

The Origin of Religious Tolerance and the Application of Pancasila

Wolfgang Brehm¹

¹Legal Consultant of German-Indonesia Technical Cooperation (2000-2008)

ABSTRACT

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*Correspondence Address:

wbrehm@cbn.net.id

The main purpose of this article is to denote the historical fact that Piagam Jakarta does not only instruct the state to apply the Sharia for the Muslim population but it also softens the binding force of the Sharia by obligating the state to harmonize the requirements of Sharia with the comprehensive understanding of Pancasila in its entirety. The research finding: the historical fact indicates that the consent of the representatives of the Muslim group in Panitia Persiapan Kemerdekaan Indonesia (PPKI) as well as in Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) is to the abandonment of the Islamic Clause (klausula tentang Islam). They called for the deletion of any reference to Islam. Hence, for this research, it can be concluded that the Islamic Clause does not present a counter-draft but forms a preliminary stage of Pancasila and its first sila. This conclusion is also strengthened by linguistic rules referring to the word “Ketuhanan” abstaining from making any statement about the attitude of people towards God. Therefore, replacement of the Islamic Clause with the term “Ketuhanan Yang Maha Esa” has removed any boundary which would have been established by any religious doctrines against the inclusion of citizens with equal rights and has opened the way for Indonesia to implement the universal human rights to their full extend. The research is done through socio-legal approach. It sees historical data from socio-legal perspectives.

Keywords; Tolerance; Religion; Pancasila; Human Rights

Introduction

The efforts to uncover the meaning of Pancasila have often been carried out, including the meaning of the first principle (*Ketuhanan Yang Maha Esa*), which becomes the main theme of this paper. The origin for adding the number of writings here is quite simple, as can be seen from the title of Part I. That is the seven words, which is a popular name for the compromise of *Piagam Jakarta* that wants to enforce the obligation to carry out Shari'a for Muslims. The phrase is used by several leading scientific books even though the Islamic clause was actually consisting of nine words. The books are also guilty of reporting on the debate on the state foundation in 1945.¹

There was an error in the first academic study conducted by Notonagoro, which he presented at a seminar on February 17, 1959 in Yogyakarta. The starting point is the assumption that Pancasila is a philosophy of life that ontologically originates from the culture of the Indonesian nation and it contains religious values and the doctrine of "One God".² Therefore, Indonesia is not a secular country, but it does not recognize the dominance of religion which is owned by the majority of the population.³ Notonagoro draws conclusions from philosophical arguments that are not based on the elaboration of the process of Pancasila creation. However, his study has a big advantage because it puts forward the main issue: whether Pancasila is based on a religious state or a secular state.

This paper is short, and it focuses mainly on the principle of *Ketuhanan Yang Maha Esa* in which citizens' freedom of spiritual belief is given a foundation. Part I concerns the state foundation debate in BPUPKI and PPKI. The main source is "Minutes of the BPUPKI Session and PPKI Session" which was collected by the State Secretariat of the Republic of Indonesia.⁴ Part II discusses the application of the principle of *Ketuhanan Yang Maha Esa* by briefly comparing the reality of religious tolerance in the first decade of an independent state and the situation after the New Order was overthrown. The study was complemented by a view on the Amendment to the Constitution which was enacted at the beginning of the Reformation Era.

Part I - Formation of the Principle *Ketuhanan Yang Maha Esa*

The formation of the principle was overshadowed by the foundational Islamic controversy that flared up immediately at the first BPUPKI General Meeting on May 28, 1945. The debate had its most important contribution when Soekarno at the grand meeting on June 1 delivered a compromise proposal with a speech known as *Kelahiran Pancasila* (the Birth of Pancasila). After that, BPUPKI suspended the first session for six weeks and opened negotiations again with the General Meeting on July 10. The second session was held on July 17, after which it was continued on August 18 by PPKI.⁵

¹ Ma'ruf, Hamka Mujahid. "When Islam and Democracy Meet in Indonesia." 2nd International Conference on Social Science and Character Educations (ICoSSCE 2019). (Atlantis Press, 2020), 8

² Dewantara, Jagad Aditya, et al. "Pancasila as ideology and characteristics civic education in Indonesia." *International Journal for Educational and Vocational Studies* 1.5 (2019): 400-405.

³ Syarif Hidayatullah, Notonagoro dan Religiusitas Pancasila, *UGM Journal of Philosophy* Vol. 16 No. 1. 38

⁴ Meilala, Aurora Jillena, et al. "An Explanation on The Ideological Deviation of Economic Legislature In Indonesia." *Jurnal Pendidikan Dasar dan Sosial Humaniora* 1.3 (2022): 417-434.

⁵ Patrianti, Tria, et al. "Pancasila Implementation Strategy as Dar al-ahdi wa al-syahadah." *BASKARA: Journal of Business and Entrepreneurship* 4.2 (2022): 111-129.

Methodology

This paper uses the socio-historical method, re-elaborating on the process of forming a law and its debate. Analyzing the context of the history of legislation to become an agreement. The historical background and the role of disagreements and discourses from the preparation of the Constitution are part of the main materials to be studied. It is equipped with related data and discussion. The data taken are primary data in the form of laws and document excavation related to flashbacks about events that have occurred. It is combined with philosophical discourse and literacy, thus forming an integrated analysis as a research finding.

