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Political Democracy and Judicial Values: A Philosophical Approach to Justice and Democracy through Legal Philosophy

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ABSTRACT

The primary source of law, Pancasila, implies that each legal product must embody Pancasila's principles from a philosophical perspective. Diverse perspectives have emerged regarding the function and importance of the fourth principle of Pancasila within the framework of Indonesian democracy. This research analyzes the political democracy based on the fourth principle of Pancasila and the legal value from the perspective of legal philosophy. Legal philosophy research is directed at understanding the moral and legal imperatives contained in the concept of political democracy according to the fourth principle of Pancasila. This research uses a doctrinal legal method with a theoretical approach to find the conceptual basis of legal principles and examine the cumulative effect of various rules and procedures in a particular activity area. There are two important points produced from this research, which are (1) the judicial values of political democracy in the fourth principle of Pancasila are closely related to Soekarno's perception of Pancasila as the ideology of Indonesian people, which prioritizes harmonious life in diversity; (2) there are four main values in political democracy in the fourth principle of Pancasila, such as (a) democracy must be based on morals, (b) power must be used for the welfare of the people, (c) elections must be held with ethics and good manners, and (d) decisions must be reached through deliberation and consensus for the common good.

Keywords: *Judicial Values, Legal Philosophy, Political Democracy*

INTRODUCTION

From a philosophical aspect, Pancasila's status as the main source of law indicates that every legal product must represent the principles of Pancasila. *Grundnorm* comes from German, which means the basic norm. It is a concept in the Pure Theory of Law created by Hans Kelsen, a jurist and legal philosopher. He also stated that *Grundnorm* is the transcendental-logical constitution, distinguished from the constitution in the sense of positive law.¹ Constitution in the transcendental-logical sense refers to its transcendental and logical meaning. In this case, the Constitution is not a specific and written set of rules but rather a fundamental principle that resides outside and constitutes the entire legal system.² *Grundnorm* is a theoretical concept that can help explain the validity of legal systems without referring to specific legal documents or rules. It is more concerned with legal philosophy and normative theories, which are organized and validated. *Grundnorm*, as constitution in the transcendental-logical sense, is a normative and abstract concept that serves as the basis for the validity of the entire legal system.³ It does not refer to a specific written document but to the basic principle that legitimizes all legal norms in the system. However, this statement is meant to emphasize that the *Grundnorm* is a theoretical and abstract basic norm, providing transcendental-logical legitimacy to the legal system, distinct from a real, written constitution that serves as a positive basic rule in ordinary legal practice.

For instance, in the legal system of a country, the constitution is considered the supreme law. However, according to Kelsen, the Constitution must be validated by a higher basic norm that is assumed to be the basis of the Constitution's validity. This basic norm is unwritten and cannot be proven empirically, but it is accepted as an initial premise to provide a basis of legitimacy for the entire legal system. Therefore, his statement that the basic norm is the "initial premise" emphasizes the fundamental role of the *Grundnorm* in Kelsen's legal theory as the basic starting point that provides the basis of legitimacy and validity for all legal norms in a legal system.⁴

In addition to the fourth principle, the statement also indicated that each principle of Pancasila has a role as a *Grundnorm* in particular contexts. The first principle (Belief in One God) is the basis for "religious life" and provides legitimacy for freedom of religion and respect for religious values. The second principle (Equitable and Civilized Humanity) is the basis for "humanity and human rights" and is based on the principles of social justice and the protection of human

¹ Hans Kelsen, *General Theory of Law & State*, ed. Hans Kelsen and A. Javier Treviño (Routledge, 2017).

² Marsilam Simanjuntak, *Pandangan Negara Integralistik : Sumber, Unsur, Dan Riwayatnya Dalam Persiapan UUD 1945* (Jakarta: Pustaka Utama Grafiti, 1994).

³ Kelsen, *General Theory of Law & State*.

