



UNDERSTANDING THE STATE CIVIL APPARATUS' NEUTRALITY IN GENERAL ELECTIONS FROM THE DIGNIFIED JUSTICE JURISPRUDENCE PERSPECTIVE

Jeferson Kameo

Universitas Kristen Satya Wacana Salatiga, Center Java, Indonesia

jefersonkameo@gmail.com

Teguh Prasetyo

Universitas Pelita Harapan Tangerang, West Java, Indonesia

teguh.prasetyo@uph.edu

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ABSTRACT

The fundamental issue in every general election, for instance the Indonesia's 2024 election, is the existence of stipulated principle of neutrality of the State Civil Apparatus (SCA) in election laws. The principle has been in conflict with the highest values which should govern it. The purpose of this research is to describe and discuss the idea or effective legal theory for solving the conflict of SCA with the highest values that should govern it. The research applied the Indonesian legal theory known as Dignified Justice to navigate the finding. The methods used is pure legal research or the normative legal research. It has found that the root problem of violations of the principle of SCA in, for instance the 2024 is that election laws is in conflict with the Pancasila, which has long been understood as not as the highest law, but an ideology, while an ideology has been argued as a manipulative tool of a ruling elite to control its subject. In order to solve the problem, this study proposes that Pancasila should be treated as containing the highest values or the inner morality of law to govern the principle of SCA stated in the country's election laws.

A. INTRODUCTION

This paper contains philosophical answers to the following fundamental questions. What does the meaning of the neutrality of the State Civil Apparatus (ASN or SCA) in general elections (elections)? What is the root¹ cause of the problem that there is still violations of the principle of

1 Philosophy or Jurisprudence and legal science called Dignified Justice teaches that: philosophizing law or thinking to answer questions in life (legal life) such as the main question raised above must be done in searching for the root (*radix/rodex*) cause of a problem. According to Professor Teguh Prasetyo and Professor Abdul Halim Barkatullah: There are several characteristics of thinking philosophically, namely, among others: thinking radically. Radical is the same as the Greek word (*radix/rodex*), that is, root. Thinking radically is thinking down to the roots cause, not just understanding something on the surface. To philosophize, therefore means to think until one could find the essence, essentialia or get to the substance one are thinking about.

the neutrality of SCA in elections, and criminality in the form of violations against the principle of neutrality abound, for instance in the 2024 general elections; How does the legal regulations regarding the neutrality of the SCA in elections? ² Why does the neutrality of the principle of SCA is needed to be held and obeyed? All of these main questions are projected on the neutrality of the SCA in all general elections.

As the questions above are philosophical, it is logical for one to suggest that the answers to the one main question can also be interpreted by nature as philosophical answers to all the problems. Likewise, considering that those questions are philosophical, this activity commencing for answering one particular question, should also be regarded as essentially the same, as the philosophical activities for the rest. By philosophy in this research article, it is understood by the authors as a scientific endeavor (a jurisprudence), to find answers for the fundamental questions above. Based on such an idea, this scientific endeavor might also be referred to as "philosophizing on the neutrality of SCA in general elections". The scope of the activity of "philosophizing the elections" is already been narrowly tailored, only revolving around the issue of the principle of SCA neutrality in general elections, including the 2024 Indonesia's general elections.

Formulating it in similar term, "philosophizing general elections" activity requires an election philosophy. In this paper, election philosophy uses are also called legal science. They are concepts used interchangeably, and with essentially the same meaning, namely legal theory or jurisprudence³. The legal theory referred to is the original legal theory of the Indonesian nation. This Jurisprudence have been discovered by one of the children of the Indonesian nation –the second author of this article— not simply made or copied from outside the Pancasila Legal System, especially copied of legal theories from the West⁴ which some has said to have hegemonized legal thought of this sovereign Indonesian nation for not less than 78 years. The theory of Dignified Justice, or the Dignified Justice Jurisprudence have been made shortly as "Dignified Justice". This theory is premised on the Pancasila as the Indonesian rule of law. It is a Jurisprudence that explain the ultimate aim of the law and legal system is to make human being humane (*nguwongke uwong*)⁵, the newly formulated theoretical contribution to the world of legal science.

2 Teguh Prasetyo and Abdul Halim Barkatullah, *Philosophy, Theory, & Law: Thoughts Towards a Just and Dignified Society*, vols., 1st Edition. (Jakarta: Raja Grafindo Persada, 2012).

3 Teguh Prasetyo, *Dignified Justice Perspective of Legal Theory*, vols. (Bandung: Nusa Media, 2015); Teguh Prasetyo, *Law and Legal Theory Perspective of the Dignified Theory of Justice*, vols. (Bandung: Nusa Media, 2020).

4 It should be underlined here, that the use of the original theory of the Indonesian nation (theory of Dignified Justice or Dignified Justice Jurisprudence) as stated above, should not be interpreted as a sign of being anti-Western or any legal ideas from other civilised nations. Dignified Justice Jurisprudence, as the name suggests, continues to respect the theories of the civilized Western or other Nation, as long as these theories have been filtered by Pancasila as the Indonesian *Volkgeist*, and the rule of law.

