

Judicial Activism of the Constitutional Court in Realizing Pancasila Constitutionalism

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Abstract

The Constitutional Court of the Republic of Indonesia plays a significant role in maintaining constitutional supremacy through its authority to review laws against the 1945 Constitution. In exercising this authority, the Court may adopt a progressive approach or judicial activism to respond to constitutional developments and protect citizens' constitutional rights. Nevertheless, judicial activism raises questions concerning the limits of judicial power, particularly when judicial interpretation approaches the function of the legislature. This study examines the relationship between judicial activism of the Constitutional Court and Pancasila constitutionalism, as well as the constitutional limits of such activism. This research employs normative legal research using statutory, conceptual, and case approaches. The study analyzes relevant constitutional provisions, legal doctrines, and Constitutional Court decisions concerning judicial activism and the implementation of Pancasila values. The analysis is expected to demonstrate that judicial

activism may contribute to the realization of Pancasila constitutionalism when it strengthens constitutional rights, substantive justice, and democratic principles. Nevertheless, such activism must remain within constitutional boundaries to prevent the Constitutional Court from exceeding its judicial function and assuming the role of a positive legislator. This study contributes to the development of a Pancasila-based constitutional interpretation that balances substantive justice with the principle of separation of powers.

Keywords Judicial Activism; Constitutional Court; Pancasila Constitutionalism; Constitutional Interpretation; Judicial Review.

A. Introduction

Indonesia is constitutionally established as a state based on law, in which the exercise of state power must be subject to constitutional limitations. This principle is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which expressly provides that Indonesia is a state based on law. The constitutional amendment following the Reform Era also strengthened the mechanism of checks and balances by establishing the Constitutional Court as an independent judicial institution with specific authority in constitutional matters. One of its principal authorities is to examine laws against the 1945 Constitution, thereby positioning the Constitutional Court as an important institution in maintaining constitutional supremacy and protecting constitutional rights.¹

The authority of the Constitutional Court to conduct judicial review has an important relationship with Pancasila as the philosophical foundation of the Indonesian state. Pancasila is not merely an ideological basis but also occupies a fundamental position within the Indonesian legal system. Article 2 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations expressly stipulates that Pancasila constitutes the source of all sources of state law. This position requires the development and interpretation of Indonesian law to remain consistent with the fundamental values contained in Pancasila. Consequently, constitutional adjudication should not be understood

¹ The 1945 Constitution of the Republic of Indonesia, art. 1(3), 24, and 24C.

solely as a formal examination of statutory provisions against the text of the 1945 Constitution, but should also consider the philosophical and constitutional values underlying the Indonesian constitutional order.²

The relationship between Pancasila and Constitutional Court decisions has become increasingly relevant because the Court's decisions may have consequences extending beyond the resolution of individual constitutional disputes. Muttaqin, Atmoredjo, and Omara argue that Constitutional Court decisions, particularly decisions containing conditional constitutional interpretations or formulating new norms, may function as a binding source of law in the development of legislation. For this reason, constitutional judges are required to relate and synchronize their decisions with Pancasila because Pancasila constitutes the national fundamental legal source and the source of all sources of law in Indonesia.³ This position demonstrates that constitutional interpretation performed by the Constitutional Court carries not only juridical consequences but also philosophical consequences for the development of the national legal system.

The exercise of judicial review, nevertheless, raises a continuing debate concerning the appropriate limits of judicial power. In constitutional adjudication, the Constitutional Court may adopt a relatively restrained approach by limiting itself to examining the constitutionality of statutory provisions, or it may adopt a more progressive approach through judicial activism. Judicial activism generally refers to a judicial approach in which judges interpret constitutional provisions dynamically and, in certain circumstances, provide solutions to constitutional problems that are not explicitly addressed by existing legal provisions. In the Indonesian context, judicial activism has been associated with the Constitutional Court's efforts to protect constitutional rights and to realize substantive justice. Saragih, Nasution, and Sihombing argue that judicial activism may function as a

² Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Laws and Regulations, art. 2, as amended by Law Number 13 of 2022.

³ Labib Muttaqin, Sudjito Atmoredjo, and Andy Omara, "The Relationship between Pancasila and Constitutional Court Decisions as a Source of Law in Indonesia," *Jurnal Konstitusi* 21, no. 1 (2024): 77–97, <https://doi.org/10.31078/jk2115>

progressive approach in constitutional review and may contribute to strengthening constitutionalism and maintaining the philosophical values of Pancasila contained in the 1945 Constitution.⁴

The development of judicial activism, however, also generates concerns regarding the constitutional boundaries of judicial authority. The Constitutional Court was constitutionally designed as part of the judicial branch, while the authority to formulate legislation principally belongs to the legislature together with the government. The problem becomes more complicated when constitutional interpretation produces consequences that effectively modify, add to, or formulate legal norms. Such decisions may move the Court's position from a negative legislator, which primarily annuls unconstitutional norms, toward a positive legislator that participates in the formulation of legal norms. Research on the Constitutional Court's positive-legislator decisions shows that this development has become an important issue in Indonesian constitutional law because it raises questions concerning the separation of powers and the limits of judicial review.⁵

This tension is particularly significant when judicial activism is justified by the need to realize Pancasila values. On the one hand, Pancasila requires the legal system to pursue justice, humanity, democracy, and social welfare. A purely textual approach to constitutional interpretation may therefore be insufficient when constitutional rights or substantive justice require a more responsive interpretation. On the other hand, the use of broad constitutional interpretation cannot automatically justify the Court exceeding its constitutionally defined judicial function. Judicial activism that lacks clear constitutional limitations may create difficulties in maintaining the balance between judicial independence, democratic legitimacy, and the authority of elected institutions. The debate between judicial activism

⁴ Geofani Milthree Saragih, Mirza Nasution, and Eka N. A. M. Sihombing, "Makna Filosofis Putusan Mahkamah Konstitusi dalam *Constitutional Review* dan Urgensi *Judicial Activism*," *Masalah-Masalah Hukum* 53, no. 3 (2024): 326–335, <https://doi.org/10.14710/mmh.53.3.2024.326-335>

⁵ Muhammad Alief Farezi Efendi, Muhtadi, and Ahmad Saleh, "Positive Legislature Decisions by the Constitutional Court," *Jurnal Konstitusi* 20, no. 4 (2023), <https://doi.org/10.31078/jk2044>

and judicial restraint consequently becomes relevant in determining how far constitutional judges may develop constitutional meaning while remaining within the boundaries of judicial power.⁶

The issue becomes more complex because constitutional interpretation in Indonesia is expected to be consistent with Pancasila. Haryono, in his analysis of Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law, emphasizes that constitutional interpretation should be conducted holistically, integratively, and dynamically while remaining harmonized with Pancasila. The study demonstrates that the method of constitutional interpretation employed by the Constitutional Court has a direct relationship with the legitimacy and normative justification of its decisions.⁷ Thus, the question is not merely whether the Constitutional Court may exercise judicial activism, but whether such activism can be justified through a Pancasila-based constitutional interpretation and, at the same time, remain subject to constitutional limits.

