

Beyond the *Grundnorm*: Pancasila as the *Staatsfundamentalnorn* dan the Jurisprudence of Dignified Justice in Indonesia

Taufiq Musa¹, Roby Awwaluddin²

^{1,2}UIN Syarif Hidayatullah Jakarta, Indonesia

Corresponding Author: taufiqmusa2025@gmail.com

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ABSTRACT

The dialectical tension between Indonesia's civil law heritage and its theistic constitutional foundation engenders profound normative asymmetry within modern judicial adjudication. While comparative literature frequently mischaracterizes Pancasila as a vague political postulate, this doctrinal research evaluated constitutional hermeneutics to resolve systemic legal disparities. Utilizing statutory, conceptual, and jurisprudential approaches, the study critically dissected landmark Constitutional Court rulings. The analysis establishes that Pancasila fundamentally transcends hypothetical norms, functioning instead as a concrete state fundamental norm that legally codifies the nation's architectural morality. We argue that the judiciary operationalizes this framework through a uniquely religious hermeneutic, categorically rejecting secularist human rights paradigms in favor of structures subordinating specific civil liberties to religious orthodoxy. Furthermore, although the Court occasionally champions deliberative democratic procedures against reckless legislative drafting, recent politically compromised rulings on electoral thresholds demonstrate a severe collapse in constitutional ethics. This exposes the acute vulnerability of jurisprudential structures to unchecked majoritarian power and systemic elite capture. To mitigate exogenous shocks, including foreign legal transplantation and the unregulated encroachment of algorithmic governance, this study prescribes the Dignified Justice Theory as an operational mechanism for normative recalibration. Ultimately, this paradigm mandates embedding prophetic integrity into statutory genesis and continuously enforcing strict judicial restraint. By demonstrating how a theistic framework effectively governs a modern legal apparatus, this research offers a highly novel jurisprudential blueprint for hybrid constitutional systems seeking to preserve substantive democratic legitimacy amidst relentless global disruption and rapid contemporary digital transformation processes across the broader international comparative legal landscape for future academic inquiries.

1. Introduction

The existence of Indonesia as a state governed by the rule of law—constitutionally designated as a *Rechtsstaat*—is inextricable from its unique, authentic philosophical foundation: Pancasila. Forged amidst the intellectual crucible of the nation's founders during the Investigating Committee for Preparatory Work for Independence (BPUPKI) sessions in mid-1945, Pancasila was conceptualized not merely as a political umbrella, but as a *Philosophische Grondslag*. It constitutes an epistemic and philosophical bedrock upon which the enduring edifice of an independent Indonesia

was erected.¹ In its jurisprudential evolution, Pancasila has undergone a normative crystallization, cementing its apex position within the Indonesian hierarchy of norms. It operates as the *fons et origo* of all law—a meta-norm serving as the ultimate metric of validity for all positive law across the archipelago.²

Yet, the trajectory of Indonesian legal history reveals a complex dialectic between the normative ideality of Pancasila (*das Sollen*) and the empirical reality of the legal apparatus (*das Sein*). Enduring prolonged colonialism, Indonesia inherited a Civil Law architecture through the Dutch principle of concordance. While the physical revolution successfully expelled the colonizers, the requisite "legal revolution"—intended to supplant colonial legal frameworks with a national system animated entirely by the spirit of Pancasila—remains systemically incomplete.³ Consequently, a phenomenon of legal transplantation persists wherein foreign legal substance is adopted, often clashing with the *Volksgeist* manifested in Pancasila. This normative asymmetry engenders both theoretical and practical friction: the jurisprudential mandate to remain modern and responsive to exogenous shocks conflicts with the imperative to anchor the law in the transcendent, communal values embedded in Pancasila.⁴

Ahmad Rofii highlights the paradoxical dual-function of Pancasila: it operates as a unifying foundation reconciling ethnic and religious pluralism, while its interpretation frequently descends into an arena of political and legal contestation, particularly regarding constitutional flashpoints like religious freedom and human rights.⁵ Furthermore, Samekto and Natalis elucidate the ongoing doctrinal debate within constitutional law literature regarding whether Pancasila can be strictly equated with the *Grundnorm* in Hans Kelsen's Pure Theory of Law, or if it constitutes a genuinely *sui generis* entity.⁶

