



The Overlapping Consensus in the Indonesian Constitution and Its Challenges



Konsensus Berkeadilan dalam Konstitusi Indonesia dan Tantangan-Tantangannya

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History:

Submitted: 21-06-2022

Revised: 08-03-2023

Accepted: 06-06-2023

Keyword:

Social Unity; Indonesian Constitution;
Overlapping Consensus; Reasonableness;
Justice.

Kata Kunci:

Kesatuan Sosial; Konstitusi; Konsensus
Berkeadilan; Nalar Yang Wajar; Keadilan.

Abstract

Pancasila and UUD 1945 form the foundation of Indonesia's social unity. This article analyzes whether Pancasila and UUD 1945 align with John Rawls' criteria of overlapping consensus. The article concludes that the agreement among Indonesia's founding fathers fulfills the requirements of an "overlapping consensus." This consensus encompasses principles of justice that remain independent of any comprehensive doctrine, ensuring the protection of citizens' fundamental rights and the most disadvantaged groups. Despite its imperfections, this consensus significantly contributes to Indonesian social unity. Nevertheless, the reality is marked by challenges and threats that require resolution. Some groups seek to dominate others, and specific rules deviate from the principles of justice. The state and society's commitment to uphold the overlapping consensus is crucial. Among the institutions entrusted with maintaining this consensus is the Constitutional Court.

Abstrak

Pancasila dan UUD 1945 merupakan dasar bagi kesatuan sosial Indonesia. Artikel ini akan menganalisis apakah prinsip-prinsip konsensus kenegaraan bangsa Indonesia sudah sesuai dengan kriteria konsensus berkeadilan (*overlapping consensus*) John Rawls. Dari analisis ini, kami berkesimpulan bahwa kesepakatan para pendiri bangsa ini sudah memenuhi kriteria "overlapping consensus." Konsensus ini mengandung prinsip-prinsip keadilan yang berdiri bebas dari doktrin yang komprehensif tertentu dan menjamin perlindungan hak-hak dasar warga negara dan kelompok tidak berdaya. Konsensus berkeadilan ini memiliki arti yang sangat penting bagi kesatuan sosial Indonesia, meskipun belum sempurna. Dalam realitas, konsensus ini memiliki tantangan dan ancaman yang perlu diatasi. Adanya kelompok yang ingin men subordinasi kelompok lain dan aturan-aturan yang tidak sejalan dengan prinsip-prinsip keadilan merupakan bagian dari tantangan dan ancaman yang harus diatasi saat ini dan ke depan. Komitmen negara dan masyarakat dalam menjaga konsensus berkeadilan menjadi sangat penting. Salah satu institusi yang diharapkan menjaga konsensus berkeadilan ada pada Mahkamah Konstitusi.



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<https://doi.org/10.31078/jk2031>

A. INTRODUCTION

1. Background

What are the prerequisites to make social unity stand relatively in a lasting time? This article holds that the essential thing to maintain social unity is fair consensus, as agreed in the Constitution. A fair consensus is not only a mere agreement but must contain the political conception of justice. This article will use John Rawls' concept of overlapping consensus in the analysis framework. The overlapping consensus is a product of public reason by which all parties stand free from their comprehensive doctrines. Religion is one of the comprehensive doctrines. Through this framework, the state formally is not based on a religion embraced by the majority group. The Constitution must guarantee the most basic justice for citizens. It does not oppress humanity and its basic rights. The existence of this consensus is fundamental so that all citizens have a basis for justice and equality. According to Rawls, the highest achievement of political agreement among plural societies is "overlapping consensus." It creates a basis of social unity through which a political community with different religious affiliations and ethnicities binds commitment to live together reasonably.

This article will examine whether Pancasila and Undang-undang Dasar 1945 (the Indonesian Constitution) is an overlapping consensus. In Indonesian formation history, the discussion of the state basis was the most disputed, especially between nationalist and Islamist groups. The dispute was solved reasonably. To some extent, Pancasila and the Indonesian Constitution are not based on a comprehensive doctrine and contain the conception of justice by which they are the overlapping consensus. This kind of consensus is critical to social unity, although it cannot guarantee Indonesian unity. The future of Indonesian social unity also depends on the extent to which political institution succeeds in standing firmly from unreasonable groups and can realize the ideals of the consensus to all citizens. If the state does not succeed, social unity will be seriously challenged.

This article will identify the threats and weaknesses of Indonesia's overlapping consensus. It highlights the threat from unreasonable groups as the main concern. These groups still want to establish their comprehensive doctrine as the basis of the state. Unreasonable groups exist in every society. To mitigate this threat, rational groups must actively engage in public life to curb the activities of irrational groups. This also highlights the challenges of translating the concept of justice into real life. Two primary weaknesses are enforcing civil and political rights and implementing social justice. The first manifests in blasphemy laws, affecting certain minority groups and government critics. The second is linked to ensuring citizens' fundamental rights for proper livelihoods. These challenges must be addressed to foster a more cohesive social unity in the Indonesian nation-state. The role of the Constitutional Court is pivotal in safeguarding the ideals of Indonesia's founding

fathers, as it possesses the authority to invalidate laws containing articles that conflict with the Constitution.

2. Research Questions

This article will examine whether Pancasila and the 1945 Constitution (UUD 1945) constitute an overlapping consensus. In addition, it will identify the threats and weaknesses of an overlapping consensus in Indonesia.

B. DISCUSSION/ ANALYSIS

1. The Overlapping Consensus Framework

In *Political Liberalism*, Rawls identifies that to build overlapping consensus, there are two basic procedures: the reasonable capacity and the state of freestanding from comprehensive doctrines.¹ Reasonable capacity is the ability of citizens to propose views that can be mutually accepted. One of the essential stances in a reasonable capacity is to stand free from all comprehensive doctrines. The criteria become the main requirements put forward by Rawls when proposing the concept of overlapping consensus. He understands that overlapping consensus is not just a mere agreement. In an overlapping consensus, the agreement is based on the values of justice, which respect the principles of freedom and equality for all. According to Rawls, overlapping consensus will strengthen social unity over agreements based on power bargaining.²

Rawls emphasizes the importance of reasonable capacity in a well-ordered society.³ He defines reasonableness as follows:⁴

“Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens and not as dominated or manipulated, or under the pressure of an inferior political or social position. Citizens will, of course, differ as to which conceptions of political justice they think the most reasonable, but they will agree that all are reasonable...”

Every society has diverse religious affiliations, ethnicities, languages, skin colors, philosophical orientations, and hobbies. Rawls calls all these comprehensive doctrines. Usually, each of them has a temptation to dominate others and make them subordinates.

¹ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), xix.

² Rawls, 147; Samuel Freeman, *Rawls* (London: Routledge, 2007), 370.