Previous studies have examined the relationship between Pancasila and Constitutional Court decisions, the philosophical meaning of constitutional review, the methods of constitutional interpretation, and the development of judicial activism.⁸ Nevertheless, these studies tend to discuss the respective dimensions separately. Studies concerning Pancasila primarily emphasize its position as the philosophical foundation and source of law, while studies concerning judicial activism focus more heavily on the tension between judicial power and legislative authority. The relationship between judicial activism and Pancasila constitutionalism, particularly regarding the constitutional limits that

⁶ Geofani Milthree Saragih, Mirza Nasution, and Eka N. A. M. Sihombing, "Judicial Review by the Constitutional Court: Judicial Activism vs. Judicial Restraint in the Perspective of Judicial Freedom," *Jurnal Konstitusi*, <https://doi.org/10.31078/jk2213>

⁷ Dodi Haryono, "Metode Tafsir Putusan Mahkamah Konstitusi dalam Pengujian Konstitusional Undang-Undang Cipta Kerja," *Jurnal Konstitusi* 18, no. 4 (2021): 774–802, <https://doi.org/10.31078/jk1843>

⁸ Pan Mohamad Faiz, "Dimensi *Judicial Activism* dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi*, <https://doi.org/10.31078/jk1328>; and Cholidin Nasir, "Mahkamah Konstitusi dan Kebijakan Kriminal," *Jurnal Konstitusi*, <https://doi.org/10.31078/jk1535>

should guide the Court when progressive interpretation is used to realize Pancasila values, therefore remains important to examine further. This article seeks to address that gap by placing Pancasila not merely as a philosophical background of constitutional adjudication, but as a substantive framework for assessing the legitimacy and boundaries of judicial activism.

The novelty of this study lies in examining judicial activism through the perspective of Pancasila constitutionalism while simultaneously considering the principle of separation of powers and the distinction between the Constitutional Court as a negative legislator and a positive legislator. Such an approach is important because Pancasila-based constitutional interpretation should not be understood as providing unlimited discretion to constitutional judges. Instead, Pancasila should function as a normative and philosophical framework that guides constitutional interpretation while maintaining the institutional boundaries of the Constitutional Court. Recent scholarship in the Indonesian Journal of Pancasila and Global Constitutionalism also emphasizes the continuing relevance of Pancasila as a living constitutional value in constitutional interpretation and adjudication.⁹ This perspective strengthens the argument that Pancasila may guide constitutional development while still requiring constitutional interpretation to remain accountable to the structure and limits of the Constitution.

Accordingly, this article aims to examine the relationship between judicial activism of the Constitutional Court and Pancasila constitutionalism and to identify the constitutional boundaries of judicial activism in realizing Pancasila values. The research questions addressed in this article are: (1) how does judicial activism of the Constitutional Court reflect the values of Pancasila constitutionalism?; (2) what are the constitutional limits of judicial activism in realizing Pancasila constitutionalism?

⁹ Saefudin, "Pancasila as a Living Constitution in Indonesian Constitutional Practice," *Indonesian Journal of Pancasila and Global Constitutionalism* 5, no. 1 (2026): 56–75, <https://doi.org/10.15294/ijpgc.v5i1.47436>

This research employs normative legal research using statutory, conceptual, and case approaches. The legal materials consist of primary legal materials, particularly the 1945 Constitution of the Republic of Indonesia and legislation governing the Constitutional Court and the formation of laws and regulations, as well as secondary legal materials in the form of scholarly articles and legal literature concerning Pancasila, constitutional interpretation, judicial review, judicial activism, and judicial restraint. The analysis is conducted descriptively and analytically to examine the relationship between Pancasila values, the Constitutional Court's judicial review authority, and the limits of progressive constitutional interpretation.

B. Judicial Activism of the Constitutional Court as a Reflection of Pancasila Constitutionalism

Judicial activism of the Constitutional Court may be understood as one of the mechanisms through which constitutional values are translated into concrete legal protection. In the Indonesian constitutional system, such activism cannot be separated from the philosophical position of Pancasila as the foundation of the state and the source of all sources of state law. Pancasila constitutionalism requires constitutional adjudication to preserve not only the formal supremacy of the Constitution but also the substantive values embodied in the constitutional order, including human dignity, social justice, popular sovereignty, democracy, and the protection of citizens' constitutional rights.¹⁰ Therefore, judicial activism becomes relevant when a merely literal application of statutory provisions is insufficient to prevent constitutional rights from being violated or to resolve a constitutional problem consistently with the fundamental values of the 1945 Constitution.

The reflection of Pancasila constitutionalism through judicial activism can be observed through three interconnected dimensions. First, Pancasila provides a normative and philosophical framework for

¹⁰ Labib Muttaqin, Sudjito Atmoredjo, and Andy Omara, "The Relationship between Pancasila and Constitutional Court Decisions as a Source of Law in Indonesia," *Jurnal Konstitusi* 21, no. 1 (2024): 77–97, <https://doi.org/10.31078/jk2115>

constitutional interpretation, requiring the Constitutional Court to relate constitutional meaning to the fundamental values underlying the Indonesian legal system. Second, judicial activism may serve the values of humanity and justice by developing constitutional interpretations that provide effective protection for constitutional rights and prevent discriminatory or unjust consequences arising from statutory provisions. Third, judicial activism may strengthen democratic and social dimensions of Pancasila constitutionalism when the Court ensures that the exercise of political power remains subject to constitutional limitations and that legal policy remains responsive to the constitutional interests of society. Accordingly, judicial activism should not be regarded merely as an expansion of judicial power, but as a constitutional interpretive approach whose legitimacy depends upon its capacity to realize constitutional values while remaining anchored in the Constitution.