Discussions

The Speech of *Kelahiran Pancasila*

Soekarno in his speech calmly emphasized that the concept of Pancasila includes the establishment of a special principle to realize the "principle of an independent Indonesia by fearing God Almighty" and added that "not only the Indonesian people believe in God, but each Indonesian should believe in his own God" and "all people should believe in God culturally, that is, without religious egoism."⁶

In this regard, Soekarno was on the same camp with the Islamic group, wanting to incorporate the spirituality into the foundation of the state. However, in contrast to them, Soekarno did not equate spiritual foundation with attachment to Islamic teachings. More than that, he emphasized that what he wanted and needed to establish was not "Panca Dharma" but "Panca Sila". Thus, the Principle *Ketuhanan Yang Maha Esa* is not something that burdens citizens with obligations in spiritual matters but rather something that bases their independence in that regard. This attitude is indeed in accordance with the inclusive political credo which is widely described by him with the slogan "Nasakom".⁷

Soekarno explained the concept very eloquently, affixing the root word with the circumfix "*ke-an*" and adding four various attributes so that the principle reads *Ketuhanan yang Berkebudayaan* (Divinity with Culture), *Ketuhanan yang Berbudi Pekerti Luhur* (Divinity with Noble Character), *Ketuhanan yang Menghormati Satu Sama Lain* (Divinity That Respects Each Other), and *Ketuhanan Yang Maha Esa*. This affix means that according to linguistic rules, individual attitudes towards God are not discussed, and the four attributes are united by the value of tolerance. Therefore, Soekarno's desire to form a country stands out where its citizens and their rights are not measured against religious beliefs but rather on their actions for the common good.⁸

The country does not expel citizens who do not have religious beliefs; agnostic or atheist. Soekarno with his choice of words implicitly gave an example of the atmosphere in the "Sultanate", "Kingdom" or "Empire", where the principle of inclusivity also applies to people who underestimate the authority of the ruler or even deny the existence of a ruler. The majesty of the ruler does not collapse; on the contrary, it rises if even the radical opposition is forgiven if it is of good character.

However, Soekarno did not forget that there were activist groups who were anti-religious. What is planned is moderate secularism in which the state, apart from

⁶ Latif, Yudi. "The Religiosity, nationality, and sociality of Pancasila: Toward Pancasila through soekarno's way." *Studia Islamika* 25.2 (2018): 207-245.

⁷ Soekarno wrote a series of articles entitled "Nationalism, Islam, and Marxism" in the *Indonesian magazine Moeda* in 1927

⁸ Ushuluddin, Win, and Al Furqon. "Karl Theodor Jasper's Godhead Philosophy and Its Relevance for The Development of Religiosity Thought in Indonesia." *KALAM* 12.2 (2018): 223-256.

upholding religious freedom, is also tasked with assisting religious organizations and avoiding anti-religious actions. Soekarno summarized the essence of the principle of *Ketuhanan* with the slogan *semua bagi semua* (all for all). But the overflow does not release the principle of secularism which always needs to be balanced.⁹

The Issuance of *Piagam Jakarta* (Jakarta Charter)

Soekarno's speech was followed by a BPUPKI recess where an action committee was formed by the chairperson of BPUPKI Radjiman and it was assigned to collect recommendations to be discussed in the next session. The committee was called *Panitia Kecil* (the Small Committee), accompanied by another committee that was formed outside the formal requirements by Soekarno and according to the number of members called *Panitia Sembilan* (the Nine Committee). Both *Panitia Kecil* and *Panitia Sembilan* were chaired by Soekarno.¹⁰

The minutes did not contain notes on the activities of the two committees. The source of information was a report submitted by Soekarno at the beginning of the Second Session of BPUPKI. Soekarno in the report stated that *Panitia Sembilan* had succeeded in drafting the Preamble to the Constitution, after which he read the document which is commonly called the *Piagam Jakarta* and emphasized that the formulation was determined by *Panitia Sembilan* unanimously.¹¹

The famous success of *Panitia Sembilan* is the formulation of a compromise in terms of the position of Islam in the Constitution. But equally important is the text of the Declaration of Independence which justifies this act as an exercise of the right of all nations to freedom from colonialism.¹² According to *Piagam Jakarta*, Indonesia entered the international stage on the foundation of popular sovereignty which did not depend on the approval of the former colonizers. This position was taken by the young country with the awareness that people's sovereignty includes the assignment of the state to develop a system of independence that is fortunate for "all of Indonesia's bloodshed". This statement shows the spirit to continue the liberation of the state by establishing a system that liberates and empowers the people.

The design of state foundation largely followed Soekarno's concept. But the similarities with Soekarno's design stop in the principle of *Ketuhanan Yang Maha Esa*. *Panitia Sembilan* in addition to advancing the basis of *Ketuhanan* from the last place to the first place, saw the plans of the Islamic side more firmly. That is, the foundation is connected with a new complementary word that carries out the "obligation to carry out Islamic Shari'a for its adherents" for the state. As a result, the concept of Panca Sila, in which piety does not know coercion, was replaced with the concept of Panca Dharma in which the piety of the Muslims was left to the supervision of the state.¹³

However, *Panitia Sembilan* agreement was not the same as the seven words. The broader Islamic clause includes two additional words *menurut dasar* (according to the basis) which clearly connects the basis *Ketuhanan* with the three following bases. Only the last basis *Keadilan Sosial* (Social Justice) is not included in this connection, thereby

⁹ Mu'ti, Abdul, and Ahmad Najib Burhani. "The limits of religious freedom in Indonesia: with reference to the first pillar *Ketuhanan Yang Maha Esa* of Pancasila." *Indonesian Journal of Islam and Muslim Societies* 9.1 (2019): 111-134.

¹⁰ Dwijayanto, Arik, and Dawam Multazam. "Pancasila and Rukun Negara: A Relation of Identity, State, and Nationalism in Indonesia and Malaysia." *Tebuireng: Journal of Islamic Studies and Society* 2.1 (2021): 43-54.

¹¹ The text of *Piagam Jakarta* is also recorded in the minutes 261 and 407

¹² Arifianto, Alexander. "Islam, Christianity, and the Formation of Secularism in Indonesia 1945-1960." *Journal of Global Strategic Studies* 2.1 (2022): 23-53.

¹³ Siregar, Zamka Fitriani. The effect of small group discussion strategy on students' reading comprehension at grade X SMK Swasta Panca Dharma Padangsidempuan. Diss. *IAIN Padangsidempuan*, 2019.

emphasizing that the state in providing social assistance should not be influenced by the religious status of the citizens.¹⁴

The two words are most important, bringing the substance of the agreement as a compromise by softening the state's attachment to the Shari'a. The exclusion of non-Muslims is different and actually less meaningful because it requires the state to be ready to establish a dual legal system.

