

JURNAL CITA HUKUM

Indonesian Law Journal



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Welcoming contributions from scientists, scholars, professionals, and researchers in the legal disciplines to be published and disseminated after going through script selection mechanisms, reviewing sustainable partners, and rigorous editing processes.

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Direct Election of President and Vice President In Pancasila Perspective*

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Abstract

After the amendment to the 1945 Constitution of the Republic of Indonesia, the Election of President and Vice President was not conducted by the People's Consultative Assembly but voted directly by the people. Amendment to the provision for the election of President and Vice President have invited debate, partly because they are deemed incompatible with Pancasila. This study examines the appropriateness of the presidential and vice-presidential election based on Pancasila. The research method uses normative juridical, using secondary data obtained through literature study and qualitative analysis. The result and discussion of this research are that the implementation of the election of President and Vice President based is in accordance with Pancasila, especially with the fourth principle.

Keywords: Democracy, Direct Election, Pancasila.

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Pemilihan Langsung Presiden dan Wakil Presiden Dalam Perspektif Pancasila

Abstrak

Setelah amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pemilihan Presiden dan Wakil Presiden tidak dilakukan oleh Majelis Permusyawaratan Rakyat tetapi dilaksanakan langsung oleh rakyat. Amandemen terhadap ketentuan untuk pemilihan Presiden dan Wakil Presiden telah mengundang perdebatan, sebagian karena mereka dianggap tidak sesuai dengan Pancasila. Studi ini mengkaji kelayakan ketentuan pemilihan presiden dan wakil presiden berdasarkan Pancasila. Metode penelitian menggunakan metode yuridis normatif, menggunakan data sekunder yang diperoleh melalui studi literatur dan dianalisis secara kualitatif. Hasil dan pembahasan penelitian ini adalah bahwa pelaksanaan pemilihan Presiden dan Wakil Presiden berdasarkan Pancasila sudah sesuai dengan Pancasila, terutama dengan prinsip keempat

Kata Kunci: Demokrasi, Pemilihan Langsung, Presiden dan Wakil Presiden, Pancasila.

Прямые выборы президента и вице-президента на основе Панчасилы

Аннотация

После внесения поправки в Конституцию Республики Индонезия 1945 года выборы президента и вице-президента не проводились Народной Консультативной Ассамблеей, а проводились непосредственно всенародными выборами в Индонезии. Поправки к положениям о выборах президента и вице-президента вызвали дебаты, отчасти потому, что они считаются несовместимыми с Панчасилой. В этом исследовании рассматривается соответствие принятия положений о президентских и вице-президентских выборах на основе Панчасилы. Метод исследования – нормативно-юридический, используя вторичные данные, полученные в результате изучения литературы и анализируемые качественным методом. Результаты и обсуждение этого исследования заключаются в том, что осуществление выборов президента и вице-президента на основе Панчасилы соответствует Панчасиле, особенно четвёртому принципу.

Ключевые слова: Демократия, Прямые Выборы, Президент и Вице-Президент, Панчасила.

Introduction

Democracy is a form of government that is applied in almost all countries in the world, including in Indonesia. In reality the practice of democracy had already been applied by the founders of the nation, long before Indonesia's independence. Ajat Sudrajat states that the history of Indonesian democracy can be divided into 6 (six) periods, namely; 1). Democracy of the revolutionary era, 2). Democracy of the United Republic of Indonesia, 3). Liberal Democracy, 4). Guided Democracy, 5). Pancasila Democracy of the New Order era, and 6). Democracy during the Reformation era, where elections in the New Order era were deemed inappropriate anymore because they often did not reflect the aspirations of the people so that the forms of election of the President and Vice President and regional head directly were chosen (Sudrajat 2016). Provisions on the Election of President and Vice President are directly carried out through the third amendment to the Constitution of the Republic of Indonesia 1945 (CRI 1945), Article 6A paragraph (1) which reads: "The President and Vice President are elected in a pair directly by the people." While the original manuscript of the CRI 1945, Article 6 paragraph (2) reads: "The President and Vice President are elected by the People's Consultative Assembly with the most votes". Even though it has been stipulated in the CRI 1945, the polemic regarding the suitability of the Direct General Election including the Presidential Election with the Pancasila turned out to be a matter of debat.