1. Pancasila as a Normative and Philosophical Framework for Constitutional Interpretation

The relationship between Pancasila and constitutional adjudication begins with the position of Pancasila within the Indonesian legal system. The Preamble of the 1945 Constitution contains the formulation of Pancasila and simultaneously establishes the fundamental objectives and philosophical foundations of the Indonesian state. Within the hierarchy of the Indonesian legal system, Pancasila is expressly recognized as the source of all sources of state law under Article 2 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as amended most recently by Law Number 13 of 2022.¹¹ This position distinguishes Pancasila from an ordinary statutory norm. Pancasila operates at the foundational level of the Indonesian legal order and provides the values through which the validity and direction of positive law should be understood.

The position of Pancasila consequently has implications for constitutional interpretation. Constitutional adjudication cannot

¹¹ Republic of Indonesia, Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Article 2, as amended by Law Number 13 of 2022.

be reduced to a mechanical comparison between statutory provisions and the textual formulation of particular articles of the Constitution. The Constitution itself contains normative commitments that must be interpreted within the broader structure of the Indonesian constitutional order. The values of divinity, humanity, unity, popular sovereignty, and social justice provide an important philosophical context for understanding constitutional rights and state powers.¹² Thus, the Constitutional Court, as an institution entrusted with the authority to review laws against the Constitution, performs its function within a constitutional order whose normative foundation is inseparable from Pancasila.

This understanding is reinforced by the relationship between Pancasila and Constitutional Court decisions. Muttaqin, Atmoredjo, and Omara explain that certain Constitutional Court decisions, particularly decisions containing conditional constitutional interpretations and decisions formulating new normative consequences, may operate as binding sources in the subsequent development of legislation. Because such decisions participate in the construction of Indonesian positive law, constitutional judges must relate their constitutional interpretation to Pancasila as the source of national basic law and the source of all sources of law.¹³ The relationship demonstrates that Pancasila is not merely an introductory philosophical concept but may function as an interpretive orientation in assessing whether the legal consequences produced through constitutional adjudication remain consistent with the fundamental values of the Indonesian legal system.

At the same time, treating Pancasila as an interpretive framework does not mean that constitutional judges possess

¹² Sholikul Hadi, "Eksistensi Pancasila sebagai Sumber Segala Sumber Hukum dalam Konstitusi di Indonesia," *Indonesian Journal of Law and Islamic Law* 3, no. 2 (2021): 104–140, <https://doi.org/10.35719/ijl.v3i2.128>

¹³ Muttaqin, Atmoredjo, and Omara, "The Relationship between Pancasila and Constitutional Court Decisions," 77–97

unlimited discretion to declare a particular interpretation consistent with Pancasila. Pancasila constitutionalism operates within the framework of the 1945 Constitution. The Constitutional Court remains a judicial institution whose authority is constitutionally determined, particularly through Article 24C of the 1945 Constitution.¹⁴ Consequently, Pancasila should guide the interpretation of constitutional provisions rather than replace the Constitution as the immediate legal basis for judicial review. This distinction is important because otherwise the invocation of Pancasila could become an excessively broad justification for judicial intervention in legislative policy.

The interpretive position of Pancasila may therefore be understood through the relationship between constitutional text, constitutional values, and constitutional purpose. A constitutional interpretation that gives meaning to equality, human dignity, popular sovereignty, or social justice may be regarded as consistent with Pancasila constitutionalism when the interpretation remains connected to constitutional provisions and the structure of the 1945 Constitution. In this sense, Pancasila functions as a normative horizon within which constitutional interpretation develops rather than as an independent source of judicial authority.

The Constitutional Court's jurisprudence demonstrates this relationship. In Decision Number 35/PUU-X/2012, for example, the Court partially granted the petition concerning the Forestry Law and removed the word "state" from the statutory definition of customary forest, resulting in the formulation that customary forest is forest located within the territory of customary law communities.¹⁵ The decision strengthened the constitutional recognition of indigenous peoples and their rights over customary

¹⁴ Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, Article 24C paragraph (1).

¹⁵ Constitutional Court of the Republic of Indonesia, Decision Number 35/PUU-X/2012 concerning the Judicial Review of Law Number 41 of 1999 concerning Forestry against the 1945 Constitution, 16 May 2013

forests. Although the operative basis of the decision remained the constitutional provisions examined by the Court, its substantive orientation demonstrates how constitutional interpretation may respond to the protection of human dignity, equality, recognition of community rights, and social justice.

Accordingly, Pancasila constitutionalism provides a philosophical direction for judicial activism. The Court may interpret constitutional provisions dynamically when such interpretation is necessary to ensure that constitutional norms remain effective in contemporary social conditions. However, the progressive character of interpretation remains legitimate only insofar as it can be constitutionally justified. Judicial activism, therefore, should be understood as an instrument of constitutional interpretation, while Pancasila provides part of the normative value structure through which the consequences of that interpretation can be assessed.

II. Judicial Activism and the Protection of Human Dignity and Substantive Justice

One of the clearest manifestations of Pancasila constitutionalism in judicial activism is the protection of human dignity and substantive justice. The second principle of Pancasila, “Just and Civilized Humanity,” places human beings and their dignity at the center of the Indonesian constitutional order. This value corresponds with the constitutional protection of human rights contained in Chapter XA of the 1945 Constitution. Judicial activism becomes relevant when the application of an existing statutory norm produces consequences that formally appear valid but substantially undermine constitutional rights.