5 Prasetyo, *Dignified Justice Perspective of Legal Theory*; Prasetyo, *Law and Legal Theory Perspective of the Dignified Theory of Justice*.

The philosophizing activity of elections in this paper, therefore, used or are navigated by Dignified Justice Jurisprudence. As stated above, the said philosophizing election activity has been made limited. That is, it is only carried out in the context of answering questions related to the principle of neutrality of the SCA in general elections, including in the 2024 Simultaneous Elections (2024 Election). Hence, the rationalization of the formulation of the title of this article as stated above, namely: "*Understanding State Civil Apparatus' Neutrality in General Elections from the Dignified Justice Jurisprudence Perspective*".

It should be further stated here, that in doing philosophy according to the Dignified Justice Jurisprudence, the "what question", as seen above, is categorized as an ontological question. Another question, in the same philosophical perspective, which begins with the formulation of the question word "how," is called an epistemological question. Whereas question, also in the same philosophical realm, namely question that begins with the word "why" or phrase similar to it, such as begins with "for what," is referred to as an axiological question that are construed to seek the goal or purpose of the principle of SCA neutrality.

According to the Dignified Justice Philosophy, or the Indonesian Jurisprudence, the "why" question or "for what" question is a question intended to find the axiology of the principle of neutrality of the SCA in elections. Consequently it is justified to state here that all of the questions above mark the existence of a philosophic activity in this scientific article. In addition, it should also be stated here, that theoretically, the above questions describe a "building"⁶ or the framework of a theory⁷, philosophy, or science in the field of law or jurisprudence (philosophy of law or legal philosophy).

A philosophical "building," structure or framework, which marked this scientific article should be interpreted as a philosophy of law. Since, it at least raises the following important issues. The first important issue is matter of ontology. The second fundamental issue is matter of epistemology. Meanwhile, the third important question is the axiological question. All of the answers to these issues should only be found in the law governing the general elections in a legal system. Philosophically, the authors of this research article believe that all the answers to the questions above, mostly, if not all of them, could be found in the election law, including in this case Pancasila as the highest law, and source of all sources of laws. Based on such a philosophical direction and understanding, the authors of this article argue that, in line with the research method as described below, the election law⁸ can, if not say it has to, be interpreted as the main place (primary legal material), from within it, philosophical answers to all of the above questions must be sought and found.

6 The Building of Legal Theory, Teguh Prasetyo et al., *Dignified Law and Justice: Orientation of Philosophical Thought, Legal Theory and Practice*, Print 1, (Yogyakarta: K-Media, 2022).

7 Teguh et al Prasetyo, *Dignified Law and Justice: Orientation of Philosophical Thought, Legal Theory and Practice*, vols., 1st Print. (Yogyakarta: K-Media, 2022).

8 Law of the Republic of Indonesia No. 7 of 2017 concerning General Elections; and the SCA Law.

This research is relatively different, compare to some previous research, such as the writing of *Rian Sacipto, et al.*⁹ In his article *Sacipto* argued on issue of SCA in relation to the development of the revolution in the digital era. It has been argued that the involvement of the Bureaucracy/State Civil Apparatus in the practice of implementing the General Elections of Regional Heads is a far cry from the principle of neutrality of the SCA.

In this research however, apart from the election law, the issue of supervision, and fostering the principle of neutrality of the SCA Employees, Members of the Indonesian National Armed Forces (TNI), and Members (of the Indonesian National Police (Polri)) remains the responsibility of officials authorities in the respective institutions/agencies, following the laws and regulations governing the institutions/agencies.¹⁰ Although inseparable from such an understanding, according to the Election Law as the main primary legal material in this research, the Election Supervisory Board of the Republic of Indonesia (Bawaslu RI), including the Provincial Bawaslu and Regency/Municipal Bawaslu, as well as the ranks of Election Supervisors under the Bawaslu RI, all has duties related to efforts to help uphold the SCA neutrality principle. However, in many instances, violations to the principle of law are looming large.

The aim of this study is to unearth the root cause of the continuing violations of the principle, which is conflicting norms governing the neutrality of the SCA and harmonize the conflict of the SCA principle with the highest values contained in the Pancasila as the highest law and the primary source of all laws, including the principle of SCA governing general election, including the recently 2024 general election in Indonesia. On top of the aim mentioned above, this study is hoped to acquired benefits that are expected to be used in fulfilling all of the above aims of this study. It would then systemically or philosophically, under the guidance of the theory of Dignified Justice realizing a presence of an increase in synergy, cooperation, harmonization of policymakers, academics, and the role of the community in participatory supervision of the General Election, specifically related to the assurance of obedience to the SCA principle of neutrality.