Guruh Soekarno Putra, in 2012 once stated that "Direct elections are in conflict with the fourth precepts of the Pancasila. In Pancasila, mentioned guided democracy or representative democracy. It is not the people who directly vote" (Prabowo 2012). Professor of Philosophy at Gadjah Mada University, Kaelan, stated that Article 22E of the CRI 1945 which regulates general elections shows a contradiction, where the democratic process is based on liberalism-individualism principles, because everything is carried out directly based on mathematical principles without giving room for deliberation and consensus (Gusti 2014). Chairman of the People's Consultative Assembly (MPR) for the 2014-2019 period, Zulkifli Hasan also said that the direct electoral system was in conflict with the fourth precept of the Pancasila because the Indonesian democratic system was actually as in the fourth precept of the Pancasila, namely representation and deliberation (Harjanto 2015).

In connection with the Presidential Election and Vice President directly, the Chairperson of the House of Representatives (DPR) for the 2018-2019 term, Bambang Soesatyo, once mentioned the discourse that the President was re-elected by the People's Consultative Assembly because according to him from

the beginning the nation's founder wanted the presidential election to be held by deliberation rather than through election directly (Bernie 2019). In the end, Bambang Soesatyo as the Chair of the MPR 2019-2024 emphasized that the limited amendments to the CRI 1945 will not discuss presidential elections, presidential elections will still be held directly, not returned to the MPR (Barus 2019).

The term Pancasila was first put forward by Soekarno at the first session of the Investigation Agency for the Preparation for Independence (BPUPK) on June 1, 1945, in the form of five ideas on the basis of the state, namely 1). Nationalism or Indonesian Nationality, 2). Internationalism or Humanitarian Elections, 3). Consensus or Democracy, 4). Social Welfare, and 5). Culture of God. At the end of BPUPK's first trial, a small committee of eight people was formed and was chaired by Soekarno, with tasks including formulating the basis of the state based on the ideas conveyed by Sukarno and the ideas conveyed by other BPUPK members. During the Small Committee session, Soekarno took the initiative to form a small committee consisting of 9 people, which later became known as the Nine Committee, to draw up a draft for the opening of the Constitution of the Republic of Indonesia, which contained the Basic State. Finally, the formulation of the Pancasila was constitutionally established on 18 August 1945 by the Indonesian Independence Preparatory Committee (PPKI).

Pancasila functions as a source of all sources of law meaning that Pancasila is domiciled as: 1). Indonesian legal ideology. 2). Collection of values that must be behind the whole of Indonesian law. 3). Principles to be followed as a guide in making legal choices in Indonesia. 4). As a statement of the mental values and desires of the Indonesian people, also in its law (Saleh 1979) .

Pancasila as the source of all sources of law provides the consequence that any material contained in the Legislation, including the 1945 Constitution, must not conflict with the values contained in Pancasila. Therefore it becomes an important issue to be further studied and analyzed regarding the suitability of the provisions of the Direct Presidential and Vice President Elections with Pancasila, especially the fourth precept of Pancasila.

Based on the background above the problems in this paper are: How does the ideal concept of the Presidential and Vice Presidential Election Indonesia based on Pancasila Democracy?