⁴ Matthew Bolton, "Three Theories of Separation: Kelsen, Schmitt and Pashukanis and The Historical Development of the Legal Form," *Philosophy & Social Criticism* (April 28, 2023): 019145372311709, <http://journals.sagepub.com/doi/10.1177/01914537231170908>.

rights. The third principle (Indonesian Unity) is the basis for “national life” and emphasizes the importance of unity, integrity, and solidarity in national life. The fifth principle (Social Justice for All Indonesian People) is the basis for “social life” and strives for fair and equitable social development for the entire community.⁵ Therefore, the statements emphasize that each of the Pancasila principles has a specific role and becomes the *Grundnorm* in particular contexts, while the fourth principle specifically becomes the *Grundnorm* for the legal system that governs the “life of the state” in Indonesia. This indicates the complexity and philosophical profundity of Pancasila as the moral and legal foundation for the Indonesian state. There are various understandings of the role and significance of the fourth principle of Pancasila in the context of democracy in Indonesia. The smaller perspective may originate from a focus on the phrase “representative deliberation,” which has affected the approach to the direct election system in the country’s political process. Based on previous background, this research has a problem statement, “How is the imperative legal value contained in the fourth principle of Pancasila for Indonesian state life?” that must be resolved. Therefore, this research is conducted to find out the legal value contained in the fourth principle of Pancasila for Indonesian state life.

RESEARCH METHODOLOGY

This research uses a doctrinal legal method with a theoretical approach to find the conceptual basis of legal principles and examine the cumulative effect of various rules and procedures in a particular area of activity. The doctrinal legal method is a legal research approach that analyzes existing legal documents, including laws, court decisions, and other legal documents.⁶ This method focuses on the interpretation, analysis, and criticism of legal documents to understand and explain the legal concepts, principles, and rules contained therein.⁷ This method is often used in legal research to develop an understanding of the legal system, study the evolution of the law, or evaluate the effectiveness and equity of certain regulations.⁸ Meanwhile, in the legal context, a theoretical approach involves using legal theories, legal philosophy, and basic concepts in law to analyze and understand legal systems, legal norms, and legal practices. This approach contributes to

⁵ Bernard L. Tanya et al., *Pancasila Bingkai Hukum Indonesia*, 1st ed. (Yogyakarta: Genta Publishing, 2015).

⁶ Bruno De Witte, “Legal Methods for the Study of EU Institutional Practice,” *European Constitutional Law Review* 18, no. 4 (December 1, 2022): 637–656, https://www.cambridge.org/core/product/identifier/S157401962200044X/type/journal_article.

⁷ Dwi Rossulliaty, Yoyok Uruk, and Wahyu Prawesthi, “Criminal Liability of Notary in Criminal Act Committed by Notary Signing Agent,” *YURIS: Journal of Court and Justice* 2, no. 1 (March 1, 2023): 54–65, <https://journal.jfpublisher.com/index.php/jcj/article/view/258>.

⁸ Brian Bix, *Jurisprudence: Theory and Context*, 9th ed. (Sweet & Maxwell, 2023).

developing broader and more fundamental insights into the functioning of the law and how it should function in society.⁹

RESULT AND DISCUSSION

The Legal Value of the Principle of Democracy

In order to properly understand and apply the legal values of the fourth principle, it is important to analyze the philosophical perspective and context provided by Soekarno about Pancasila. Furthermore, by understanding the “*anima legis*” or spirit of Pancasila, we can ensure that the entire legal system and rules in Indonesia are in accordance with the spirit and basic values contained in Pancasila.¹⁰ Although *Weltanschauung* was used by Soekarno to describe Pancasila, it is not the same as the interpretation offered by Karl Mannheim and Karl Jaspers. For Soekarno, the *Weltanschauung* Pancasila was a worldview of the Indonesian people that focused on basic principles that could be applied in daily life to build a strong, just and united country.¹¹ While Soekarno’s interpretation was more practical and related to the social and political realities of Indonesia, Mannheim, and Jaspers provided a more theoretical and philosophical interpretation. Karl Mannheim associated *Weltanschauung* with ideologies and conceptions of the world that are often affected by social position and historical context.¹² Moreover, Karl Jaspers identified *Weltanschauung* as a personal way to understand existence and the meaning of life, which is often related to deep philosophical issues of existence and morality.¹³

When it comes to Pancasila, Soekarno does not aim for a worldview according to a certain period or current trend. For Soekarno, Pancasila was a worldview for a particular place called Indonesia. Therefore, Pancasila is a worldview for the locus of Indonesia, not for a certain period of time, which may disappear at any time according to changing times.¹⁴

⁹ Kaharuddin Kaharuddin, “Legal Sociology Approach: A Critical Study on Understanding the Law,” *Veteran Law Review* 6, no. SpecialIssues (April 18, 2023): 54–69, <https://ejournal.upnvj.ac.id/Velrev/article/view/4955>.