Crucially, the operationalization of Pancasila within the modern constitutional framework faces rigorous scrutiny through judicial review at the Constitutional Court (MK). The Court's jurisprudence functions not merely as a corrective mechanism for legislative output, but as the authoritative hermeneutic on how Pancasila must be applied in concrete controversies. From assessing the procedural justice dimensions of the Job Creation Law, to adjudicating the distributed accountability and judicial integrity surrounding presidential age limits, and navigating the state-

¹ Darmawati et al., *PANCASILA: Kontekstualisasi, Rasionalisasi, Dan Aktualisasi*, ed. Oki Anggara (Malang: CV. Future Science, 2024). Hal, 89.

² Jeferson Kameo and Teguh Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 1 (2021): 1–8, <https://www.abacademies.org/articles/pancasila-as-the-first-and-foremost-source-of-laws-a-dignified-justice-philosophy.pdf>.

³ Ratno Lukito, "Pancasila as a National Legal Postulate: Re-Conveying the Rules of Recognition," *Journal of Legal, Ethical and Regulatory* 26, no. 5 (2023): 1–17, <https://www.abacademies.org/articles/pancasila-as-a-national-legal-postulate-reconveying-the-rules-of-recognition-16146.html>.

⁴ Yohanes Firmansyah et al., "Elaboration, Collaboration, And Contribution Of Traditional Law In Indonesian National Legal System," *International Journal of Social Science and Religion (IJSSR)* 2, no. 1 (March 5, 2021): 1–21, <https://doi.org/10.53639/ijssr.v2i1.37>.

⁵ Ahmad Rofii, "The Religiosity of the Indonesian Constitution: Article 29(1) and Its Interpretation," *Constitutional Review* 7, no. 2 (December 31, 2021): 203–240, <https://doi.org/10.31078/consrev722>.

⁶ F. X. Adji Samekto and Aga Natalis, "Exploring the Grundnorm Dilemma: Can Pancasila Be Considered the Grundnorm in the Context of 'the Pure Theory of Law?'," *Journal of Philosophical Investigations* 18, no. 48 (2024): 319–38, <https://doi.org/10.22034/jpiut.2024.62978.3843>.

religion nexus in interfaith marriage disputes—these juridical phenomena confirm that Pancasila is not a static dogma, but a living, dynamic touchstone.^{7,8,9}

The urgency of this inquiry lies in the necessity to comprehensively remap the operationalization of Pancasila within the constitutional framework. Utilizing the Dignified Justice Theory—which frames Pancasila as the "First Agreement" and the ultimate source of legal morality—this analysis transcends mere doctrinal description to explore Pancasila's role in preserving the systemic coherence of Indonesian law.

Theoretical Construct of the Meta-Norm: Examining Pancasila's jurisprudential status as the ultimate source of law, comparing it with the *Grundnorm* concept, and tracing its downstream implications for Indonesia's statutory hierarchy. Doctrinal Dynamics in Constitutional Adjudication: Analyzing the *ratio decidendi* of landmark Constitutional Court decisions where constitutional rights, religious doctrines, and political ethics collide. Systemic Disparity Amidst Global Disruption: Identifying primary challenges in sustaining a Pancasila-based legal architecture in an era of algorithmic governance and digital transformation, formulating how Dignified Justice Theory offers a pathway for normative re-actualization.

