

Institutionalizing Indonesia's Indigenous Legal Purpose "Pengayoman" As the Presidential Institution's Guiding Principle

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Abstract. This article examines the contemporary relevance and constitutional positioning of the indigenous legal principle of pengayoman as a normative foundation for strengthening the Indonesian presidency in the post-Reformasi era. Focusing specifically on the President's constitutional powers—namely the oath and mandate under Article 9, the clemency and amnesty mechanisms under Article 14, and the human rights guarantees under Articles 28A–28J—the study analyzes how pengayoman operates as a protective function embedded within these provisions. Using a juridical-conceptual approach complemented by a socio-legal perspective, the research reconstructs the genealogy of pengayoman from Soepomo's integralistic state philosophy and Sahardjo's 1960 Banyan Tree emblem and evaluates its normative relevance within Indonesia's current separation-of-powers framework. The analysis demonstrates that although constitutional amendments have redistributed authority and strengthened checks and balances, the President's protective mandate remains inherent and legally traceable within explicit constitutional norms. However, the absence of a statutory instrument systematically regulating the presidential institution has caused pengayoman to persist only symbolically rather than operationally. To address this gap, the article proposes two concrete mechanisms for incorporation into a forthcoming Presidential Institution Act: (1) codifying the President's protective function through clear obligations to uphold human rights, ensure proportional use of clemency and amnesty powers, and issue periodic protection-oriented governance reports; and (2) embedding pengayoman as a guiding principle in the Act's general provisions to bind presidential discretion to constitutional accountability. These recommendations aim to transform pengayoman from a cultural-historical value into a functional normative standard for democratic executive governance.

Keywords: Banyan Tree, Indonesian Presidential System, Indonesian Reformasi Era, *Pengayoman* principle, Presidency Institution Act.

Abstrak. Artikel ini mengkaji relevansi kontemporer dan posisi konstitusional asas hukum adat pengayoman sebagai landasan normatif untuk memperkuat kepresidenan Indonesia di era pasca-Reformasi. Dengan berfokus secara khusus pada kewenangan konstitusional Presiden—yaitu sumpah dan mandat berdasarkan Pasal 9, mekanisme grasi dan amnesti berdasarkan Pasal 14, dan jaminan hak asasi manusia berdasarkan Pasal 28A–28J—kajian ini menganalisis bagaimana pengayoman berfungsi sebagai fungsi perlindungan yang tertanam dalam ketentuan-ketentuan tersebut. Dengan menggunakan pendekatan yuridis-konseptual yang dilengkapi dengan perspektif sosio-hukum, penelitian ini merekonstruksi genealogi pengayoman dari filsafat negara integralistik Soepomo dan lambang Pohon Beringin Sahardjo tahun 1960, serta mengevaluasi relevansi normatifnya dalam kerangka pemisahan kekuasaan Indonesia saat ini. Analisis ini menunjukkan bahwa meskipun amandemen konstitusi telah mendistribusikan kembali kewenangan dan memperkuat mekanisme pengawasan dan keseimbangan (*checks and balances*), mandat perlindungan Presiden tetap inheren dan dapat dilacak secara hukum dalam norma-norma konstitusional yang eksplisit. Namun, ketiadaan instrumen hukum yang secara sistematis mengatur lembaga kepresidenan telah menyebabkan pengayoman hanya bertahan secara simbolis, alih-alih operasional. Untuk mengatasi kesenjangan ini, artikel ini mengusulkan dua mekanisme konkret untuk diintegrasikan ke dalam Undang-Undang Lembaga Kepresidenan yang akan datang: (1) mengkodifikasi fungsi perlindungan Presiden melalui kewajiban yang jelas untuk menegakkan hak asasi manusia, memastikan penggunaan kewenangan grasi dan amnesti secara proporsional, dan menerbitkan laporan tata kelola pemerintahan yang berorientasi pada perlindungan secara berkala; dan (2) menanamkan pengayoman sebagai prinsip panduan dalam ketentuan umum Undang-Undang untuk mengikat diskresi presiden dengan akuntabilitas konstitusional. Rekomendasi ini bertujuan untuk mengubah pengayoman dari nilai budaya-historis menjadi standar normatif fungsional bagi pemerintahan eksekutif yang demokratis.

