

## Legal Effectiveness of The Pancasila Ideology Development Agency (BPIP) in Giving Recommendations About Regulations that Conflict with Pancasila Values

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### Abstract

This study aims to explain the legal effectiveness of BPIP's recommendations on statutory regulations that are contrary to Pancasila values and the main factors that are internal obstacles to BPIP institutions. This type of research uses normative-empirical research. This type of research uses secondary data (from the library) and is supported by primary data based on field research, such as observations, interviews and surveys. Using a normative/juridical approach and a philosophical/ideal values approach. The results of this study are that the implementation of the duties and functions of the BPIP in providing recommendations on regulations that conflict with Pancasila values or the institutionalization of Pancasila values in a product of current legislation is not fully effective due to various influencing factors, including the weak institutionalization of Pancasila values in political institutions, economic, and socio-cultural, and lack of consistency in making Pancasila the source of all sources of state law in the formation of statutory regulations, BPIP with its duties and functions can provide recommendations on statutory regulations that are contrary to the values of Pancasila but need to be strengthened again the form of the recommendation so that it is final and binding, bearing in mind that the recommendation policy issued by BPIP is only in the form of written input on the contents of regulations or laws that are not in line with Pancasila values.

### Keywords

Legal Effectiveness; Recommendations; Pancasila Ideology Development Agency (BPIP)

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## 1. INTRODUCTION

Regarding legal development in a country, Indonesia is in dire need of additional development and guidance in its national legal system in order to encourage and support development in all sectors, particularly legal development (Ferry Anggriawan, 2020). Keeping in mind Roscoe Pound's definition of "a tool as a social design," national legislation must be able to signify the direction and path of the relationship between law, society, and the state. This is possible if the objective is to maintain and develop national laws and regulations based on the spirit of togetherness and societal values, without ignoring the values that develop over time, because legal materials or products are always changing



and these changes are caused by time and social change, as the law does not exist in an unchangeable state. As explained in previous studies, one of them is the implementation of Pancasila values as the basis of the state in the formation of laws and regulations compiled by Oksep Adhayanto, which states that the norms and values contained in Pancasila should be able to be elaborated in the form of articles in each drafting of laws and regulations so that they can reflect the values that exist within society itself (Oksep Adhayanto, 2017). The mandate of Article 2 of Law Number 12 of 2011 that "Pancasila is the source of all sources of state law" reinforces the importance of placing Pancasila within the realm of material sources of law, particularly in the process of formulating laws and regulations.

The position of Pancasila is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia, in which Pancasila is placed as the foundation of the state as well as the philosophical foundation of the nation and state, so that the content of statutory regulations may not be in conflict with the values contained in the Pancasila precepts. Therefore, it is essential to have an agency or institution that can oversee every regulatory policy or law to ensure that it is consistent with the values adopted by the nation. However, it is also necessary to evaluate the effectiveness of the law or the sustainability of each agency carrying out this function in order to optimise the institutionalisation of values based on legal ideals and national values in the future.

Therefore, this extremely dynamic development can have an effect on the legal substance, which is frequently not founded on the nation's legal ideals and values. It is also possible to say that the law is a tool that will meet the needs of the community, so it must be reformed to meet those needs. And in the current legislative reform, values are required as the framework and direction for sources of value, as well as the basis for formulating a regulation or law in accordance with a society's legal ideals. The relevance of the rule of law in general, with the legal needs of everyone who will be subject to the rule of law, therefore, if the rule of law in question is in the form of a law, the legislator must be able to translate and comprehend the legal needs of the target to ensure the law's enforceability (Ali, 2012).

In a nation with a unified legal system, there may also be a rule that is superior to the constitution. The constitution is based on these higher principles. In the unified state legal system, the paramount authority is referred to as the *staatsfundamentnorm*, also known as *grundnorm*. The essence of this state constitutional norm is a legal requirement for the constitution's validity because it was formed from and is directly rooted in the nation's history and collective decisions (Megasari, 2022).

In the contemporary Indonesian context, things that can be implemented by reformulating the values or principles of Pancasila and the emanation of the nation's soul, which contains the core values of public morality, must be viewed as a metalegal form that constitutes the highest laws. This utmost law or standard is referred to by Hans Kelsen as *Philosophische Grundslag/Grundnorm* and by Hans Nawiasky as *Staatsfundamentnorm*. Based on the essence or character of the people, these fundamental norms are the principal and highest rules of every legal system and nation. As an expression of the essence of the people, this fundamental norm is no longer shaped by higher norms; rather, it is "determined" (adopted) by the people of the country and then becomes dependent on the legal norms below it.