¹⁰ Putra Kaslin Hutabarat, “Legal Philosophy in Constructing the Pancasila Legal System in Indonesia,” *Jurnal of Etika Demokrasi* 7, no. 2 (2022): 297–307.

¹¹ Jagad Aditya Dewantara et al., “Pancasila as Ideology and Characteristics Civic Education in Indonesia,” *International Journal for Educational and Vocational Studies* 1, no. 5 (July 20, 2019), <http://ojs.unimal.ac.id/index.php/ijevs/article/view/1617>.

¹² Martyn Hammersley, “Karl Mannheim’s Ideology and Utopia and the Public Role of Sociology,” *Journal of Classical Sociology* 22, no. 2 (May 6, 2022): 176–198, <http://journals.sagepub.com/doi/10.1177/1468795X20986382>.

¹³ Siphwe Ndlovu and Angelo Nicolaidis, “Karl Jaspers and the Eastern Orthodox View of Transcendence: A Comparative Analysis,” *Pharos Journal of Theology*, no. 104(3) (June 2023), https://www.pharosjot.com/uploads/7/1/6/3/7163688/article_5_vol_104_3_unizulu.pdf.

¹⁴ Sandi Arifin et al., “The Importance of Pancasila Education as Learning Material in Higher Education,” *Indonesian Journal of Educational Science and Technology* 2, no. 2 (June 1, 2023): 207–214, <https://journal.formosapublisher.org/index.php/nurture/article/view/4279>.

Karl Jaspers is the opposite. Jaspers referred to *Weltanschauung* as the philosophy of the world. Soekarno did not talk about the philosophy of the world but rather the philosophy of peaceful co-existence in the Indonesian nation.¹⁵ In other words, Pancasila is a philosophy of life (*Lebensphilosophie*) regarding a peaceful common life in Indonesia; a philosophy that is capable of giving hope, providing confidence, and building the commitment of its people.

Nevertheless, what was Soekarno's Indonesia, for which Pancasila had to function as a *lebensphilosophie*? The answer is that Indonesia is Unity in Diversity. Against this such Indonesia, the *lebensphilosophie* called Pancasila shall be established and exist. The *raison d'être* of Pancasila is precisely for this purpose. Thus, in the context of Pancasila as a *Weltanschauung*, the *anima legis* within Pancasila is the necessity of peaceful co-existence in a Unity in Diversity Indonesia.

Democracy Must Be Conscientious

The first imperative of the Principle of Democracy is the necessity to implement a conscientious democracy. The Fourth Principle is the 'Indonesian Doctrine' on managing (populist) democracy, i.e., democracy/popularity that is inseparable from the spirit of the necessity to live together peacefully in Indonesia's Unity in Diversity. In this context, the phrase of the Fourth Principle (a democracy led by wisdom and prudence) takes on great importance. Wisdom and discretion are the "path of wisdom" prepared by Pancasila to manage power and strengthen "peaceful co-existence" in the Indonesian Republic.

It is commonly acknowledged that statehood is a matter of managing power politically. According to Talcott Parsons, politics is the second most value-poor field after the economy.¹⁶ If the economy has the potential to lead people to greed and hedonism, then politics could lead people to opportunism (legalizing any means to achieve goals and power).

Apparently, through the Fourth Principle, the Founding Fathers did not desire such things to occur. Hence, the Principles must be presented in a format weighted by values/conscience. It is a big bet if the home country—where almost three hundred million Indonesians who are diverse in terms of geography, ethnicity, social, cultural composition, economic adaptation, social structure, and political system who wish to live in peace, tranquility, and prosperity in it—is then handed over to be managed politically in a democracy with no conscience.