Kata Kunci: Banyan Tree, Sistem Presidensial Indonesia, Era Reformasi Indonesia, *Pengayoman*, Undang-Undang Lembaga Kepresidenan.

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INTRODUCTION

In the early years of Indonesia's independence, President Soekarno, endowed with extraordinary powers under the 1945 Constitution of the Republic of Indonesia, played a decisive role in shaping both the direction and character of the nascent state, as the presidential office conceived in Soepomo's constitutional draft positioned the President as "supreme leader" appointed by the People's Consultative Assembly (Majelis Permusyawaratan Rakyat);¹ this constitutional framework was subsequently replaced by the 1950 Provisional Constitution, only to be restored by Soekarno's Presidential Decree of 5 July 1959 when he determined that the Constituent Assembly had failed to produce a new constitution, a series of events that definitively underscored the breadth of executive authority while simultaneously raising critical questions regarding the separation of powers and the rule of law within Indonesia's presidential system.²

President Soekarno's decision to dissolve the Constituent Assembly was driven by his belief that the Assembly could not fulfill its mandate to draft a new *grundnorm* or new Indonesian constitution, culminating in his famous assertion that "*to build a nation one cannot rely on jurists*",³ a pronouncement that elevated political judgment above normative legal reasoning in the policymaking process, effectively marginalizing the legal profession and giving rise to the highly centralized model of administration known as Guided Democracy, in which supreme executive power was concentrated in the presidency, until Justice Minister Sahardjo intervened to insist that, however expansive presidential policy might be, it must nonetheless be grounded in legal principles so that executive action and the rule of law would proceed hand in hand.⁴

This effort to consolidate the presidential system was intrinsically linked to the articulation of a distinctly Indonesian legal purpose, a concept first identified by

¹ Jimly Asshiddiqie et al., *Soepomo: Pergulatan Tafsir Negara Integralistik, Biografi Intelektual Pemikiran Hukum Adat Dan Konstitualisme* (Yogyakarta: Thafa Media, 2015).

² M. Agus Santoso, "Perkembangan Konstitusi Di Indonesia," *Yustisia: Jurnal Hukum* Volume 2, no. Nomor 3 (2013): 118–26.

³ Adnan Buyung Nasution, *Aspirasi Pemerintahan Konstitusional Di Indonesia: Studi Sosio-Legal Atas Konstituante 1956-1959* (Jakarta: Pustaka Utama Grafiti, 2009).

⁴ Ktut Sudiri Panyarikan, *Dr. Sahardjo, S.H.* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1980).

Soepomo in the drafting of the 1945 Constitution and later elaborated by Sahardjo in his endeavour to recover the original telos of Indonesian law, culminating in their mutual endorsement of the principle of “Pengayoman,” which draws upon the indigenous tradition of *Manunggaling Kawula Gusti* to symbolize the unity of ruler and ruled;⁵ formally codified in 1960 through the adoption of the Banyan Tree emblem in place of the Western allegory of Themis,⁶ Pengayoman reoriented the understanding of law from an abstract, exclusionary ideal of justice to a mechanism of protection encompassing all members of society.⁷

The institutionalisation of the Banyan Tree “Pengayoman” emblem was effected by the Department of Justice’s Decree No. J.S.8/20/17 of 6 December 1960 and further endorsed at the First National Seminar of the National Law Development Institution in March 1963, thereby establishing a new juridical paradigm that prioritised the safeguarding of the people’s welfare in all legal instruments; through its authority to enact, amend, and rescind regulations, the Department of Justice under Sahardjo operationalised this vision, systematically replacing colonial legal heritage with an indigenous jurisprudence rooted in local wisdom rather than in Western inheritance.⁸

Although the Banyan Tree “Pengayoman” emblem inherently imposed a normative restraint upon the President’s exercise of power, reflecting the harmony and concord demanded by *Manunggaling Kawula Gusti* as the hallmarks of legitimate governance, after the 1998 Reformasi and the 1999–2000 amendments to the 1945 Constitution, Pengayoman has largely remained a nominal administrative symbol devoid of strong normative support within the modern presidential framework; this study therefore underscores the urgent need for a dedicated Presidential Institution Act that explicitly integrates the principle of Pengayoman, thereby aligning extensive executive discretion with judicial oversight and the President’s constitutional obligation to

⁵ Lucien Adam, *De Autonomie van Het Indonesisch Dorp* (Amersfoort: Melchior, 1924).