B. RESEARCH METHODS

The methodology used in this research is normative legal research. As this paper is navigated by the uses a legal philosophy, a navigator called the theory of Dignified Justice or as stated above, the legal research that is used should also be the legal research according to or within the perspective of

9 Rian Sacipto, Binov Handitya, Eta Yuni Lestari. "Neutrality Of The Government Apparatus's Stance In Simultaneous Regional Elections On The Constituitional State Law." *The 2nd International Conference And Call Paper 1*, No. 1 (2020): 266–271.

10 Among other things, for example, in the legislation that was once in effect, namely Regulation of the Election Supervisory Board of the Republic of Indonesia No. 6 of 2018 concerning Supervision of the Neutrality of ASN Employees, TNI Members and Polri Members.

Dignified Justice as well. The Dignified Justice theory recognizes a legal research method known as the pure legal research method¹¹.

The dominant approach referred to in this legal research is the statutory approach. Several other approaches are also important in any legal research, namely the conceptual approach, the philosophical approach, are also used in this study. The collection of legal materials is carried out, mainly by studying primary and secondary legal materials. By primary legal material are applicable laws and regulations, that have permanent legal force.

C. RESULTS AND DISCUSSION

1. The Nature of the Neutrality of SCA in General Elections

Research on primary legal materials, particularly on the Law of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatus (ASN/SCA Law)¹², found a very important formulation of understanding (legal philosophy). Answers to the main questions above were found, to answer the question of what does the meaning of the principle of neutrality of the SCA. The answer in the form of an ontological formulation of SCA principle of neutrality must be related to the norms, governing efforts to achieve national goals as stated in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution). By such an epistemology, the authors of this article have found the answer to that "what question", or the result of the search for ontology to harmonize the conflict of the highest law with the principle of neutrality of the SCA, which has caused considerable confusing in practice, for instance in the 2024 General Election. It has been found that by the term of the principle of the neutrality of SCA in general elections is similar to the meaning of a professional SCA.

Professionalism of the SCA, is the philosophical characteristic of the independent SCA. As stated above, professional SCA is essentially SCA who has the character of being neutral. This formula is found in the provisions of the SCA Law as stated above. The professionalism of the SCA demands that the SCA is free from political intervention. Including in it, is free from ideological intervention and hence, clean from corruption, collusion, and nepotism practices. With such a professional SCA's philosophical condition, the SCA could be considered as neutral or independent and professional SCA. In other words, a neutral SCA is a professional SCA, and simultaneously could also be referred to as the SCA who is having the quality to provide public services for the community and also able to carry out the role as an adhesive instrument for national unity, based on Pancasila as the highest or supreme law of the land, and the 1945 Constitution.

The findings regarding the philosophy (juridical ontology) of the neutrality of the SCA according to the method taught by the theory of

11 Teguh Prasetyo, *Legal Research Methods: A Perspective of Dignified Justice Theory*, vols., 1st Print. (Bandung: Nusa Media, 2019).

12 Rian Sapiro, *Loc. Cit.*

Dignified Justice as just formulated above, can also be seen as the answer to the axiological question. Therefore, the answer to such a question are closely related to the aims of achieving the national goals as formulated in the fourth paragraph of the Preamble of the 1945 Constitution. As suggested in the juridical document (the SCA Law), the SCA must be professional or independent in order that the national goals is achieved. Thus the principle of the independence of the SCA, is an indicator of professionalism of the SCA. This is a value or an ideal. It is part of virtues of the Indonesian State Government mentioned in the Preamble of the 1945 Constitution, and a prerequisite for achieving national goals. As is well known, in the formulation of the Fourth Alenia of the Preamble of the 1945 Constitution it was stated that the Indonesian State Government, which in this case can also be understood as including the SCA, has a very important constitutional task. The constitutional task is to undertaken a command to protect the entire nation of Indonesia and all in the motherland of Indonesia.

Additionally, the axiologies or goals of the Indonesian nation, which are the formulation in the Preamble of the 1945 Constitution as the highest juridical document and must be implemented by the Government of Indonesia, including by the SCA, are to promote public welfare. In addition to these goals, other axiologies also emerged, namely the axiology of educating the nation's life and participating in carrying out world order based on freedom, eternal peace, and social justice.

More fundamentally, all of the axiologies have been formulated in the highest juridical document (Preamble to the 1945 Constitution). They are part of the foundations or premise of the Indonesian State Government. The premise referred to above, is the foundation which in this paper should also be interpreted as including the principle of neutrality of a professional SCA. It was stated that the Government of the State of Indonesia, and thus including in it the SCA has to be professional. By professional is to mean the SCA upholds the values of Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity and Democracy Led by Wisdom in Deliberative Representatives, and by Realizing a Precepts od Social justice for All Indonesian people. Taking these five tenets into account, the ontology of the neutrality of the SCA is none other than the all the values and virtues contain in the Pancasila, as the highest law or the supremacy of law stipulated in the Fourth Alenia of the Preamble to the 1945 Constitution.