Overview of the BPUPKI Debate

The discussion of the second session of BPUPKI was started by Yamin with the suggestion that a "*declaration of rights*" be drafted.¹⁵ This proposal became an important topic for the committee formed by Radjiman and in accordance with its duties was given the name the Committee for Drafting Basic Law (Panitia Perancang Hukum Dasar - PHD). The PHD committee succeeded in issuing the Body Draft and formulating that there almost all the human rights of Indonesian citizens which were finally determined in the 1945 Constitution with the exception of human rights groups in public spaces.

Soepomo rejected the provision of human rights on the grounds that such broad guarantees were inspired by Western liberalism and they were developed there by the rise of the absolutism regime. He added that the culture of the Indonesian people is marked by a harmonious relationship between the leadership and the people and is embodied by the idea of national unity.¹⁶ Soepomo's views were firmly supported by Soekarno. Soekarno also held the view that the "Western Trias Politica" – meaning the separation of powers between the executive, legislative, and judiciary – was powerless to achieve social justice.

But the thoughts of Soepomo and Soekarno were firmly rejected by Hatta and Yamin. Hatta admitted that he himself was wary of individualism but at the same time denied the idea that human rights are the fruit of individualism. State guarantees for human rights, on the other hand, are considered indispensable in a culture of brotherhood so that the rise of dictatorship and the development of "cadaveric discipline" can be avoided and the ideal of collectivism can be developed as well as possible.

This argument shows that Soekarno's concept has not yet matured. In the end, however, the human rights, namely the freedom to think and express opinions, assemble and establish a union, were also accepted by Soekarno and Soepomo and regulated in Article 28 of the 1945 Constitution.

The discussion of *Panitia Sembilan* compromise draft started with a critique of Latuharhary from the national group in the PHD Committee Meeting. Latuharhary pointed to the difficulty of the Minangkabau people and the people in Maluku to adapt to the Shari'a and rebuked that the forced adjustment would harm the land rights in Maluku which had been distributed equally between Muslim and Christian groups. However, Soekarno stifled this criticism with the argument that a compromise had been accepted.

Following that was Wachid Hasjim with a proposal to make two changes to the Body relating to the role of religion: First, the President must be Muslim and secondly Islam needs to be adopted to become the State Religion, along with guarantees for the independence of other religions. The first proposal is defended with the argument that the President's influence is strengthened if he is a Muslim. The second proposal is

¹⁴ See attachment 1

¹⁵ The text of *Piagam Jakarta*... 197

¹⁶ The text of *Piagam Jakarta*... 236

explained by citing Islamic teachings that life can only be given up for religious ideology.¹⁷

It should be noted here that this reference to armed *jihad* does point to the enemy from outside but is by no means suitable for inclusion in state law. Humans have not yet received a religion that is entirely free from the legal awareness of its age and the culture concerned.

Later in the Plenary Session, Soekarno re-read the four paragraphs of the *Piagam Jakarta* which is now divided into two parts where the second part consists of only the fourth paragraph, also now called the Preamble and is given a headline that reads *Dengan nama Allah, Pengasih dan Penyayang* (In the name of Allah, the Compassionate and the Merciful).¹⁸ However, the state foundation debate experienced a crisis when Hadikoesoemo, with increasing urgency, questioned the Islamic clause and the chairperson of BPUPKI Radjiman together with Soekarno each time replied to the words by expressing their refusal.

Hadikoesoemo first demanded the abolition of the word *bagi pemeluk* (for adherents), but was willing to give up the demand when Abikoesno from the Islamic group warned that friends would see the failure of BPUPKI's efforts to reconcile differences in understanding.

But days later, Hadikoesoemo returned to the Islamic clause. Now he has submitted a request to be informed about the meaning of the clause. The verbal argument became very sharp when Radjiman emphasized that the matter had been explained. But Hadikoesoemo persisted, even stating harsh words:

"Really, I was forced, forced by the chairperson to accept it. I thanked you very much. And now I wanted to speak. If you did not explain it to me, I wanted to talk"

Hadikoesoemo added,

"Frankly, yesterday I was forced too"

Once again, he emphasized that he did not agree with the formulation in the Preamble and in Article 29. But he now stopped fighting:

"If the session is in [ful]l agreement [with that], I [will] accept it"

Radjiman ended this matter and adjourned the trial for 10 minutes.¹⁹ But after that, the debate hit a new crunch. Pratalykruma from the national group submitted a proposal that the President should be Muslim. He was followed by Masjkoer from the Islamic group with the additional suggestion that Islam be made the state religion. Soepomo, pointing to the compromise of *Piagam Jakarta*, rejected this proposal.

Afterwards, Moezakir from the Islamic group came up with very surprising words. That is, he suggested that

"from the very beginning of the declaration of Indonesia Merdeka to the articles in the Constitution that mention Allah or agama Islam or anything else, they should be crossed out altogether"

Moezakir described this suggestion as a compromise and was strengthened by hitting the table and by saying:

¹⁷ The text of *Piagam Jakarta*... 247

¹⁸ The text of *Piagam Jakarta*... 261

¹⁹ Soebahar, Halim. "Islamic Education Transformation." *International Journal of High Education Scientists (IJHES)* 2.1 (2021): 1-20.

"there is no need to have those things".

At the same time, Moezakir emphasized that:

"the proposal was approved by all the Ulama here".²⁰

However, Soekarno emphasized that Moezakir's proposal was not agreed upon. Hadikoesoemo opened the door to get out of the debate jam with a very clear and in-depth explanation. According to Hadikoesoemo, Islam does contain an ideology that does not allow the state to be separated from religion. But rejection of the idea does not mean that the state will be religiously neutral. Then he demands:

"Choose the obvious [one] over the fact that I don't understand and I am not allowed to get explanation"

and added:

"If it's actually neutral, don't take the words of Islam which apparently are only used in an end-to-end manner."

He concludes by explicitly agreeing with Moezakir's proposal:

"I ask for the clear [explanation], and I agree with Mr. Moezakir."²¹

Radjiman closed the BPUPKI session by emphasizing that:

"those who are still waiting for a decision... tomorrow morning will certainly be resolved with a calm feeling."

