

DEMOCRACY CONCEPTION POST-CONSTITUTION AMENDMENT IN INDONESIA

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ABSTRACT

The democracy conception in Indonesia cannot be separated from the influence of the three ideologies of liberalism, communism, and Islamic. This is as in the formulation of Pancasila in the BPUPKI (an Agency for Investigating the Attempts of Preparing Indonesian Independency), PPKI (Committee for Preparing Indonesian Independency), and the Constituent Assembly. Therefore, the main objectives of this study is; first, to analyze the democracy conception of Indonesia according to the ideology of Pancasila; and secondly, to analyse the democracy conception post-constitution amendment. To answer these problems, in this study used the type of legal research with the conceptual approach and the statute approach. Source of legal materials that are used include primary legal materials and secondary legal materials with the method of descriptive analysis. The results of the discussion that the formulation filosofische grondslag, Pancasila, can be said as a synthesis on the substance of the three ideological values of liberalism, communism and Islam. The democracy conception of Indonesia is influenced by these three ideologies. Therefore, the founding fathers agreed that the democracy conception of Indonesia according to the ideology of Pancasila, is consultative democracy. However, as a result of the demands of the 1998 reform, the consultative democracy is changed to the liberal democracy in the third amendment of the 1945 Constitution of the Republic of Indonesia.

Key words: democracy conception, ideology of Pancasila, consultative democracy.

INTRODUCTION

The inception of Unitary State of Republic of Indonesia proclaimed on August 17, 1945 was inseparable from the history of global ideology confrontation underlying it. The history of global ideology confrontation has actually inspired the founding fathers to establish Pancasila ideology as the basis of organizing Indonesian democracy. Global confrontation that has occurred for a long time is the one between liberal-capitalistic and social-communistic ideologies.

The two-ideology confrontation have influenced the formers filosofische grondslag of Indonesia, Pancasila. However, it can not be denied that religious ideology, particularly Islamic ideology plays considerable role in a debate about the filosofische grondslag, both during discussion in BPUPKI (An Agency for Investigating the Attempts of Preparing Indonesian Independency) and PPKI (Committee for Preparing Indonesian Independency) in 1945 and even continued in Constituent Assembly in 1956.

The effect of three large world ideologies above can be seen clearly in Tjokroaminoto's argument idealizing Islam, socialism and democracy. This argument is in line with Soekarno's writing in 1926 entitled "*Nasionalisme, Islamisme, dan Marxisme* (Nationalism, Islamism, and Marxism)" in *Indonesia Moeda* Magazine. Soekarno idealized more the synthesis of large ideologies in the framework of Indonesian nationality and independence construction. In 1930s, Soekarno began to formulate a synthesis of the three ideological into Socio-Nationalism and Socio-Democratic terms (Firdaus Syam, 2007). Socio-democratic conception developed by Soekarno is as same as the one delivered by Mohammad Hatta stating that democracy in Indonesia should be based on political democracy and economic democracy principles simultaneously. Hatta said that political democracy stems from individualism, while economic democracy stems from socialism, in which both of them has not found the perfect form yet. Therefore, Indonesian democracy cannot build on democracy developed in western area, because Indonesian people are still based on collectivism. Considering this collectivism, according Hatta, the substance of political democracy is consensually decision making by means of meeting. Meanwhile, economic democracy is mutual-help (Mohammad Hatta, 2014).

Indonesia as an independent state has proclaimed itself as a democratic state as formulated in the 4th principle of Pancasila and in article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution) ratified by PPKI on August 18, 1945 stating that "Sovereignty is in the hands of the people and is implemented entirely by People's Consultative Assembly". This article is actually more compatible to political thinking of the founding fathers. However, the power building on this one institution has led to the abuse of power and to a totalitarian and authoritarian government during old order and new order. Such the condition finally led to reformation and required the amendment to the 1945 Constitution. In reform era, the 1945 Constitution has been amended four times: in 1999, 2000, 2001, and 2002 (Sri Soemantri Martosoewignjo, 2016). In the third amendment to the 1945 Constitution, Indonesian democracy changed very significantly, in which People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*) no longer implements sovereignty, but it is implemented based the 1945 Constitution. It is like what is included in the third amendment to the 1945 Constitution, "Sovereignty is in the hands of the people and is implemented according to this Constitution".

THE DEMOCRACY CONCEPTION IN INDONESIA ACCORDING TO THE IDEOLOGY OF PANCASILA

In modern democracy development recently, there are 3 (three) big strong ideologies affecting the nation's ideals in realizing its best political future. Those three ideologies are liberalism, socialistic-communism, and Islamic ideologies (Firdaus Syam, 2007).