2. Research Methods

This inquiry is methodologically anchored in doctrinal legal research—traditionally categorized as normative legal research within Indonesian scholarship—which remains the orthodox jurisprudential paradigm for evaluating the validity, coherence, and structural architecture of legal norms and principles. Diverging from empirical socio-legal methodologies, this study eschews quantitative datasets and field surveys. Instead, it relies upon a rigorous, hermeneutic analysis of primary and secondary legal texts to resolve the posited legal dilemmas.¹⁰ The analytical framework is executed through a tripartite methodological structure:

This approach conducts a systematic examination of the regulatory architecture, spanning from the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) down to pertinent sectoral statutes, aiming to decipher the normative hierarchy and internal consistency of the state's legal apparatus. The analytical focal point is Article 2 of Law No. 12 of 2011, a statutory provision that explicitly crystallizes Pancasila as the *fons et origo*—the foundational source—of all national law.

This vector of analysis dissects jurisprudential doctrines and evolving scholarly discourse. Foundational legal constructs—namely, Kelsen's *Grundnorm*, Nawiasky's *Staatsfundamentalnorn*, and von Savigny's *Volksgeist*—are synthesized to construct a robust theoretical scaffolding. Critically, this research operationalizes the Dignified Justice Theory (*Teori Keadilan Bermartabat*) as its primary epistemological lens to evaluate doctrinal coherence and address underlying normative asymmetries.¹¹

The analysis zeroes in on the *ratio decidendi* embedded within judicial pronouncements, with a specific focus on the Constitutional Court (MK). In this context, constitutional jurisprudence is

⁷ Syaifullahil Maslul, "Menakar Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Perspektif Hukum Profetik," *Jurnal Hukum IUS QUILA IUSTUM* 32, no. 1 (January 31, 2025): 99–120, <https://doi.org/10.20885/iustum.vol32.iss1.art5>.

⁸ Imaro Sidqi and Mhd. Rasidin, "Prohibition of Interfaith Marriage in Indonesia: A Study of Constitutional Court Decision Number 24/PUU-XX/2022," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (June 28, 2023): 154, <https://doi.org/10.30984/jis.v21i1.2337>.

⁹ Kameo and Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy."

¹⁰ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

¹¹ Mulyadi Mulyadi and Teguh Prasetyo, "The Future Development and Practice of Law Based on Dignified Justice," *International Journal of Advanced Research* 12, no. 12 (December 31, 2024): 1224–30, <https://doi.org/10.21474/IJAR01/20132>.

framed not merely as a mechanism for dispute resolution, but as the concrete, authoritative manifestation of constitutional hermeneutics and the active, living interpretation of Pancasila.

The evidentiary corpus is derived from an exhaustive literature review, heavily prioritizing high-impact, internationally indexed journals. This methodological choice ensures the analysis transcends jurisdictional parochialism, maintains global relevance, and satisfies stringent academic standards. The primary legal taxonomy comprises seminal Constitutional Court decisions (specifically, Decisions No. 91/PUU-XVIII/2020, No. 24/PUU-XX/2022, and No. 90/PUU-XXI/2023), which serve as the central objects of inquiry. Data aggregation was executed via comprehensive archival and digital repository research. The extracted materials are subsequently evaluated through a qualitative-prescriptive framework, systematically synthesizing the data to resolve systemic disparities within the law and to generate a logically cohesive, doctrinally sound legal argumentation.¹²

3. Result and Discussion

3.1. The Theoretical Architecture of Pancasila: Navigating the *Grundnorm* and *Staatsfundamentalnorm* Dichotomy

Within the pantheon of jurisprudential theory, the normative positioning of Pancasila is frequently contested through the lens of Hans Kelsen's Pure Theory of Law (*Reine Rechtslehre*). Kelsen posits the *Grundnorm* (basic norm) as the ultimate locus of validity within a legal system. Crucially, the *Grundnorm* operates as a hypothetical, *a priori* construct; it is not promulgated by any sovereign or legislative authority, but is instead logically presupposed by human cognition as the requisite precondition for the validity of all subordinate norms.¹³

Rigorous doctrinal inquiry by Adji Samekto and Aga Natalis illuminates the ontological dilemma inherent in attempting to pleonastically categorize Pancasila as a Kelsenian *Grundnorm*. This friction emerges because Pancasila possesses an undeniably positive, historical dimension—it was deliberated, codified, and formally enacted by the state's founding bodies (BPUPKI and PPKI) and is expressly enshrined in the Preamble to the 1945 Constitution. Thus, Pancasila is an artifact of political consensus (*the will of the state*), whereas Kelsen's *Grundnorm* resides in a strictly transcendental-logical realm, entirely divorced from formal legislative genesis.