The Constitutional Court's Decision Number 46/PUU-VIII/2010 provides an important illustration. The case concerned Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which originally provided that a child born outside marriage had a civil relationship only with the mother and the mother's family. The Court partially granted the petition and declared the provision unconstitutional insofar as it was

interpreted to eliminate a civil relationship between the child and a biological father whose blood relationship could be established through science and technology or other legally recognized evidence. The Court subsequently formulated the provision so that such a child could also have a civil relationship with the biological father and his family.¹⁶

The significance of the decision is not limited to the modification of the meaning of a statutory provision. The decision demonstrates an interpretive approach that considers the constitutional consequences of maintaining a rigid statutory formulation. A child should not bear the legal consequences of circumstances beyond the child's control, particularly where the denial of a civil relationship may affect legal identity, civil rights, and access to protection. The Court's interpretation therefore demonstrates a substantive conception of justice that prioritizes constitutional protection over an exclusively textual understanding of statutory law.

This dimension is consistent with the second principle of Pancasila because the constitutional protection afforded by the decision is directed toward the dignity and equal legal position of human beings. The Court did not simply create a new entitlement detached from the constitutional framework; rather, it interpreted the statutory provision in light of constitutional rights and the constitutional requirement that every person be treated justly. Hamzani's analysis of the decision likewise demonstrates that the ruling significantly altered the legal position of children born outside marriage by recognizing a civil relationship with the biological father where the requisite biological relationship can be legally established.¹⁷

¹⁶ Constitutional Court of the Republic of Indonesia, Decision Number 46/PUU-VIII/2010 concerning the Judicial Review of Law Number 1 of 1974 concerning Marriage against the 1945 Constitution, 17 February 2012

¹⁷ Achmad Irwan Hamzani, "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (2015), <https://doi.org/10.31078/jk1214>

Judicial activism may similarly be observed in Decision Number 35/PUU-X/2012. By distinguishing customary forests from state forests, the Court provided stronger constitutional protection for indigenous communities and their relationship with customary territories.¹⁸ The decision demonstrates that constitutional adjudication may respond to social realities that are not adequately accommodated by a conventional statutory interpretation. Recognition of indigenous communities is connected not only to individual rights but also to collective identity, social equality, and the constitutional protection of communities that have historically occupied a vulnerable position in relation to state power.

The philosophical relevance of such decisions lies in the Court's attempt to translate constitutional principles into effective legal protection. Judicial activism becomes meaningful within Pancasila constitutionalism when it prevents constitutional guarantees from becoming merely formal declarations. The values of humanity and justice require constitutional rights to possess practical consequences. In this context, judicial activism may function as a corrective mechanism when statutory arrangements produce constitutional inequalities that cannot adequately be addressed through a restrained textual approach.

Pan Mohamad Faiz identifies judicial activism in the Constitutional Court's jurisprudence as a development associated with the Court's willingness to move beyond a purely formal conception of judicial review and to consider sociological and substantive dimensions of justice.¹⁹ Similarly, Saragih, Nasution, and Sihombing argue that judicial activism may serve a progressive function in constitutional review because it enables the Court to strengthen constitutionalism and preserve the philosophical values

¹⁸ Constitutional Court of the Republic of Indonesia, Decision Number 35/PUU-X/2012

¹⁹ Pan Mohamad Faiz, "Dimensi Judicial Activism dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 13, no. 2 (2016), <https://doi.org/10.31078/jk1328>

embodied in Pancasila.²⁰ These perspectives demonstrate that judicial activism may be justified not because judges are inherently entitled to make law, but because constitutional adjudication sometimes requires the Court to give effective meaning to constitutional rights.

Nevertheless, the protection of substantive justice must not be confused with judicial preference. A decision cannot be considered consistent with Pancasila merely because the judges characterize its outcome as “just.” The Court must demonstrate a constitutional connection between the interpretation adopted and the constitutional norms, rights, or principles that provide its legal basis. This requirement is essential to prevent substantive justice from becoming an instrument for judicial subjectivity. Thus, the Pancasila-based legitimacy of judicial activism depends upon both its substantive objective and its constitutional reasoning.

III. Judicial Activism, Popular Sovereignty, and Social Justice in Pancasila Constitutionalism

The third dimension concerns the relationship between judicial activism and the democratic and social dimensions of Pancasila constitutionalism. The fourth principle of Pancasila emphasizes democracy guided by wisdom through deliberation and representation, while the fifth principle requires the realization of social justice for all Indonesian people. These principles establish that democracy within the Indonesian constitutional order is not simply a matter of majority decision-making. Political power remains subject to constitutional limitations and must ultimately be directed toward the realization of constitutional objectives.

The Constitutional Court therefore occupies a distinctive position within the democratic constitutional structure. Its authority to review statutes enables the Court to assess whether

²⁰ Geofani Milthree Saragih, M. Nasution, and E. Sihombing, “Makna Filosofis Putusan Mahkamah Konstitusi dalam Constitutional Review dan Urgensi Judicial Activism,” *Masalah-Masalah Hukum* 53, no. 3 (2024): 326–335, <https://doi.org/10.14710/mmh.53.3.2024.326-335>

laws enacted through democratic institutions remain compatible with constitutional limitations. This function reflects the idea that constitutional democracy requires both democratic legitimacy and constitutional supremacy. As Sundariwati explains, judicial review enables the Constitutional Court to examine laws formed through majority political processes so that the interests of the majority do not result in the limitation or denial of fundamental rights protected by the Constitution.²¹ Judicial activism may therefore strengthen democracy when it prevents majoritarian political power from operating beyond constitutional boundaries.

This role is particularly relevant to the concept of Pancasila democracy. Democracy under Pancasila is not identical to unlimited majority rule. The exercise of popular sovereignty is constitutionally structured through representative institutions, legal procedures, constitutional rights, and limitations on state power. Judicial activism may contribute to this model by ensuring that legislative majorities remain accountable to constitutional norms. In this respect, judicial review does not necessarily contradict democracy. Rather, it may preserve the constitutional conditions under which democratic government can legitimately operate.

Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law illustrates another form of judicial intervention. The Constitutional Court declared the formation of Law Number 11 of 2020 concerning Job Creation conditionally unconstitutional and ordered the legislature to undertake corrective measures within a period of two years. The Court maintained the temporary validity of the law while simultaneously requiring the legislature to remedy the constitutional defects identified in the legislative process.²² The decision was significant

²¹ Ni Luh Dewi Sundariwati, "Judicial Activism: Between Protecting Constitutional Supremacy or Transitioning to Juristocracy," *Jurnal Konstitusi* 20, no. 3 (2023), <https://doi.org/10.31078/jk2135>

²² Constitutional Court of the Republic of Indonesia, Decision Number 91/PUU-XVIII/2020 concerning the Formal Judicial Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution, 25 November 2021

because the Court did not simply invalidate the statute immediately. Instead, it created a constitutional remedy that preserved legal continuity while requiring the political branches to correct the identified procedural deficiencies.

From the perspective of Pancasila constitutionalism, this form of judicial activism demonstrates the relationship between constitutional democracy and institutional responsibility. The Court recognized the importance of legislative authority while simultaneously enforcing constitutional requirements concerning law-making. The decision thus illustrates that judicial activism does not necessarily mean replacing the legislature. Judicial intervention may instead operate as a constitutional corrective mechanism that requires the legislature to return to constitutionally prescribed procedures.

The decision also illustrates the social dimension of Pancasila constitutionalism. Laws regulating employment, investment, natural resources, and economic development have significant consequences for social welfare. The fifth principle of Pancasila requires legal and governmental policies to pursue social justice rather than merely economic efficiency. Constitutional adjudication over legislation with broad socioeconomic consequences therefore has implications beyond formal institutional procedure. The Court's role is to ensure that the formation and implementation of such legislation remain consistent with constitutional guarantees and the constitutional objectives of the state.

The connection between judicial activism and Pancasila constitutionalism can consequently be understood through a balance between democratic authority and constitutional limitation. Judicial activism may protect the constitutional order when the legislature or government adopts policies that conflict with constitutional rights or procedures. At the same time, judicial activism must respect the institutional competence of the political branches. The Constitutional Court cannot transform the

principle of social justice into an unrestricted mandate to determine every aspect of public policy.

This limitation is important because the development of the Constitutional Court's decisions has also generated debate concerning the Court's movement from a negative legislator toward a positive legislator.²³ Decisions that conditionally interpret statutory provisions, formulate replacement norms, or establish regulatory consequences may produce effects that extend beyond the traditional function of annulling unconstitutional provisions. The phenomenon demonstrates the practical power of constitutional adjudication in shaping Indonesian law, but simultaneously raises questions concerning separation of powers and democratic legitimacy.

Therefore, judicial activism reflects Pancasila constitutionalism most convincingly when it performs a constitutional corrective function rather than an autonomous law-making function. The Court may develop constitutional meaning, provide effective remedies, and require legislative correction when necessary to protect constitutional rights and values. However, the Court's intervention must remain connected to constitutional provisions, constitutional structure, and the institutional allocation of powers established by the 1945 Constitution.

The three dimensions above demonstrate that judicial activism may reflect Pancasila constitutionalism through the integration of constitutional interpretation, human rights protection, democratic accountability, and social justice. Pancasila provides the philosophical orientation for these values, while the 1945 Constitution provides the immediate constitutional framework through which those values acquire juridical force. Consequently, judicial activism is not justified merely because it produces an outcome perceived as morally desirable. Its legitimacy depends upon whether the Court's progressive interpretation

²³ Muhammad Alief Farezi Efendi, Muhtadi, and Ahmad Saleh, "Positive Legislature Decisions by the Constitutional Court," *Jurnal Konstitusi* 20, no. 4 (2023), <https://doi.org/10.31078/jk2044>

strengthens the effectiveness of constitutional rights and constitutional democracy while remaining institutionally accountable to the Constitution.

In this sense, judicial activism and Pancasila constitutionalism should not be positioned as opposing concepts. Judicial activism may become a mechanism for realizing Pancasila constitutionalism when it translates the constitutional values of humanity, democracy, and social justice into effective legal protection. At the same time, Pancasila constitutionalism places a substantive orientation upon judicial activism: the exercise of judicial power must serve constitutional justice rather than judicial preference. The Court's progressive interpretation therefore finds its legitimacy in the combination of substantive constitutional values and constitutional limits.

C. Constitutional Limits of Judicial Activism in Realizing Pancasila Constitutionalism

The recognition of judicial activism as an instrument for realizing Pancasila constitutionalism does not mean that the Constitutional Court possesses unlimited authority to develop constitutional meaning. Judicial activism remains an exercise of judicial power and must therefore operate within the constitutional framework established by the 1945 Constitution. The legitimacy of progressive constitutional interpretation depends not only on the substantive values pursued by the Court but also on the constitutional authority, institutional competence, and legal reasoning underlying the decision. Accordingly, the realization of Pancasila constitutionalism through judicial activism requires a distinction between constitutionally justified judicial development and judicial intervention that effectively substitutes judicial preference for the authority of the constitutionally designated law-making institutions.

The constitutional limits of judicial activism may be examined through three interconnected boundaries. First, judicial activism must remain within the constitutional jurisdiction and function of the Constitutional Court as a judicial institution. Second, judicial activism must respect the principle of separation of powers and the distinction

between the Constitutional Court as a negative legislator and the legislature as the primary law-making institution, including the limitations concerning the formulation of new legal norms. Third, judicial activism must be supported by constitutional reasoning and proportionality so that the invocation of Pancasila does not become an independent justification for judicial discretion. These limitations demonstrate that Pancasila constitutionalism simultaneously provides an orientation for progressive constitutional interpretation and establishes a substantive reason for restraining judicial power when such power begins to exceed constitutional boundaries.

1. Constitutional Jurisdiction and Institutional Boundaries of the Constitutional Court

The first limitation of judicial activism derives from the constitutional position of the Constitutional Court itself. Article 24 paragraph (2) of the 1945 Constitution places the Constitutional Court within the judicial power, while Article 24C paragraph (1) expressly determines its principal constitutional authorities. Among these authorities is the power to adjudicate at the first and final level, with decisions that are final, in reviewing laws against the 1945 Constitution.²⁴ The constitutional design therefore establishes the Constitutional Court as an institution entrusted with constitutional adjudication rather than as a general law-making institution.