⁶ Jacques de Ville, “Mythology and The Images of Justice, Law & Literature” Volume 23, no. Nomor 3 (2011): 324–64.

⁷ Sahardjo, “Pohon Beringin Pengajoman: Hukum Pantjasila/Manipol.Usdek, Pidato Penganugerahan Doctor Honoris Causa Dalam Ilmu Hukum Oleh Universitas Indonesia” (Jakarta, 1963).

⁸ Soediman Kartohadiprojo, *Pancasila Sebagai Pandangan Hidup Bangsa Indonesia* (Jakarta: Gatra Pustaka, 2010).

guarantee legal protection and the welfare of all citizens while preventing any resurgence of authoritarian tendencies.

In the early years of Indonesia's independence, the presidency was conceived through Soepomo's integralistic constitutional philosophy, which positioned the President as the central embodiment of state authority. However, much of the conceptual genealogy that the literature later attributed to Manunggaling Kawula Gusti has often relied on interpretations rooted in mystical Sufistic traditions rather than on verifiable legal-historical sources. This creates conceptual ambiguity: to what extent was Soepomo's formulation genuinely derived from indigenous legal-political structures, and to what extent was it a metaphoric or symbolic reconstruction? Such ambiguity weakens the explanatory power of the concept when used as the normative basis for modern constitutional analysis.

A second conceptual issue arises from the use of the Banyan Tree (Pohon Beringin) as the emblem of Pengayoman, institutionalized by Sahardjo through the 1960 Decree. Although this symbol was intended to mark a shift away from Western imagery – specifically, the Themis allegory – its meaning became politically contested during the New Order. The banyan emblem was later adopted by Golkar, the dominant political vehicle of Suharto's regime, which exerted overwhelming control over legal and political institutions. As a result, the symbol's association with Pengayoman cannot be detached from its appropriation by an authoritarian party apparatus. This raises a critical question: does the contemporary legal meaning of Pengayoman still rest on its philosophical origins, or has it been compromised by its New Order political connotations? Any attempt to reconstruct Pengayoman as a constitutional principle must therefore critically address this layered historical burden.

These conceptual tensions underscore the lack of clarity in the current academic discourse regarding what exactly is being studied when scholars speak of Pengayoman: is it a cultural-philosophical ideal, a political symbol, a legal purpose, or a constitutional doctrine? The absence of definitional clarity complicates efforts to evaluate its relevance within Indonesia's post-Reformasi presidential system. This article thus begins by clearly delineating the legal problem: despite the extensive constitutional amendments

between 1999 and 2002 – which recalibrated the balance of power, strengthened checks and balances, and expanded human rights protections – there remains no statutory instrument specifically regulating the Presidential Institution. Consequently, Pengayoman persists normatively through dispersed constitutional provisions but lacks a coherent doctrinal or legislative articulation.

The core research problem addressed in this study is therefore twofold. First, whether Pengayoman, as an indigenous legal purpose historically associated with protection, still bears conceptual and normative relevance as a foundational basis for the presidency in a constitutional system now characterized by separation of powers and rule-of-law principles. Second, how this principle can be operationalized in a future Presidential Institution Act in a manner that avoids the paternalistic excesses of the Old Order and New Order while preserving its protective essence.

To respond to these problems, the paper advances the argument that Pengayoman should be reinterpreted through a constitutional lens rather than a mystical or political one. Its meaning must be grounded not in romanticized cultural metaphors nor in politically compromised symbols, but in explicit constitutional mandates – such as the presidential oath (Article 9), humanitarian prerogatives (Article 14), and human rights guarantees (Articles 28A–28J). On this basis, the study proposes the reconstruction of Pengayoman as a constitutional protective function that binds presidential discretion to democratic accountability, transparency, and the protection of vulnerable groups.

METHODOLOGY

This research adopts a qualitative normative legal method situated within the broader tradition of interdisciplinary legal inquiry. Although socio-legal perspectives inform parts of the analysis, the primary orientation of this study remains normative, focusing on legal ideas, constitutional provisions, and doctrinal debates rather than empirical measurement. The methodological choice is grounded in the nature of the object under examination: the concept of Pengayoman as a legal purpose, the constitutional construction of presidential powers after the 1999–2002 amendments,

and the normative possibility of integrating Pengayoman into a future Presidential Institution Act.