³ Rawls, *Political Liberalism*, 49–50; John Rawls, “The Idea of Public Reason Revisited,” in *The Law of Peoples with “The Idea of Public Reason Revisited”* (Cambridge, MA.: Harvard University Press, 2000), 136–137.

⁴ Rawls, “The Idea of Public Reason Revisited,” 136–137.

For example, part of Muslim society in Indonesia has desired to make Islamic sharia a state basis. This desire is normal but can become a barrier to making an overlapping consensus. What to do by the first procedure is that all groups of society must be reasonable in terms that they see others as equal and free citizens. Gerald F. Gaus emphasizes why we must accept the principle of liberty and equality for all citizens because we are human beings.⁵ Then, by the second procedure, as a consequence of the first, the overlapping consensus is only achieved if the state stands free from one comprehensive doctrine. In other words, the consensus is not based on one religion, ethnicity, or comprehensive doctrine. Society groups can come from one comprehensive doctrine, but they do not impose their comprehensive doctrine as the state basis for developing a fair relationship. These two preconditions are fundamental to making overlapping consensus possible.

According to Rawls, an overlapping consensus is not an agreement among groups based on their temporary interest. The agreement of the state basis based on religious or aristocratic authority is also not an overlapping consensus. A consensus regarding the agreement based on temporary interest is a *modus vivendi*. He defines it as an agreement in which the groups of society accept it because of social and political pressures. It does not contain political values guaranteeing fundamental liberties and other fair principles. This kind of agreement is very fragile and every time can raise disputes. The stability is only on the surface, not for a long time. In short, *modus vivendi* is not a consensus that creates the basis of social unity. Thus, he underlines the fundamental difference between *modus vivendi* and overlapping consensus.⁶ The consensus in *modus vivendi* arises just briefly to balance social and political forces. In contrast, overlapping consensus can last long because it is based on reasonableness.

Equal and free persons formulate the overlapping consensus, although they may come from comprehensive doctrines. The consensus must contain a political conception of justice for a democratic society.⁷ The essential idea in overlapping consensus is the idea of public reason. According to Rawls, people use public reason if they see others as equal and free citizens.⁸ Although society groups come from comprehensive doctrines, they must see other people as equal and free citizens, not as their subordinates. All people must embrace this idea to be reasonable. However, this does not mean making religious people less religious. They can remain religious, but they must see others as equal and free citizens in public life.⁹ The comprehensive doctrine imposing its view to be a social-political foundation is unreasonable. To make overlapping consensus possible, we need the active participation of reasonable comprehensive doctrines in society.

⁵ Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011), 21.

⁶ Rawls, *Political Liberalism*, 147.

⁷ Freeman, *Rawls*, 370.

⁸ Rawls, "The Idea of Public Reason Revisited," 131.

⁹ Rawls, *Political Liberalism*, 147.

Here Rawls identifies why public reason is essential to make overlapping consensus. Through public reason, citizens understand the meaning of public political culture. They may come from religious or secular people, but they must see all as equal and accessible when they engage in public life. The principle of equal liberty for all must be accepted wholeheartedly. Rawls also underlines the importance of public reason for legitimacy. Legitimacy connects to citizenship relations which develops fair political values. The essence of political values comes from a reasonable capacity. According to him, legitimate law can only arise from reasonable citizens who see one another as equal and free.¹⁰ Thus, the consensus could be legitimate if the people reciprocally offer fair terms of cooperation.

The consensus must contain political values and all fundamental rights.¹¹ These guarantee a consensus for a long time, not only for a short time. This consensus can be achieved if it contains political values and the protection of fundamental rights for all citizens. The product of an overlapping consensus is the political conception of justice. Then Rawls identifies the content of political conception in two principles of justice. They are (1) the principle that all people must be equal and free citizens without exception; (2) the principle that all citizens have access to public office and position under conditions of fair equality of opportunity; and the principle that the least advantaged people gain the most significant benefit.¹² In the first principle of justice, he ensures the fundamental rights of all citizens, whatever their religious affiliation, ethnicity, and skin color. He establishes fair equality of opportunity and “the greatest for the least” principle in the second principle.

In the second principle, Rawls underlines fair equality of opportunity to differentiate from the classical liberal jargon ‘careers open to talents.’¹³ To distribute opportunities, we must consider citizens’ social and natural circumstances. This principle aims to minimize the negative impact of their social and natural backgrounds. Next, guided by the principle of maximizing benefits for the least advantaged, there is increased pressure to improve the condition of the least advantaged group. State institutions must assist this group in achieving and enhancing their quality of life. Without state aid, they cannot achieve a good life. Therefore, all these principles constitute the content of the political conception of justice, forming the primary basis of the overlapping consensus agreement.

Based on this, we can summarize the criteria of overlapping consensus in two main points. Firstly, the members participating in reaching a consensus are reasonable individuals. They may belong to a religious group or hold other comprehensive doctrines but must exhibit reasonableness when engaging in public life. They embrace fair reciprocal relations in which all of them are, to some extent, equal and free. They can restrain the desire to

¹⁰ Rawls, “The Idea of Public Reason Revisited,” 149–150.

¹¹ Rawls, *Political Liberalism*, 164.

¹² John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA.: The Belknap Press of Harvard University Press, 2001), 42–43.

¹³ John Rawls, *A Theory of Justice* (Cambridge, MA.: The Belknap Press of Harvard University Press, 1999), 62; Rawls, *Justice as Fairness: A Restatement*, 43–44.

impose their convictions to be established on a state basis. While forming a consensus, people might draw inspiration from their religious faith or other comprehensive doctrines, yet the notion of public reason acts as a filter for these doctrines.

The second point involves incorporating the political conception of justice within the consensus, defined by two principles: (1) ensuring equal liberty for all citizens and (2) promoting fair equality of opportunity and providing maximum protection for the least advantaged. The content of the political conception of justice is crucial in ensuring the safeguarding of fundamental rights and the equitable distribution of opportunities. Subsequently, we will assess whether the process of formulation and the content of Pancasila and the “Undang-undang Dasar 1945” adhere to these criteria. Top of Form

The argument in this article shows that Pancasila and Undang-undang Dasar 1945 are relatively following the Rawlsian overlapping consensus criteria. After that, we will show some challenges and threats to the Indonesian’s overlapping consensus. Analysis of challenges and threats refers to actors or conditions, not in line with the criteria of overlapping consensus. In this case, we show the behaviors of some groups who want to become first-class citizens compared to other community groups. The existence of this group indeed threatens the Indonesian’s overlapping consensus. In addition, we also identify several conditions that are not in line with the spirit of justice, such as state abandonment of people with low incomes. This condition is certainly not in line with the principle of justice. Thus it can be assessed as a challenge that must be overcome.

a. Reasonable Agreement in Pancasila

The deliberation on the state basis was the most noted among meetings of the Committee for the Investigation of Independence (Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan/BPUPK) in 1945. Members of BPUPK attempted to address the question of the foundation upon which the new nation-state would be built. Among many formulations, Soekarno’s is the most structured and the clearest.¹⁴ He answered the question by explaining the meaning of *filosofische gronslag*. By this term, he meant “fundament, philosophy, the deepest thinking, soul, and desire, on which the idea of Indonesia stands forever and everlasting.”¹⁵ In his speech on June 1 (*Pidato 1 Juni*), 1945, he proposed five principles (later called Pancasila). BPUPK’s members appreciated his speech and agreed to follow it up by making a small committee (Panitia Delapan).¹⁶ These five principles were not based

¹⁴ Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila* (Jakarta: Gramedia Pustaka Utama, 2011), 10–12.