The distinction is fundamental because judicial activism operates within the exercise of judicial review. The Court may interpret constitutional provisions, assess the constitutionality of statutory norms, and determine the legal consequences of constitutional defects. However, the authority to interpret the Constitution does not automatically constitute authority to formulate any legal policy considered desirable by the judges. The constitutional function of the Court remains connected to the resolution of constitutional disputes within the jurisdiction granted by the Constitution.

²⁴ Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, Article 24 paragraph (2) and Article 24C paragraph (1)

Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, as amended several times, including by Law Number 7 of 2020, further provides the statutory framework concerning the authority of the Constitutional Court to adjudicate at the first and final level in reviewing laws against the 1945 Constitution.²⁵ This statutory framework must be understood in conjunction with Article 24C of the 1945 Constitution because the Constitutional Court is constitutionally established and its core jurisdiction cannot be expanded merely through ordinary legislation.

The institutional limitation is particularly important when judicial activism produces consequences beyond the annulment of an unconstitutional norm. Constitutional adjudication may sometimes require the Court to determine a particular interpretation in order to prevent constitutional rights from becoming ineffective. Conditional constitutional decisions, conditional unconstitutionality, and certain forms of normative interpretation demonstrate that the Court's decisions may have regulatory consequences. Nevertheless, the existence of such consequences does not eliminate the institutional distinction between adjudication and legislation.

Faiz explains that the development of judicial activism in the Constitutional Court is closely related to the Court's effort to protect constitutional rights and realize substantive justice. At the same time, he emphasizes that the exercise of judicial activism must still be examined in relation to the extent of judicial justification available to the Court.²⁶ This means that the existence of constitutional rights may justify an active judicial role, but it does not provide an unlimited mandate for the Court to determine every legal consequence it considers appropriate.

²⁵ Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, Article 10 paragraph (1), as amended by Law Number 8 of 2011, Law Number 4 of 2014, and Law Number 7 of 2020

²⁶ Pan Mohamad Faiz, "Dimensi Judicial Activism dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 13, no. 2 (2016), <https://doi.org/10.31078/jk1328>

The Constitutional Court's jurisprudence concerning the limits of its own authority illustrates this institutional tension. In Decision Number 48/PUU-IX/2011, the Court annulled provisions of Law Number 8 of 2011 that restricted the Court's decision-making authority. The decision reaffirmed the position of the Constitutional Court as an organ of the Constitution whose authority is derived from the 1945 Constitution rather than merely from ordinary legislation.²⁷ The decision is important for demonstrating constitutional supremacy, but it should not be interpreted as granting the Court an autonomous constitutional power unrestricted by the constitutional text and structure.

The institutional boundary consequently requires the Court to distinguish between interpreting constitutional meaning and exercising legislative discretion. Constitutional interpretation remains necessary because constitutional provisions frequently contain principles and open-textured concepts that require interpretation. However, when a judicial decision ceases to resolve a constitutional question and instead determines policy choices that are constitutionally entrusted to the legislature, the Court risks moving beyond judicial review into an area belonging to another branch of government.

This limitation is consistent with Pancasila constitutionalism itself. The fourth principle of Pancasila recognizes the importance of popular sovereignty exercised through representative institutions and deliberative democracy. The democratic legitimacy of legislation is therefore connected to the constitutional role of the legislature as the institution responsible for forming laws. Judicial activism that ignores this institutional arrangement would paradoxically undermine the

²⁷ Constitutional Court of the Republic of Indonesia, Decision Number 48/PUU-IX/2011 concerning the Judicial Review of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court and Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution, 18 October 2011

democratic dimension of Pancasila while attempting to realize its substantive values.

Therefore, the first constitutional limit may be formulated as follows: judicial activism is legitimate only when it remains connected to the Constitutional Court's constitutional jurisdiction and functions as constitutional adjudication rather than as an independent source of law-making authority. Pancasila may guide the interpretation of constitutional norms, but it cannot independently expand the institutional jurisdiction of the Constitutional Court beyond that granted by the Constitution.

II. Separation of Powers and the Limitation between Negative Legislator and Positive Legislator

The second limitation concerns the principle of separation of powers. The Constitutional Court's authority to review legislation creates an institutional relationship between the judiciary and the legislature. The Court may declare statutory provisions unconstitutional, but the legislature remains the institution primarily responsible for formulating legislation. The problem arises when judicial activism produces a decision that not only eliminates an unconstitutional norm but also formulates a new norm that directly regulates legal conduct.

The distinction between the Constitutional Court as a negative legislator and a positive legislator is therefore central to determining the limits of judicial activism. In its traditional conception, a constitutional court acts as a negative legislator because its principal function is to remove legal norms that are inconsistent with the constitution. The legislature, by contrast, acts as the positive legislator because it determines the content of legal policy through the legislative process. The emergence of decisions containing new or modified norms complicates this distinction.

Indonesian constitutional practice demonstrates that the Constitutional Court has, in certain circumstances, adopted decisions with positive legislative consequences. Efendi, Muhtadi, and Saleh identify a significant development of positive legislative

decisions in the Constitutional Court's jurisprudence and argue that this development raises questions regarding the legal basis and implementation of decisions containing regulatory consequences.²⁸ Their research identifies Decision Number 48/PUU-IX/2011 as an important point in the development of the Court's regulatory decisions. The development demonstrates that judicial activism can create legal norms or legal consequences that go beyond the conventional negative-legislator model.

Nevertheless, the existence of positive legislative consequences does not necessarily mean that every norm created or modified by the Court is unconstitutional. Constitutional adjudication occasionally requires the Court to formulate an interpretation that gives practical effect to constitutional rights. If the Court merely annuls a statutory provision without addressing the constitutional consequences of that annulment, the decision may create legal uncertainty or even a legal vacuum. For this reason, the Court has developed various forms of conditional decisions and interpretive judgments.

Rahman and Wicaksono explain that conditional constitutional and conditional unconstitutional decisions have developed in the Constitutional Court's practice even though these models were not expressly formulated in the original statutory framework. Such decisions enable the Court to establish conditions under which a statutory provision remains constitutional or becomes unconstitutional.²⁹ This practice demonstrates the Court's effort to reconcile constitutional supremacy with the need for effective remedies.