Furthermore, the axiology, or the national goals referred to above, which mark the professionalism of SCA, and thus the principle of neutrality of the SCA, is inseparable from the conception or arrangement/structure of Indonesian National Independence. As stated above, an important pillar in the structure or composition of the Indonesian National Independence is found in the Preamble to the 1945 Constitution. It is the philosophy of the Republic of Indonesia, which also recognizes the principle of people's sovereignty. The philosophy of

popular sovereignty or the philosophy of democracy¹³ in the formulation of the Preamble to the 1945 Constitution which is also integrated with the Pancasila. Therefore the Pancasila is certain to be a derivative source, the source of all legal sources¹⁴ that including in it the demand for the SCA to be professional or neutrality. In that sense is also the meaning of the principle of neutrality of the SCA or the professionalism of the SCA which is also defined as respecting the people, hence the democratic SCA.

Unless they are derivations from Pancasila as the highest law, various juridical philosophies that reveal the meaning of the neutrality of the SCA or professionalism of the SCA. Accordingly, it should not be refer to an ideological political propaganda document. Derived references to objectives (juridical axiology¹⁵), the principle of the SCA must originate from Pancasila. And, it is also important to note that the Pancasila in question is the Pancasila that is stipulated in the Fourth Alenia of the Preamble to the 1945 Constitution as the highest juridical document.

Juridical epistemology or legal philosophy in the sense of how to see Pancasila as the highest law as elaborated above, is indeed, has a significant difference from epistemology or how to see pancasila as an ideology. It should be stated here, that pancasila as an ideology was not written in the Fourth Alenia of the Preamble to the 1945 Constitution. Therefore it is not part of the highest juridical document. On the other hand, one of the pancasila as an ideology is found, for example in the speech of the first President of the Republic of Indonesia, Soekarno's, the Proclamator, proposed in the First of June, 1945¹⁶. Pancasila, proposed by Ir Soekarno on the June the 1st 1945, which in fact the pancasila formulated by Ir Soekarno, is the ideological pancasila. It is equivalent or equal to other pancasila¹⁷ formulations, for example, the ideological pancasila put forward by Committee 9, and which is famous for the 5 precepts in the Jakarta Charter.

Taking into account the philosophical understanding mentioned above, the formulation of the Pancasila as the highest law of the Land, namely the formulation of the Pancasila as stipulated in the Fourth Alenia of the Preamble of the 1945 Constitution, is inseparable from the entire substance of the Preamble to the 1945 Constitution. Such a juridical epistemology¹⁸ is of course unique. If, it is compared to general

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- 13 Teguh Prasetyo, *Dignified Elections (Reorientation of New Thoughts on Democracy)*, vols., 1st Printi. (Depok: Raja Grafiika Persada, 2017).
 - 14 Jeferson Kameo and Teguh Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy" *Journal of Legal, Ethical and Regulatory* 24, No. 1 (2021): 1-8.
 - 15 P. Page Lang, "Legal Axiology in The Information Society," *European Proceedings of Social and Behavioural Sciences* 79, :778-783.
 - 16 Politik, Jurnal Wacana. *Jurnal Wacana Politik* 8, No. 2 (2023): 223–234
 - 17 Faisal Ismail. "Religion, State, And Ideology in Indonesia: A Historical Account of the Acceptance of Pancasila as the Basis of the Indonesian State." *Indonesian Journal of Interdisciplinary Islamic Studies (IJIIS)* 1, No. 2 (2018): 19-58.
 - 18 Jakob v. H. Holtermann et. al., "Legal Validity and the Importance of Epistemology for Research on Legal Norms." *iCourts Working Paper Series*, No. 268 (2021)

epistemology¹⁹, which so far views the formulation of Pancasila as separated, or even further has been "taken out" of the juridical frame called the Preamble of the 1945 Constitution.

An epistemology which separated the Pancasila in the Preamble of the 1945 Constitution, and the "removal" of the Pancasila from the Preamble to the 1945 Constitution as the highest juridical document, was once carried out during the New Order era. This New Order epistemology has caused serious problems. In this case, the authors of this article see it as the origin (the root cause) of a serious problem as seen in the question above, namely the difficulties in overcoming the persistence "non-neutrality of the SCA" in general elections. In other words, the New Order epistemology is the main cause or the principle reason behind the attitude of people who always seek the answer for the root cause of the problem of continuing violations of the principle of neutrality of the SCA in general elections; or otherwise, the causes of the proper function of the neutrality of the SCA in general elections, as mentioned in the main questions raised at the beginning of this research article.

In other words, epistemology "takes out" the Pancasila from the Fourth Alenia of the Preamble to the 1945 Constitution, and making the Pancasila which has been "taken out" from the Fourth Alenia of the Preamble to the 1945 Constitution to become an ideology, should be the basis to find the answer to the question: "why still persistence violations of the principle of neutrality of the SCA in every general elections. The "removal" of the Pancasila from the Fourth Alenia of the Preamble of the 1945 Constitution and the use of it as an ideology, has become the culprit of the fundamental problem of the non-neutrality of the SCA. The professional character of the SCA in which they should be free or neutral, not bound by political intervention of the left, the center, or right political ideology is diluted.