The last trial was dominated by Soekarno's efforts to resolve the opposition to the Islamic clause. He began by admitting that he was constantly thinking about the difficulties faced in last night's Session, then pointed to his position as chair of the PHD Committee and "with tears" stated the request that the exchange of arguments be stopped, also encouraging the national groups to sacrifice their beliefs, namely unanimously accept the clause Islam and the proposal to require the President to be Muslim.

Radjiman expressed a request to express his views on the President's belief in Islam and an additional suggestion from Soepomo that the President and Vice President be elected by the Assembly with a majority vote. The requests and proposals were agreed. After that, at Soepomo's suggestion, several changes were made to the composition of the torso and Radjiman stated:

"The Constitution is unanimously accepted."²²

PPKI's Decision

PPKI met for the first time one day after the independence of the Republic of Indonesia was proclaimed and one month after BPKI stopped negotiations. The trial resulted in a unanimous decision on the formulation of the 1945 Constitution. The most important result is the determination of the phrase *Yang Maha Esa* as a basic attribute of God and a substitute for the Islamic clause. This change meant that the representatives of Islam followed the path opened by Hadikoesoemo and gave up the demand to stick to

²⁰ The text of *Piagam Jakarta*... 372.

²¹ The text of *Piagam Jakarta*... 375

²² The text of *Piagam Jakarta*... 386

the Islamic clause while Soekarno stopped his stance in defending the continuation of the clause.

The minutes commented on Soekarno's change in attitude in a footnote by asking why he had not agreed to the removal of the Islamic clause when the proposal was submitted by Hadikoesoemo.²³ But Soekarno's motivation was actually quite clear. Although he supports the Islamic clause, he still believes that secularism has important advantages. But at the same time, he was worried that the removal of the clause would not be accepted by the Muslim community. It's just a question of when he will let go of that fear and the answer will be given in the PPKI Session.

The trial was opened by Sukarno as chairperson. He informed that the discussion on the draft constitution was continued in an informal meeting, after which he handed over the task of reporting the results of the BPUPKI Session and the meeting to Deputy Chairperson Hatta.

Hatta put forward information about the changes that occurred in the Preamble design. The formula is now identical again with the old Preamble ... originally designed by *Panitia Kecil*. Next, Hatta read the Preamble word by word, thereby ensuring the basic change in *Ketuhanan* in which the Islamic clause was replaced with the attribute *Yang Maha Esa*, also justifying the reunification of the four paragraphs of the Preamble which had been separated. Following the information about two changes in the Body that relate to matters of religion. The requirement for the President to be Muslim is crossed out and the excerpt from the basis of *Ketuhanan* in Article 29 Paragraph 1 is adjusted to the text of the newly determined Preamble.

These two reports suggest that the PPKI Session was preceded by a non-formal meeting. What was also brought up was the fact that the formulation of the principle *Ketuhanan Yang Maha Esa* had been drafted by *Panitia Kecil* and the fact that it was not mentioned by Soekarno when he submitted a report on the activities of *Panitia Kecil* and *Panitia Sembilan* to BPUPKI. In addition, it can be seen from the two reports why PPKI was able to carry out its very full and heavy agenda in one session and even resolve basic state controversies so quickly.

The opening was still undergoing two more changes. At Hadikoesoemo's suggestion, the word *menurut dasar* (according to the basis) was removed from the principle of *Ketuhanan*. Those two words did not need to be stated again after the Islamic clause was abolished. The second change is the replacement of the word "Allah" in paragraph three with the word "God", proposed by I Gusti Pudja. Soekarno once again read the Preamble word by word and stated "Hereby the Preamble to the Indonesian Constitution is valid".

Next PPKI discusses the Body. Soepomo first explained the outline of the structure of the state, followed by Soekarno by affirming that the constitution was a temporary work which the MPR would make more perfect and complete after the atmosphere became more peaceful.

Subsequently, several regulations were modified, including the draft Article 9 by *Panitia Kecil*²⁴ regarding the inauguration of the President and Vice President. Namely, their agency to take the Oath or just to say the Oath of Office without pointing to God is equipped with a detailed formula.

Important changes were made in the matter of continuing the independence process. PPKI cancels Japan's participation in the transfer of Government to the Government of Indonesia²⁵, schedules general MPR negotiations²⁶ and adds to the draft

²³ The text of *Piagam Jakarta*... 383

²⁴ The text of *Piagam Jakarta*... 250, Article 7

²⁵ The BPUPKI draft still clearly requires a transfer of government "with the consensus of the Dai Nippon Army Government": Minutes p. 255 ("On the Transfer of Transfer Regulations")

²⁶ Additional Rules Paragraph 1

BPUPKI with regulations regarding amendments to the Constitution. This addition facilitated the MPR negotiations including the ratification of the 1945 Constitution, as well as implicitly stating the recognition that the 1945 Constitution was suitable to be enacted as a permanent constitution.²⁷ Finally the PPKI results were agreed so that Soekarno could state: "The Constitution of the Republic of Indonesia and the Transitional Regulations have been legally enacted."²⁸

Criticism from Outside

A part of the Muslim community is disappointed about the removal of the Islamic clause. As reported in several leading scientific books, at that time, there were also accusations that representatives of Islam were being deceived. It was concluded from Soekarno's statement that the Constitution that was being drafted would become a provisional constitution, as well as from the promise that the debates of the state foundation would immediately resume. But such accusations can be denied by the fact that the continuation of the debate is determined and scheduled by mutual agreement, as has just been mentioned here.

The description of the approval of the representatives of Islam as a result of coercion is based on Hatta's story that was announced by him in the book *Sekitar Proklamasi Kemerdekaan* in 1970. That is, according to the memoir, Hatta, before the PPKI Session on August 18 1945, gathered representatives of Islam and persuaded them to agree to the abolition of the Islamic clause by reporting that he was visited by Japanese Navy officers the previous evening with information that Christians from Eastern Indonesia were threatening to not follow the formation of the Republic of Indonesia if that clause is stipulated.