The difficulty begins when judicial intervention goes beyond what is necessary to resolve the constitutional defect. In such circumstances, judicial activism may become

²⁸ Muhammad Alief Farezi Efendi, Muhtadi, and Ahmad Saleh, "Positive Legislature Decisions by the Constitutional Court," *Jurnal Konstitusi* 20, no. 4 (2023), <https://doi.org/10.31078/jk2044>

²⁹ Faiz Rahman and Dian Agung Wicaksono, "Eksistensi dan Karakteristik Putusan Bersyarat Mahkamah Konstitusi," *Jurnal Konstitusi* 13, no. 1 (2016), <https://doi.org/10.31078/jk1316>

indistinguishable from judicial legislation. Cholidin Nasir argues that although the Constitutional Court may employ judicial activism when statutory provisions violate constitutionally guaranteed rights, the Court must exercise restraint where the creation of a new criminal norm or other policy would effectively substitute the Court's judgment for that of the law-making institution.³⁰ The distinction is particularly important because the formulation of new legal obligations may have broad consequences for society and normally requires democratic deliberation.

The principle of separation of powers therefore does not prohibit every form of judicial activism. Rather, it determines the conditions under which activism remains constitutionally legitimate. The Court may interpret a statutory provision, remove unconstitutional elements, establish a constitutionally necessary meaning, or formulate a remedy that is directly required to protect constitutional rights. However, the Court should avoid determining policy questions that involve multiple constitutionally permissible alternatives and that have not been transformed into a genuine constitutional question.

This limitation is closely connected with the concept of open legal policy. The legislature possesses a sphere of policy discretion in areas that are not constitutionally predetermined. If several policy options remain equally compatible with the Constitution, the selection among those options generally belongs to the legislature rather than the Constitutional Court. The Constitutional Court should intervene when the chosen policy crosses a constitutional boundary, such as violating constitutional rights, creating discrimination, or contradicting explicit constitutional requirements.

The study on open legal policy in Constitutional Court decisions demonstrates that the boundary between open legal policy, positive legislator, and negative legislator remains contested

³⁰ Cholidin Nasir, "Mahkamah Konstitusi dan Kebijakan Kriminal," *Jurnal Konstitusi* 15, no. 3 (2018), <https://doi.org/10.31078/jk1535>

in Indonesian constitutional practice. The absence of sufficiently clear boundaries may produce tension between judicial activism and judicial restraint.³¹ Therefore, the Court's reliance on Pancasila cannot by itself transform a policy question into a constitutional question. The constitutional question must first be identifiable, and the judicial remedy must remain proportionate to the constitutional defect.

A useful illustration can be found in Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law. The Court declared the formation of Law Number 11 of 2020 conditionally unconstitutional because of defects in its legislative formation and required corrective action within two years.³² Instead of permanently replacing the statutory framework with a judicially formulated regulatory regime, the Court required the legislature to correct the constitutional defects. This approach demonstrates a form of judicial intervention that preserves the constitutional role of the legislature while enforcing constitutional standards.

The decision therefore illustrates an important boundary: judicial activism may require legislative correction, but legislative correction should remain within the competence of the legislature when the Constitution does not require the Court itself to formulate the substantive policy. This approach is particularly compatible with Pancasila constitutionalism because it maintains both constitutional supremacy and democratic representation.

Consequently, the distinction between negative and positive legislator should not be understood as an absolute prohibition against all judicially formulated legal consequences. Instead, it should function as an institutional warning. The greater the degree

³¹ See, generally, the discussion in "Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang," *Jurnal Konstitusi*, which identifies the continuing uncertainty concerning the boundaries between open legal policy, positive legislator, negative legislator, judicial activism, and judicial restraint

³² Constitutional Court of the Republic of Indonesia, Decision Number 91/PUU-XVIII/2020 concerning the Formal Judicial Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution, 25 November 2021

to which a judicial decision creates new substantive policy, the stronger the constitutional justification required. Judicial activism is therefore legitimate when the Court develops constitutional meaning to remedy a constitutional violation, but becomes constitutionally problematic when it substitutes judicial policy preferences for legislative choices that remain constitutionally permissible.

III. Constitutional Justification, Legal Certainty, and Pancasila as a Limiting Framework

The third limitation concerns the substantive and methodological justification of judicial activism. Even when the Court acts within its formal jurisdiction and does not explicitly assume the legislative function, judicial activism may still become problematic if its interpretation lacks a sufficiently strong constitutional foundation. The progressive character of a decision cannot be justified merely by asserting that its outcome promotes justice or reflects Pancasila.

Pancasila has a dual significance in this context. On the one hand, Pancasila provides fundamental values that may support dynamic constitutional interpretation, particularly in relation to humanity, democracy, and social justice. On the other hand, because Pancasila is the philosophical foundation of the Indonesian constitutional order, its values must be interpreted consistently with the constitutional structure rather than used as an open-ended source of judicial discretion. Pancasila therefore functions not only as a justification for judicial activism but also as a framework for limiting it.

The requirement of constitutional justification becomes particularly important because constitutional adjudication may involve competing constitutional values. For example, the protection of individual rights may need to be balanced with legal certainty, institutional competence, democratic legitimacy, or other constitutional interests. A judicial decision that prioritizes one constitutional value must therefore explain why that

interpretation is compatible with the broader constitutional structure.

The Court's use of conditional decisions provides an example of how such balancing may be achieved. By declaring a provision conditionally constitutional or conditionally unconstitutional, the Court can preserve the statutory framework while establishing a constitutional interpretation that prevents the provision from being applied in a manner inconsistent with constitutional rights. Rahman and Wicaksono note that conditional decisions have developed as an instrument through which the Court gives constitutional meaning to statutory provisions while encouraging subsequent legislative review.³³

However, the development of constitutional interpretation must also preserve legal certainty. Legal certainty constitutes an important element of the rule of law under Article 1 paragraph (3) of the 1945 Constitution. Excessively unpredictable judicial intervention may create uncertainty concerning the content of legal norms, particularly where the Court formulates a new meaning without sufficiently clear constitutional parameters. Judicial activism that seeks to achieve substantive justice but produces disproportionate uncertainty may consequently create tension with another constitutional value.