Without conscience (wisdom and prudence), politics will only appear as a battle of will to power. The most valuable lesson we learn from the journey of every

¹⁵ Alvina Kusuma and Agus Adriyanto Syamsunasir, "Indonesia's Message of Peace to the World: A Case Study of the Indonesian Christian Church's Yasmin Conflict," *International Journal of Research and Innovation in Social Science* 06, no. 03 (2022): 436–439, <https://www.rsisinternational.org/journals/ijriss/Digital-Library/volume-6-issue-3/436-439.pdf>.

¹⁶ Mike Saks, "The Anthem Companion to Talcott Parsons," *Contemporary Sociology: A Journal of Reviews* 47, no. 3 (May 25, 2018): 370–371, <http://journals.sagepub.com/doi/10.1177/0094306118767651ss>.

political recruitment is that the attainment of power always involves intrigue. One does not need to read Machiavelli to comprehend this, as first-hand experience will prove.

The negative temperament of the will to power is, in part, a function of tactics. While the difference between one and another may only be in how the scheme is carried out, the tendency towards using foul means is the same elsewhere. Indonesia is no exception, as has been the case so far (including character assassination, black campaigns, slander, and other heinous acts that have characterized the electoral process over the years).

The presence of the Fourth Principle prevents such possibilities. There is a moral imperative to practice democracy (populism) with wisdom and prudence and to seek deliberation and consensus as far as possible to avoid hostility between elements of the nation.

Power Shall Belong to the People

The second imperative of the Principle of Democracy is power for the people. Theoretically, democracy as a political system presupposes that power shall be from the people, by the people, and for the people. Democratic procedures must be implemented to guarantee that the political power obtained is truly from and given by the people. However, realizing freedom, equality, justice, and prosperity as the substantive objectives of democracy guarantees that democracy is a government and power for the people instead of for its leaders or a few limited groups.¹⁷

Power for the people is a matter related to the quality of the power holder, i.e. the ability to govern or statecraft, “regnancy”, or rule, rather than ‘theatre state’ officials as Clifford Geertz discovered regarding the classical state in Bali in the 19th century. According to Geertz, theatre state officials are characterized by two things: (i). Mental estate (the prioritization of a certain status, social level, or a certain standing). (ii). Mental stateliness (stage, glamor, and grandeur). Stage, glamor, and grandeur are not merely signs of power; they have become the power itself.

Power for the people must be competent in politics, leadership, management, regulation, planning, and communication. In other words, the public needs quality leaders who are complete, have the will, are generous, competent, have constituency legitimacy, and are highly motivated with a sensitive conscience.

Power holders’ quality is determined by the political recruitment system (through election or through mandate/appointment). In particular, the electoral recruitment system is an important and strategic issue. In monarchical or authoritarian systems, this matter is not a major issue. A political leader is easily determined based on lineage (monarchy) or unilateral power (authoritarian). In contrast, a democratic system requires public participation in recruiting leaders in representative and immediate formats. This participation becomes a *modus vivendi*

¹⁷ Bernard L. Tanya, *Pancasila: Bingkai Hukum Indonesia* (Yogyakarta: Genta Publishing, 2015).

to produce quality leaders in competence, constituency, and integrity.¹⁸ Therefore, to obtain leaders with the three qualifications above, the recruitment process (from the beginning to the end) must be maintained in such a way as to avoid various distortions that may arise.

Accommodating this, it is wise to establish future political recruitment regulations to regulate the “quality selection” of candidates before being contested in the general election. For this purpose, an Independent Selection Team (national and regional) should be formed to test the candidates’ competence, commitment, and integrity. Parties can submit a specified number of candidates to be tested by the Selection Team. If none of the candidates submitted by a party passes the selection, then the party concerned is considered to have no candidates in the election. The only candidates who pass the selection can run in the general election.

Through this scenario, the candidates presented to the people are worthy. This method can also eliminate the game of money politics and other corrupt practices because those who come forward are the chosen ones. The expert panel’s recommendations serve as a control system for the candidates to maintain their honor before the voters. Voters will also pay more attention to the quality of candidates and their programs than other things due to their labels as chosen people.