The study employs a conceptual and constitutional approach, which is essential for clarifying the meaning, scope, and normative function of Pengayoman in Indonesian legal thought. Through this approach, the research traces how the idea evolved from its philosophical roots in Soepomo's integralistic theory and Sahardjo's 1960 Banyan Tree formulation to its current position in the constitutional framework. The conceptual analysis is interwoven with a statutory reading of the 1945 Constitution – especially Article 9 concerning the presidential oath, Article 14 regarding clemency and amnesty, and Articles 28A–28J on the protection of human rights – to determine where and how the protective logic of Pengayoman remains relevant in Indonesia's post-Reformasi governance structure.

To illuminate the historical layers that shape the modern understanding of Pengayoman, the research also incorporates a selective historical approach. This is not intended to romanticize cultural origins, but rather to critically examine how the symbol and meaning of Pengayoman traveled across political regimes—from its adoption as a legal emblem in 1960, to its subsequent appropriation by the New Order, and finally to its reinterpretation within democratic constitutionalism. The historical inquiry allows the study to distinguish between philosophical foundations, political distortions, and constitutional potential.

The object of analysis therefore consists of three interconnected components: the normative structure of the presidency in the amended Constitution, the doctrinal idea of Pengayoman as a legal purpose, and the feasibility of translating Pengayoman into statutory form in a future Presidential Institution Act. To study these objects, the research relies entirely on secondary materials, including primary legal texts (the Constitution and relevant decrees), academic literature on constitutional theory and Indonesian legal philosophy, scholarly interpretations of Soepomo and Sahardjo, as well as archival writings and institutional documentation that contribute to conceptual reconstruction.

All materials are examined through qualitative doctrinal analysis, which involves reconstructing the concept of Pengayoman, systematizing constitutional norms pertaining to presidential authority, and critically evaluating the extent to which the protective ethos remains embedded in the modern Indonesian state. The analysis concludes with a normative design process, through which the research formulates specific recommendations for incorporating Pengayoman into the forthcoming Presidential Institution Act while maintaining democratic safeguards and avoiding authoritarian paternalism.⁹

RESULT AND DISCUSSION

Traditional Indonesian Democratic Tradition

In formulating his conception of statehood, Soepomo appears to have been influenced by two Dutch scholarly works: *De Autonomie van het Indonesisch Dorp* by Lucien Adam and *Indonesische en Indische Democratie* by Bauke Jan Haga.¹⁰ Both authors emphasize that democratic practices in Indonesia historically manifested on the periphery, namely, in rural villages located at a considerable distance from the centers of royal authority. Whereas the royal courts tended toward a theocratic model of governance, these outlying villages exhibited far more democratic patterns of self-rule.

The conception of democracy articulated by both Dutch scholars is founded upon the principles of mutual cooperation (*gotong-royong*) and deliberation (*musyawarah*).¹¹ Under this system, supreme authority resides in the Customary Assembly or Village Council, which embodies the sovereignty of the people at the local level. The village head is elected directly by the villagers, and every decision rendered by the Customary Head or Village Head is regarded as a declarative expression of the community's collective will.¹² Drawing upon this perspective, when drafting the 1945 Constitution, Soepomo incorporated the notion of the People's Consultative Assembly

⁹ M. Iqbal Hasan, *Pokok-Pokok Materi Metodologi Dan Aplikasinya* (Jakarta: Ghalia Indonesia, 2022).

¹⁰ Adam, *De Autonomie van Het Indonesisch Dorp*; Bauke Jan Haga, *Indonesische En Indische Democratie* (Den Haag: De Ster, 1924).

¹¹ Adam, *De Autonomie van Het Indonesisch Dorp*.

¹² Jan Haga, *Indonesische En Indische Democratie*.

(*Majelis Permusyawaratan Rakyat* or MPR) as the highest state organ, thereby reflecting the collective ethos and deliberative principles characteristic of traditional local democratic practice in Indonesia.¹³

It may thus be concluded that Soepomo's concept of an Integralistic State was heavily influenced by the peripheral democracy model advanced by Lucien Adam and Bauke Jan Haga. In this peripheral model, the doctrine of separation of powers is absent, since the will of the Customary Head or Village Head is deemed to be the direct, declarative embodiment of the villagers' will. Accordingly, when Soepomo drafted the constitution, he designed a state structure that did not emphasize a system of checks and balances among state organs but rather rested upon a unified popular will centralized in a single authority.