Discussion

The President of the Republic of Indonesia in addition to being the Head of State, is also the highest authority of government based on the CRI 1945. Indonesia since independence until now, has been led by 7 (seven) Presidents namely Soekarno, Soeharto, BJ Habibie, Abdurrahman Wahid, Megawati Soekarno Puteri, Susilo Bambang Yudhoyono, and Joko Widodo, through election arrangements that change from time to time. Historically, Indarja stated that the presidential and vice presidential election arrangements in Indonesia since 1945 are as follows (Indarja 2018) :

1. Period 1945-1950, through the PPKI consultation Ir. Soekarno and Mohammad Hatta were appointed as the first President and Vice President of the Republic of Indonesia.
2. Period 1949-1950, the period when the Republic of Indonesia joined the federation of the United Republic of Indonesia (RIS) with the position as a state. According to the RIS Constitution, the President is elected by an Electoral College consisting of state delegates on certain conditions.
3. Period 1950-1959, the period of the enactment of the 1950 Constitution which determined that the figure holding the position of President in this period was the result of the approval of RIS and RI on May 19, 1950, while the figure of the vice-president was for the first time appointed by the President from a figure proposed by the House of Representatives (DPR).
4. Period 1959-1965, during this period the MPRS was formed as a follow-up to the Decree of the President of the Republic of Indonesia on July 5, 1959. The appointment of Sukarno as President for life was carried out through an MPRS decree.
5. New Order, the election of the President is carried out in the MPR General Session forum by voting, and those who have the right to vote for the President are only members of the MPR. CRI 1945 at that time did not provide limits on the period of a person to serve as President.
6. Reformation era, the period when Suharto ended his position as President of the Republic of Indonesia and then the position of President was replaced by Baharuddin Jusuf Habibie after he had previously served as Vice President.
7. Elections in 1999, where the President and Vice President are still elected by the MPR. At the MPR-RI general session two competing presidential

candidates emerged, namely Abdurrahman Wahid who was supported by the Central Axis (coalition of Islamic and Nationalist political parties) and Megawati Soekarno Putri who was supported by the Indonesian Democratic Party of Struggle as the winner of the 1999 Legislative Elections. In the end Abdurrahman Wahid won the Presidential Election with 373 votes while Megawati Soekarno Putri received 313 votes.

8. Presidential Election in 2004, was the first general election (election) that allowed the people to directly elect their representatives to sit in the DPR, DPD and DPRD and directly elect the President and Vice President. The 2004 Presidential Election was conducted in 2 (two) rounds, because in the first round which was followed by 5 (five) candidate pairs, no candidate pair gained more than 50 percent of the votes. In the second round, the pair Susilo Bambang Yudhoyono-Jusuf Kalla got more votes than the pair Megawati Soekarno Putri-Ahmad Hasyim Muzadi.
9. The 2009 Presidential Election is the second direct Presidential election held in Indonesia, which set Susilo Bambang Yudhoyono-Boediono as the President-Vice President for the 2009-2014 term. The Presidential Election in 2009 was attended by 3 (three) candidate pairs and only lasted one round, because one of the candidate pairs namely Susilo Bambang Yudhoyono-Boediono gained more than 50% of the votes.
10. The 2014 Presidential Election is the third direct Presidential election held in Indonesia. After going through a direct election process which was followed by 2 (two) candidate pairs, Joko Widodo and Jusuf Kalla were appointed as the President and Vice President of the 2014-2019 term.
11. Presidential Election 2019 is the fourth direct Presidential election held in Indonesia. The direct election was attended by 2 (two) candidate pairs, Joko Widodo and Ma'ruf Amin, and Prabowo Subianto and Sandiaga Uno. The Joko Widodo and Ma'ruf Amin pairs later gained more votes and were appointed as President and Vice President for the 2019-2024 term.

Direct Presidential Elections in Indonesia were conducted in 2004, 2009, 2014 and 2019 with different provisions and regulations, especially regarding the threshold for presidential and vice presidential nominations. The 2004 Presidential Election is based on Law Number 23 of 2003 concerning the Election of President and Vice President, while Act Number 42 of 2008 concerning the Election of President and Vice President is used in the Presidential Elections in 2009 and 2014. In 2017, the Act Law No. 42 of 2008 is

