the executive implementing the joint framework between the executive and the legislature. The HIP Bill places its regulatory authority on the BPIP institution or its successor, which is under executive control.

### Suggestion

The results of this study recommend that Pancasila, as the philosophy of the state, needs improvement in order that the state philosophy has more legitimate power to regulate, it must not only be placed on the highest legal product but it must also have its own legal entity above the 1945 Constitution, as well as act as a filter for statutory legal products to ensure that all state policies are in conformity with Pancasila as the state philosophy.

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