The concept of peripheral democracy refers to a form of democracy not solely concentrated at the centers of power (the state's capital), but which also affords extensive participatory space to regions or political entities beyond the core. During the Old Order, particularly under the Guided Democracy era, this notion manifested in the composition of the Provisional People's Consultative Assembly (*Majelis Permusyawaratan Rakyat Sementara* or MPRS). Here, peripheral democracy was understood as an endeavor to involve social and political forces outside the formal seat of power in the state's decision-making process. This incorporation encompassed diverse societal elements from the regions as well as from functional groups, including laborers, farmers, the military, religious scholars, and other community organizations.

The MPRS structure of that period comprised not only members of the House of Representatives (*Dewan Perwakilan Rakyat* or DPR) but also regional and group delegates. This arrangement signified the state's effort to extend representation more broadly across Indonesia's population, both geographically and socially. Although the political system was heavily dominated by presidential authority, the inclusion of various societal constituencies within the MPRS demonstrated that this body functioned as the highest state organ. It was this collective assembly that elected the

¹³ RM. A. B Kusuma, *Lahirnya UUD 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha-Oesaha Persiapan Kemerdekaan* (Jakarta: Fakultas Hukum Universitas Indonesia, 2009).

President as both Head of State and Head of Government [mirroring the traditional Customary Assembly or Village Council (*Rapat Adat/Rapat Desa*)], which determined village-level policies for the welfare of the community and, by analogy, the selection of the nation's leader.

The Nature of The Value of *Pengayoman* in Sahardjo's Banyan Tree of *Pengayoman*

The notion of *Pengayoman* (protection) as the purpose of law is deeply influenced by the dominant cultural patterns of the Nusantara region, particularly those of the Javanese–Balinese, Malay, and Bugis–Makassar traditions. This concept emphasizes a special relationship between the ruler (king) and the people. Within this cultural framework, the legitimacy of a king's power is believed to derive from divine revelation or *pulung* bestowed by God; in certain contexts, the king is even regarded as a manifestation of God himself. Consequently, the king is perceived to be closely aligned with absolute truth, rendering his authority unquestionable and his person deserving of complete reverence.¹⁴

Nevertheless, traditional Indonesian cultural values do not condone arbitrary or despotic actions by a ruler. This is because a king is believed to lose his divine revelation or *pulung* (the very source of his legitimacy), if he fails to exercise self-control and fulfill his duties with wisdom. In the Javanese–Balinese cultural context, a king is constantly reminded of his responsibility as a protector through various symbolic representations, such as the *Banyak* (swan), *Dalang* (deer), *Sawung* (rooster), and *Galing* (peacock), each carrying profound philosophical significance regarding the ideal role of a leader.

¹⁴ In Javanese political tradition, this concept is referred to as *wenang murba wisesa*, which denotes the ruler's absolute authority to act without limitation, based solely on their position of power. See G. Moedjanto, *Konsep Kekuasaan Jawa: Penerapannya Oleh Raja-Raja Mataram* (Yogyakarta: Kanisius, 1987). and Baskara T Wardaya, "The Influence of Javanese Political Concept of Power on President Sukarno," *Paramita: Historical Studies Journal* 31, no. 2 (2021): 227–38, <https://doi.org/https://doi.org/10.15294/paramita.v31i2.28928>.

A parallel can be found in the Malay context, particularly in the case of Dato' Maharaja Lela of the Perak Sultanate, a high-ranking official and religious figure historically believed to possess the prerogative to impose capital punishment without judicial process. See R. J. Wilkinson, *Paper On Malay Subjects: History, Part II (Notes on Perak), 1877-1879* (FMS Government Press, 1907). Similarly, in traditional Thai royal custom, individuals are prohibited from standing in the presence of the King, and are instead required to prostrate themselves as a sign of ultimate subservience, reflecting the deep-rooted absolutism embedded in pre-modern Southeast Asian political cultures. See Andrew MacGregor Marshal, "The Royal Wee (Some Reflections on Thai Royalism)," Medium, 2016, <https://medium.com/%40zenjournalist/the-royal-wee-30ba7625947b>.