However, when evaluated through the prism of the hierarchical theory of norms (*Stufenbaulehre*) as refined by Kelsen's protégé, Hans Nawiasky, Pancasila finds a far more doctrinally precise classification as the *Staatsfundamentalnorm* (State Fundamental Norm). In contrast to the epistemological abstraction of the *Grundnorm*, a *Staatsfundamentalnorm* constitutes the supreme, concrete normative foundation of a specific state. It serves as the bedrock for constitutional drafting (*Staatsgrundgesetz*) and remains hermetically shielded from ordinary legislative amendment procedures, since altering it would legally equate to the dissolution of the sovereign state itself.¹⁴

¹² Kameo and Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy."

¹³ Samekto and Natalis, "Exploring the Grundnorm Dilemma: Can Pancasila Be Considered the Grundnorm in the Context of 'the Pure Theory of Law'?"

¹⁴ Redyanto Sidi et al., "Staatsfundamentalnorm (Pancasila) Sebagai Bahan Pembaruan Sistem Hukum Di Indonesia," *Iuris Studia: Jurnal Kajian Hukum* 2, no. 3 (September 30, 2021): 501–12, <https://doi.org/10.55357/is.v2i3.167>.

Table 1. Comparison of Basic Norm Characteristics

Jurisprudential Characteristic	Grundnorm Doctrine)	(Kelsenian	Staatsfundamentalnorm (Pancasila)
Ontological Nature	Hypothetical, Transcendental	Abstract,	Concrete, Historical, Ideological
Normative Genesis	Logical (<i>presupposed</i>)	presupposition	Political consensus (<i>agreed upon</i>)
Codification Form	Unwritten meta-norm		Written (Preamble to the 1945 Constitution)
Systemic Function	Epistemic basis for logical validity	Philosophical foundation and teleological objective of the state	
Legal Mutability	Irrelevant / Non-applicable		Legally unamendable

Elevating Pancasila to the status of *Staatsfundamentalnorm* triggers profound juridical consequences. The entirety of the statutory corpus—from the Constitution down to regional bylaws—must operate as a strict normative derivation and crystallization of Pancasila's core tenets. Ratno Lukito reinforces this by asserting that Pancasila must be conceptualized as a "national legal postulate," effectively functioning as the Hartian *rule of recognition* that dictates legal validity in Indonesia.¹⁵ Absent structural coherence with Pancasila, a legal norm is stripped of both its moral and juridical legitimacy, rendering it *null and void*.¹⁶

To bridge the chasm between constitutional abstraction and jurisprudential praxis, Teguh Prasetyo's Dignified Justice Theory (*Teori Keadilan Bermartabat*) offers a highly relevant operational framework. This theoretical model expressly repudiates the rigid legal positivism that artificially divorces law from its moral moorings. Instead, it posits that the teleological zenith of the law is the actualization of "dignified justice".¹⁷

The epistemological anchor of this theory is the socio-philosophical construct of *nguwongke uwong* (humanizing the human being). Within constitutional architecture, this dictates that a Pancasila-based legal system must be engineered so the state engages its citizens not as mere objects of sovereign power or distributed accountability metrics, but as subjects endowed with inherent, divine dignity.¹⁸

The systemic implications of this framework demand strict doctrinal adherence across five dimensions:

- The Theological Dimension: The legal architecture cannot be secular-atheistic; it must structurally accommodate the spiritual dimension of human existence.
- The Humanitarian Dimension: The law must categorically reject systemic disparity, torture, discrimination, and the degradation of human dignity.
- The Unitary Dimension: The legal framework must function as an integrative force, guarding against social disintegration while robustly protecting pluralism.

¹⁵ Lukito, "Pancasila as a National Legal Postulate: Re-Conveying the Rules of Recognition."