¹⁵ Saafuruddin Bahar and Nannie Hudawati, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Dan Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945-22 Agustus 1945*, ed. Saafuruddin Bahar and Nannie Hudawati (Jakarta: Sekretariat Negara Republik Indonesia, 1998), 84; RM. A. B. Kusuma, *Lahirnya Undang-Undang Dasar 1945, Revisi* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009), 150.

¹⁶ Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila*, 75–77.

on religion or ethnicity. The ideas formulated in Pancasila come from Indonesian living values and are a mix of many views, either religious or secular.

Pancasila, or the five principles, could be Indonesia's worldview (*Weltanschauung*). They are nationalism (*kebangsaan*), humanism (*perikemanusiaan*), deliberative democracy (*mufakat*), social justice, and belief in God. In defining nationalism, Soekarno did not think in the European way, which is limited to one nation or chauvinism. He refused the concept 'Deutschland über Alles' in Germany because it made one nation primary and placed others as subordinate.¹⁷ By nationalism, he did not think that the Indonesian nation was the highest and that other nations were subordinates. Humanism is a universal principle that could be accepted by all groups based on religious or secular views. We know that this principle comes from the Western idea, but at the same time, the Islamic faith and other local views did not refuse it. The principle of deliberative democracy or "*mufakat*" is much more seen as a local living value in Indonesian rural societies. Soekarno connected this principle to local traditions, although we can categorize this idea as Western.

Social justice is a universal idea that all religions, ethnicities, and other comprehensive doctrines accept. This principle is a critique of individualism and capitalism. Soekarno emphasized the idea of *politiek economische democratie*, in which Western democracy must be mixed with social justice. The last is the principle of belief in God. Founding fathers and mothers have seen that believing in God is the most valuable for the Indonesian people. This belief is for the monotheistic tradition (Islam and Christianity) and local beliefs. In short, almost all Indonesian people believe in God in terms of transcendent reality. The most interesting in this principle is that belief in God was not meant theologically but must be expressed in civic values. Among those essential values are tolerance and mutual respect. This principle rejects all kinds of exclusive religiosity.¹⁸ Panitia Sembilan (The Committee Nine) then finalized the formulation of all principles and restructured the number of principles. The committee first placed the principle of belief in God, then humanism, nationalism, deliberative democracy, and social justice as the following principles. The perspective to formulate the principles is two: first, they must become common denominators or common ground among many views of Indonesian people, and second, they must be a '*Leitstar*' or a guiding star for Indonesian to achieve their common goal.

Of course, arriving at a common denominator or shared principle among plural societies like Indonesia is difficult. Each group, especially the majority group, might desire to make their value the state basis. Historically tension between Muslim and nationalist groups

¹⁷ Bahar and Hudawati, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Dan Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945-22 Agustus 1945*, 97; Kusuma, *Lahirnya Undang-Undang Dasar 1945*, 160.

¹⁸ Bahar and Hudawati, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Dan Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945-22 Agustus 1945*, 101-102; Kusuma, *Lahirnya Undang-Undang Dasar 1945*, 163-164.

occurred in BPUPK meetings.¹⁹ However, reasonably, they agree that the state was not based on religion or ethnicity in Indonesia. Persuasively, Soekarno proposed principles that all groups could accept. As described above, Pancasila became an umbrella for all. It is not based on one faith or ideology, but at the same time, all groups in Indonesia, either religious or secular, accept Pancasila. This nation-state belongs to all and is for all. Based on Pancasila, the foundation does not place one religion or ethnicity as first-class and others are subordinate.

The founding fathers realized that every group, either religiosity or ethnicity, wanted to make its group higher than others. Muslim groups may have the desire to make themselves the primary among others. Naturally, their ideal societal concept would be proposed as a social-political foundation. Javanese people, as the majority, may have the desire as well. Nevertheless, reasonably, they believe that if they impose that desire, the idea of building an Indonesian nation-state never comes true. Based on this reasonableness, they proposed principles that are common denominators instead of imposing their particular value. We can see this reasonable consensus when the founding fathers discussed the controversial seven words (Tujuh Kata) in Jakarta Charter (Piagam Jakarta), “by the obligation to carry out the Islamic sharia for its adherents.” This charter was agreed upon on June 22, 1945, by Panitia Sembilan, and on July 11, when the substance was deliberated in BPUPK, Latuharhary, representing Christian and eastern Indonesia, objected to the formulation, especially to those seven words.

Nevertheless, at that time, although objection was delivered, BPUPK members continued to pass this charter with those seven words. Muslim groups remained to defend the formulation as of June 22. The formulation lasted until August 18, a day after the Indonesian Proclamation. At that time, some persons from eastern Indonesia came to Mohammad Hatta with their previous objection to those seven words, and they warned that the unity of Indonesia in the future could not be guaranteed. Hatta then came to the Muslim group and persuaded them to seek a new formulation that did not contradict their aspiration. Finally, they agree to change these seven words into ‘*Ketuhanan Yang Maha Esa*,’ the principle of belief in God Almighty.²⁰ The change disappointed some Muslim groups, but Hatta and others were convinced that the change did not contradict Islamic values.

This achievement is very historic. Reformulation from ‘by the obligation to carry out Islamic sharia for its adherents’ into ‘belief in God almighty’ was an accommodation

¹⁹ Kusuma, *Lahirnya Undang-Undang Dasar 1945*, 19–24; Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila*, 23–39; Yudi Latif, “The Religiosity, Nationality, and Sociality of Pancasila: Toward Pancasila through Soekarno’s Way,” *Studia Islamika* 25, no. 2 (2018): 226, <https://doi.org/10.15408/sdi.v25i2.7502>; Ahmad Syafii Maarif, *Islam Dan Pancasila Sebagai Dasar Negara: Studi Tentang Perdebatan Dalam Konstituante* (Bandung: Mizan, 2017), 148–150. Endang Saifuddin Anshari, *Piagam Jakarta 22 Juni 1945: Sebuah Konsensus Nasional Tentang Dasar Negara Republik Indonesia (1945-1949)* (Jakarta: Gema Insani Press, 1997), 3–11.