Furthermore, the principle of unity between the sovereign and the people (*Manunggaling Kawula Gusti*) constitutes a fundamental tenet that must be manifest in the conduct of the ruler. A good leader is one who performs his functions diligently in order to secure and realize: (1) the welfare of the populace; (2) a spirit of selfless service (*Sepi Ing Pamrih, Rame Ing Gawé*); and (3) continuous self-awareness and vigilance (*Tansah Eling lan Waspada*). In embodiment of these ideals, the role of the king or leader is symbolized by eight exalted emblems:¹⁵

1. *Surya* – the source of strength and vitality;
2. *Candra* – like a light that cools and illuminates darkness;
3. *Arga* – emblematic of steadfastness and resilience;
4. *Tirta* – serving as a source of refreshment and peace;
5. *Samirana* – ever-present for the people in all circumstances;
6. *Dahana* – instilling courage and inspiration;
7. *Samudra* – possessing a capacious heart that embraces all; and
8. *Bantala* – fulfilling the essential needs of the populace.

Thus, within this tradition, a ruler is not merely a sovereign but a figure bearing spiritual, moral, and social responsibilities to protect and nurture all subjects.

To discharge his obligations effectively, a king or sovereign must demonstrate mastery over his own impulses. This requirement underpins the expectation that the ruler's conduct remain aligned with the values of harmony and concord. Should a king exercise his authority capriciously, it is deemed a betrayal of the divine revelation (*pulung*) that legitimizes his rule. Such self-mastery is cultivated through various spiritual and ascetic disciplines, such as meditation, retreat, austerity, fasting, and other practices of inner discipline.¹⁶ Consequently, although the king wields

¹⁵ Results of Interview with Koerniatmanto Soetoprawiro and Tristam Pascal Moeliono, January 26, 2024, at 10.00 WIB.

¹⁶ In Javanese cultural-political tradition, asceticism is often portrayed as a prerequisite for legitimate leadership. For instance, King Airlangga is said to have undergone a period of ascetic practice prior to assuming power, a theme later symbolically captured in the *Kakawin Arjuna Wiwaha*, which depicts the spiritual preparation of a ruler through the figure of Arjuna. See Jiphie Gilia Indriyani et al., "Adaptasi Cerita Kakawin Arjuna Wiwaha Pada Pewayangan Jawa Lakon Arjuna Wiwaha," *SULUK: Jurnal Bahasa Sastra Dan Budaya* 1, no. 1 (2020): 31–36, <https://doi.org/10.15642/suluk.2019.1.1.31-36>.

Similarly, the *Bima Suci* narrative represents the struggle for self-mastery, in which Bima confronts his desires, symbolized by a giant serpent. This motif is also reflected in the traditional dance performance *Bambangan Cakil*, where

considerable power, he also bears commensurate responsibility toward his people and the realm he governs. In the framework of Traditional Nusantara Culture, the king is positioned not only as a formal head of state but also as the very embodiment of *Pengayoman*, the protector of his subjects.

Although the value of *Pengayoman* is most prominently associated with Javanese–Balinese traditional culture, these principles also manifest in Malay and Bugis–Makassar traditions, precluding any characterization of *Pengayoman* as strictly Javanocentric. Indeed, these values have developed in parallel across these cultural spheres. The realization of *Pengayoman* can be observed in the esteemed life philosophies upheld by each community.¹⁷ The populace’s demands upon their ruler invariably take the form of appeals for the king or leader to act justly and to remain mindful of his protective duties, for such vigilance embodies the very essence of the *Pengayoman* concept.

Thus, the very essence of the value of *Pengayoman* is law conceived as a mechanism of protection. Within Indonesian traditional culture, the king or sovereign is regarded as the living embodiment of the law, such that the will of the ruler is itself perceived as law in force. In exercising his authority, the monarch must continually exercise self-restraint so as to maintain his protective role toward his subjects. Consequently, every act undertaken by the ruler must be grounded in the principle of safeguarding the interests of the community. In other words, the sovereign’s actions must be directed toward legal measures designed to protect the people.

Moreover, the king or sovereign is expressly forbidden from acting arbitrarily, for any abuse of power risks forfeiture of his divine legitimacy and his consequent replacement. To avert this outcome, the monarch must govern himself with discipline. From this requirement follows another fundamental tenet of law: that law must not serve as an instrument to perpetuate the abuse of authority but must rather function

a noble warrior battles Cakil, a character embodying unchecked passion. These cultural expressions underscore the moral expectation that rulers must first conquer their inner impulses before governing others. See Sikandar, “Bambangan Cakil Dance: A Powerful Expression of Javanese Heritage,” Ozmodchips, 2025, <https://ozmodchips.com/a-powerful-expression-bambangan-cakil-dance/?utm>.