This proposal is derived from several empirical facts. Firstly, in the current elections, it can be claimed that there are no clear criteria for ability and eligibility to become a leader. Any person may feel that it is feasible to run for the regional head, even if they have neither the ability nor the eligibility to carry out that function.

Second, in terms of commitment, candidates are often only gracious and generous once they need people’s support to gain power. The people’s vote is only required to seize and attain power. People are only needed for the sake of *machtsvorming*. As a result, the matter of *machtsaanwending* (utilizing that power) for the welfare of the people is neglected.

Third, what McCracken calls “aggressive-manipulative” leaders emerge quite often. They fully understand the population’s weaknesses and limitations. Unfortunately, they are not doing what a leader should do: turning weaknesses into strengths through empowerment policy stimuli. Instead, the leader manipulates these weaknesses to serve their own interests. The leader’s strengths are used to outwit, deceive, and fool those they are supposed to serve.

Fourth, strengthening the belief that politics is a gambling arena to obtain greater profits. As a result, power is used as an opportunity to expand power networks and corrupt cronies rather than expanding effective and efficient public services; expanding the area of tribute through various levy and retribution policies rather than expanding the development of productive economic sectors that can

¹⁸ Nicolas Faysse, Myriam Bouzekraoui, and Mostafa Errahj, “Participation et Amélioration Des Compétences Dans Des Groupes Restreints,” *Revue d’anthropologie des connaissances* 9, no. 3 (2015), <https://journals.openedition.org/rac/3055>.

improve people's welfare; and expanding nepotistic and collusive oligarchic networks rather than enhancing the channels of community empowerment that are necessary for their welfare. Regulations related to political recruitment should focus on strictly regulating the recruitment system to produce competent, committed, and integrity leaders, as that is exactly what the public expects.

Election Implementation Shall Be Civilized

The third imperative of the Principle of Democracy is 'the implementation of elections shall be conducted in a civilized manner.' The phrase 'democracy led by wisdom and discretion' applies not only to *machtsaanwending*, as mentioned in point 2 above, but also to the stage of *machtsvorming* (power formation).

Therefore, it is appropriate that the Constitution and the Election Law place political recruitment called the General Election (including Regional Elections) as a civilized democratic event. To maintain 'civilization,' the election program provided by the constitution and law is provided with basic principles, including direct, general, free, secret, honest and fair, independent, and impartial. These principles are implemented by the constitution and law. All of them are *anima legis* or the soul of the Election Law and all its derivative rules. The normality/abnormality of the implementation of election rules, procedures, and mechanisms cannot be separated from these principles. The disregard of these principles is the same as ignoring the Law and all its derivative rules. The main postulate regarding principles (in the field of law) is *cessante ratione legis, cessat et ipsa lex* (when the legal reason is disappears, the law also disappears). Likewise, when the rules for organizing elections (as a derivation of the principles above) are violated, it must be considered a violation of the principles itself.

"Direct, general, free, and secret" is an imperative value to guarantee the constitutional right of the voters to determine their leaders directly without pressure and manipulation. In this context, there should be no administration, procedures, or mechanisms made by the government that potentially mislead voters into implementing their constitutional right to vote. The principle of "public, free, and secret" must be respected in political recruitment to ensure that democracy is truly a government and the power of people and by the people in its truest form.

"Honest and fair" is an imperative value to ensure that the implementation of elections is conducted correctly in accordance with the procedures and mechanisms stipulated by law. The correct procedures must be implemented to ensure that the elections are held in accordance with the rules. In addition, valid procedures and mechanisms must be guaranteed in order to prevent the elections from being violated by manipulation of any kind, including manipulation of voter administration (formal and material defects). Likewise, fair procedures and mechanisms must be enforced with the aim of ensuring that they are fair, neutral, and impartial to one candidate.

Meanwhile, “independent and impartial” is an imperative value that binds the government to conduct their duties and obligations in an unbiased manner (integrity as an election organizer) and in a consistent manner (integrity to perform their duties based on the law and regulations). Independent refers to free from interference, pressure, or force, either directly or indirectly, from the power of other institutions, peers, superiors, and other parties. Likewise, in making decisions on a policy for organizing elections, it must be free from outside intervention and conflicts of interest with parties competing in elections. All of these are prerequisites for the independence of election organizers, which can be tested through the fact that they are not bound by conflicts of interest and the spirit of friendship factor with the parties competing in the election.

