

Principles of Indonesian Constitutional Law in Pancasila Democracy

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Abstract

Pancasila Democracy has consistently been a central topic in the discourse of Indonesian constitutional law. There appears to be a gap in understanding both doctrinally and in legal thought. Historically associated with the New Order government under the second period of the 1945 Constitution, Pancasila Democracy is perceived similarly in the Reformation Order under the amended 1945 Constitution of Indonesia. Although Pancasila Democracy remains a significant part of Indonesia's constitutional heritage, its foundational orientation has drastically shifted. The current democratic practices in Indonesia are seen as deviating from the original meaning and formulation of Pancasila Democracy. The Reformation Order's governance under the amended constitution reflects a liberal democratic character. There is a notable trend of integrating liberal democratic values into Pancasila Democracy, which dilutes the traditional values that have long been part of national and state life. The essence, formulation, and implementation of Pancasila Democracy have weakened. This weakening aligns with the perceived shift in Pancasila's role and status as the state foundation. The attitudes, actions, and activities of state and government administration often do not align with the consciousness of Pancasila as the state's cornerstone. While Pancasila Democracy is a principle of Indonesian Constitutional Law, the development and practice of constitutional law in Indonesia no longer seem to be grounded in Pancasila Democracy. This article delves into the principles of Indonesian Constitutional Law within the framework of Pancasila Democracy, elucidating its meaning, formulation, and core essence.

Keywords: *Pancasila Democracy, Indonesian Constitutional Law, Constitutional Amendments*

INTRODUCTION

Democracy, as a concept in the structuring of social and political life within states, has established itself as both a global principle and a foundational element for national governance. Its universal appeal lies in its intrinsic, instrumental, and constructive values. Intrinsic values are reflected in the freedoms and participatory rights of individuals, emphasizing their role as social beings. Instrumentally, democracy facilitates the expression of people's political aspirations, economic demands, and efforts to improve welfare. Constructively, it offers citizens the chance to learn from each other and cooperate to meet common needs.

Democracy is understood in multiple ways, rather than as a single, uniform concept. Globally, it is perceived and acknowledged similarly concerning horizontal accountability. However, within individual nations, democracy is shaped by internal factors, bearing unique characteristics and influences specific to each country. This results in various interpretations, formulations, and dimensions of democracy (Gumbira & Wiwoho, 2019).

The form of democracy in any given country is influenced by numerous factors, including natural conditions, historical societal developments, resource potentials, cultural norms, socio-economic status, and political character. Throughout its evolution, democracy has interacted dialectically with diverse social and cultural forms and levels of economic development, demonstrating its flexibility and resulting in its complex nature. As a result, democratic practices have diversified and spread across the globe, reflecting a wide array of expressions and implementations (Putri et al., 2022).

In Indonesia, democracy is categorized by various terms. According to different historical periods, it can be divided into three phases or four distinct periods. Between 1945 and 1959, Indonesian democracy was identified as liberal democracy; from 1959 to 1966, it was known as guided democracy; and from 1967 onwards, it has been referred to as Pancasila democracy.

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Liberal democracy was implemented during the operation of three different constitutions: the initial period of the 1945 Constitution, the RIS Constitution, and the 1950 Provisional Constitution. This form of democracy is rooted in the principle of liberty, enabling the expression of individual will while ensuring harmony among individuals' interests. Guided democracy emerged within the context of the second period of the 1945 Constitution, following the Presidential Decree of July 5, 1959, aimed at resolving the Constituent Assembly's deadlock (Sugianto, Setyorini & Puspitasari, 2018).

Pancasila democracy is closely linked to the New Order regime, which aspired to implement Pancasila and the 1945 Constitution genuinely and consistently. It began with the presidential transition in 1967 and is not associated with different constitutions (Fatlolon, 2016). Pancasila democracy is envisioned as a corrective model to previous governance practices under the same constitution. It is a form of democracy tailored to the ideology, character, and needs of the Indonesian populace. Despite constitutional amendments and regime changes, Pancasila democracy has remained a constant in Indonesian governance and continues to be a foundational principle of Indonesian Constitutional Law.