Because Pancasila and the 1945 Constitution of the Republic of Indonesia are the basis for the realization of social life, nation, and state, everything that is done in Indonesia, especially the formulation of regulations and legislation, must be in accordance with these two documents. Besides that, everything that is done in Indonesia must be governed by the law, given that Indonesia is a nation of laws. As the foundation and ideology of the state, or as the fundamental legal principles and standards of the state, Pancasila must become the model for all legal reforms. Due to the fact that the law is not immutable, legal materials and products are constantly evolving alongside the changing times and societal norms. Pancasila must remain a way of thinking and a source of the nation's values despite these ongoing legal reforms.

Obviously, the government as an organization has objectives to attain; therefore, the government should make these plans. The government will plan various programs to achieve the state's objectives based on the goals to be attained (Ilmar, 2014). In order to ensure that the designed and implemented

rules, laws, and regulations are consistent with the Pancasila values, an evaluation tool or indicator is required. The conditions that occur in the preparation and evaluation of laws and regulations related to the Pancasila values are solely based on the subjective reasoning of its founders and on the legal principles of the formation of laws and regulations, as set forth in the provisions of law No. 12 of 2011. There is no standardization of Pancasila values, an objective reference that can be used as a guide and foundation for drafting a decision or law consistent with Pancasila values.

Evaluation of a statutory product is highly realizable. These statutory factors are evaluable because these laws do not yet reflect a sense of justice, certainty, or expediency, nor have they been able to meet all of society's legal requirements. One can evaluate the validity of a legal product in a variety of methods, including judicial review, legislative review, executive review/administrative review, and legislative review. However, these instruments are often implemented because legal regulations are not viewed as a manifestation of justice, certainty, and adequacy and do not meet the legitimacy needs of society and government, or because they are viewed as a violation of the constitutional rights of society or citizens. incompatible with or violating the Pancasila values. Therefore, the evaluation of a legal product must include not only sociological and legal considerations, but also philosophical considerations related to the Pancasila values (Ilmar, 2014).

The formation of the Pancasila Ideology Development Agency (BPIP) by the government in 2018 represents a genuine endeavor by the government to carry out its administrative duties in response to the evolving social situation. In the midst of a democratic system that highlights the advantages and disadvantages of various new ideas, this very rapid development has given rise to various controversies among the public, which are feared to undermine or erode the understanding and experience of Pancasila's values as the state ideology, a way of life, and a unifying tool for the nation (Burhanuddin, 2020; Mustari, 2019).

The Pancasila Ideology Development Agency (BPIP) has drafted regulations such as BPIP Regulation No. 4 of 2020 Concerning Harmonization of Draft Ministerial Regulations, draft Regulations of Non-ministerial Government Institutions, drafts from Non-Structural Institutions, and draft Regional Legislations. Second, BPIP Regulation No. 5 of 2020 Concerning Guidelines for Providing Recommendations Against Pancasila-Contrary Policies and Regulations. Regarding the performance achievements of the Pancasila ideology development agency in analyzing policy and regulatory studies conducted by the Deputy for Advocacy and Regulatory Oversight, BPIP produced a number of recommendations for laws and regulations that contradict Pancasila values.

There are still many laws and regulations that overlap or conflict with the laws and regulations above them, which is a problem for the legal system today. Several significant problems have been identified as problems of fostering Pancasila ideology, particularly in the internalization and institutionalization of Pancasila values in a law product, so that BPIP can provide recommendations on regulations that conflict with Pancasila values (Yanuar Syam Putra, 2017). The first problem identified is the lack of direction politics and weak legal policies to advance Pancasila ideology at the national and regional levels. Second, the institutionalization of promoting the Pancasila ideology in state administration in ministries/agencies/agencies at the central and regional levels is not yet optimal. Third, the deterioration of the realization of Pancasila values in society, nation, and state life. Fourth, the Pancasila Ideology Development Agency's administration is not yet optimal. Therefore, it is essential to conduct in-depth research on the extent to which the legal effectiveness of the Pancasila Ideology Development Agency's recommendations for statutory regulations that are contrary to Pancasila values, as well as the main factors that become internal institutional obstacles in fostering Pancasila ideology, particularly with regard to the institutionalization of Pancasila values in laws and regulations, and to continue to monitor the situation.