¹⁶ Farida Sekti Pahlevi, "Revitalisasi Pancasila Dalam Penegakan Hukum Yang Berkeadilan Di Indonesia," *Justicia Islamica* 13, no. 2 (December 31, 2016): 173–98, <https://doi.org/10.21154/justicia.v13i2.585>.

¹⁷ Kameo and Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy."

¹⁸ Kameo and Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy."

- d. The Democratic Dimension: Legal processes—and emerging algorithmic governance models—must remain deeply participatory, actively resisting elite capture.
- e. The Social Justice Dimension: The law must employ normative asymmetry (e.g., targeted affirmative action) to protect marginalized demographics and dismantle structural socioeconomic inequities.

Ultimately, this theory provides a vital methodological imperative for both the judiciary and the legislature when engaging in *rechtsvinding* (legal discovery). When confronted with statutory lacunae or doctrinal ambiguity in the face of exogenous shocks, legal actors are bound to excavate the living values embedded within the *Volksgeist* to engineer equitable and jurisprudentially sound resolutions.¹⁹

3.2. The Jurisprudential Dialectic Between the Rechtsstaat and the Theistic State: Operationalizing the First Principle

A profoundly distinctive characteristic of Indonesia's constitutional architecture is the structural integration of religiosity into the constitutional matrix—a paradigm frequently conceptualized in comparative constitutional literature as "Godly Nationalism" or the "Religious Nation-State." The First Principle of Pancasila, "Belief in the One and Only God" (*Ketuhanan Yang Maha Esa*), transcends mere theological rhetoric; it functions as a binding legal postulate with formidable normative force.

Article 29(1) of the 1945 Constitution explicitly declares that "The State is based upon the belief in the One and Only God." Engaging with this complexity from an international perspective, scholars such as Ahmad Rofii and Simon Butt observe that the Constitutional Court (MK) consistently adopts a hyper-religious hermeneutic regarding this provision, effectively engendering the supremacy of religious doctrines within the public sphere. This constitutional posture sharply delineates Indonesia from Western liberal democracies anchored in the strict secularist separation of church and state.^{20,21}

Tim Lindsey argues that while Pancasila is occasionally dismissed in political science as vague rhetoric, it has functionally evolved into the theoretical determinant for all legal validity. In practice, the "spiritual atmosphere" (*suasana kebatinan*) of Pancasila furnishes the state with the jurisprudential legitimacy to police aspects of human life—such as marriage and sexual morality—that in other jurisdictions are fiercely protected as purely private domains.²²

The most salient empirical manifestation of the First Principle's constitutional weight is evident in the Court's jurisprudence on interfaith marriage. Petitions for judicial review challenging the Marriage Law were predicated on the argument that prohibiting interfaith unions constitutes a fundamental breach of human rights and the constitutional guarantee of religious freedom.

Nevertheless, in Decision No. 24/PUU-XX/2022 (and the corollary Decision No. 71/PUU-XX/2022), the Court dismissed these petitions, mobilizing a doctrinal rationale steeped heavily in Pancasila's ideological framework. A rigorous dissection of the Court's *ratio decidendi* reveals three core pillars:²³

¹⁹ Teguh Prasetyo and Tri Astuti Handayani, "Legal Aid Principle: (Dignified Justice Theory Perspective)," *International Journal of Advanced Research* 5, no. 3 (March 31, 2017): 1650–55, <https://doi.org/10.21474/IJAR01/3674>.

²⁰ Rofii, "The Religiosity of the Indonesian Constitution: Article 29(1) and Its Interpretation."

²¹ Simon Butt, Bisariyadi, and Fritz Siregar, "International Law in the Indonesian Constitutional Court: A Typology of Use," *Asian Journal of International Law*, 2025, 1–22, <https://doi.org/10.1017/S204425132510074X>.

²² Simon Butt and Tim Lindsey, *Indonesian Law* (New York: Oxford University Press, 2018). Hal, 86.