²⁰ Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila*, 23–39.

process for all faiths. To some extent, this reformulation is a kind of reasonableness that saves Indonesian unity. This formulation is interesting. On the one hand, they did not reject religion to be active in public life as expressed with public reason; on the other, this nation was officially not a theocratic state. They were not trapped to choose between a secular state (in terms of anti-religion) and a religion-based state. The formulation “belief in God Almighty” is reasonableness because a group of founding fathers finally did not impose their particular concept to be stated on a state basis. They realize that the state belongs to all people of Indonesia and must accommodate all groups. We can see the emphasis on Soekarno’s speech. He emphasized the principle of *Ketuhanan* in a substantive instead of a formalistic way. He stated that we must believe in God in a civilized way (*Ketuhanan yang berkebudayaan*).²¹ The principle must be expressed in civic virtues like toleration of one another. The principle is far from formalistic in terms of placing one doctrine of the group as a basis in the Constitution. The way the founding fathers and mothers think of this principle is very substantive to making a polity where a plural society can live together.

We can also see the spirit of reasonableness in Constitutional Court decision no. 97/PUU-XIV/2016, which annulled the 2006 and 2013 Law of Population Administration (Administrasi Kependudukan/Adminduk) articles 61 and 64. The cancellation was because the provisions in the Adminduk law were not following the values of equality and anti-discrimination.²² The Constitutional Court considered that because the implementation of the Adminduk law articles 61 and 64 had resulted in discriminatory acts against adherents of local believers, these articles must be annulled. These articles do not align with higher principles, namely the articles in the Constitution of the Republic of Indonesia.²³ This decision shows a spirit of reasonableness in the Indonesian Constitution. However, in the practice of law and policy in Indonesia, we often witness human rights violations against minority groups in Indonesia, as we will show in several challenges to the overlapping consensus in Indonesia.

In the context of the principles of Pancasila, we also need to state that these principles are not values that disconnect from religious views, especially Islam. We emphasize this group because Muslims are the majority in Indonesia, and it is normal if they desire to make their ideal view a social-political foundation in this nation-state, as in many new

²¹ Soekarno, *Tjamkan Pantja Sila*, ed. Amin Arjono (Jakarta: Panitia Nasional Peringatan Lahirnya Pancasila, 1958); Bahar and Hudawati, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Dan Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945-22 Agustus 1945*; Kusuma, *Lahirnya Undang-Undang Dasar 1945*.

²² Mahkamah Konstitusi Republik Indonesia, “Putusan NO. 97/PUU-XIV/2016” (2016), 130–153; Uli Parulian Sihombing, “Penafsiran Atas Makna Agama Di Dalam Undang-Undang Dasar 1945 Menurut Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016 Dan Nomor 140/PUU-VII/2006,” *Jurnal Konstitusi* 16, no. 4 (2019): 692, <https://doi.org/10.31078/jk1641>; Shandy Harsyahwardhana, “Akibat Hukum Putusan MK No. 97/PUU-XIV/2016 Tentang Judicial Review UU Administrasi Kependudukan Terhadap Penghayat Aliran Kepercayaan,” *Arena Hukum* 13, no. 2 (2020): 383–384.

²³ Mahkamah Konstitusi Republik Indonesia, Putusan NO. 97/PUU-XIV/2016, 133–136.

nation-states in which Muslims are the majority. Nevertheless, Pancasila is not a religion in terms of Islam, and at the same time, Islamic values do not contradict Pancasila. Some Muslim scholars and clerics have written that Pancasila and the Indonesian Constitution are appropriate to Islamic values.²⁴ In defining reasonableness, Rawls does not see the idea of public reason as something disconnecting from comprehensive doctrines, especially religion. We can see the case of Martin Luther King, who proposed civil rights in America, inspired by his faith. What he has proposed has legitimacy because it is formulated reasonably.²⁵ So do all-comprehensive doctrines so far formulated reasonably. It is legitimate for all comprehensive doctrines to propose their values to be a social-political foundation so far in a substantive way. In Pancasila, we see that the principles of social justice, humanism, deliberative democracy, and unity are not something disconnected from comprehensive doctrines in Indonesia. They are or may be inspired by comprehensive doctrines but are relatively delivered reasonably.

b. Political Conception of Justice in the Constitution

To see the political conception of justice in Pancasila and the Indonesian Constitution, we need to explore whether they absorb or contain two principles of justice. The first principle is equal liberty for all without exception. The second principle is fair equality of opportunity and the most significant benefit for the least advantaged. Suppose we discern the deliberations among BPUPK members, UUD 45, and the amended Constitution. In that case, we can conclude that these two principles are stated, although they mean differences in understanding the primary of both. To Rawls, equal liberty is the first principle, whereas, to the Indonesian Constitution, collectivism or “*gotong royong*” (cooperation) is the first. We can find this spirit in the discussions among BPUPK members. In UUD 45, individual freedom was accepted as it did not contradict Indonesian collectivism (*kekeluargaan*). The value of ‘*kekeluargaan*’ is the most rooted in Indonesian society, and this value is much more connected to socialism and collectivism.

Specific statements guaranteeing civil and political rights in UUD 45 are rarely found, except in Article 28 (before the amendment). In comparison, statements guaranteeing social rights can be found in many articles. However, it does not mean that Pancasila and UUD 45 do not contain civil and political rights protection. In his speech on June 1, Soekarno emphasized the principle of equal citizenship by stating:²⁶

²⁴ Munawir Sjadzali, *Islam Dan Tata Negara: Ajaran, Sejarah Dan Pemikiran* (Jakarta: UI-Press, 1990); Abdurrahman Wahid, *Islam Kosmopolitan, Nilai-Nilai Indonesia & Transformasi Kebudayaan* (Jakarta: The Wahid Institute, 2007); Nurcholish Madjid, *Islam, Kemodernan Dan Keindonesiaan* (Bandung: Penerbit Mizan, 1987); Masdar F. Mas’udi, *Syarah Konstitusi UUD 1945 Dalam Perspektif Islam* (Jakarta: Pustaka Alfabeta and LaKIP, 2010); Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila*; Yudi Latif, *Wawasan Pancasila: Bintang Penuntun Untuk Pembudayaan* (Bandung: Mizan, 2020).

²⁵ Freeman, Rawls, 382–383; Troy Dostert, *Beyond Political Liberalism: Toward a Post-Secular Ethics of Public Life* (Notre Dame: University of Notre Dame Press, 2006), 157; 179; 187–188.