## **2. METHODS**

This type of research employs a normative-empirical research design, which is interpreted as legal research supplemented by empirical data. This form of research utilizes secondary data (from the

library) and is complemented by primary data derived from field research, including observations, interviews, and surveys (Irwansyah, 2020). In this type of research, which falls within the Normative-Empirical legal research type space, law enforcement institutions investigate and evaluate the efficacy of a norm during the enactment and operation of the norm. This type is essentially situated between the two major currents in legal research methods, namely normative legal research and empirical legal research. Consequently, the normative-empirical type of legal research is viewed as the middle ground, i.e. legal research that is still normative but heavily influenced by sociological jurisprudence or research. Therefore, this normative-empirical legal research is deemed appropriate for examining and assessing the efficacy of BPIP law in providing recommendations for regulations that contradict Pancasila values. This research employs a normative/juridical approach, also referred to as a juridical-normative approach, which entails analysing all laws and regulations as the primary source material for research related to the problems (legal issues) at hand. Using a philosophical/ideal values approach, this method is typically used to examine regulations whose norms tend to have deficiencies or weaknesses at both the technical level and in actual practise. This method views law as an expression of philosophical values and ideals. A society's virtuous values. Using both a normative/legal and a philosophical/ideal values perspective. After analyzing all of the data using a qualitative descriptive method, the researcher drew a conclusion based on the analysis that had been conducted (Ringgi, 2017).

### **3. FINDINGS AND DISCUSSION**

#### ***3.1. The Establishment of the Pancasila Ideology Development Agency (BPIP) by Way of Presidential Regulation No. 7 of 2018***

The Pancasila Ideology Development Agency (BPIP) is an institution under and accountable to the President whose mission is to assist the President in formulating policy directions for fostering Pancasila ideology; coordinating, synchronizing, and controlling Pancasila ideology development in a comprehensive and sustainable manner; preparing educational standards and organizing education and training (Bagus Hermanto, 2021). Internal and external factors prompted the establishment of the Pancasila Ideology Development Agency (BPIP) in the constitutional system of the Republic of Indonesia. Internal factors are closely related to the constitutional system of the Republic of Indonesia, where BPIP was created to complement or reconstruct a previously established agency or unit, the Presidential Work Unit for the Development of Pancasila Ideology (UKP-PIP).

Since the institution was superseded by BPIP, the UKP-PIP governed by Presidential Decree No. 54 of 2017 has undergone numerous modifications. Previously, UKP-PIP was assigned and had functions based on article 3 of the Presidential Decree, which stated that UKP-PIP was responsible for assisting the president in formulating general policy directions for fostering the Pancasila ideology and coordinating, synchronizing, and controlling the development of the Pancasila ideology in a comprehensive and sustainable manner. In accordance with Article 3 of the Presidential Decree, BPIP is now responsible for assisting the President in formulating policy directions for fostering Pancasila ideology, coordinating, synchronizing, and controlling the development of Pancasila ideology in a comprehensive and sustainable manner, and preparing education and training materials.

The role specified by BPIP in the legal basis in the form of a Prepress is not only to assist the President in formulating policies, but also to coordinate, synchronize, and continuously direct the development of the Pancasila ideology. Moreover, BPIP is tasked with carrying out this mission by providing training and making recommendations to ministries/high institutions, regional governments, socio-political organizations, and other sectors of society based on research on anti-Pancasila policies or regulations. Referring to the Constitution of the Republic of Indonesia following the amendment, the relevant high state institutions are the People's Consultative Assembly (MPR), the People's Representative Council (DPR), and the Regional Representative Council (DPD). President and Vice President, Supreme Court, Constitutional Court, Supreme Audit Agency, and Judicial Commission.

In carrying out its responsibilities, BPIP executes the following duties:

- a. Formulation of Pancasila ideology-promoting policy directives
- b. Preparation of the Pancasila ideology's framework and a plan for its development
- c. Development and execution of work plans and initiatives to promote Pancasila ideology
- d. Coordination, synchronization, and management of Pancasila ideology development implementation
- e. Plans for the advancement of the Pancasila ideology
- f. Implementation of monitoring, evaluation, and proposed measures and strategies to expedite Pancasila ideology development implementation
- g. Implementation of assimilation and cooperation as well as relations with state high institutions, ministries/agencies, regional governments, socio-political organizations, and other community components in the development and implementation of the Pancasila ideology
- h. Evaluation of Pancasila instructional material and methodology
- i. Advocacy for the application of fostering Pancasila ideology in the formulation and implementation of regulations
- j. Compilation of standardization of Pancasila Education and training as well as organizing Education and training
- k. Formulation and submission of policy recommendations or regulations that are in opposition to Pancasila. In question, the provision of recommendations issued by BPIP is the submission of written input based on the findings of studies on policies and regulations that are antithetical to Pancasila.