Mohammad Hatta suggested that there are three sources affecting democratic conception of Indonesian leaders: firstly, western socialism, attracting them due to humaneness principles they defend and pursue. *Secondly*, it is Islamic tenet requiring divine truth and justice in society or fraternity between human beings as God's creature. *Thirdly*, is the knowledge that Indonesian people should develop from Original democracy prevailing in Indonesian village (Mohammad Hatta, 2014 and Ni'matul Huda, 2015). This argument is similar to Soekarno's stating that Indonesian people movement has three characteristic: nationalism, Islamism, and Marxism. These three views, according to him (Soekarno) has been the spirit of movements in Asia. For the sake of unity, these three views should not be debated, but can work together to be wave-storm, the thrust of which cannot be resisted. In 1930s, Soekarno finally formulated a synthesis on those three views by releasing socio-nationalism and socio-democracy concept (Yudi Latif, 2012). The arguments of this nation's two founding fathers confirm that indeed the mindset of Indonesian ideology formulators is replete with the effect of three world ideologies: Islam, socialist-communism and liberalism.

The debate about the state ideology began to be discussed in the formulation of state foundation conducted by BPUPKI consisting of 62 members and led by Radjiman Wediodiningrat. In formulating the foundation of state, some members delivered their view. The view stating the importance of divinity value as fundamental of statesmanship was delivered by Muhammad Yamin, Wiranatasoesoema, Soerio, Soesanto Tirtoprodjo, Dasaad, Agoes Salim, Abdoelrachim Pratalykrama, Abdul Kadir, K.H. Sanoesi, Ki Bagoes Hadikoesoemo, Soepomo, and Mohammad Hatta. The view representing the importance of humanity value as the fundamental of statesmanship was delivered by Radjiman Wediodiningrat, Muhammad Yamin, Wiranatasoesoema, Woerjaningrat, Soesanto Tirtoprodjo, Wongsonagoro, Soepomo, Liem Koen Hian and Ki Bagoes Hadikoesoemo. The view stating the importance of unity values as the fundamental of statesmanship is delivered by Muhammad Yamin, Sosrodingrat, Wiranatasoesoema, Woerjaningrat, Soerio, Soesanto Tirtoprodjo, A. Rachim Pratalykrama, Soekiman, Abdul Kadir, Soepomo, Dahler, and Ki Bagoes Hadikoesoemo. The view stating the importance of consultative democracy values as the fundamentals of statesmanship is delivered by Muhammad Yamin, Woerjaningrat, Soesanto Tirtoprodjo, A. Rachim Pratalykrama, Ki Bagoes Hadikoesoemo and Soepomo. The view stating the importance of social justice/welfare values as the fundamental of statesmanship is delivered by Muhammad Yamin, Soerio, A. Rachim Pratalykrama, Abdul Kadir, Soepomo, and Ki Bagoes Hadikoesoemo (Yudi Latif, 2012).

Some of views above have not explained yet the foundation of state systematically and completely. A more systematic, complete, coherent and monumental view is the one delivered by Soekarno in BPUPKI meeting on June 1, 1945 called the foundation of Indonesia state in the basic framework of philosophy (*philosofische grondslag*) or worldview (*weltanschauung*). The basic philosophy is called Pancasila by Sukarno, involving three principles: *firstly*, Indonesian nationality; *secondly*, Internationalism or humaneness; *thirdly*, Consensus and Democracy; *fourthly*, Social Welfare; and *fifthly*, Cultured Divinity of God. However, to give alternative to his view, Soekarno then stated that those five principles can be divided into three he called Tri Sila: Socio-Nationalism, Socio-Democracy, and Divinity of God. Even Soekarno then brought those three principles into one state foundation called *Eka Sila*, mutual cooperation (*Gotong Royong*) (Yudi Latif, 2012).