²⁶ Bahar and Hudawati, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Dan Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945-22 Agustus 1945*, 92; Kusuma, *Lahirnya Undang-Undang Dasar 1945*, 156.

“First of all, brothers and sisters, I ask: Do we want to establish an independent Indonesia for one man or a group? If an independent Indonesia is just a formal name in which it belongs to one man to give power to a rich group and give power to a group of nobles, do we mean that? Of course not! Neither those who are called nationalists here nor those who are called Muslim faction have agreed that it is not such a country that we mean. We want to establish a country ‘all for all.’ Not for one person, not for one group, neither the aristocrats nor the rich, but ‘all for all.’”

This spirit is essential to be underlined. Independent Indonesia (Indonesia Merdeka) does not belong to one group or man. Here, the vision is very modern in that the state is based on the republic principle, “all for all.” Moreover, this nation-state does not belong to the majority group in religious affiliation or ethnicity. The state stands for all citizens. In his speech at BPUPK, Soekarno said that Indonesia does not belong to the proletariat group like the Soviet Union. This statement shows a progressive vision to build Indonesia where all citizens can stand equally. The ideal formulation of citizenship is in Article 26 [1]: *“Citizens shall consist of indigenous Indonesian people and persons of foreign origin who have been legalized as citizens in accordance with the law.”* We can also find the principle of equality before the law in Article 27 [1]: *“All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.”*²⁷

Another fundamental thing that could be seen as the political conception of justice in the Constitution is the guarantee of fundamental rights like freedom of association and expression. The discussion on these rights was surrounded by polemic among members of BPUPK. Indeed, the spirit of the founding fathers at that time was to build a collectivist state (*negara kekeluargaan*) which is the institutionalization of “*Gotong Royong*” values. These values are connected to collectivism. Therefore, we can see that the founding fathers’ attention to citizens’ freedom regarding individual rights is not too big. The debate regarding individual freedom among the founding fathers took place on July 15, 1945. Soepomo assumed that the inclusion of individual freedom rested on the spirit of individualism. In his view, if we included individual freedom, the inclusion would have contradicted the model of “*negara kekeluargaan*” built. Soekarno agreed with Soepomo’s view in this matter, although he tried to propose an alternative to make the Declaration of Rights in a “family atmosphere.”²⁸

On the other side, for various reasons, M. Yamin, Agus Salim, Mohammad Hatta, and Soekiman saw the urgency of affirming this fundamental freedom of citizens in the Constitution. Hatta proposed a stricter guarantee of the rights to associate, assemble, and express opinions in the Constitution to prevent the potential abuse of power in the name of family principles in the future. While he indeed agreed with the spirit of “*negara*

²⁷ Indonesia, “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (1945).

²⁸ Latif, *Negara Paripurna: Historisitas, Rasionalitas Dan Aktualitas Pancasila*, 29–32.

kekeluargaan” and strongly opposed individualism, he argued that the affirmation of fundamental freedom needs to be explicitly stated in the Constitution to avoid the possibility of power abuse. He advocated for a “Rechtstaat,” in which the state is based on the rule of law, rather than a “Machtstaat,” in which power could be uncontrollably abused. The debate finally led to a compromise. The compromise could be found in Article 28 of UUD 1945, which guarantees freedom of association, assembly, and expressing opinions verbally and in writing.²⁹ This article is the only article that guarantees the freedom of citizens to have opinions and associations, even though the explanation on this matter is further elaborated in the law. We could find more pervasive support for human rights in Konstituante meetings in 1958. However, the agreement to support it more in the Indonesian Constitution could not happen because the Konstituante Assembly was then dissolved by President Soekarno’s Decree in 1959.³⁰ After the reformation in 1998, members of MPR (*Majelis Permusyawaratan Rakyat/People’s Consultative Assembly*) saw the urgency to make a detailed statement on human rights when they amended UUD 1945.

The following principle of justice is the protection of the weakest groups, i.e., the least advantaged. This principle is not difficult to find in the Indonesian Constitution. We can say that this is the fundamental spirit of the founding fathers to build Indonesia. In the Preamble, the state aimed “...to form a government...which shall protect the people and the land and its territorial integrity that has been struggled for, and to improve public welfare...” The people’s sovereignty in Indonesia is based on togetherness and collectivism. Collectivism has become Indonesian people’s primary social character, contrary to individualism.³¹ The founding fathers understood that the goals and responsibilities of the state are to make public welfare happen as stipulated in the Constitution, Articles 33 and 34 concerning the national economy and social welfare.³² We can also see that goal in Article 27 concerning the right to a job and a humane livelihood.³³ Through these articles, the state must guarantee social welfare in guarantees of employment, life, and health that are appropriate and humane to all citizens.

In those articles, there are two principles to be emphasized. The first is the fair distribution of benefits, and the second is economic democracy.³⁴ Based on these principles,

²⁹ Latif, 32–33.

³⁰ Adnan Buyung Nasution, *Aspirasi Pemerintahan Konstitusional Di Indonesia: Studi Sosio-Legal Atas Konstituante 1956-1959* (Jakarta: Grafiti, 2009), xxxii–xxxiii; Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca and London: Cornell University Press, 1962), 597–608.

³¹ Sri-Edi Swasono, *Kebersamaan Dan Asas Kekeluargaan* (Jakarta: UNJ Press, 2005), 1; Mohammad Hatta, *Membangun Ekonomi Indonesia: Kumpulan Pidato Ilmiah*, ed. I. Wangsa Widjaya and Meutia Farida Swasono (Jakarta: Inti Idayu Press, 1985), 5–6.

³² Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

³³ Majelis Permusyawaratan Rakyat Republik Indonesia..

³⁴ M. Dawam Rahardjo, *Ekonomi Pancasila: Jalan Lurus Menuju Masyarakat Adil Dan Makmur* (Yogyakarta: Aditya Media bekerjasama dengan Pusat Studi Ekonomi Pancasila, UGM, 2004), 23–29; Mubyarto, *Amandemen Konstitusi Dan Pergulatan Pakar Ekonomi* (Yogyakarta: Aditya Media, 2001), 11.

the state must intervene through regulations or economic governance so that economic actors can contribute to prosperity. Historically and practically, there is no economic governance without state intervention. Even in capitalist countries, intervention is always there. What distinguishes one country is the level of intervention, deep or shallow. In the case of Indonesia, the state constitutionally plays a role in creating equitable economic governance. The Constitution states guidelines to realize economic justice. What the Constitution means by economic justice is an economic system that guarantees the fundamental rights of all people and provides protection for the weakest or the least advantaged.