¹⁷ For Example, such as Tepak Sirih, Sulapa Appa, Siri’ na Pacce, Tat Twam Asi, and son.

as a restraint upon arbitrary rule. This principle aligns with Sahardjo's assertion that the purpose of law is to protect the people, not to serve the ruler.¹⁸

The principle of *Pengayoman* also informed Soepomo's conceptualization of the 1945 Constitution. Moreover, Soepomo was influenced by Indonesia's traditional democratic traditions, which themselves reflected the intellectual contributions of Dutch scholars. This connection arises from Lucien Adam's and Bauke Jan Haga's classification of Indonesian democracy as peripheral to the centers of power. There are notable parallels between Soepomo's Integralistic State concept and the theories of Adam and Haga, particularly in elevating a deliberative assembly as the highest state organ.¹⁹

The foundational tenets underlying this democratic system are likewise analogous: the principle of mutual cooperation (*gotong-royong*), which underscores the importance of maintaining ethical conduct and mutual assistance to achieve collective objectives, and the principle of deliberation (*musyawarah*), which emphasizes consensus-based decision-making. Both principles endure in contemporary practice. The values articulated by Soepomo in the 1945 Constitution ultimately influenced Sahardjo's application of *Pengayoman* in his Banyan Tree concept, thereby actualizing these protective principles within Indonesia's legal framework.

A New Meaning of *Pengayoman* As A Legal Purpose in The Post-Reformation Constitution

During the transitional period from the New Order to the Reformasi era (when President Suharto resigned and authority passed to Vice President B. J. Habibie), Indonesia confronted a host of serious challenges bequeathed by the prior regime.²⁰ President Habibie and his successors bore the weighty responsibility of restoring national political, social, and economic stability.²¹ A principal task was the

¹⁸ Sahardjo, "Pohon Beringin Pengayoman: Hukum Pantjasila/Manipol.Usdek, Pidato Penganugerahan Doctor Honoris Causa Dalam Ilmu Hukum Oleh Universitas Indonesia."

¹⁹ Adam, *De Autonomie van Het Indonesisch Dorp*.

²⁰ Maria Winda Klaudia and Ida Bagus Nyoman Wartha, "Perkembangan Politik Dan Ekonomi Masyarakat Indonesia Pada Masa Awal Reformasi Tahun 1998-1999," *Jurnal Santiaji Pendidikan (JSP)* Volume 1, no. Nomor 1 (2020): 69–75.

²¹ Merle Calvin Ricklefs, *Sejarah Indonesia Modern 1200-2008* (Jakarta: Serambi Ilmu Semesta, 2008).

implementation of amendments to the 1945 Constitution, a reform spurred by widespread public demand, especially from university students, who insisted that the constitutional system no longer be dominated solely by executive power.²² They called for a more equitable distribution of authority through checks and balances among state organs. Interestingly, amidst this reformasi momentum, the idea of *Pengayoman* reemerged with a revised interpretation: whereas previously it had been closely associated with traditional culture and the figure of the monarch as protector, in the Reformasi context *Pengayoman* came to signify the state's institutional duty to safeguard citizens' rights through a legal system that is just, transparent, and democratic.

Under the Old Order, the purpose of law as *Pengayoman* was intimately linked to the spirit of decolonization. Law was positioned as an instrument to shield the nation from colonial influence and Western legal values deemed incompatible with Indonesia's national character. Within that framework, law served to preserve independence, national identity, and state sovereignty from foreign intervention. *Pengayoman* thus manifested as protection of the nation's dignity and the integrity of its legal sovereignty. In contrast, during the New Order, the paradigm shifted significantly: law ceased to be regarded as an intrinsic end and was reduced to a tool of social engineering directed at fulfilling state objectives, particularly national development. While the notion of *Pengayoman* persisted, it was refracted through the lens of development: "good law" was defined as that which supports stability, efficiency, and the success of national political-economic growth. Consequently, *Pengayoman* in the New Order prioritized orderliness for the sake of development, adopting a top-down, technocratic approach that often sidelined principles of justice and public participation. Although the term *Pengayoman* remained in use, its protective essence was substantially diminished.