However, the influence of the arrival of Japanese messengers on the PPKI's decision was greatly exaggerated. It is almost impossible for the officers to focus on Indonesian unity. The motivation needs to be looked for in the interests of Japan itself which is not difficult to find. It was related to the fact that Sukarno, Hatta, several PPKI members and youth groups were given the opportunity to formulate the text of the proclamation of independence in the villa of Admiral Tadashi Maeda. Maeda's voluntary assistance should be kept a secret at least for now because it risks raising the spirit of independence of the armed groups and the fear of the Japanese in Indonesia.

More than that is the fact that this narrative neglects the proposals of Moezakir and Hadikoesoemo as well as Soekarno's reporting on non-formal meetings. Besides that - unintentionally - it supports the presumption that Pancasila is detrimental to Islamic interests and even suggests that the abolition of the Islamic clause was produced by the Christian group.

It remains only to look at the sharp comments about the PPKI decision that Hadikoesoemo made in August 1945.²⁹ Hadikoesoemo alleges that "actually, Indonesian Muslims are still being colonized".³⁰ This anger did occur after the 1945 Constitution was mutually agreed upon so that it could not target the issue of the enactment of Pancasila. Nevertheless, the call from the chairperson of the Muhammadiyah Executive Board was able to support the opposition against the implementation of the state's foundation. Therefore, the reason for the call deserves to be highlighted. It should be noted that Hadikoesoemo's support for Moezakir's proposal is not a matter of spontaneous thought. On the contrary, it is rooted in careful

²⁷ Chapter XVI Article 37

²⁸ The text of *Piagam Jakarta...* 573

²⁹ Triwahyuningsih, Triwahyuningsih, and Siti Zuliyah. "Transcendental Study on Democracy Concept Formulation in Indonesia and Its Implementation Post Reformasi." Annual Civic Education Conference (ACEC 2018). (Atlantis Press, 2018), 40

³⁰ AB Nasution... 363

consideration and it is almost impossible to throw it away so quickly. The reasons are different. Hadikoesoemo was angry because he understood that the Islamic parties were not trusted, even though their willingness to compromise had been proven. It is not the deletion of the Islamic clause but the prevention of in-depth debate that is considered unnatural.

Results

With the PPKI decision, Indonesia has obtained a legally binding state foundation, thus functioning as a guide for the development of democracy and a future rule of law. The main provisions of Pancasila are summarized as follows:

Pancasila and the System of Government

Matters of government are regulated by the principle of *Kerakyatan*. The principle clearly states the goal is to create a democratic country, namely a country that carries out the basic values of democracy. This statement is accompanied by a provision that combines *Permusyawaratan* (Deliberation) and *Perwakilan* (Representatives) and then orders all state institutions to use their respective powers with *Hikmat Kebijaksanaan* (Wisdom). Thus, the commitment to democracy is strengthened by stating its deliberative nature.

The regulation does not provide regulations on the distribution of power between state institutions and on oversight of the executive in a deliberative democracy. It is also undeniable that the body of the 1945 Constitution gives the President broad domination over the legislative body of the DPR.³¹

Therefore, it is often concluded that the 1945 Constitution, by realizing a "quasi-presidential government", opens the door for the rise of authoritarian power. The government system is considered to follow the pattern of an integral state in which the authority of the leader is exalted and the community's obligation to follow the leader is prioritized. However, this thought cannot be justified. The 1945 Constitution together with stipulating the basic right to democratic life for citizens empowers the legislative body of the DPR to exercise supervision over the President and recommends the dismissal of the President to the MPR, which is above the President.

The efficiency of this supervisory system can be seen from the dismissal of President Abdurrahman Wahid. The ability of Guided Democracy and the New Order to defeat democracy did not stem from a lack of principle of *Kerakyatan* and a quasi-presidential system of government. The two dictatorships only developed after and because the President succeeded in controlling the formation and membership of the DPR and MPR.³²

Pancasila and the State Law

Pancasila applies the principle of moderate secularism. It means that it is in accordance with the core values of democracy. There is constitutional legal guarantee that the interests of Islam and the dictates of the Shari'a are still considered and the voices of the *ummah* and Islamic theologians are still heard in debates. However, religious teachings are powerless to legitimize state intervention into the personality space which is contrary to freedom of religion and other human rights. Pancasila opposes attempts to undermine state guarantees by referring to religious doctrine. At the same time, it is against religious fatalism in which the obligation to consider all aspects of justice in depth is removed for the concept of a rigid classification of religion.

³¹ Syukron, Tubagus Muhammad, Hamka Hasan, and Alvin Noor Sahab Rizal. "Pancasila Democratic Discourse in The Perspective of Hadith's Prophet: Ambition to be Leader." 2020, 8

³² Brehm, Pemerintahan Quasi Presidensial, majalah PMB-LIPI Peradaban 3/2001, 27

The determination of Pancasila does not conflict with the compromise proposed by the *Panitia Sembilan*, but is an improvement on the proposal. However, the deletion of the Islamic clause resolves doubts that Indonesia according to constitutional law is ready to implement the universal human rights described in the United Nations Charter. There is also no doubt that Muslims also have the right to exercise these human rights. That right is not an obligation. This means that Muslims do not face legal obstacles to exercise these universal human rights in a limited way and take restrictions from the Shari'a for themselves. But that right does not include the right to control the piety of others, including the attitude of Muslims to Sharia rules. Likewise, if the authority of Islamic organizations is considered.

This progress has not actually been found in the concept of Pancasila which was conveyed by Soekarno in the speech "The Birth of Pancasila" on June 1, 1945. It was only made when guarantees for human rights in public spaces were determined at the initiative of Hatta.

The Scope of Human Rights

The procurement of human rights is not against communalistic culture. Such a culture is indeed a characteristic of the Indonesian nation and according to Pancasila. It continues to exist as a determinant of the way in which the human rights of Indonesian citizens are exercised. However, the principle of communalism is powerless to abolish the basic essence of human rights. On the contrary, it functions as a motivator and guarantor of basic freedoms concerning freedom of thought and freedom in private spaces.