BPIP was established with responsibilities and functions closely related to Pancasila-related development issues. Examining some of the BPIP functions enumerated in the Presidential Decree reveals that this BPIP plays a vital and significant role in the process of formulating regulations and laws that are consistent with the Pancasila ideals and values. In carrying out its responsibilities to promote the Pancasila ideology, the BPIP has a body structure that includes a main secretariat and five deputies with specialised disciplines. One of these deputies, the deputy for legal, advocacy, and regulatory oversight, is tasked with internalising and institutionalising Pancasila values in the legal field in order to conduct out regulatory oversight. One of the responsibilities of the deputy is to evaluate the applicability of all statutory regulations using law as one of the Pancasila pillars. So that BPIP can make recommendations on regulations that contradict Pancasila's values. In question, the provision of recommendations issued by BPIP is the submission of written input based on the findings of studies on policies and regulations that are antithetical to Pancasila.

The Deputy for law, advocacy, and regulatory supervision can make recommendations to state high institutions, ministries/agencies, and local governments regarding regulations that conflict with Pancasila values, based on the findings of studies. This can be interpreted to mean that this deputy has the authority to evaluate national or regional regulations that are in conflict with Pancasila values and recommend their repeal or revision. However, this BPIP recommendation is merely written input, as BPIP is neither an institution that drafts laws nor a judicial institution that can overturn laws, so there are still institutions with the authority to disregard BPIP's recommendations in practise. In addition, the BPIP regulations pertaining to this recommendation do not elaborate on the legal force of the BPIP decision's outcomes, and the effect of this recommendation tends to be minimal because it is also governed by a presidential regulation. Therefore, BPIP is anticipated to produce an effective and advantageous institutional design in the near future. BPIP should be given a way to become an examining team or institution whose decisions and outputs are important (urgent), not just limited to providing recommendations, so that automatically the judiciary can immediately work to evaluate without having to wait for reports from plaintiffs or the legislature can immediately revise the most recent regulation, so that the president can immediately issue a Perppu for the law recommended by BPIP. Therefore, it is anticipated that BPIP can play a more effective role in supervising the institutionalisation of Pancasila values and eradicating regulations that are in opposition to these values.

### **3.2. Indicators of BPIP Pancasila Values in the Manifestation and Actualization of Pancasila Values as a Source of State Law**

Pancasila is the philosophical foundation upon which the laws and regulations of the Republic of Indonesia are based. As the ideological foundation of the Indonesian state, Pancasila must be utilized as a legal paradigm (framework, source, and value orientation) in the development and reform of law. In response to the need to establish a paradigm for the reform of the legal system or order, every legal product applicable in Indonesia must be based on Pancasila and the entire Preamble to the Republic of Indonesia's 1945 Constitution (Astomo, 2018).

Formally, Pancasila refers to a set of values expressed in the form of words that have legal force or status as the foundation of the state's philosophy. The formal understanding of Pancasila followed the Proclamation of Independence with the ratification of the constitution, where Pancasila's voice was voiced in the opening of the 1945 Constitution of the Republic of Indonesia (UUD), giving Pancasila binding force as the foundation of the constitution or state philosophy. Even though the word "Pancasila" does not appear in the preamble, Pancasila refers to the Five Precepts in Chapter IV of the Preamble to the 1945 Constitution of the Republic of Indonesia, which was written at the beginning of the Constitution of the Republic of Indonesia.

The Preamble of the 1945 Constitution of the Republic of Indonesia was the precursor to the contents and values of Pancasila, from which the articles in the body of the 1945 Constitution of the Republic of Indonesia were derived. Therefore, Pancasila is the fundamental norm upon which the state constitution (*staatsgrondgezet*) is based. Notonagoro was the first to describe Pancasila as the fundamental (idea of law). He stated that Pancasila as the fundamental law of the state is nothing more than a legal concept. A sign that provides orientation and guidance for all activities in accordance with the applicable laws and regulations. Therefore, lawmaking, implementation, and enforcement cannot be separated from value of Pancasila. Even the TAP MPR No. XX/MPRS/1966 identifies Pancasila as the fundamental standard, the source of all sources of state law, which was followed by Law No. 12 of 2011 and then Law No. 15 of 2019 the second amendment regarding the formulation of statutory regulations, both of which assert the same thing (Huzaeni, 2022).