Ironically, the entry of the SCA, that in principle should be professional, and neutral into in the contrary the ideological trap is still happening at this time. It has begun since the epistemology of the New Order regime has fell on top again. In contrast to it, the epistimology of the present Reformed Order dictates that the SCA is required to be part of the Indonesian State Government which had to be having the characteristics of clean from corrupt practices, hence professional and neutral from any ideological persuasions. It is also ironic, that amid demands for the SCA to be professional, namely the SCA who do not practice collusion, in the contrary by the New Order epistimology appearing to be trapped in an ideological "collision". This is a contra Reformation sign, in that the professional SCA, as defined in the SCA Law above, should be the SCA who do not practice nepotism (including ideological nepotism). Furthermore, in terms of the dictate of the spirit

19 Marvin Backes, "Epistemology and the Law: Why There is No Epistemic in Legal Cases." *Springer Link Philos Stud* 177, (2020): 2759-2778

of reformation in the SCA Law, the SCA should be professional SCA which provide public services for the whole community, not only limited to serve a particular ideological community.

No less important than the professional requirements for the SCA as listed above, namely a professional SCA is the SCA who can carry out the role of being the instrument of national unity²⁰ and integrity. All of the indicators for professional and independent SCA as required above, may not be based on anything (including ideology), except solely be based on the Pancasila in the Fourth AleniaThe opening of the 1945 Constitution, namely the Pancasila as the highest law, the sources of all sources of laws, from which the SCA Law is derived the principle of neutrality of the SCA.

Furthermore, the emphasis on the meaning (essence) or ontology of the professional SCA concept as described above is on the word "free". This fundamental "term", "free" SCA is in line with the other basic legal principles, which are also the substance of the Pancasila as the Supreme Law (the highest rule of law) as formulated in the first line of paragraph 1 of the Preamble to the 1945 Constitution. Paragraph 1, and in the first line of the Preamble of the 1945 Constitution as the highest juridical document states: "That Independence is the right of all nations and based on this principle, colonialism over the world must be abolished, because it is not in accordance with the principle of humanity and justice".

The essence of the legal and constitutional concept of "free" or independent, among others, is neutral, hence the neutrality of the SCA. That is the true meaning of the word Independence²¹ which is formulated in the first line of the First Alenia of the Preamble of the 1945 Constitution, and should not be separated from the nuance of the Pancasila as the highest law of the Land, the supremacy of law²². The neutral concept associated with the concept of "free" means, among other things, that in this case, civil servants (the SCA) must not be in a state of under the hegemony or be under any ideological "colonization"²³ (either the ideology of the left one, the center, or right). The independent, professional and neutral SCA may not be under the hegemony or under the dictate of the power or influence, let alone any force that "smells" ideological. That is the true meaning of the principle that the SCA which is required by the law, derived from the Pancasila as

20 Jacobus Ronald Mawuntu, et. al., "The Neutrality of the State Civil Apparatus in General Elections: A Study of Law Enforcement." *Al-Ishlah: Jurnal Ilmiah Hukum* 26, No. 1 (2023): 1-14.

21 Note that the word "Independence" in the first line of the Preamble to the 1945 Constitution is written with the first letter being the letter "K" in capital or uppercase. That one word is written differently from the same word in another line, in the Preamble of the 1945 Constitution.

22 Aloysius R. Entah, "Indonesia's Position as a Rule of Law Based on Pancasila." *Law Research Review Quarterly* 2, No. 4 (2016): 533-542.

23 Zach Bates and Ken MacMillan, *Ideologies of Colonization*, Oxford Bibliographies, (2021)

the highest law to be neutral, and free. There should not be any political force or political ideologies intervening with the SCA.

Similarly, the SCA that is independent, and that can carry out their roles as the instrument for the unity and integrity of the nation based on the Pancasila and the 1945 Constitution. The above juridical and philosophical understanding is only correct since the understanding is coherent,²⁴ with the Pancasila Legal System that underlies the SCA Law. The correct (coherent) legal system referred to here is the Pancasila Legal System. For the coherence to occur in the Pancasila Legal System, the highest legal principle in the Pancasila Legal System cannot be other than the Pancasila as the Supreme Law or the rule of law.

Pancasila is the fundamental norm (*grund* legal norm). The state may not use another state basis (let alone use any ideology) to be the *grund* legal norm, other than Pancasila as the highest law (*staatsfundamental norm*). There should be no norms, let alone idiology that conflict with Pancasila as the highest legal norm in the Pancasila Legal System.