METHOD

In terms of general research methodologies, this article is derived from a literature review. Specifically, in legal studies, this type of research is referred to as normative juridical. Methodologically, this article relies on secondary data, utilizing primary, secondary, and tertiary legal materials.

RESULTS AND DISCUSSION

The Essence of Pancasila Democracy

Pancasila Democracy is fundamentally a distinctive Indonesian democratic model, enriched with the inherent elements, traits, and characteristics of the Indonesian people, fused with Western democratic concepts. This model evolved as society responded to the shifts brought about by modern capitalism. Known as "Eastern democracy" as opposed to "Western democracy," Indonesian democracy integrates both practical and theoretical aspects of the modern state, emphasizing harmony between individual and collective interests. Unlike liberalism's focus on individualism or communism's focus on collectivism, Pancasila Democracy emphasizes a balance and harmony between these interests. This balance is a core feature of the Indonesian ethos, where the individual is not seen as absolute, and collective interests do not erase individual autonomy. This principle of balance guides democratic practice in Indonesia, with individual citizens having the right to participate in state governance, while the collective aspect is embodied in state institutions.

The interplay between individual and collective interests represents an antinomy in the organization of the state. Historically, there has been a fundamental conflict between collectivist and individualist ideas in modern state civilization. These two concepts, akin to two sides of a coin, are absolute antinomies within the state. Despite the strong pull towards individualism, there always remains an aspect of collectivity, and within collectivism, there is always a dimension of individuality. Both concepts evolve to meet the advancing needs of communal life.

Pancasila Democracy seeks to harmonize individual and collective interests, blending these rival claims. This synthesis of individual autonomy and collective societal supremacy is reflected in the state concept, influenced by the philosophy of Georg Wilhelm Friedrich Hegel, which has shaped Indonesian statehood. The Indonesian constitution does not rigidly oppose individualism and collectivism but rather integrates them fluidly within its democratic framework.

The state functions as a unified organism that integrates all elements of the populace into a functional relationship. Similar to how a family is formed from autonomous individuals into a unified organism through marriage, the state blends individual and collective aspects, reflecting the familial state theory (integralist view) as conceptualized by Soepomo in the 1945 Constitution. In the state, there should be no dualism between the people as individuals and the government as a collective entity. Pancasila Democracy, equated constitutionally with popular sovereignty, encompasses not only political democracy but also economic democracy.

Political democracy alone is inadequate for bolstering the people's position within the state, particularly in relation to economic power, which often favors the upper classes. Political democracy does not inherently ensure democratic conditions in the distribution of economic resources. Ideally and practically, Indonesian democracy integrates both economic and political democracy. The development of economic democracy gained prominence towards the end of the New Order era, highlighting its importance alongside political democracy. The combination of political and economic democracy was a major topic of debate among independence movement leaders before Indonesia's independence. The concept of popular sovereignty, incorporating both political and economic democracy, was one of the earliest state concepts developed in preparation for Indonesia's independence.

Pancasila Democracy, as implemented during the New Order, aimed to correct the deviations of guided democracy from the Old Order, restoring policies and practices to align with the 1945 Constitution. This realignment aimed for the pure and consistent implementation of the Constitution, achieving a balance between individualism and collectivism. Additionally, Pancasila Democracy emphasizes various forms of balance, such as the balance between the individual and society, between physical and spiritual well-being, between integrative and disintegrative values, between ends and means, and between freedom and justice, ensuring mutual guarantees.

The Essence of Pancasila Democracy

Pancasila Democracy encompasses several key formulations. Firstly, from a constitutional standpoint, it pertains to the foundational state principles enshrined in Pancasila, consistently featured in each subsequent constitution. Pancasila Democracy is embodied in the fourth principle, "popular sovereignty" or "people's democracy," intrinsically linked with the other four principles: Belief in One Supreme God, Humanity, National Unity, and Social Justice, which form the ethical basis of Popular Sovereignty in Indonesia.