Every aspect of state law is derived from the existence and status of Pancasila within the framework of Indonesian law. According to Hans Kelsen, Pancasila is the most fundamental legal standard (*grundnorm*). Politically, Pancasila is also a source of ethics and morality, particularly in terms of power legitimacy. The legitimacy of power, according to Pancasila, must be based on the will of the people; therefore, Pancasila favors a democratic state. The existence of Pancasila necessitates that all laws and regulations underlying it be consistent with Pancasila values and not in conflict with them. Legal sources are essentially locations where we can conduct investigation and locate laws (Diamantina et al., 2021).

According to Zevenbergen, there are two types of legal sources: substantive legal sources and formal legal sources. The origin of substantive law is the location from which legal materials are derived. For instance, the source of substantive law influences the law of social relations, political power relations, socio-economic situation, traditions (religious beliefs, decorum), international developments, and geographical conditions of a nation. From formal sources of law, a decision derives its legal effect.

This refers to the formal manner in which regulations are enforced (Mertokusumo, 2010). Pancasila is a source of substantive or substance law, while sources of formal law include statutes and regulations, international agreements, case law, and customs. The content or weight of the material contained in Pancasila, namely the values contained therein, determines the source of Pancasila's substantive rights. Pancasila contains at least some material with the following characteristics: First, the philosophy of the Indonesian people is reflected in Pancasila's content. Second, the Pancasila as a source of national legal identity. Third, Pancasila does not regulate regulations, prohibitions, or punishments; it only regulates the fundamental principles of lawmaking (*meta-juris*).

To ensure that designed and implemented laws and regulations are consistent with Pancasila values, evaluation instruments (parameters/indicators) are required. The preparation and evaluation of

legal regulations pertaining to the Pancasila values have thus far relied solely on the arguments and subjective understanding of legislators and, of course, legal professionals. There are no consistent standards or indicators that serve as an objective indication of Pancasila values that can be used as a guide for compiling and assessing a statutory regulation that is appropriate or not in accordance with Pancasila values. Legislators and the evaluation of statutory regulations have thus far only concentrated on the legal principles of establishing statutory regulations in accordance with Articles 5 and 6 of Law No. 12 of 2011.

In BPIP regulation No. 4 of 2022 regarding indicators of Pancasila values, embodiment and actualization of the values contained in Pancasila as the source of all sources of state law in the Republic of Indonesia are referred to. This Pancasila value indicator serves as a guide for state institutions, ministries/agencies, regional governments, and village governments in the formulation of policies, laws, and regulations. As intended, the formulation of policies, laws, and regulations includes monitoring and evaluating policies, laws, and regulations that are aligned with the BPIP indicators of Pancasila values.

Pancasila is the source of all state law sources that have been established as a meta-legal foundation for the emergence of legal norms in policies and the legal system of laws and regulations. In each precept, Policy Value Indicators, Pancasila Laws, and Regulations are presented as an inseparable, coherent, and mutually supportive unit.

The following is an indicator of BPIP's Pancasila values:

No	Sila	Description
1	Belief in the one and only God. (Ketuhanan yang Maha Esa)	In a civilized manner, policies, laws, and regulations are established to protect and respect everyone's right to believe in and fear God Almighty in accordance with their respective religions and beliefs.  Indicator: <ol style="list-style-type: none"> <li>1. Policies and laws and regulations guarantee that Indonesia is a nation that recognizes God Almighty's existence.</li> <li>2. Policies and laws and regulations guarantee that every citizen can practice the teachings of his religion and beliefs.</li> <li>3. Policies and laws and regulations guarantee freedom and respect for every adherent of religion and belief to carry out their religious and belief obligations.</li> <li>4. Policies and laws and regulations guarantee that everyone in carrying out their religious orders and beliefs is in harmony with the life of society, nation and state.</li> <li>5. Policies and laws and regulations guarantee respect for everyone to embrace their religion and beliefs.</li> </ol>
2	A just and civilized humanity. (Kemanusiaan yang Adil dan Beradab)	Policies and laws and regulations established to provide recognition of equality, equal rights and equal obligations among human beings.  Indicator: <ol style="list-style-type: none"> <li>1. Policies and laws and regulations guarantee the independence, sovereignty, unity and integrity of the nation as well as equality of relations between nations in the world.</li> <li>2. Policies and laws and regulations guarantee international relations by prioritizing national interests.</li> </ol>