replaced by Law Number 7 of 2017 concerning General Elections for reasons of unification and simplification of the legal basis for simultaneous general elections. The threshold of the nomination of the President and Vice President in the direct presidential elections in 2004, 2009, 2014 used the acquisition of the number of DPR seats and national legitimate votes on the results of the DPR elections that had been held previously because legislative elections were conducted before the election of the President and Vice President. In the 2004 presidential and vice presidential elections, candidates for president and vice president can only be submitted by political parties or a combination of political parties that obtain at least 15% (fifteen percent) of the number of seats in the DPR or 20% (twenty percent) from the acquisition of a valid national vote in the Election of members of the DPR. In the 2009 and 2014 Presidential Elections, the threshold for nominating the President and Vice President underwent a change, where only a party or a combination of parties controlled more than 20% of seats in the DPR or won 25% of the national legitimate votes in the election of DPR members who could nominate a Presidential Candidate and Vice President. The provisions contained in Law Number 7 of 2017 concerning General Elections are slightly different, because the presidential and legislative elections are held simultaneously in April 2019. This gives the consequence of the threshold used is the acquisition of the number of DPR seats and national legitimate votes in member elections Previous Parliament.

The presidential and vice presidential direct elections which have taken place four times, are considered by some community leaders to be incompatible with the Pancasila, especially the four precepts of the Pancasila, which reads "Democracy led by wisdom in deliberation/representation." An understanding of the philosophical meaning of the fourth principle of Pancasila is of course it is important to know the compatibility of the Presidential and Vice Presidential Elections with Pancasila. Yusdianto stated philosophically the fourth precepts of Pancasila contained the following meanings (Yusdianto 2016):

1. The nature of this precepts is democracy, namely the government of the people, by the people, and for the people.
2. Consultation, namely making a unanimous decision, carried out jointly through the path of wisdom.
3. Implement decisions based on honesty. Decisions are unanimous so as to bring the consequences of honesty together. The value of identity is consultation.

4. It contains the principle of populism, which is a sense of love for the people, fighting for the ideals of the people, and has a popular spirit.
5. The principle of deliberation to reach consensus, which is to pay attention to and respect the aspirations of all the people through consultative forums, respect for differences, prioritize the interests of the people, nation and state.

Bakry argues that the fourth precepts of Pancasila contain democratic values, in the form of (Bakry 2010):

1. State sovereignty in the hands of the people is led by wisdom based on sound reasoning.
2. Indonesian people as citizens have the same position, rights and obligations.
3. Consensus agreement in state by representatives of the people for the sake of togetherness on the basis of kinship.
4. People's values are encompassed and imbued with divinity, humanity, unity and covering and animating justice.

Meanwhile Yudi Latif argued that the fourth precepts of Pancasila contained the characteristics of populist (people's sovereignty), deliberation (kinship) and wisdom wisdom (Latif 2019).

Based on several opinions related to the meaning of the fourth precepts of the Pancasila, it can be seen that the fourth precepts of the Pancasila have 1) Popular Value, 2), Wisdom Wisdom 3) Consultation and 4) Representative. In relation to the election of President and Vice President directly, the four precepts of Pancasila must be interpreted as follows:

1. People's Value

Popular values mean the sovereignty of the state in the hands of the people, as confirmed in the opening and trunk of the CRI 1945. After the amendment to the CRI 1945, the MPR does not have the authority to elect the President and Vice President, the MPR is only authorized to appoint the President and Vice President. By looking at the historical facts that have occurred, the direct election of the President and Vice President is a more appropriate choice to realize democratic values. Giving the opportunity to elect the President and Vice President in accordance with the wishes of the majority of the people is one of the reasons for the implementation of direct elections in Indonesia (MD 2004). The practice of money politics, high political costs, and increased social

conflict cannot be used as a reason to return the right to elect the President and Vice President to the MPR, bearing in mind that the tendency that occurs in the representative system is a deviation of the aspirations of the people and their representatives (Hajri 2018). In the representative system the people's right to elect the President is seized by the political elite so that the configuration of the people's will is not directly proportional to the will of the political elite (MD 2007). Popular aspirations are realized by giving a role to the people in the decision-making process carried out in government affairs including the determination of government leaders. In popular aspirations, the state must guarantee that every citizen has an equal position in law and government. The provision of Article 27 paragraph (1) of the CRI 1945 which states that the equality of citizenship in law and government with no exception is an incarnation of the principle of popular sovereignty and the principle of fair and civilized humanity (Bakry 2010).