Confirmation of protection for the weakest group can be seen in Article 34, as stated before. The Constitution before the amendment read: “*Impoverished persons and abandoned children shall be taken care of by the state.*” After the amendment, the article contained four sub-articles. The original becomes sub-article 1, while the following three are: (1) The state shall develop a system of social security for all people and shall empower the inadequate and underprivileged in society in accordance with human dignity; (2) The state shall have an obligation to provide sufficient medical and public service facilities; (3) Further provisions regarding the implementation of this article shall be additionally regulated by law. The protection and guarantee of a humane life for a vulnerable community manifest the principle of egalitarianism. As the main initiator of this idea, Hatta referred to this concept as a model of “Indonesian socialism.” In simple terms, he sees Indonesian socialism as an idea rooted in the collective spirit, much like what Indonesian village people have always practiced.³⁵

Based on this consensus, we can argue that the founding fathers’ consensus in 1945 can be categorized as an overlapping consensus. It was deliberated reasonably because the people have not enforced the value of one comprehensive doctrine to be stated in the Constitution. Although some BPUPK members desired to state Islamic sharia obedience in the Constitution, they finally agreed to change with inclusive formula, i.e., the belief in God Almighty “*Ketuhanan Yang Maha Esa.*” The agreement is reasonable because the formula includes all religions and beliefs as equal, not as subordinate. To some extent, it has saved Indonesian existence up to now. The Indonesian founding fathers’ consensus also contains two principles of justice, as stated by Rawls. Indeed, the Constitution, in the beginning, has paid more attention to collectivism (*Negara Kekeluargaan*) rather than to individual freedom. However, based on experiences in Soekarno and Soeharto eras, it was amended to pay more attention to individual freedom. Now, individual freedom is part of the most essential in the Indonesian Constitution.

³⁵ Mohammad Hatta, *Persoalan Ekonomi Sosialis Indonesia* by Mohammad Hatta, 2nd ed. (Jakarta: Djambatan, 1967), 13, <https://www.goodreads.com/book/show/8380270-persoalan-ekonomi-sosialis-indonesia>.

2. The Challenges of Indonesian Overlapping Consensus

The fulfillment of overlapping consensus criteria in Pancasila and the Indonesian Constitution is a unique achievement if we compare it to other Muslim countries in the world at the same time.³⁶ There were two main models with the emergence of nation-states in the Muslim world in the twentieth century. The first model was based on Islamic roots, making Islam the foundation of the new nation-state. Second, Islam was discarded as the new nation-state was secularized, similar to Western countries. The Indonesian founding fathers took the middle way. On one side, they did not make Islam the basis, although Muslims had claimed the majority at the time, and on the other, they did not make Indonesia secularized as Western countries. As we explained, the founding fathers agreed on Pancasila as a state basis. They also include the values of a political conception of justice that guarantee equal liberty for all citizens and protection for the least advantaged. This achievement effectively has bound the Indonesian people to be one nation-state, although they have plural comprehensive doctrines.

However, threats to the consensus have occurred in Indonesian history. One of them is the Islamization movement carried out by some Islamist groups. It will be more when Indonesian society is more Islamized than before. As shown by M. C. Ricklefs, Indonesian society, especially Javanese people, is more Islamized deeply, and there is no possibility of reversing it.³⁷ Of course, Indonesia's term "Islamization" is not always understood similarly. Some Indonesian Muslims do not object to this term as long as it is understood substantively. However, others demand that the term be understood formally. In the future, directly or not, it will impact the principle of freestanding in the Constitution. Years after the reformation, with political decentralization, we have seen the phenomena of "*Perda Syari'ah*" (shari'a district laws) produced by local parliaments.³⁸ Some discriminative laws in "*Perda Syari'ah*" have not been canceled, although they did not comply with the Constitution.³⁹ Efforts to Islamize the law and Indonesian people's lives have continued in broader areas.⁴⁰

³⁶ Myengkyo Seo, "Defining 'religious' in Indonesia: Toward Neither an Islamic nor a Secular State," *Citizenship Studies* 16, no. 8 (December 2012): 1045–1058, <https://doi.org/10.1080/13621025.2012.735028>; Al Makin, "Not a Religious State': A Study of Three Indonesian Religious Leaders on the Relation of State and Religion," *Indonesia and the Malay World* 46, no. 135 (May 4, 2018): 95–116, <https://doi.org/10.1080/13639811.2017.1380279>.

³⁷ M. C. Ricklefs, *Mengislamkan Jawa: Sejarah Islamisasi Di Jawa Dan Penentangannya Dari 1930 Sampai Sekarang* (Jakarta: Serambi, 2013), 729–730.

³⁸ Michael Buehler and Dani Muhtada, "Democratization and the Diffusion of Shari'a Law: Comparative Insights from Indonesia," *South East Asia Research* 24, no. 2 (2016): 261–282, <https://doi.org/10.1177/0967828X16649311>; Michael Buehler, *The Politics of Syari'a Law: Islamist Activists and the State in Democratizing Indonesia* (Cambridge: Cambridge University Press, 2016).

³⁹ Kyle Knight, "Presiden Jokowi Gagal Menghapuskan Hukum Syariah Yang Kejam | Human Rights Watch," accessed December 13, 2020, <https://www.hrw.org/id/news/2017/04/13/302313>.

⁴⁰ Najwa Abdullah and Mohamed Nawab Mohamed Osman, "Islamisation in the Indonesian Media Spaces New Sites for a Conservative Push," *Journal of Religious and Political Practice* 4, no. 3 (September 2, 2018): 214–232, <https://doi.org/10.1080/20566093.2018.1525894>; Robert W. Hefner, "Which Islam? Whose Shariah? Islamisation and Citizen Recognition in Contemporary Indonesia," *Journal of Religious and Political Practice* 4, no. 3 (September 2, 2018): 278–296, <https://doi.org/10.1080/20566093.2018.1525897>.

Thus, if we identify the threat to the political conception of justice in Indonesia, we can identify the unreasonable groups' existence as the real threat. The Islamist groups that continue to fight for the Islamization agenda in the Constitution, laws, policies, and all aspects of societal and political life threaten the idea of pluralism in Indonesia. They are present in political parties, bureaucracies, religious organizations, and others. They have real power either in government or society. They have not been able to change the Constitution, but they have included many agendas of Islamization in government policies.⁴¹ Indeed, their existence is not without social and economic backgrounds. Some observers say that their phenomena are the product of the failure to get social and economic resources.⁴² As occurred in recent times, identity politics is created by politicians, business people, and religious leaders. In recent findings, Jeremy Menchik shows that the two major Muslim organizations, Nahdlatul Ulama (NU) and Muhammadiyah, tend to fall into actions that are anti-pluralistic values.⁴³ Most of the followers of NU and Muhammadiyah tend to reject the existence of Ahmadiyah, who are considered deviant and commit defamation of religion. In Menchik's argument, these actions are inconsistent with democratic values that respect freedom of religion and belief.⁴⁴

In Indonesia, the unreasonable groups are not only those from religious groups. The unreasonable groups are the groups that tend to impose their comprehensive doctrine to be the basis of political life. In addition to religious groups, these unreasonable groups can come from ethnic groups who want to impose their views to become the social foundation. This group is considered a threat because it wants to undermine political values in the overlapping consensus. Political values are undermined to be transformed into particular values as contained in a comprehensive doctrine. In the Indonesian context, the domination of certain ethnicities in political life is a threat, as with the domination of one religion. Pancasila and the Indonesian Constitution do not place certain religions and ethnicities as the foundation of the state. The occupation of certain religions and ethnicities in public life is a severe threat.