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3	Unity of Indonesia. (Persatuan Indonesia)	3. Policies and laws and regulations uphold universal human rights while still remembering national wisdom and maintaining equal, just and civilized relations between nations. 4. Policies and laws and regulations reflect the recognition and equality of human beings in accordance with their dignity as creatures of God Almighty. 5. Policies and laws and regulations function to develop mutual respect and respect for differences in ethnicity, religion, belief, race, and between groups. The policies and laws and regulations that have been formed are capable of fostering a sense for everyone to belong to and love the Motherland and are willing to protect the whole nation and all of Indonesia's bloodshed.
		Indicator: 1. Policies and laws and regulations guarantee national unity, integrity and territorial integrity of the Unitary State of the Republic of Indonesia, and develop culture. 2. Policies and laws and regulations reinforce the national spirit that protects the whole nation and all of Indonesia's bloodshed within the framework of the Unitary State of the Republic of Indonesia. 3. Policies and laws and regulations guarantee that every citizen prioritizes the interests of the nation and state above personal or group interests. 4. Policies and laws and regulations function to develop a sense of love for the motherland and a willingness to sacrifice for the interests of the nation and state for every citizen. 5. Policies and laws and regulations are able to foster a spirit of mutual cooperation, a sense of pride for the nation and for Indonesia's homeland.
4	Democracy, led by the wisdom of the representatives of the people. (Kerakyatan yang dipimpin oleh himat kebijaksanaan dalam permusyawaratan /perwakilan).	Policies and laws and regulations that are formed to encourage and give respect to the aspirations and interests of the people in politics and continue to improve the system and practice of democracy. Indicator: 1. Policies and laws and regulations always pay attention to the fact that the State of Indonesia is not a state established for one group but for all those with Indonesian homeland by basing the administration of the state on representative deliberations. 2. Policies and laws and regulations pay attention to wisdom in representative deliberations based on the values of divinity, humanity, unity and social justice for all Indonesian people. 3. Policies and laws and regulations guarantee democracy based on deliberations capable of realizing social welfare. 4. Policies and laws and regulations guarantee that every citizen respects and upholds every decision made based

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		on deliberation/consensus and implements the decision in good faith and a sense of responsibility.
		5. Policies and laws and regulations guarantee the implementation of a civilized and just political democracy.
5	Social justice for all Indonesian people. (Keadilan sosial bagi seluruh rakyat Indonesia).	The policies and laws and regulations that have been formed are capable of encouraging the development of joint businesses in a spirit of mutual assistance. Indicator: <ol style="list-style-type: none"><li>1. Policies and laws and regulations function to realize justice and prosperity for all Indonesian people both physically and spiritually.</li><li>2. Policies and laws and regulations guarantee protection for everyone to appreciate the creative process, works and initiatives in a responsible manner for the realization of people's welfare.</li><li>3. Policies and laws and regulations guarantee the right of every citizen to obtain education, health, employment, and business opportunities, as well as a decent living.</li><li>4. Policies and laws and regulations that are formed foster economic independence of the community and people's welfare with justice.</li><li>5. Policies and laws and regulations guarantee economic activities that are just, sustainable, competitive, environmentally sound, and maintain a balance of progress and national economic unity.</li></ol>

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### ***3.3 Effectiveness of BPIP Legal Recommendations Against Regulations Contrary to Pancasila Values and BPIP Constraint Factors in Efforts to Institutionalize Pancasila Values***

As a result of the coercive nature of the law, the effectiveness of the law is contingent upon conformity with the provisions of the implementing law, as well as the legality of society. The effectiveness of a law is directly proportional to its application, implementation, and enforcement in society in order to achieve a particular objective. This indicates that the law applies philosophically, legally, and sociologically.

In terms of the implementation of the evaluation of all categories of central and regional laws and regulations. Laws (UU), Government Regulation (PP), Presidential Regulation (Perpres), Provincial Regulation, Regency/City Regional Regulations, and additional categories of laws and regulations are evaluated. Institutions authorized to evaluate statutory regulations as described above are either institutions authorized to draft statutory regulations or institutions/bodies authorized to do so.