2. Wisdom

The ideal of wisdom reflects ethical orientation, through the power of rationality, consensual wisdom and the commitment of social justice to prevent power from being controlled by "majorocracy" and "minorocracy" (Latif 2019). The state must be able to overcome the understanding of individuals and groups, because Soekarno when delivering the Pancasila stated that "we established a country for all, one for all, all for one". Reflecting on the experience of the previous elections, there are three basic problems in electoral practice, namely the first political oligarchy where a group of elites both from the national level to the regional government that continuously in every way seeks to perpetuate power, especially by using an existing power approach. Second is the political-economic oligarchy, which is a group of very large capital or capital voters who are willing to finance potential candidates at the national and local level in the hope of obtaining large concessions for natural resource management and projects in the government. Third is minimizing the birth and development of "political bandits", namely a group of people who use their social influence to trick the election in the hope of winning a candidate pair with personal rewards to the community figure (Firman Noor dkk 2015). Oligarchy makes the wisdom wisdom wisdom not realized because it is only based on practical interests only. The current MPR membership comes in part from 575 DPR members and 136 DPD members. As a member of the DPR as well as a party member, the party's policies and direction cannot be separated from the consideration of members of the DPR in making decisions including

the Presidential Election through representation. Wisdom in accordance with the fourth precept of Pancasila should be based on the values contained in the principle of the Almighty God and the principle of Just and Civilized Humanity (MS 2016). Presidential Elections produce a President that is in accordance with the wishes of the majority of the people, thus the President does not need to fear being dictated by political parties and does not need to worry about being overthrown for political reasons. The President can decide all matters relating to government based on wisdom that include fulfilling four prerequisites, 1) is impartial by involving and considering the opinion of all parties inclusively, 2) dedicated to the interests of many people, not for the benefit of individuals or groups, 3) oriented far ahead not in the short-term interests through destructive transactional accommodation, and 4) must be based on the principle of rationality and justice not just based on ideological subjectivity and interests (Latif 2017).

3. Consultation

The ideals of deliberation is the desire to bring a united state that can overcome the understanding of individuals and groups, as a reflection of the spirit of kinship of the Indonesian people (Latif 2019). So that it can be understood that the Presidential Election must be carried out by all Indonesian people consisting of various Ethnic, Religious and Intergroup groups so as to obtain a joint decision. Decisions obtained can accommodate all interests in order to achieve unity.

4. Representative

The ideals of representation based on the content of the four precepts of Pancasila can be seen that the highest state power is in the hands of the people and implemented according to the Representative implies that the will of the people in the administration of the state is carried out through its representatives elected through a free election process. Jimly believes that people's sovereignty in Indonesia is held directly through general elections, presidential elections and the approval or rejection of the planned amendment to the CRI 1945 and the representative system through representatives who have been selected to carry out legislative and supervisory functions (Ashiddiqie 2005).

The implementation of democracy is directed to realize prosperity for all Indonesian people. Pancasila democracy is not just a technical tool, but also a reflection of the natural psyche, personality and national ideals that are realized in the family state to overcome individual and group understandings and develop a welfare state that can carry out social justice (Latif 2017).

Conclusion

Based on the results of the research and discussion described in the previous chapter, it can be concluded that the implementation of the Presidential and Vice President Election is in accordance with the Pancasila, especially with the fourth principle of the Pancasila. The direct presidential election is in accordance with the 4th (four) precepts of Pancasila, which has 4 meanings, namely 1) People's Value, 2) Wisdom, 3) Consultation, and 4) Representation. And the direct Presidential Election is required to realize prosperity for all Indonesian people.

The author recommends that the implementation of the Presidential and Vice President Election be directly followed by all members of the community who have fulfilled the requirements and are monitored by all parties, from the public and the government so that honest and fair election results are obtained.

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