It's just that, once examined with²⁵ careful juridical epistemology, it turns out that in the SCA Law, it is found a problematic formulation of provisions in the Article 4 of the SCA Law, which is in principle should not be separated from the formulation in Article 3 letter (a) of the Law. As stated in the Article 3 of the SCA Law, the SCA as a profession should based its principles, among others namely: basic values. The Article 4 of the SCA Law is a regulation that specified these basic values. It is formulated in the Article 4 letter (a) of the SCA Law that the basic values referred to in the Article 3 letter (a) of the SCA Law is to include, among others: SCA should adhere to the ideology of Pancasila.

At a glance, and following the general understanding that has has been construed so far, there is no problem with the formulation of the

24 Teguh Prasetyo, *Election Philosophy*, (Jakarta-Bandung, Print I, Cooperation between the Honorary Council of Election Organizers of the Republic of Indonesia and Nusa Media, 2018), 3; also see, Teguh Prasetyo, Muhammad, Ida Budhiati, *Philosophy of Elections Based on the Dignified Justice Theory*, Editor by Franciscus Xaverius Wartoyo, Print I, (Yogyakarta: K-Media, Print I, 2021), 10. Also see Teguh Prasetyo, *Law and the Legal System Based on Pancasila*, (Yogyakarta: Perkasa Media, First Print, 2013), 39-46. Also see: Teguh Prasetyo, *Election Philosophy*, vols. (Jakarta-Bandung: Cooperation between the Honorary Council of Election Organizers of the Republic of Indonesia and Nusa Media, 2018); Teguh Prasetyo and Muhammad Ida Budhiati, *Philosophy of Elections Based on the Dignified Justice Theory*, Ed. Franciscus Xaverius Wartoyo, vols., Print I. (Yogyakarta: Honorary Council of Election Organizers of the Republic of Indonesia and Nusa Media, K-Media, 2021); Teguh Prasetyo, *Law and the Legal System Based on Pancasila*, vols., 1st Print. (Yogyakarta: Perkasa Media, 2013). The legal system does not want conflict between elements or parts of the system. Sudikno Mertokusumo, *Invention of Law An Introduction*, Second Edition, First Edition, Liberty, Yogyakarta, Page, 25 Sudikno Mertokusumo, *Invention of Law An Introduction*, vols., 1st Editio. (Yogyakarta: Liberty, n.d.).

25 The juridical epistemology that is used in researching legal materials to find answers to the questions that have been raised above is the juridical epistemology according to the teaching of the theory of Dignified Justice. The inventor of this theory or Indonesian Jurisprudence is Professor Dr Teguh Prasetyo, SH., M.Si.

Article 4 letter (a) of the SCA Law. Namely, the formulation that the basic values referred to in the Article 3 letter (a) of the SCA Law. Include in the basic values, among others: uphold the ideology of Pancasila. However, if the Article 4 letter (a) of the SCA Law is examined critically, it turns out that there is the word "ideology" in the formulation of Article 4 letter (a) of the SCA Law.

The word ideology as an adjective, is placed before the word Pancasila in the article. The authors of this research article argue that the placement of the word ideology in front of the word Pancasila in the formulation of the provisions of the Article 4 of the SCA Law is may also be regarded as another root cause of the persistence problem that the SCA is still violating the principle of neutrality in all areas of its professional life, especially in the context of the SCA activities in elections, including projected to the 2024 election.

Thus, if the main question as stated above is raised again here, namely: what is the cause of the persistence of violations of the SCA principle of neutrality? The answer is that the cause of the persistence violations of the principle of neutrality of the SCA is perhaps generated by the conflicts within the law. There is a contradiction in the formulation of the provisions of the SCA Law, as described above, which still requires Pancasila to be seen as an ideology. This, is in contradiction with the essence of the Pancasila in the Fourth Alenia of the Preamble of the 1945 Constitution as the highest law, the source of all sources of law. How should the regulation be arrange with regard to the principle of neutrality of the SCA.

It is explained in Paragraph Five of the General Elucidation of the SCA Law, that in order to be able to maintain the neutrality of the SCA from the influence of political parties and to ensure the integrity, cohesiveness, and unity of the SCA, and to be able to concentrate all attention, thought, and energy to the tasks assigned, the SCA is prohibited from becoming a member and/or administrator of a political party. This must be seen as a necessity for the SCA to be professional and maintain neutrality.

With this in mind, the SCA must not becoming "caretakers" of any ideology (the leftist, the centre or right wingers)²⁶, except for being officers of the Pancasila as the Supreme Law, or the Indonesian rule of law. This study found that that formulation in the General Explanation of the SCA Law, conflicts with the formulation of legal provisions in the Article 3 letter (a) and in conjunction with the Article 4 letter (a) of the SCA Law.