To discuss further the propositions above, the Chairperson of BPUPKI established a Small Committee (*Panitia Kecil*) consisting of 8 members with Soekarno as the Chief. However, Soekarno then established Small Committee informally consisting of 9 members to respect the representativeness of two groups: Nationalist Group (5 members including Soekarno) and Islam group (4 members). This Small Committee was then called *Panitia Sembilan* (Nine Committee). On June 22, 1945, this *Panitia Sembilan* produced the draft Preamble of the 1945 Constitution called *Mukaddimah*, containing the State Foundation, Pancasila, put in the fourth paragraph. The state foundation, Pancasila, delivered by Soekarno on June 1, 1945 was accomplished and then Pancasila reads: *firstly*, Divinity of God with obligation of undertaking Islam sharia for those adherents; *secondly*, just and civilized humanity; *thirdly*, Unity of Indonesia; *fourthly*, Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives; and *fifthly*, Social justice for all of the people of Indonesia. Those five state foundations were then called *Piagam Jakarta* (Jakarta Charter). The result of state foundation formulation, according to Hatta, is that the first principle serves as its moral fundamental and this moral fundamental becomes political fundamental of the second to the fifth principles. In BPUPKI meeting on June 11, 1945, the result of *Panitia Sembilan*'s formulation was responded to and debated particularly in the term of the first principle, called "seven words". However, finally the formulation of *Mukaddimah* was approved (Yudi Latif, 2012).

The chairperson of BPUPKI then assigned a group under Soekarno's lead to develop Constitution. To optimize the result, Soekarno established *Panitia Kecil* consisting of 6 members, with Soepomo being the chief. Considering the result of Jakarta Charter, *Panitia Kecil* had successfully formulated three main themes encompassing all articles in the body of Constitution (Yudi Latif, 2012):

1. The state protecting all of Indonesian people and all bloodshed of Indonesia based on unity, by realizing justice for all Indonesian people. This idea refuses the form of state based on individualism and "klasse-staat" State, as the one prioritizing one class, one group only according to Soviet's system, prioritizing worker and farmer groups.
2. The state based on kinship life with implement this foundation not only inside but also outside... so through this, we will create state based on kinship, pertaining not only to interior but also abroad.
3. The state with people sovereignty based on the democracy and representative discussion. Therefore, the state system established in the constitution should be based on people sovereignty and based on representative discussion.

4. State based on Divinity of God and just and civilized humanness. Therefore constitution should contain a content obliging government and other state organizers, to maintain the human's noble character and to hold on the people's high moral ideals tightly.
5. The state of Indonesia considers the peculiarity of largest population in its local area, the Islam population. In the "preamble" it is explained clearly that the obligation of implementing Islam sharia for its adherents. Through this, the state pays attention to the peculiarity of largest (majority) populations, those holding on Islam religion.

After the declaration of Indonesia's independence, the Constitution resulting from BPUPKI meeting was then ratified by PPKI on August 18, 1945. However, for the first principle of Jakarta Charter contained in the fourth paragraph of preamble was still challenged by Nationality (*Kebangsaan*) group and finally changed into "Belief in Divinity of God (*Ketuhanan yang Maha Esa*)".

The debate between Nationality and Islam groups continued in Constituent Assembly meeting in 1956. Having convened for about two and a half years, Constituent Assembly had not resulted in a consensus yet about the amendment to the 1950 Temporary Constitution (*Undang-Undang Dasar Sementara 1950*). The debate occurred related to the State foundation. National group remained to maintain the content of Pancasila just like the one ratified by PPKI on August 18, 1945, while Islam group struggled for enacting Jakarta Charter. Meanwhile, the political and government is in unstable condition. To avoid political instability and to maintain constitution emptiness, President Soekarno released Decree on July 5, 1959, containing three dictums: *firstly*, the dismissal of Constituent Assembly; *secondly*, the assignment of the reenactment of the 1945 Constitution and the 1950 Temporary Constitution was void; and *thirdly*, the establishment of Temporary People's Consultative Assembly (*Majelis Permusyawaratan Rakyat Sementara/MPRS*) and Temporary Supreme Deliberation Council (*Dewan Pertimbangan Agung Sementara/DPAS*) (Mahfud MD, 2011 and Mohammad Fajrul Falaakh, 2014).

Debate between nationalist and Islam groups aforementioned actually represents ideological wrestle in the formulation of state foundation by founding fathers and leaders of nation. Therefore, the formulation of Pancasila is the synthesis or the crystallization of three world ideologies: liberalism, socialist-communism, and Islam ideologies. Mahfud MD said that Pancasila neither holds on religion nor secular state and neither individualism nor collectivism ideology, but substantially holds on prismatic concept, taking good aspects of two contradictory concepts that was then integrated into one distinctive concept thereby can always be actualized into society reality (Mahfud MD, 2010). This argument is in line with the result of dissertation research conducted by Jimly Asshiddiqie finding that the concept of people sovereignty and Indonesian Democracy is a creative balanced combination of individualism and collectivism (Jimly Asshiddiqie, 1993).