Then we also need to highlight the problem of implementing principles of justice in the Constitution. There are two fundamental weaknesses: the enforcement of civil and political rights and the problem of implementing social justice. Political rights have been violated since the Guided Democracy (*Demokrasi Terpimpin*) in the Soekarno era. Although Soekarno was

⁴¹ David M. Bouchier, "Two Decades of Ideological Contestation in Indonesia: From Democratic Cosmopolitanism to Religious Nationalism," *Journal of Contemporary Asia* 49, no. 5 (April 8, 2019): 3, <https://doi.org/10.1080/00472336.2019.1590620>.

⁴² Vedi R. Hadiz, "A New Islamic Populism and the Contradictions of Development," *Journal of Contemporary Asia* 44, no. 1 (January 2014): 127, <https://doi.org/10.1080/00472336.2013.832790>; Vedi R. Hadiz, "Towards a Sociological Understanding of Islamic Radicalism in Indonesia," *Journal of Contemporary Asia* 38, no. 4 (2008): 639, <https://doi.org/10.1080/00472330802311795>.

⁴³ Jeremy Menchik, "Moderate Muslims and Democratic Breakdown in Indonesia," *Asian Studies Review* 43, no. 3 (July 3, 2019): 416, <https://doi.org/10.1080/10357823.2019.1627286>.

⁴⁴ Menchik, 7-10.

one of the most important founding fathers and inspired the idea of Pancasila, practically, at the end of his era, he led by avoiding principles of democracy and political liberty. Those who disagreed with the President's conception would be considered anti-revolutionary in his era. Ricklefs said that the personality of Soekarno dominated the Guided Democracy.⁴⁵ Within the framework of democracy, such a system is a severe threat. Soekarno's figure was too dominant, so no one dared to criticize his view. The violation of political rights then mounted in Soeharto's Orde Baru. With the development agenda proposed by the Orde Baru government, Soeharto silenced critics of the government's development policies. Orde Baru was very tough on groups that were considered politically different. Political freedom, freedom of the press, and freedom of expression are severely restricted. People at that time felt Orde Baru was a very repressive government.⁴⁶

These experiences inspired the new parliament in the reformation era to amend Undang-undang Dasar 1945, especially regarding civil and political rights. The protection of these rights is guaranteed in the amended Constitution. Nevertheless, although the Constitution was amended to protect civil and political rights, Indonesian laws still uphold blasphemy law. Victims of this law are the minority religious groups and those who criticize the social and political policies of the government. The Indonesian Constitution has failed to guarantee the protection of minority religious groups. Cases of Ahmadiyah and Shia in Indonesia reflect the failure. Based on the blasphemy law, the government criminalized these minority groups and deviants.⁴⁷ After the reformation, the blasphemy law (Undang-undang No. 1/PNPS/1965) was reviewed several times at the Constitutional Court, but the lawsuit has consistently failed. The judges viewed the lawsuit as legally weak.⁴⁸ Indeed, the problem between mainstream and non-mainstream in Indonesia is very complex. It is

⁴⁵ M. C. Ricklefs, *A History of Modern Indonesia since c. 1200*, Third Edit (Houndmills: Palgrave, 2001), 312.

⁴⁶ Adrian Vickers, *A HISTORY OF MODERN INDONESIA* (Cambridge: Cambridge University Press, 2005), 169–96; Wijaya Herlambang, *Kekerasan Budaya Pasca 1965: Bagaimana Orde Baru Melegitimasi Anti-Komunisme Melalui Sastra Dan Film* (Serpong, Tangerang Selatan: Marjin Kiri, 2013), 301–310; Colin Brown, *A Short History of Indonesia* (Crows Nest: Allen & Unwin, 2003), 218–224.

⁴⁷ Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," *Asian Journal of Comparative Law* 3 (2008): 1–27, <https://doi.org/10.1017/S2194607800000144>; Kari Telle, "Faith on Trial: Blasphemy and 'Lawfare' in Indonesia," *Ethnos* 83, no. 2 (March 15, 2017): 371–91, <https://doi.org/10.1080/00141844.2017.1282973>; Melissa A. Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7 (2011): 1–46, <https://doi.org/10.1017/S2194607800000582>; Melissa Crouch, "Asia-Pacific: Ahmadiyah in Indonesia: A History of Religious Tolerance under Threat?" *Alternative Law Journal* 36, no. 1 (March 1, 2011): 56–57, <https://doi.org/10.1177/1037969X1103600115>; A'an Suryana, "Indonesian Presidents and Communal Violence against Non-Mainstream Faiths," *South East Asia Research* 26, no. 2 (April 15, 2018): 147–160, <https://doi.org/10.1177/0967828X18769393>; Andi Muhammad Irawan, "'They Are Not Muslims': A Critical Discourse Analysis of the Ahmadiyya Sect Issue in Indonesia," *Discourse & Society* 28, no. 2 (March 1, 2017): 162–181, <https://doi.org/10.1177/0957926516685462>.

⁴⁸ Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 140/PUU-VII/2009" (2009), 306–307; Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 84/PUU-X/2012" (2012), 147–148; Mahkamah Konstitusi, "Putusan Nomor 76/PUU-XVI/2018" (2018), 35–36; Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 5/PUU-XVII/2019" (2019), 1–2; Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 56/PUU-XV/2017" (2017), 540–542.

not only about the theological problem.⁴⁹ However, by the blasphemy law, many minority groups often become victims.