It has been formulated in the Article 3 letter (a) of the SCA Law which states that the SCA as a profession is based on basic value or principles in conjunction with the Article 4 letter (a) which states that the basic values as referred to in the Article 3 letter (a) is to include, among others, upholding the ideology Pancasila. This means that, on

26 Maurius S. Ostrowski, "The Ideological Morphology of Left–Centre–Right." *Journal of Political Ideologies* 28, No. 1 2023.

the one hand, the elucidation of the SCA Law confirms that the SCA is prohibited from being a member and/or administrator of a political party (including being an administrator of any ideological stream (left, center, and right ideology). However, on the other hand, there found some provisions require the SCA to uphold Pancasila ideology. As stated above, according to the authors of this research article, what has just been stated is also the root cause of all causes to the neutrality of the SCA problems.

The root cause of all the SCA problem of neutrality referred to is the conflict or conflict between norms, precisely within one law, namely the SCA Law. In addition, the contradictions at the level of the law are in fact also "opposite" or runs contrary to the principle, that the Pancasila in the Fourth Alenia of the Preamble of the 1945 Constitution is the highest law, the rule of law.

In other words, this research has found that there are conflicts within the law. The requirement for wisdom (Philosophy of Law or Jurisprudence) to humanize humans (*ngungwongke uwong*) as the postulate of the Dignified Justice theory is that there must be the coherence of truth in the law. The legal system, especially the Pancasila Legal System, because it is characterized by a system, must not contain contradictions within it²⁷. Bear it in mind, the law, and in this case the principle of the SCA neutrality may achieves its goals. How to resolve the conflict within the law? In the following the authors attempt to present further a view to resolve according to the Dignified Justice Jurisprudence, overcoming the root causes around questions regarding the neutrality of the SCA.

2. Pancasila, Supreme Law, Philosophy of SCA Neutrality in the 2024 Election

Ideally, as stated many times before, the Pancasila in the Fourth Alenia of the Preamble of the 1945 Constitution which is the Supreme Law in the Pancasila Legal System²⁸, is included in the regulatory sub-system regarding SCA, namely the SCA Law, as part of the Pancasila Legal System. The author believes that the requirement in the Pancasila Legal System to regard Pancasila as the Highest Law²⁹, especially in the context of this research and writing, to ensure professionalism and neutrality of the SCA, particularly that the SCA should ansure its

27 Edward N. Zalta. "In Defense of the Law of Non-Contradiction." Oxford Academic. (2004): 418–436.

28 Dini Amalia Fitri, "Pancasila as a Legal Science Paradigm, International Journal of Law Reconstruction." *PDIH UNISSULA* 3, No. 2 (2019),.

29 Cf., Bob Hasan, et al., *Pancasila as the Highest Legal Source and Inspiration for Other Countries in the World*, Atlantis Press, 2019. Also see Several other references with regard to the problematic are stated in: S. M. Hangabei, et al., "The Ideology of Law: Embodying the Religiosity of Pancasila in Indonesia Legal Concepts." *Law Reform, Program Magister Ilmu Hukum, UNDIP* 17, No. 1 (2021). Razak Mohammed Hamdani et. al., "Pancasila in the Foundation of Legal Education: Various International Comparisons," *Jurnal Panjar: Pengabdian Bidang Pembelajaran* 4, No. 1 (February 2022)

professionalism and neutrality in elections, especially in the 2024 Election, the Pancasila should not be referred to as an ideology. Why should it be so?

There is only one Pancasila, on top of the various Pancasila formulations. The one and only Pancasila is the Pancasila as the highest law which is formulated in the 4th Alenia of the Preamble of the 1945 Constitution. As it has been repeated several times above, the Preamble of the 1945 Constitution is the highest legal document. It is said to be the highest legal document since in that document (the Preamble to the 1945 Constitution) there are spiritual standards (*ruh*) or spirituality (*Volkgeist*) in the context of national and state life in the Preamble to the 1945 Constitution. Are we all unable to reject the truth that the Preamble to the 1945 Constitution is immutable and therefore eternal? Legal history has recorded that amendments to the 1945 Constitution, which have been made four times, however the Preamble to the 1945 Constitution is untouchable and remain exactly the same, unchanged.³⁰

The 1945 Constitution is the untouchable.³¹ This is so, as the part of the substance of the highest document (the Preamble to the 1945 Constitution) there is the sacred Pancasila in the 4th paragraph. It was in the Preamble of the 1945 Constitution that the only Pancasila one, no other was written. There however, the place is only the text of speeches, or texts where (*locus*) ideological thought designs and propaganda about how and what Pancasila should be stated, and because of that it is still just an ideology.³²

Article 1 paragraph (3) of the 1945 Constitution contains a binding juridical order, namely: "The State of Indonesia is a state of law". It is a common understanding and is also stated in various literature on constitutional law in the world that what is the meaning of a rule of law (*rechtstaat*) is none other than the rule of law. In a rule of law, there are several fundamental principles. One basic principle that is important is the supremacy of law.

The meaning of the supremacy of law is that only the law (sovereignty of law) has the highest power in a country. In philosophy,

30 Nallom Kurniawan, "Pancasila, The 1945 Constitution, Unamendable Articles," *Proceedings of SOCIOINT 2018, 5th International Conference on Education, Social Sciences and Humanities*, 2-4 July 2018- Dubai, U.A.E.