Philipus M. Hadjon in his study said that Pancasila is the state foundation in the sense of state ideology and life philosophy. From its position as state ideology and life philosophy, Pancasila becomes a guideline of statesmanship life behavior and living within state (Philipus M. Hadjon, 2007). Thus, Pancasila as the state ideology should be a foundation of democracy implementation in Indonesia (Backy Krisnayuda, 2016). The concept of democracy implementation in Indonesia is formulated in the 4th principle of Pancasila, *Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan dan Perwakilan* (Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives)".

On June 1, 1945, Soekarno delivered his view on Indonesian Democracy Concept before BPUPKI meeting:

The state of Indonesia is not a state for an individual, not a state for a group despite rich group, but we establish State 'all for all', 'one for all, all for one'. I am sure that the absolute condition of the strong State of Indonesia is consultation (discussion), representativeness... when we look for democracy, it should not be western democracy but consultation for giving life...(Yudi Latif, 2012).

Indonesian nation is the one replete with diverse ethnics, culture, languages, religions and credos. Therefore, democracy concept is built based on the guarantee of balance between the fulfillment of freedom, equality and fraternity principles, applying to all elements of nation. In political ideology diversity based on the view on village democracy, Islam tenet, and Western socio-democratic elements, eventually the debate between the founding fathers of nation was converged in an idea of kinship democracy, and generally declined individualism democracy (Yudi Latif, 2012).

Regarding the choice of democracy concept, Soepomo explained that there are three views on State: *firstly*, individualism theory, taught by Thomas Hobbes, John Locke, Jean Jacques Rousseau, Herbert Spencer, and Laski. State, according to this tenet, is a legal society composed of contract between all individuals in society. *Secondly*, it is class theory taught by Karl Marx, Fredrich Engels, and Lenin. State is considered as a group's means of oppressing other groups (classes). *Thirdly*, it is integralistic theory taught by Spinoza, Adam Muller, Hegel, and etc. This theory suggests that this state is not intended to ensure an individual's or a group's interest, but to ensure all people's interest as the unity. Soepomo stated that out of those views, only integralistic view is more appropriate to eastern nature of Indonesian people. Nevertheless, in the debate during BPUPKI meeting, Soepomo kept accepting and compromising with the application of kinship democracy in Indonesia, called "basic definition of state" (*staatsidee*) (Yudi Latif, 2012).

This kinship democracy was then conveyed by Soekarno in BPUPKI meeting, called consultative democracy. Soekarno suggested that consultative democracy has double functions: consultative/representative function, on the one hand, can be a means of confronting and fighting for the aspiration of groups existing in the society and consultative democracy on the other hand should strengthen the state of unity, rather than the state for one group or individual. Consultative democracy Soekarno dreamt of is the one based on kinship in order to achieve mutual goodness (Yudi Latif, 2012). Furthermore, Soekarno explained

that “the democracy we implement is Indonesian democracy, bringing with it Indonesian personality. If we cannot think in this way, we will not be able to implement what becomes people’s sorrow mandate later” (Yudi Latif, 2012) .

In relation to this implementation of consultative democracy, Soepomo explained Republic of Indonesia state governance system as follows:

Sovereignty is performed by People’s Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*) convening once in 5 years. Therefore, this Assembly holds the supreme power, the state reformation can be done, making the President’s daily activities the embodiment of people sovereignty. State ruler is helped by Vice President, ministers responsible to him/her, and Supreme Deliberation Council (*Dewan Pertimbangan Agung/DPA*). In legislating, President should make consensus with Legislative Council (Yudi Latif, 2012).

Considering the result of debate between founding fathers aforementioned, eventually everyone agreed that the democracy held on in Indonesia is neither the one based on western political ideology nor the one based on Islamic political ideology, but the one adjusted with Indonesian nation personality, consultative democracy. For implementing this consultative democracy system, MPR was put on the supreme state institution. This consensus was included into the body of The 1945 Constitution, particularly in Article 1 paragraph (2), “Sovereignty is in the hands of the people and is implemented entirely by People’s Consultative Assembly”.