²³ Sidqi and Rasidin, "Prohibition of Interfaith Marriage in Indonesia: A Study of Constitutional Court Decision Number 24/PUU-XX/2022."

- a. **Pancasila as the Epistemic Filter for Human Rights:** The Court firmly articulated that the conceptualization of human rights in Indonesia cannot be extricated from the nation's cultural and religious fabric. In stark contrast to secular, universalist human rights paradigms, constitutional rights in Indonesia are subject to a deliberate normative asymmetry—they are expressly bounded by religious values, as stipulated in Article 28J(2) of the 1945 Constitution. This limitation is deemed a legitimate and constitutionally necessary mechanism to ensure respect for the rights of others and to satisfy the demands of justice in accordance with moral considerations, religious values, security, and public order within a democratic society.
- b. **The State as the Guardian of Religious Orthodoxy:** The Court posited that the state maintains a compelling interest in securing legal certainty and social order through the institution of marriage. Because marriage is legally construed as both a civil-juridical act and a profoundly sacred covenant, its validity must remain strictly subordinated to religious law. The Court systematically dismantled the petitioner's argument that civil administration (state registration) could be conceptually decoupled from the religious validity of the union. Consequently, the practice of "law smuggling" (*penyelundupan hukum*)—utilizing civil court decrees to bypass religious prohibitions on interfaith marriage—was condemned as fundamentally antithetical to a constitutional spirit intent on preserving the doctrinal purity of religious teachings.
- c. **The Categorical Rejection of Secularism:** This jurisprudence unequivocally reaffirms that Indonesia rejects secular constitutionalism. Rather than maintaining a posture of state neutrality or structural detachment from religious affairs, the state is mandated to actively facilitate and protect the observance of religious doctrines. Ergo, secular state law (the Marriage Law) cannot be deployed to compel religious institutions to legitimize acts that are expressly prohibited by their own internal dogmas (such as interfaith unions under Islamic or Christian canon).

Dissenting critiques of this jurisprudential trajectory, heavily articulated by the National Commission on Violence Against Women (Komnas Perempuan) and human rights advocates, warn that the state risks perpetuating systemic disparity and ignoring the empirical realities of a deeply pluralistic society.²⁴ However, when analyzed through the orthodox lens of the *Staatsfundamentalnorm*, the Court's ruling represents a stringent preservation of the normative hierarchy: it solidifies the overarching supremacy of the First Principle as the non-derogable umbrella under which all other civil liberties must be subsumed and interpreted.

3.3. Pancasila Democracy and Constitutional Ethics: The Dialectic of Procedure and Substance

The Fourth Principle of Pancasila—"Democracy Guided by the Inner Wisdom in the Unanimity Arising Out of Deliberations Amongst Representatives"—mandates a strictly deliberative model of democracy, categorically rejecting unbridled majoritarianism and the mechanistic detachment of modern algorithmic governance. Consequently, the constitutional architecture must reflect a jurisprudential and legislative decision-making process imbued with profound prudential wisdom, rather than raw political arithmetic.

²⁴ Komnas Perempuan, "Pertimbangan Mahkamah Konstitusi Potensial Memperkuat Diskriminasi Dan Kekerasan Terhadap Perempuan Yang Menikah Beda Agama," Komnas Perempuan, 2023, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-terkait-putusan-mk-nomor-24-puu-xx-2022-pertimbangan-mahkamah-konstitusi-potensial-memperkuat-diskriminasi-dan-kekerasan-terhadap-perempuan-yang-menikah-beda-agama>.

The formal constitutional review of the Job Creation Act (Omnibus Law) via Constitutional Court Decision No. 91/PUU-XVIII/2020 represents a watershed moment in Indonesian constitutional jurisprudence. The Court struck down the statute, declaring it conditionally unconstitutional based on procedural infirmities. The doctrinal nucleus of this landmark decision is the Court's robust articulation of "Meaningful Participation" as the ultimate operationalization of popular sovereignty. To satisfy this constitutional threshold, the Court delineated a tripartite framework for public engagement:

- a. right to be heard.
- b. right to be considered.
- c. right to be explained.