Government, DPR, and/or DPD have the authority to conduct evaluations at the level of laws through a legislative review mechanism. The Government has the authority to evaluate executive legal products (PP, Perpres, and Permen) through an executive review mechanism. In the meantime, regional law products can be implemented by the Regional Government, DPRD, and/or government structures above them via legislative or executive review mechanisms. Other institutions have the authority to conduct out harmonization, evaluation, analysis, and recommendations regarding the applicability of the Law on the Institutionalization of Pancasila Values, in addition to the Council mentioned above. BPIP is responsible for harmonizing the fundamental values of Pancasila in draft ministerial decrees, draft regulations for non-ministerial institutions, draft regulations for non-structural institutions, and draft regional laws and regulations.

In this case, the delegate is assigned to the fields of law, advocacy, and regulatory supervision in order to provide recommendations on regulations or legislation that conflicts with Pancasila's values. In accordance with BPIP regulation number 5 of 2021 regarding the Pancasila Ideology Development Agency's organizational and operational procedures. The Deputy for Law, Advocacy, and Regulatory Oversight is responsible for internalizing and institutionalizing Pancasila in the disciplines of law, advocacy, and regulatory oversight, as well as performing the following duties:

1. Formulation of Pancasila's internalization and institutionalization policies in the fields of law, advocacy, and regulatory supervision.
2. Implementation of Pancasila's institutionalization against national law so that it is consistent with the state's foundation.
3. Provide recommendations to state high institutions, ministries/agencies, and regional governments, based on the results of supervision and studies, regarding regulations that are contrary to Pancasila's fundamental values.
4. Implementation of advocacy for the development of the Pancasila ideology in state institutions, ministries/agencies, local administrations, socio-political organizations, and other societal components.
5. Resolving and overcoming problems and obstacles in the promotion of Pancasila ideology.

BPIP has also drafted BPIP Regulation No. 5 of 2020 concerning Guidelines for Providing Recommendations for Policies and Regulations that Contradict Pancasila in order to fulfil its mandate of formulating and submitting policy recommendations or regulations that contradict Pancasila. The subject matter of this guide is governed by policies and regulations. The intended policy is the policy of state-level institutions, ministries, and regional governments. Government laws/regulations in lieu of laws, government regulations, presidential regulations, ministerial regulations, non-ministerial government agency regulations, non-structural institution regulations, and provincial and district/city regional regulations are the subject of study for the BPIP. A recommendation is formulated based on the findings of studies concerning policies, laws, and regulations that contradict Pancasila. The recommendations are submitted to high-level state institutions, ministries/agencies, and/or regional administrations, after which the President is informed.

The effectiveness of a law product can be influenced by a number of factors, including the legal factor itself (the law), law enforcement factors (the parties making or implementing the law), factors of facilities or space that support the implementation of the law, community factors (the environment in which the law is applied or enacted), and cultural factors (as a result of work, creativity, and taste based on human initiative in society). These factors are grounded in Soerjono Soekanto's theory of legal effectiveness. The measure of legal effectiveness in the first factor that can affect the effectiveness of the BPIP's recommendation law is the factor regarding the law itself (law); existing regulations do not accommodate the element of coercion in regulations BPIP in providing recommendations for regulations that conflict with Pancasila so that they are once again aligned with Pa. Due to the fact that, as a legal ideal, Pancasila can serve constitutive and regulatory functions.

In terms of its structural function, Pancasila can determine a legal system that gives meaning and significance to the law, so that if it lacks the premise provided by Pancasila, the law loses its significance and meaning. In its regulatory role, Pancasila can determine whether positive law as a legal product is just or not. Moreover, in accordance with BPIP regulation No. 5 of 2020, the procedure for providing these recommendations must involve lengthy phases or steps and take a considerable amount of time, rendering them ineffective. This is consistent with the findings of interviews conducted with Prof. Agus Moh, Najib as the Director of Analysis and Alignment for BPIP. In general, the recommendation is non-binding, and the phases of making the recommendation are lengthy and need to be shortened (Prof. Agus Moh, Najib, personal communication March 6, 2023).

As in Aminuddin Ilmar's book on establishing the rule of law in Indonesia, there are obstacles to the legal development administration system, the first being procedure obstacles and the second being

orientation obstacles. There are both procedural and structural obstacles to the process. The occurrence of extreme bureaucratisation and centralisation in administrative management will give rise to a highly hierarchical and legalistic bureaucratic structure, such that the procedures adopted or passed are more of a nature or aim to satisfy the demands of the structure than the benefits. In addition, flexibility will not be created and communication will not flow effortlessly because the procedure is lengthy and convoluted, resulting in a process that is rigid and sluggish.