Thus, elections based on these principles should not be viewed as simplistic pragmatism based on instrumental rationality (machinations and stratagems) but should be conducted within the rationality of values. This means that the methods chosen to achieve the objectives must be justifiable and testable by moral criteria. In other words, the principles of elections in the context of electoral legal regimes are not just an accessory. Instead, these principles serve as a measuring tool for the normality of the entire electoral process. The measuring instrument takes the form of election rules and procedures. All laws in the whole range of election procedures must be obeyed to maintain the idea of civilized democracy. In the context of “maintaining civilized democracy,” various kinds of fraud need and must be disputed.

Deliberation and Consensus on Citizen’s Interests

The fourth imperative of the Principle of Democracy is that all state apparatus are obliged to deliberate and reach a consensus on citizens' interests. In this context, the state administration, in various affairs, by all organizers, must lead to optimal service to the interests of citizens. This means that all state administrators are representatives of citizen’s interests. In their position as representatives of citizen’s interests, all programs (planning to implementation) should be consulted with the citizens. Furthermore, the deliberation of consensus among state administrators is a deliberation of consensus on the interests of the citizens that must be worked collectively, not on their own interests.

This fourth imperative needs to be applied to representation in Parliament. This is because representation in Parliament is often interpreted as representation of political parties. It needs to be emphasized as clearly as possible that the task of representation is the mandate of the community. An elected member of Parliament is prepared and proposed by the party, but their position in Parliament is as a representative of citizens rather than as a representative of the party itself. The political party only provides the person concerned with all the necessary equipment to become a representative of citizens who serve the *res publica* (public interest).

Similar to a family, a party is where a child is formed, educated, and prepared to take part in society. However, his loyalty as a family member ends when he accepts responsibility in public office. His position and duties are no longer determined by the will and interests of the family that raised and formed him but are fully determined by the norms of his office as a servant of the *res publica*. It would be much more elegant when the citizen's representatives in Parliament adhered to Quezon Rules¹⁹, which states, "My loyalty to my party ends when my loyalty to my country begins." Obeying this regulation would be more beneficial for the interests of the nation and state than the citizen's representatives acting as party men since the interests of citizens, the interests of the state, and the interests of the country are not necessarily the same as the interests of the party itself. Moreover, all the office facilities are financed by the state.

When it is done differently, not only is there a denial and moral anomaly of public office, but there is also the practice of collusion and nepotism, which has become a common problem in this nation since the Reformation era. The logical consequence is that the moral duty as representatives of the people/public officials, the deliberation of consensus conducted by members of Parliament, should not be corrupted into negotiations for the interests of the party or the personal interests of members of Parliament, but deliberation of consensus on the struggle for programs for citizens and how to realize them in the most effective way.

Party differences and party ideologies may exist. However, these characteristics should not be transformed into parochial ways to provide for the interests of certain groups. The differences should only be in the formulation and the strategy for a program, but the target must remain the same, which is the entire community. This will ensure that the programs or agendas planned by the parties do not become a trigger for conflict and chaos, but become a unifier for the inhabitants of the pluralistic "Indonesian house."

¹⁹ This ideal rule was originally expressed by Manuel L. Quezon, President of Commonwealth of the Philippines (1935-1944), which was reiterated by US President; John F. Kennedy decades later.

CONCLUSION

Imperative legal values contained in populist politics of the Fourth Principle of Pancasila cannot be separated from Sukarno's conception of Pancasila as the *Weltanschauung* of Indonesia, which is a philosophy of peaceful co-existence in a Unity in a diverse Indonesian state. There are 4 (four) Imperatives of populist political values of the Fourth Principle of Pancasila, such as the democracy must have a conscience, the authority must be for the citizens, elections must be civilized, and the deliberation and consensus must be based on the citizen's interest. Since the Fourth Principle is an integral part of Pancasila, the imperative of these values is positioned as the main source of law or philosophically functions as the basic norm for the Indonesian legal system.

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