THE DEMOCRACY CONCEPTION POST-CONSTITUTION AMENDMENT

The provision of Article 1 paragraph (2) of The 1945 Constitution as the basis of consultative democracy implementation was then amended due to the reform demand in 1998. The amendment to the executor of people sovereignty in Article 1 paragraph (2) of The 1945 Constitution was conducted in the third amendment to The 1945 Constitution in 2001. The discussion on the amendment to Article 1 paragraph (2) no longer debates consultative democracy concept that has been substantial value in the debate between this nation’s founding fathers in 1945. In 14th Meeting of MPR Worker Agency’s Ad Hoc Committee held on May 10, 2001, a member of expert team, Jimly Asshiddiqie reported that :

... In the attempt of first, second and then third amendments, there was an idea of changing our thinking principle about people sovereignty, separation and power division principle, embodiment of people sovereignty in People Consultative Assembly. Therefore, sovereignty is proposed to be on people’s hand and implemented according to the provision governed in Constitution... Thus, the more flexible formulation is proposed, “Sovereignty is on people’s hand and implemented according to the provision governed in Constitution” (Sekretariat Jenderal MPR RI, 2010).

Furthermore, Expert members explained the result of formulation in Article 1 paragraph (2) of The 1945 Constitution, reading: “Sovereignty is in the hands of the people and is implemented according to this Constitution”:

Then, that is all about the people sovereignty state. So, people sovereignty is based on constitution (law). So, finally the discussion about sovereignty addresses what is actually sovereign in every country? Who is the one holding supreme power sovereignty? Is it people or law? It is just like philosophical debate, philosophy of law between democracy and nomocracy.

Then, they are converged in the two concept, *rechtsstaat* democracy and constitutional democracy. We want to combine both of them in order to be held on in our Constitution. And indeed when we read and study the debate occurring since 1930s, we can see that both of them were held on by the founding fathers. That is why there is a term *constitutional system* explained previously in the formulation made by Supomo, in which constitutional system is intended to represent the presence of constitutional democracy.

When we should improve the formulation about MPR, the presence of MPR, why are we not included into it? So we formulate it, “Sovereignty is on people’s hand and implemented according to the provision governed in Constitution”. So, the ideas are our nomocracy and democracy, whatever it is called, we make it two sides of coin. So a constitutional state should be democratic; otherwise democratic state will be completed when it is based on the constitution. (Sekretariat Jenderal MPR RI, 2010)

Considering the argument above, Article 1 paragraph (2) of The 1945 Constitution resulting from the third amendment is *rechtsstaat* and constitutional democracy principles (Walter F. Murphy, 2007). It means that the principle of consultative democracy deriving from Indonesian nation personality no longer underlies the argumentation in the formulation of amendment to Article 1 paragraph (2) of The 1945 Constitution. Meanwhile, *rechtsstaat* and constitutional democracy concepts derive not from Indonesian political culture but from western democracy concept. *Rechtsstaat* concept develops in continental European countries emphasizing on freedom, equality, and autonomy of individuals in the framework of legal order determined certainly by law and implemented by independent court. Carl Schmitt said that liberal *rechtsstaat* concept is in line with classical liberal philosophy perspective viewing that the individual’s freedom is subjected not to the rules developed by personal or other human beings but to a state governed by the law of reason (I Dewa Gede Palguna, 2013). Meanwhile, the concept of constitutional democracy is known in Walter F. Murphy’s work entitled “*Constitution, Constitutionalism, and Democracy*”. Murphy said that the concept of constitutional democracy derives from the combination of two concepts: democracy and constitutionalism concepts, both of which aim to achieve respect to human dignity (Walter F. Murphy, 2007 and Hamdan Zoelva, 2011).

Considering the basic argumentation for the formulation of amendment to Article 1 paragraph (2) of The 1945 Constitution reading: "Sovereignty is in the hands of the people and is implemented according to this Constitution", it can be said that democracy concept in Indonesia is no longer based on ideology of Pancasila deriving from Indonesian nation values and personality, but based on western liberal ideology in implementing democracy in Indonesia (Donald L. Horowitz, 2013).

CONCLUSION

1. The democracy conception of Indonesian is largely affected by three ideologies: liberalism, communism, and Islam. It can be seen clearly in the discussion of state foundation in BPUPKI and PPKI meetings and even continued in Constituent Assembly meeting in 1956. From such the prolonged debate, the founding fathers eventually agreed that the foundation of Indonesia state should stem from Indonesian nation, thereafter called Pancasila. Pancasila became the foundation of democracy implementation in Indonesia. Democracy conception consistent with ideology of Pancasila approved by the founding fathers is consultative democracy, based on kinship spirit.
2. As the result of reform demand in 1998, the conception of consultative democracy has been changed by People's Consultative Assembly in the third amendment of the 1945 Constitution of the Republic of Indonesia into the conception of liberal democracy based on *rechtsstaat* and constitutional democracy principle. The liberal democracy that applied by Indonesia consistent with liberal ideology developing in western democratic countries.

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