This ruling reflects a systemic institutionalization of Pancasila that categorically repudiates elitist, opaque, and legislatively "reckless" rulemaking. The Court decisively established that the mitigation of exogenous economic shocks and the pursuit of maximalist efficiency—purported rationales for the Omnibus Law—cannot subordinate the principles of deliberative consensus and transparency that form the lifeblood of Pancasila democracy. This served as a critical jurisprudential correction to a legislative paradigm that had routinely subjugated the public sphere in the name of foreign investment and capital accumulation.

However, if Decision 91/2020 is celebrated as a triumph of deliberative Pancasila democracy, Decision No. 90/PUU-XXI/2023 is widely indicted as the nadir of constitutional ethics. By altering the statutory age qualifications for presidential and vice-presidential candidates, the Court triggered a severe crisis of systemic legitimacy. The ruling was heavily compromised by profound conflicts of interest and naked political expediency, inextricably linked to the familial nexus between the sitting Chief Justice and the immediate political beneficiary of the judicial alteration.²⁵

A critical autopsy of this ruling exposes a violent collision between the ideals of the *Rechtsstaat* (the rule of law) and the *Machtstaat* (the rule of power):

- a. The Majority Rationale: The concurring justices attempted to dress the ruling in the rhetoric of intergenerational equity, arguing that statutory age barriers arbitrarily disenfranchised electorally experienced youth. By selectively weaponizing the "Open Legal Policy" doctrine, the majority engineered a veneer of constitutional justice to rationalize what was effectively a partisan intervention.
- b. The Dissenting Opinions: Fierce dissents (notably from Justices Saldi Isra and Arief Hidayat) articulated deep alarm that the Court had been subsumed by a political vortex, fatally eroding judicial independence and distributed accountability. They firmly anchored their dissent in the political question doctrine, arguing that prescribing age minimums is an exclusively legislative prerogative—a non-justiciable domain fundamentally outside the Court's purview of constitutional adjudication.

Evaluated through the normative matrix of Pancasila, Decision 90/2023 is fundamentally defective for contravening the core tenet of "Inner Wisdom" (*Hikmat Kebijaksanaan*). Within constitutional practice, such wisdom necessitates rigorous *judicial restraint*—the refusal to usurp the constitutional prerogatives of co-equal branches to service transient political imperatives. The subsequent adjudication by the Constitutional Court Honorary Council (MKMK), which found the Chief Justice guilty of severe ethical breaches, empirically confirms that the ruling was morally hollow, even as it remained legally finalized and shielded by the doctrine of *res judicata*. This episode serves

²⁵ Maslul, "Menakar Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Perspektif Hukum Profetik."

as a harsh jurisprudential indictment: a legal architecture divorced from the substantive morality of Pancasila inevitably collapses into a deficit of legitimacy.

3.4. Contemporary Vulnerabilities and Strategies for Normative Re-Actualization

The most formidable existential challenge to Pancasila's supremacy as the foundational source of law in the twenty-first century is the relentless tide of globalization, which continuously mainlines foreign normative values into the domestic legal architecture. Particularly within the domains of economic and commercial law, the encroachment of Common Law principles and international regulatory standards is frequently catalyzed by free trade agreements and transnational corporate practices. Extant scholarship demonstrates that this legal transplantation often manifests through a mechanism of *path dependence*, wherein Indonesia becomes inextricably locked into a trajectory of adopting foreign legal constructs driven by sheer economic pragmatism, often at the expense of indigenous jurisprudential identity.²⁶

Furthermore, the digital epoch introduces unprecedented challenges characterized by profound legal lacunae (*rechtsvacuum*) surrounding emerging paradigms such as data privacy, artificial intelligence (AI), and cryptographic assets. The constitutional framework must rapidly adapt to these exogenous shocks. Failure to do so risks relinquishing the digital sphere to a Hobbesian state of nature—a regulatory vacuum fundamentally antithetical to the Second Principle of a Just and Civilized Humanity. In this context, Dignified Justice Theory mandates a digital regulatory regime that transcends the mere facilitation of technological innovation; it must actively shield human dignity from the predatory mechanics of algorithmic governance and surveillance capitalism.²⁷