Another weakness is the problem of the implementation of social justice.⁵⁰ The words in Article 34 are very idealistic. The article states, “*Impoverished persons and abandoned children shall be taken care of by the state.*” In contrast, we see many impoverished and deprived people being ignored. They do not have social security to live with dignity. The state must place these idealistic words as guidelines. The government must do its best to make policies comply with the ideal justice. If not, the deprived people will be worse, and they can transform the disappointment to challenge the overlapping consensus. Radical religious leaders and opportunist politicians can address the identity issue because of social and economic inequality. Some policies in the last decades can be a breakthrough, like the national social security system (Sistem Jaminan Sosial Nasional/SJSN), which transforms health services to be better than before.⁵¹ The implementation of the policy opened more comprehensive access to health for all people, but as Lusie Wardani and team show, healthcare infrastructures have not been distributed across Indonesia.⁵² Sufficient facilities of health services for people are essential to guarantee the success of the policy. However, to protect impoverished people with human dignity, the SJSN policy is not sufficient. They

⁴⁹ Zakiyuddin Baidhawiy, “Building Harmony and Peace through Multiculturalist Theology-based Religious Education: An Alternative for Contemporary Indonesia,” *British Journal of Religious Education* 29, no. 1 (2006): 15–30, <https://doi.org/10.1080/01416200601037478>; Lyn Parker, “Religious Education for Peaceful Coexistence in Indonesia?,” *South East Asia Research* 22, no. 4 (December 1, 2014): 487–504, <https://doi.org/10.5367/SEAR.2014.0231>; Paul Marshall, “The Ambiguities of Religious Freedom in Indonesia,” *The Review of Faith & International Affairs* 16, no. 1 (January 2, 2018): 85–96, <https://doi.org/10.1080/15570274.2018.1433588>; Robert W. Hefner, “THE STUDY OF RELIGIOUS FREEDOM IN INDONESIA,” *The Review of Faith & International Affairs* 11, no. 2 (June 2013): 18–27, <https://doi.org/10.1080/15570274.2013.808038>; Ben K.C. Laksana and Bronwyn E. Wood, “Navigating Religious Diversity: Exploring Young People’s Lived Religious Citizenship in Indonesia,” *Journal of Youth Studies* 22, no. 6 (July 3, 2018): 807–823, <https://doi.org/10.1080/13676261.2018.1545998>.

⁵⁰ Mohammad Zulfan Tadjoeuddin et al., “Inequality and Violent Conflict: New Evidence from Selected Provinces in Post-Soeharto Indonesia,” *Journal of the Asia Pacific Economy* 26, no. 3 (2021), <https://doi.org/10.1080/13547860.2020.1773607>.

⁵¹ Nafsiah Mboi, “Indonesia: On the Way to Universal Health Care,” *Health Systems & Reform* 1, no. 2 (2015): 91–97, <https://doi.org/10.1080/23288604.2015.1020642>; Edward Aspinall, “Health Care and Democratization in Indonesia,” *Democratization* 21, no. 5 (February 26, 2014): 803–823, <https://doi.org/10.1080/13510347.2013.873791>; Susanti Susanti et al., “What Makes Indonesians Satisfied With Their Health? A Multilevel Analysis,” *SAGE Open* 12, no. 3 (July 1, 2022), <https://doi.org/10.1177/21582440221121722>.or JKN

⁵² Lusie Wardani and Yohanna M.L. Gultom, “Health Care Infrastructure Limits the Ability of the Poor to Utilize National Health Insurance: The Case of Indonesia,” *Asia-Pacific Journal of Public Health* 34, no. 1 (January 1, 2022): 137–139, <https://doi.org/10.1177/10105395211046503>; Ratna Dwi Wulandari et al., “Socioeconomic Disparities in Hospital Utilization Among Female Workers in Indonesia: A Cross-Sectional Study,” *Journal of Primary Care & Community Health* 13 (January 24, 2022), <https://doi.org/10.1177/21501319211072679>.

need more, like good education, housing, and economic facilities, to improve their lives.⁵³ These guarantees are fundamental to protecting human dignity, as the Constitution promised.

It is crucial to overcome these challenges to save the consensus. The political conception of justice in the Indonesian Constitution has meaning if it guides government policies. Unfortunately, there is a profound disparity between the idealistic constitution and government policies. The challenges described above are severe challenges to Indonesia's future. Failure to respond to these challenges will make Indonesian social unity very fragile. The government must strive to build effective communication in a diverse society, guarantee freedom, and create social justice. If the government succeeds in realizing these efforts, the risk of destroying Indonesian social unity can be reduced. In line with the affirming constitutional mandate that Indonesia is a rule-of-law country, then one of the essential principles is the guarantee of the authority of an independent judiciary, free from the influence of other powers to administer justice to enforce law and justice, among others, through the critical role of the Constitutional Court. We have to emphasize here the vital role of the Constitutional Court in canceling laws that are not in line with the Constitution based on the submission of a lawsuit application to the Constitutional Court. It is a crucial role of the court that can maintain Indonesia's overlapping consensus.⁵⁴

C. CONCLUSION

The article concludes here that first, historically, we can see that the founders of Indonesia have reasonableness in addressing Indonesian diversity, and second, with a different emphasis, they have made a consensus that guarantees principles of justice, namely equality for all citizens and the protection of the least advantaged groups. Nevertheless, we underline that Indonesia's overlapping consensus still faces severe challenges that must be overcome, like unreasonable groups, the avoidance of civil liberty, and the failure to guarantee social justice. Thus, to protect overlapping consensus, reasonable groups must be more active in the public sphere, and it is also crucial to guarantee the role of the Constitutional Court in examining laws that are not in line with the Constitution. Among

⁵³ Elisa Brewis, "Fair Access to Higher Education and Discourses of Development: A Policy Analysis from Indonesia," *Compare: A Journal of Comparative and International Education* 49, no. 3 (May 4, 2018): 453–470, <https://doi.org/10.1080/03057925.2018.1425132>; Mega Wanti et al., "The Role of Social Factors in Access to and Equity in Higher Education for Students with Low Socioeconomic Status: A Case Study from Indonesia," *Equity in Education & Society* 2, no. 1 (November 2022), <https://doi.org/10.1177/27526461221140570>; Sri Irianti and Puguh Prasetyoputra, "Rural–Urban Disparities in Access to Improved Sanitation in Indonesia: A Decomposition Approach," *SAGE Open* 11, no. 3 (July 6, 2021), <https://doi.org/10.1177/21582440211029920>; Irene I. Hadiprayitno, "Food Security and Human Rights in Indonesia," *Development in Practice* 20, no. 1 (February 2010): 122–130, <https://doi.org/10.1080/09614520903447437>; Dalhar Susanto et al., "The Minimum Space Standard: Proposing New House Floorplan on Dwelling Activities in Greater Jakarta Region, Indonesia," *Urban, Planning and Transport Research* 10, no. 1 (December 31, 2022): 373, <https://doi.org/10.1080/21650020.2022.2093790>.

⁵⁴ Republik Indonesia, "Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman," (2009).

the homework of the court are Undang-undang PNPS 1965, which is not in line with the principle to guarantee citizens' fundamental rights, and legislature members (DPR) must revise the law to be according to the principle.

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