31 Ideology is a tool for deception. Unlike the commands of Allah Almighty, God Almighty for humans in the Garden of Eden, do not touch. Don't you touch.

32 There are at least 2 different pancasila texts. The two pancasila texts are not the highest law, but only ideology. The first text that is commonly understood contained the pancasila text in President Soekarno's speech on June 1st, 1945. Pancasila in Ir Soekarno's speech, as well as various pancasila texts put forward by other founding figures, is pancasila as an ideology, not the Pancasila as the supreme law. On June 1st, 1945 there was no agreement regarding the formulation, structure and substance of Pancasila as agreed on August 18, 1945 and set forth in the Preamble to the 1945 Constitution. Another pancasila, which is also ideological in nature, is pancasila in the Jakarta Charter of June 22nd, 1945. The word ideology in the formulation of the Articles of the SCA Law as stated above is seen as the root cause of the SCA disorientation and therefore has a very large potential to become a cause for continuing and persistence violations of the principle neutrality of the SCA.

only the law has the highest authority in the country; which means that there should not be anything and anyone higher than the law (nothing is above the Law) or even sits on equal footing with the law, is not allowed.

No one is higher than the law (no one is above the Law). "Nothing" means there isn't anything either. No one means no anyone whatsoever. Thus, there should be nothing that is higher and takes precedence over the law. The point is that apart from the law, even ideology, no one should be the highest authority in a country where in its constitution it is expressly stated that the country is a country based on law or the rule of law.

Paying attention to the basic principle in Article 1 paragraph (3) of the 1945 Constitution, then the basic principle that can guarantee the neutrality of the SCA, and that the SCA compliance with the principle of neutrality arranged in the SCA Law is that the SCA must adhere to the Pancasila as the highest law. That is if, in the SCA Law, as a legal provision is formulated such as the formulation of the Article 4 letter (a) that the basic values referred to in Article 3 letter (a) is to include, among other things, upholding the ideology Pancasila, then the formulation is in contrary to Article 1 paragraph (3) of the 1945 Constitution. This is the novelty of our argument, that as long as the Pancasila is still considered as an ideology, it will still be ignored. Therefore, based on the assumption that Pancasila is an ideology, and the ideological values are embedded in the formulation of legal provision, including the SCA provision, it would continue to be ignored.

By contrast these authors would argue, once Pancasila is considered as the highest law, it must not be the tool of deception from a limited elite in Indonesia who hold the political power. In this case, since it has been considered that Pancasila is the law, and more than that, it is a highest law, the law should be observed, even obeyed by the most powerful elite. This thought is in line with the Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia only requires that there be only foundation or highest law (*fundamental legal norm*), namely the Pancasila.

It may not be the other way around, as stated in the Article 4 letter (a) of the SCA Law, that the basic values referred to in Article 3 letter (a) include: adhering to the ideology of Pancasila. By formulating that pancasila is an ideology, it means that an ideology has been placed by the SCA Law above the law, or at least has an equal position with the law. Lost, the meaning of the supremacy of law.

Therefore, if the SCA is required by the SCA Law to adhere to pancasila as an ideology, then there will be a double loyalty required by the law for the SCA. This dual loyalty causes disorientation or confusion and a clear loss of direction (guiding star) for some the SCA and therefore evade the persistence violations of the law continue to occur, in this case, preventing the violations of SCA neutrality. If neutrality is

interpreted as freedom (independent)³³ from the hegemony of political power (in this case including the hegemony of ideological power (left, center, and right), then the formulation of legal provisions in the SCA Law as stated above has become one of the root cause of the continuing violations of the principle of the neutrality of the SCA.

D. CONCLUSION

The gradual steps towards changing the philosophy of the state administration system, including the SCA regulation system which still contains the contradictions or paradox as stated above is needed to be taken. First of all, the Indonesian legal system must accept and develop the awareness that there will be no double loyalties (Pancasila as the Supreme Law and Pancasila as an ideology). As long as a double loyalty as described above is still occur, in particular attached to the the SCA provision, it is still far away to achieve an effective system of law governing the SCA. In the end, there will always problems with SCA in every general election conducted in Indonesia. Secondly, with such a legal awareness, not an ideological awareness that is false and deceptive as stated above, Indonesia's democracy will triumph. Criminality out of violating against the principle of neutrality in general election is oppressed. As, Bawaslu and its counterparts as well as other election supervisory hierarchies together with community participation may successfully supported and implement the efforts to supervise and foster neutrality SCA. The army members and police officers, public prosecutors who are the responsibility of their respective institutions/agencies may be able continue to be vigilant in every effort to obey the highest law and preventing the violations of the principle of neutrality by the SCA.

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33 Diego M. Papayannis, *Independence, Impartiality and Neutrality in Legal Adjudication*, Revus, (2016), Page 33–52, <https://doi.org/10.4000/revus.3546>.

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