Domestically, the Indonesian legal system suffers from acute regulatory hypertrophy and systemic normative overlap. A proliferation of regional bylaws (*Perda*) infused with majoritarian religious doctrines or provisions explicitly discriminatory against minority demographics frequently evades robust executive or judicial scrutiny. This generates severe normative asymmetry, placing local ordinances in direct contradiction with Pancasila as the overarching *Staatsfundamentalnorm*. Simultaneously, the structural integrity of legal enforcement is perpetually undermined by entrenched corruption and an administrative apparatus that has yet to fully internalize the substantive ethos of Pancasila.

Confronting these multifaceted challenges necessitates a systematic, doctrinally rigorous strategy for the re-actualization of Pancasila's core values:²⁸

- a. Revitalizing the National Legislative Architecture: The statutory drafting process must strictly operationalize Pancasila as the ultimate metric of legislative validity. Every proposed bill must be accompanied by a comprehensive academic draft (*naskah akademik*) that explicitly maps how the legislation functions as a direct normative derivation of Pancasila's five principles, rather than a mere administrative transplant.
- b. Prophetic Legal Education: The pedagogical framework of legal education requires radical reform. The objective must shift away from mass-producing legal technicians—practitioners adept merely at mechanical statutory application—toward cultivating jurists endowed with "prophetic integrity." This requires an educational

²⁶ Firmansyah et al., "Elaboration, Collaboration, And Contribution Of Traditional Law In Indonesian National Legal System."

²⁷ Bayu Dwi Anggono et al., "Interrogating the Legal Foundations of Digital Transformation: Balancing Economic Growth and Social Welfare in the Era of Disruption," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (May 27, 2025): 191–211, <https://doi.org/10.24090/volkgeist.v8i1.12211>.

²⁸ Maslul, "Menakar Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Dalam Perspektif Hukum Profetik."

synthesis of intellectual rigor, profound moral conscience, and an awareness of transcendental accountability.

- c. Calibrated Judicial Activism: The Constitutional Court and the Supreme Court must boldly engage in progressive jurisprudential innovation (*rechtsvinding*) to bridge legal lacunae and rectify systemic disparity. Crucially, however, this judicial intervention must remain meticulously calibrated within the bounds of judicial restraint, preserving the distributed accountability inherent in the separation of powers.
- d. Value-Driven Digital Jurisprudence: The evolution of cyber law must prioritize national digital sovereignty and the uncompromising protection of citizen data. This imperative serves as a contemporary constitutional manifestation of the Third Principle (National Unity), ensuring that the digital architecture acts as a bulwark safeguarding the populace against extractive transnational technology monopolies.

4. Conclusion

The operationalization of Pancasila as the *fons et origo* of all law within Indonesia's constitutional architecture is an absolute philosophical and juridical imperative. Far from a mere theoretical abstraction, it operates as a concrete *Staatsfundamentalnorm* that inextricably binds the existential fabric of the state. Evaluated through the prism of Dignified Justice Theory, Pancasila serves as the ultimate moral compass, mandating that the legal apparatus structurally humanize the individual—a doctrinal ethos encapsulated by the socio-philosophical concept of *nguwongke uwong*.

In jurisprudential praxis, the Constitutional Court holds the vital mandate of preserving this normative coherence. Yet, recent constitutional controversies and ethical crises starkly underscore a critical vulnerability: devoid of unimpeachable integrity among judicial and political actors, these foundational values are easily weaponized as mere instruments for the legitimization of raw power. Consequently, the re-actualization of Pancasila must decisively transcend political rhetoric. It must be substantively engineered into the DNA of every legislative enactment and judicial pronouncement to fortify the legal system against exogenous global disruptions, mitigate systemic disparity, and ultimately realize the constitutional teleology of social justice for the entirety of the Indonesian populace.

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