Secondly, Pancasila Democracy is framed within a hierarchical-pyramidal structure of the five principles, with "Belief in One Supreme God" underpinning the principles of humanity, national unity, democracy, and social justice. This unity of principles sets Pancasila Democracy apart from Western democratic systems. It represents a collective agreement among all societal groups, first achieved in the Jakarta Charter on June 22, 1945. The essence of Pancasila Democracy is encapsulated in the closing statement of the 1945 Constitution's Preamble: "popular sovereignty led by the wisdom of deliberations/representations to achieve social justice for all Indonesian people."

Thirdly, Pancasila Democracy offers a broader and more distinct understanding than guided democracy, accepted by most without opposition. It is marked by a restrained form of democracy that avoids anarchy and is guided by wisdom, emphasizing collective welfare. Unlike other forms of democracy, Indonesian democracy is deeply rooted in tradition, characterized by leadership (*democratie met leiderschap*), and aimed at fulfilling the ideals of the August 17, 1945, proclamation. Pancasila Democracy, as envisaged by the Preamble of the Constitution, is a comprehensive social democracy integrating both political and economic aspects, aligned with the unique nature and character of the Indonesian people, advocating for collective state governance based on moral and familial values.

Fourth, the term Pancasila Democracy is particularly apt for describing guided democracy, which effectively addressed the constitutional deadlock in 1959. This form of democracy wasn't a novel idea at the time; instead, it stemmed from political ideologies present since the era of national awakening, aimed at fostering social justice in Indonesian society. Pancasila Democracy represents a rejection of all historical political ideologies, striving to embody the positive values of Pancasila's political doctrine as outlined in the Preamble of the 1945 Constitution, closely linked to the proclamation of independence. It gained political legitimacy from the Constituent Assembly on April 22, 1959.

Fifth, Pancasila Democracy is a form of democracy that has been embraced in Indonesia since the establishment of the 1945 Constitution, intrinsically linked to the ideology of Pancasila. It is a democracy grounded in Pancasila, embodying a modern and flexible approach that accommodates evolving values while maintaining a foundation in Pancasila's core principles of freedom and equality.

Sixth, the term Pancasila Democracy was formalized during a seminar on Pancasila at Gajah Mada University in 1958. It encompasses both formal and material democracy, as reflected in the provisions of the constitutions that have been in force. This type of democracy is rooted in the constitution. Formally and semi-constitutionally, Pancasila Democracy was officially defined in the Provisional People's Consultative Assembly Decree No. XXXVII/MPRS/1968, which revoked the Provisional People's Consultative Assembly Decree No. VIII/MPRS/1965 on Guidelines for Implementing Democracy Led by Wisdom in Deliberation/Representation. This definition was later reinforced by the People's Consultative Assembly Decree No. V/MPR/1973 regarding Referendums.

The Principle of Deliberative Representation as the Heart of Pancasila Democracy

The concept of sovereignty, defined as the highest authority, involves two critical components: the scope of power and the domain of power. The scope of power involves the decision-making process, whereas the domain of power pertains to the institutions wielding power in the state and those subject to that power. The scope of power addresses the decision-making processes for various policies. In legal terms, concerning legal subjects, it means that the people, as the subjects of power, must comply with the decision-making process.

The essence of Pancasila Democracy within the scope of power lies in the methods of decision-making processes as constitutionally implied and explicitly stated in Indonesia's fundamental laws. The decision-making process through deliberation and consensus is central to guided democracy. All state institutions, including cabinet meetings and lower government agencies, must make decisions based on deliberation and consensus. If consensus is not reached during deliberation, the collective leadership makes the final decision.

The distinction between Pancasila Democracy and guided democracy is in the quorum and the domain of decision-making. Practically, applying unanimous consensus in Indonesian state governance is unfeasible due to the diversity of thought and groups. Pancasila Democracy fundamentally addresses decision-making methods; when unanimous consensus cannot be achieved, decisions are made by majority vote or constitutionally-based voting (Nani, 2022).

The principle of constitutional law at the heart of Pancasila Democracy is deliberation-representation. This principle embodies a decision-making mechanism that integrates both individual and collective dimensions, ensuring that citizens and state bodies have the freedom to express opinions and make decisions.