This issue regarding the concept of human rights according to the communalistic culture of the Indonesian people, of course, must be discussed in depth and details. But the rough description should not be overlooked here: Freedom of thought cannot be abolished by outsiders, including by absolute rulers. What can be forced is not a change of opinion but the issuance of a statement that is actually different from the opinion, namely a false confession. The same applies to freedom in personal space. Such freedom cannot be denied without eliminating the position of citizens against the principle of *Kerakyatan*.

Such human rights really apply to every citizen. The deletion of the Islamic clause, in addition to opening the door for Indonesia to actually implement universal human rights, also contains a prohibition on expelling one citizen or even a group of citizens from being enforced on the grounds of religion. Such an interpretation is invalid. On the other hand, the state is obliged to maintain equal rights in the implementation of human rights. Consequently, the follower of any religion has the right to decide at his own will whether and to what extent he pays attention to the teachings of his religion and follows orders from there. State legislation is not a religious doctrine that has the power to limit human rights.

Pancasila and the Religious Freedom

The Principle *Ketuhanan Yang Maha Esa* is applied in the body of the 1945 Constitution as state guarantees for religious freedom. Article 29 in Paragraph 1 repeats the formulation of the principle while Paragraph 2 develops the meaning of these human rights.

Paragraph 2 on the one hand is very broad because it applies to every religion and spiritual belief without providing the state with the authority to limit that independence or to enter the spiritual area with special regulations. Therefore, adherents of any religion and belief are free from the obligation to register and other supervision, and are also entitled to protection against religious institutions or mass organizations who wish to impose their views. Such a wide state guarantee is directed not only to its citizens but to every resident. Thus, religious freedom is recognized as a universal human right that is protected by the state for every human being.

But, on the other hand, the paragraph 2 is very narrow. In fact, it only covers matters of piety and the implementation of worship but does not touch aspects of religious life in public spaces such as freedom to express certain religious beliefs, freedom to build and use houses of worship, and freedom to build houses of worship and managing religious organizations. In accordance with the moderate secularism of Pancasila, religious interests are not neglected, but are given a place in Article 28 which provides state guarantees for freedom of association, assembly, and expression. The human rights group also applies in matters relating to religion.

Protection by the guarantee is not limited to the views of individuals who recognize the existence of God but also includes religious freedom which is usually called "negative". Rejecting "negative freedom" is inappropriate because, among other things, it is tantamount to acknowledging the existence of a religious will to impose a belief that one does not have. Such a will have the power to prevent its adherents from being honest. At the same time, it harms the ability of Indonesian citizens, scientific institutions, and groups of scholars to participate in the modern world's efforts to investigate the beautiful nature, including the laws of nature and the origins of outer space.

The freedom to believe or not to believe in God is indeed justified by Article 9 where the President and Vice President are given the right to carry out the inauguration ceremony without mentioning God. But, the main root for independence is in the principle of *Ketuhanan Yang Maha Esa*. The principles are indeed about the spirituality of the Indonesian people but do not apply a monopoly for religious people. That is, the existence of spiritual atheism is undeniable and is currently accepted by leading thinkers who contradict the absolute theory of evolution.³³ It refers to the ability of the group concerned to appreciate the highest values beyond purely rational considerations. The basis is a sense of admiration for the beauty and diversity of the Earth and the responsibility of humans to preserve that state.³⁴

Pancasila and Morality

According to the Preamble, the struggle for independence was driven by the noble desires of the Indonesian people. This desire is certainly not a matter of *temporary-ness* but continues to function as a guide for state legislation and government. This desire is noble with high quality intentions, thus containing ethical values.

This paper is not to explore such ethical demands. Such an effort goes beyond the purpose of expressing the meaning of Pancasila. It also requires deep philosophical considerations; the deepest intentions. However, a rough description in the context of interpreting Pancasila should not be neglected. In short it is as follow: although ethical values are not identical with religious teachings, they prioritize the independence and creativity of responsible human beings. That goal is impossible to achieve if the legal system fights for a human who is without flaws. Such a high benchmark was exaggerated because it was beyond human capabilities. If the state tries to enact a perfect human pattern, the society is actually encouraged to be hypocritical and the values of freedom and responsibility are canceled in favor of a system of supervision and coercion in which even consideration of the consequences of morality is made difficult.

The noble desires referred to in the Preamble are simpler. That is, the leadership of the state is obliged to continue the Proclamation of Independence by liberating the Indonesian people. The center is on the duty and authority of the state to educate the nation's life, at the same time, maintaining the human rights of its citizens to the space of personality and independence.

³³ The absoluteness of the theory of evolution is defended by, for example, Richard Dawkins

³⁴ See for example Jurgen Habermas

Part II – Application of Principle *Ketuhanan Yang Maha Esa*

The establishment of the Republic of Indonesia as a democratic rule of law is a long-term challenge, requiring the transformation of traditional society into a post-traditional society. The main change is a new orientation towards minorities. In this case, it is the tradition of supporting respect for minorities as an outside group while the formation of a modern state requires an attitude to prioritize equality of rights.³⁵

The main guideline for the success of this change was held by Pancasila, in terms of religious tolerance, especially by the principle of *Ketuhanan Yang Maha Esa*. Part II discusses the development of the principle by comparing the reality of religious tolerance in the first decade of an independent state and the situation after the New Order was overthrown. The study was complemented by a view on the Amendment to the Constitution which was enacted at the beginning of the Reformation Era.

First Decade

The young Republic of Indonesia at that time was exemplified in many democratic countries as an area of religious tolerance. The picture is certainly not without stains, but it is also overshadowed by intolerant groups with the rise of the Darul Islam movement as the biggest threat. However, the image is not an imitation, as it has a radiant power. The brilliance did not stop when the 1945 Constitution was replaced with the 1949 Constitution and 1950 Constitution, but took place under the two Provisional Constitutions, which did not question the secular nature of the state.

The value of Pancasila secularism stood out quite firmly and clearly when a Christian, namely Amir Syarifuddin, was appointed Prime Minister. Equally significant was the Government's decision to establish a party system that truly reflects the nation's pluralism. Even the PKI was not excluded from this development even though it sympathized with the anti-religious ideology of Marxism-Leninism. Such wide inclusiveness indeed risks threatening the establishment of the rule of law and democracy. But the danger does not come from atheism but from communism's openness to the idea of the dictatorship of the proletariat.