This concern is visible in the broader debate surrounding the Constitutional Court's regulatory decisions. Efendi, Muhtadi, and Saleh observe that positive legislative decisions have not always been effectively implemented, and their research identifies the absence of a clear legal basis and questions concerning institutional competence as among the problems associated with such decisions.³⁴ The issue demonstrates that the effectiveness of judicial activism cannot be measured solely by whether the Court has formulated a norm. The implementation, institutional

³³ Rahman and Wicaksono, "Eksistensi dan Karakteristik Putusan Bersyarat Mahkamah Konstitusi."

³⁴ Efendi, Muhtadi, and Saleh, "Positive Legislature Decisions by the Constitutional Court."

competence, and legal consequences of the decision must also be considered.

Decision Number 90/PUU-XXI/2023 provides an important illustration of why constitutional limits are necessary. In examining the statutory provision concerning the minimum age requirement for presidential and vice-presidential candidates, the Constitutional Court granted the petition in part and formulated a condition concerning candidates who had or were currently holding positions elected through general elections, including regional heads.³⁵ The decision generated substantial discussion regarding the boundary between constitutional interpretation and the formulation of electoral policy. The case is particularly relevant to the present discussion because it demonstrates how judicial activism may become controversial when a judicial interpretation directly affects the design of political competition and electoral eligibility.

The significance of Decision Number 90/PUU-XXI/2023 for Pancasila constitutionalism is therefore not simply whether its substantive result can be associated with democratic values. More importantly, the decision illustrates the necessity of asking whether the Court's reasoning remains sufficiently connected to constitutional provisions and whether the remedy respects the institutional competence of the legislature. Electoral regulation concerns the exercise of popular sovereignty and therefore occupies a particularly sensitive area of constitutional democracy. Judicial intervention in such an area requires a strong constitutional justification because the consequences extend beyond the individual rights of the applicant and affect the broader democratic process.

The concept of judicial activism consequently cannot be assessed solely by the degree of intervention exercised by the Court. The relevant question is whether the intervention is

³⁵ Constitutional Court of the Republic of Indonesia, Decision Number 90/PUU-XXI/2023 concerning the Judicial Review of Article 169 letter q of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution, 16 October 2023

constitutionally justified, necessary to remedy a constitutional violation, and proportionate to the constitutional problem presented before the Court. Faiz's analysis of judicial activism similarly emphasizes the need to determine the extent to which activism can be justified within the Constitutional Court's decision-making process.³⁶

This requirement can be connected to Pancasila through the principle that constitutional justice must operate simultaneously with constitutional democracy and social justice. The second principle requires respect for human dignity; the fourth principle requires democratic decision-making and popular sovereignty; and the fifth principle requires social justice. None of these principles operates in isolation. Judicial activism that protects an individual right but disregards democratic institutional competence may create another constitutional problem. Conversely, excessive judicial restraint that leaves constitutional rights without effective protection may fail to realize the substantive dimension of Pancasila constitutionalism.

Therefore, Pancasila should function as a limiting interpretive framework rather than an unlimited source of judicial authority. The Court may invoke Pancasila to strengthen an interpretation that protects constitutional rights, promotes equality, or prevents injustice, but the Court must still demonstrate the constitutional provisions that authorize the intervention. Pancasila provides the normative direction of constitutional adjudication, while the 1945 Constitution provides the institutional and juridical boundaries within which that direction must be realized.

Based on the foregoing discussion, the constitutional limits of judicial activism may be formulated through three cumulative requirements. First, judicial activism must remain within the Constitutional Court's constitutionally assigned jurisdiction. Second, the exercise of activism must respect the separation of powers and may not transform the Court into an unrestricted

³⁶ Faiz, "Dimensi Judicial Activism dalam Putusan Mahkamah Konstitusi."

positive legislator. Third, progressive constitutional interpretation must be supported by constitutional reasoning that balances substantive justice, constitutional rights, legal certainty, democratic legitimacy, and institutional competence. These requirements prevent the realization of Pancasila constitutionalism from becoming a justification for judicial overreach.

Accordingly, the constitutional legitimacy of judicial activism can be maintained when the Court uses its interpretive authority to make constitutional guarantees effective without replacing the constitutional functions of the legislature. Pancasila constitutionalism therefore establishes a dual requirement for judicial activism: it requires the Court to be sufficiently active to protect constitutional values and sufficiently restrained to remain within the constitutional allocation of power. Judicial activism is constitutionally legitimate not because it is “activist” in itself, but because the judicial intervention can be justified as necessary to preserve constitutional supremacy, constitutional rights, democratic legitimacy, and social justice within the framework of the 1945 Constitution.

D. Conclusion

Judicial activism of the Constitutional Court may reflect Pancasila constitutionalism when progressive constitutional interpretation is directed toward giving effective meaning to constitutional rights, substantive justice, democratic accountability, and social justice. Pancasila provides the philosophical and normative orientation for such interpretation, while the 1945 Constitution remains the primary constitutional framework that determines the legitimacy of judicial intervention. Judicial activism is therefore not inherently contrary to the principle of separation of powers. It may function as a constitutional corrective mechanism when statutory provisions or their application undermine constitutional rights or fundamental constitutional values. Nevertheless, the exercise of judicial activism is subject to constitutional limits. The Constitutional Court must remain within its constitutionally

assigned jurisdiction, respect the institutional role of the legislature, and distinguish between interpreting constitutional meaning and formulating legal policy that properly belongs to the law-making institutions. The progressive development of constitutional interpretation may be justified when it is supported by a clear constitutional basis and is necessary to remedy a constitutional violation, but it becomes problematic when judicial intervention substitutes judicial preference for constitutionally permissible legislative choices.

The findings of this research indicate that Pancasila should be positioned as a normative and philosophical framework that both guides and limits judicial activism. In its application, the Constitutional Court should develop constitutional interpretation in a manner that strengthens the protection of human dignity, democratic participation, and social justice while maintaining legal certainty and institutional balance. Future constitutional adjudication should therefore employ judicial activism selectively and with transparent constitutional reasoning, particularly when a decision may produce new or modified legal norms. Such an approach allows Pancasila constitutionalism to develop dynamically without transforming Pancasila into an unlimited justification for judicial power, thereby maintaining the balance between substantive constitutional justice, constitutional supremacy, and democratic legitimacy.

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