The principle of deliberation-representation, as clearly articulated in Pancasila's fourth principle, serves as the cornerstone of Pancasila Democracy. This principle combines deliberation and consensus with a majority vote decision-making process, as stipulated in the 1945 Constitution. The essence of Pancasila Democracy lies in a decision-making approach that merges consensus-driven deliberation with majority voting. Ideally, all decisions are made through deliberation to achieve consensus. If consensus cannot be achieved despite earnest efforts, decisions are then made by majority vote in accordance with the 1945 Constitution. Before the amendments, majority vote decision-making was regulated in Article 2, paragraph (3), and Article 6, paragraph (2) of the 1945 Constitution. After the amendments, this is reflected in Article 2, paragraph (3), stating that "all decisions of the People's Consultative Assembly are made by majority vote."

Deliberation and consensus remain the primary and preferred mechanisms in Pancasila Democracy. The principle of deliberation in Indonesian constitutional law, as the core of Pancasila Democracy, is derived from the fundamental principle of mutual cooperation (*gotong royong*). Mutual cooperation applies in public law for the common good and in private law. In constitutional law, mutual cooperation manifests in two forms: as a shared obligation among community members and voluntary assistance among residents. Under this principle, all matters are deliberated to reach an agreement before decisions are made. Deliberation and consensus underpin the individual right to self-determination. In smaller communities, a similar principle of mutual cooperation is known as "village harmony." This principle varies, such as "sinoman" or "bido," led by a *lurah bido* (*East Java*), and the "kanoman" association, led by an elected leader called "lurah kanoman."

Decision-making through "majority vote" is considered a secondary approach. This method is used as a last resort and is both important and constitutional. Within the philosophical framework, majority vote decision-

making remains aligned with the principle of deliberation. The majority vote is not contrary to deliberation but complements it. Deliberation and consensus are more fundamental because they embody the wisdom intrinsic to the decision-making process, reflecting the people's spirit. Majority vote decision-making is a technical approach. Deliberation refers to the process, while the outcomes can be reached either through unanimous consent (*consensus*) or by majority vote.

The principle of deliberative representation includes guidelines: prioritizing national and societal interests, avoiding imposing one's will on others, emphasizing deliberation for the common good, combining deliberation-consensus with a familial spirit, conducting deliberation with common sense and noble intentions, accepting and implementing the results of deliberation-consensus responsibly, ensuring decisions are morally accountable to God Almighty, and upholding human dignity and the values of truth and justice (Patarai, 2021).

The principle of deliberation and consensus is crucial for a robust Indonesia, as the nation operates on the concept of "all for all" and "one for all, all for one." The phrase "popular sovereignty led by wisdom in deliberation/representation" implies that the administration of people's affairs should be guided by "wisdom." This means decisions should be made wisely, balanced, unbiased, and without prioritizing specific interests over others. Ideally, decisions reached by acclamation are the best, achieved through wise deliberation (*free and fair*), allowing ample opportunity to hear various opinions, and giving all stakeholders a chance to voice their views.

CONCLUSION

As a principle of constitutional law, Pancasila Democracy provides the foundation for creating and establishing rules that outline the structure of the state, the roles of various state institutions, the methods for filling state positions, and defining their duties and authorities. It is a uniquely Indonesian concept of state governance, deeply believed in, accepted, and acknowledged as a national paradigm. Despite changes over time, it remains a cornerstone of national belief and governance.

Indonesian democracy is marked by a balance between individual and collective interests, avoiding the individualism of liberalism and the collectivism of communism. Based on the 1945 Constitution, Pancasila Democracy is inseparable from the ideology of Pancasila. It is a modern form of democracy that flexibly incorporates evolving values while staying true to the foundational values of Pancasila, which are freedom and equality.

Pancasila Democracy is articulated in the concluding sentence of the Preamble of the 1945 Constitution, stating, "popular sovereignty led by wisdom in deliberation/representation to achieve social justice for all Indonesian people." Pancasila Democracy must ensure at least three aspects: the upholding of popular sovereignty, the application of the principle of deliberation, and the emphasis on wisdom in governance.

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