The liberal structure can also be exemplified by the regulations applied to religious education in public schools. There, parents are given the right to free their children from being obliged to attend the education.

The first important event in society was *Resolusi Djihad* (the Jihad Resolution). Although preceded by the abolition of the Islamic clause, the Resolution was issued by the Chairperson of NU, Hasjim Asyari on October 21, 1945 on behalf of his organization to confront the aggression of the Netherlands Indies Civil Administration (NICA) which retook Indonesia. This action reminds Puputan of the past in Bali, but now it is done to defend the unity of the nation as a whole.

At that time, Muhammadiyah's attitude was no different, as was the determination to defend a united secular state. A prominent example is Natsir's *Mosi Integral* (Integral Motion). The great figure fought hard and indeed succeeded in uniting the RIS federal state back into a unitary state again under the 1950 Constitution.

The openness of the two largest Islamic organizations is repeatedly proven by their participation in the government based on constitutional law that actually stands for secularism. The NU Djihad resolution was immediately followed by the establishment of the Ministry of Religious Affairs. The plan was previously rejected by the PPKI but at the end of 1945 it was accepted by the National Committee which took over the authority of the PPKI. This action seems to embody the appreciation for Islamic

³⁵ Frans Magnis-Suseno, *Kuasa & Moral* 25

nationalism which is proven in the field.

The composition of the Ministry of Religious Affairs is not without problems, focusing on Islam and four other religions that have many adherents in Indonesia. However, it neglects the interests of other religions including the interests of traditional beliefs. It also neglects interfaith issues. The moderate secularism is not in question. The Ministry of Religious Affairs is not given the right and the apparatus to monitor the piety of citizens, but is structurally bound to government policies based on moderate secularism.

The state's actions in the case of the Religious Courts are similar. The special court is given the authority to decide certain civil cases that flare up between adherents of the Islamic religion. Furthermore, the regulation is equipped with an open door for Muslims who still want to seek justice in the District Court.

The etiquette of tolerance is justified by the vast majority of society. For example, the marriage of a couple of different religions is not considered a violation nor is it faced with obstacles from legislation and bureaucracy. Deviations from the mainstream in religious areas are tolerated, even Ahmadiyah can move freely in public. Prominent Islamic nationalists such as Agus Salim enjoyed dialogue with the sect and the leader of the Sarekat Islam Tjokroaminoto even followed or at least maintained close relations with them.³⁶ It took 35 five years after Indonesia's independence until the MUI fatwa against liberalism was issued in which, among other things, it was announced that Ahmadiya was outside of Islam.

The extent of freedom of space can also be exemplified by community groups who differ in their habits of life. The “transvestites” enjoyed considerable popularity. The same applies to the players Ludruk and Travesti. They are liked by "common people" when dances with erotic nuances are delivered by them. Many of the narratives from the past allow for the conclusion that the question of morality does not burden unity or at least does not exaggerate tensions in urban or village areas.

Guided Democracy and the New Order

Both Guided Democracy and the New Order do not exclude the area of religion from the ruler's efforts to defend power. This can also be seen from several legal regulations which are contrary to the neutrality of the state and together with it are detrimental to religious freedom. The Reformation Era has indeed succeeded in developing a strong democratic system of government. But the illiberal legislation persists to this day.

The most important example is the Presidential Decree dated January 27, 1965 regarding the Prevention of Abuse and/or Blasphemy of Religion which was later passed down in the form of a Law. As a result, deviation from what is considered to be the core of religious teachings becomes a legal risk even for pious people. Of course, it is very surprising that such legal material was issued by Soekarno. The defender of religious freedom in the BPUPKI negotiations eliminated this strong interest and apparently no longer cared about the rights of religious minorities. His motivation cannot be found in the aggressiveness of atheists or communists as is sometimes reported. That is, the group does not interfere in religious teachings. It is very possible – and that possibility is not in doubt – Soekarno at that time also sought support from dogmatic Muslims to confront the usurpation of power by certain groups in the military.

Under the New Order regime, Islamic party groups – like other opposition parties – were forced to merge into Partai Persatuan Pembangunan (PPP - United Development Party) and Islamic figures were expelled from government. Even the establishment of the Indonesian Ulema Council and its leadership was strongly directed by the Government. This action resulted in the popular perception that Islam at that time was experiencing oppression. But, the focus of the crush is not on religion, only on the

³⁶ Budi Sutyarso, *Guru Para Pendiri Bangsa*, Seri Buku Tempo, Jakarta 201, 80

defense of power. The demands of Islamic leaders are usually met as long as they do not oppose the opposite and even support the concept of development.

Religious freedom and religious tolerance were targeted by policies that apply and perfect the principles of "recognized religion". That is, citizens were ordered to recognize and adhere to a religion that has been formalized and to show that religion on a national ID card (KTP). When the religion record in the KTP is allowed by the Constitutional Court, the obligation is not abolished, it is only smoothed out.

Another example is the regulation of the Marriage Law saying that "marriage is legal, if it is carried out according to the laws of each religion and belief". So, it is now easier for Indonesians to marry foreigners than countrymen of different religions. Interfaith couples, if they do not want or are unable to marry abroad for the sake of registering at the civil registry office, can only solve the problem by making a statement about their false religion.

Such developments include weakening the line of separation between the State Courts and the Religious Courts by opening the door to enter the State Courts for judges who have primary qualifications in the field of Shari'a law. As a result, jurisdictions more easily get rid of state laws that are secular and follow Shari'a regulations.

Indonesia's image in the international world as a tolerant country is indeed not too harmed by such Guided Democracy and New Order laws. However, the Pancasila state foundation continued to weaken, and the Indonesian people were made uneasy with identity politics, and were also tortured with the obligation to attend and pass education on values that proved to be nonsense so that the Pancasila experienced completely lost its main meaning.³⁷

State policy is certainly not the only reason for the decline in tolerance that continues to occur. Wahhabi ideology managed to spread and many fanatical preachers around, were also able to get on the political stage and use the mass media. But these developments did not eliminate the negative influence of the regime's actions. When the New Order collapsed, years of indoctrination had succeeded in familiarizing subordinates with the obligation to recognize certain religions, promote religious beliefs and accept such groupings.