Law enforcement is another factor that determines the success or failure of a written law. In this context, it is desirable to have a reliable device so that it can perform its function effectively. Integral to dependability is professionalism. The efficacy or ineffectiveness of laws in general depends on the efficiency and professionalism of institutions in carrying out the implementation of a rule of law, beginning with the phases of formulating, disseminating, and enforcing these rules, as well as the phase of governance. It is anticipated that, in the future, BPIP's institutional governance will function optimally as a result of a law enforcement procedure that incorporates legal discovery (the use of reasoning, interpretation, and construction of law).

The next factor is the availability of infrastructure and facilities for implementing officials to carry out their responsibilities. The facilities and infrastructure at issue are infrastructure and facilities used to accomplish legal effectiveness. Clearly, this infrastructure contributes to the efficient operation of the apparatus' duties at their workplace or location. The elements include infrastructure presence or absence, adequate or insufficient infrastructure, and excellent or poor existing infrastructure. The facilities and infrastructure in question are not only limited to physical facilities, but also the legal regulatory infrastructure attached to the BPIP institution is deemed insufficient to entrust its duties and functions, one of which is to review and evaluate statutory products so that they are consistent with the Pancasila values.

Because every legal product is also a manifestation of a political product that frequently deviates from Pancasila values, this is regarded as a crucial step. As a result, the existence of BPIP is essential and crucial for furthering its position. The next factor is cultural factors, which have a significant impact on the development of situations that occur in a country's society. Cultural factors also have a significant impact on the formulation of a recommendation or a statutory regulation. Considered to be diluting the reasoning of Pancasila values, particularly in the institutionalisation of Pancasila values into a regulation or legislation, is the current state of cultural developments that will continue to develop in the future. Given the current state of affairs, the lack of consistency renders Pancasila the source of all sources of state law.

Regarding several factors impeding BPIP's efforts to uphold Pancasila Values, which are suspected of having contributed to the creation of regulatory conditions or laws and regulations that are not in line with or contradict Pancasila Values, namely the shallow, fragmented, unplanned, unstructured, and poorly coordinated socialisation of Pancasila by Ministries/Agencies thus far, the weak institutionalisation of Pancasila values in political, economic, and social spheres, and the lack of consistency. Considered to have an impact on BPIP's legal efficacy and performance, these issues can render BPIP's function ineffective or suboptimal.

Regarding the Pancasila value indicator as an instrument of Pancasila's fundamental values in harmonisation of the harmonisation, study, analysis, and recommendation of laws and regulations, as stated previously, it still raises questions, namely whether BPIP regulation number 4 of 2022 can apply and be enforced, so as to be binding for all parties with authority in the formation and evaluation of laws. This is not feasible from a legal standpoint, as legal products in the form of decisions are only binding within the BPIP institution. The author is of the opinion that in order for this indicator of Pancasila values to be institutionalised and become a guide in the formation and evaluation of laws and regulations at all levels and institutions forming laws and regulations, it must be included in the Appendix to Law Number 12 of 2011 as amended by Law -Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 so that the Pancasila ideology development agency can carry out its duties.

#### 4. CONCLUSION

In order to attain the goals of the law, the application, implementation, and enforcement of the law are crucial to its efficacy. Currently, the implementation of BPIP's responsibilities and functions to provide recommendations on regulations in conflict with Pancasila values or the institutionalisation of Pancasila values in a legislative product is insufficient. The weak institutionalisation of Pancasila values in political, economic, and socio-cultural institutions, as well as the lack of consistency in making Pancasila the source of all sources of state law in the formation of laws and regulations, have contributed to the existence of regulations that are not consistent with Pancasila values.

BPIP, as part of its duties and responsibilities, can provide recommendations on legislation that is contrary to the Pancasila values, but it is necessary to strengthen the form of these recommendations so that they are final and binding, bearing in mind that the BPIP's only recommendation policies are written input on the content of regulations or laws. In the near future, it is anticipated that regulations that are not in line with the Pancasila or BPIP values will produce an efficient and beneficial institutional structure. It is appropriate for BPIP to be given a way to become an examining team or an institution whose decisions and outputs are important (urgent), so that BPIP also needs to be strengthened in terms of its institutional juridical and functional duties so that it is much more efficient and/or strengthened in terms of its authority through laws. In this manner, BPIP's function will be significantly more optimal and efficient, as well as more focused and able to superintend every piece of legislation that will be enacted in accordance with the Pancasila values.

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