Reformation Era

At the beginning of the Reformation Era, state institutions prioritized efforts to maintain the peaceful transfer of power, as well as immediately following actions to secure the newly reviving democracy. This activity began with the release of the press and the re-establishment of a multi-party system, followed by general elections to form the DPR and MPR and continued with the renewal of the Constitution, namely the four amendments from 1999 to 2002.

At that time, the MPR succeeded in stopping the initiative of various Islamic parties to replace the principle of *Ketuhanan Yang Maha Esa* with an Islamic clause. This goal was achieved by the MPR by recognizing *Piagam Jakarta* as a historical document. This recognition deserves to be stated considering that the *Piagam Jakarta* is an important step for the establishment of Pancasila. However, the MPR's decision was not followed by firm pressure that *Panitia Sembilan* produced the first agreement to soften the state's attachment to Shari'a law.

The Amendment's focus is primarily on the composition of the state and the method of electing the President, as well as on expanding the rights of citizens. The reform of the government system was successful, as evidenced by the rise of democracy which to this day continues and endures many big and tough challenges. However, the New Order's practice of shifting the human rights of its citizens for opportunistic

³⁷ The program *Pedoman Penghayatan dan Pengalaman Pancasila* (Guidelines for the Appreciation and Practice of Pancasila), known as the P-4 course

reasons was not completely eliminated. These deficiencies are often reported by community leaders and organizations, and do not need to be reported here. It is sufficient to mention two examples that really stood out thanks to the involvement of former President Abdurahman Wahid.

The first example occurred when the prominent human rights defender held the post of President. He stopped the discrimination of the Chinese by allowing them to revive their cultural expression, as well as proclaiming the recognition of Confucianism as the official religion. However, the second decision implicitly justifies the concept of "recognized religion". Abdurahman Wahid must accept the fact that decades of discrimination cannot be stopped by simply abolishing the order or regulation concerned.

This fact directs attention to the question of whether the Amendment contains flaws that help or even perpetuate violations of Pancasila's opponents. A question should be asked:

The Transitional Regulations of the 1945 Constitution have undergone changes that actually oblige Indonesia to continue the old laws if the new laws have not been decided by the legislature. Although this regulation does not cancel orders to the legislature to adapt laws and other legal materials to the demands and values of Pancasila, it does allow the legislature to delay the implementation of that task, nor does it specify a time limit in which the legislative obligations must be fulfilled. This fact also risks limiting the contribution of the Constitutional Court to the proper determination of Pancasila.

Criticism of the Amendment needs to be supplemented with a deficiency related to the MPR's attempt to incorporate the main provisions of the Elucidation into the relevant Article. Namely, the government's assignment to promote national culture is subject to changes that reduce the subject matter. Article 32 no longer covers "new materials from foreign cultures that can develop or enrich the culture of the nation itself and enhance the humanity of the Indonesian nation" which previously, according to the explanation, had to be included. Knowledge about the efforts of cultural experts from abroad to investigate the living conditions of the community is no longer considered important, with the exception of cooperation with experts in Islamic religious studies. It is doubtful whether this narrowing has the power to improve the education of the Indonesian people. However, the negative effects are limited. That is, the desire of scientists to broaden their views cannot be ruled out; hence, collaboration with universities and Western scholars continues to this day.

Conclusion

A closing statement should start with a summary. However, this task was carried out at the end of Part I and the substance of Pancasila is not changed by the 1945 Amendment to the Constitution. Therefore, the closing remarks are directed to the problems that have not been adequately resolved in the Reformation Era. It is the fact that religious tolerance does not develop; on the contrary, it regresses.

These results reflect the shortcomings in the determination of Pancasila that come from wrong education. The error can be found in several leading scientific books.³⁸ The books are misleading because they are busy exaggerating the spiritualism of *Ketuhanan Yang Maha Esa* as a close tie to religious attitudes. But this thought actually narrows the meaning of spirituality. At the same time, false reports about the state foundation debate in 1945 are documented. The books hide the formulation of *Piagam Jakarta* which is inconsistent with their assumptions and does not mention the role of Islamic leaders in BPUPKI as pioneers of the secular Pancasila.

³⁸ As an examples, Yudi Latif *Negara Paripurna* and Tim UB *Pancasila dalam Diskursus*.

The books also include Kamus Besar Bahasa Indonesia (KBBI), which since its first edition in 1988, has passed the description of *Ketuhanan* as "belief in God" even though people's beliefs are not discussed there. The theme is different, namely the territory of God. This indication on the errors of the KBBI can be supplemented by citations of information about secularism which is defined as "a philosophical understanding or view that holds that morality does not need to be based on religious teachings" even though the term is actually not about morality, nor is it about negligence of morality or neglect of religious teachings, but rather about holding fast to rational considerations.

Contrary to the KBBI statement, secularism is really needed to deepen religious teachings and prioritize their main meaning as a driver of human values. God's territory is vast and very beautiful, manifested in God's creation entirely such as natural wealth and human pluralism, also includes minorities such as LGBT groups or agnostics and atheists. According to Pancasila, society is obliged not to expel, let alone be hostile, or even criminalize the minority, but to prioritize inclusiveness and dialogue. This is because *Ketuhanan Yang Maha Esa* perfect the principle of *Kemanusiaan* which is to instruct state institutions to be determined and dare to confront religious doctrines with a critical mind so that misunderstandings can be dismantled and the rights of togetherness are protected.

The decline in tolerance shows that the written law is not strong enough to achieve such a high goal. What is really needed is awareness of law and justice in accordance with the challenges, both in society and in the state apparatus. However, this article should not end with spreading pessimism. Activities to establish the values of Pancasila have never stopped, but have found a strong place in the essence of Islam Nusantara and other versions of Islam that firmly admire religious freedom and other universal human rights, as well as in other religious movements that are tolerant. The future will see if that power is sufficient. The closest test is delivered to the draft of Criminal Law Act.

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