In the Reformasi era, a fundamental redefinition of *Pengayoman* as a legal purpose took place. No longer confined to protection from colonialism (as in the Old Order) or to

²² Ricklefs.

facilitating state-led development (as in the New Order), *Pengayoman* came to signify the protection of citizens' rights grounded in the principles of democracy, freedom, and the limitation of state power. The amendments to the 1945 Constitution enacted between 1999 and 2002 embodied this reformative spirit. These fundamental changes reflect the actualization of *Pengayoman* values within the constitutional framework, ensuring that the state's legal architecture is purposefully oriented toward safeguarding the rights and welfare of all Indonesians:²³

1. Bicameral Democracy

The establishment of the Regional Representative Council (hereinafter "DPD") as a body representing the regions constitutes an acknowledgment of pluralism and local aspirations, thereby strengthening popular representation both vertically and horizontally.

2. Strengthening the House of Representatives

The House of Representatives (hereinafter "DPR") can no longer be dissolved by the President and is vested with supervisory functions as well as the authority to propose the removal of the President, as integral components of the checks and balances system.²⁴

3. Establishment of the Constitutional Court of the Republic of Indonesia

The Constitutional Court (hereinafter "MK") was created to safeguard the constitutionality of legislation and to serve as the moral guardian of the Constitution. This reflects a concerted effort to guarantee the supremacy of law and to prevent arbitrary exercise of power.

4. Limitation of Executive Power

The amendments underscore the importance of the separation of powers (executive, legislative, judicial) as an instrument to prevent the accumulation of authority and the potential for corruption within the government.

²³ T.A. Legowo, *Lembaga Perwakilan Rakyat Di Indonesia* (Jakarta: Forum Masyarakat Peduli Parlemen Indonesia, 2005).

²⁴ Ni Wayan Merda Surya Dewi, "Kewenangan MPR Sebagai Pelaksana Kedaulatan Rakyat Pasca Amandemen Ke-4 UUD NRI 1945," *Soshum Jurnal Sosial Dan Humaniora* Volume 7, no. Nomor 1 (2017).

Thus, the concept of *Pengayoman* in the Reformasi era has not only persisted as a moral imperative but has also been concretely implemented within the institutional design of the state and its constitutional arrangements.²⁵ In this context, law functions not merely as a protector but also as a guarantor of liberties and a regulator of power, preserving the dignity of democracy and social justice.²⁶ From the Reformasi perspective, there has been a fundamental shift in the relationship between law and power. Whereas in previous eras (notably the New Order) law was often construed as an extension of executive authority, post-Reformasi law is positioned as an independent entity, separate from the rulers. This signifies that both the citizenry and the governing authorities equally operate under the rule of law, and no party is above it.

Nevertheless, law and power have been separated, the protective function of *Pengayoman* remains inherent in the President as Head of State and Head of Government. This is clearly reflected in the Presidential Oath and Pledge set forth in Article 9 of the 1945 Constitution following its amendment, which emphasizes the following points:

1. The fulfillment of official duties to the best of one's ability and with the utmost fairness;
2. Adherence to the Constitution and all statutory regulations;
3. Service to the Nation and the State.

This Oath and Pledge manifest the value of *Pengayoman* within the context of a democratic constitutional state. Here, *Pengayoman* is no longer paternalistic but rather constitutes a constitutional and moral commitment to protect all citizens equitably and impartially. The Reformasi era further reinforced the protection of human rights (hereinafter "HR"), positioning them as an integral component of the legal purpose of protection. This is evident in Chapter XA of the 1945 Constitution, Articles 28A

²⁵ Janedri M. Gaffar, *Fungsi, Dan Peran Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia* (Surakarta: MKRI, 2017).

²⁶ Ro'is Alfauzi and Orien Effendi, "Pembatasan Kekuasaan Berdasarkan Paham Konstitusionalisme Di Negara Demokrasi," *Politica* Volume 7, no. Nomor 2 (2020): 111–33.

through 28J, which explicitly enumerate various fundamental rights of citizens, including:

1. The right to life (Article 28A);
2. The right to freedom of religion, expression, and association;
3. The right to security, legal protection, and justice;
4. The obligation to respect the human rights of others (Article 28J).

Thus, within the post-Reformasi legal framework, *Pengayoman* is construed as the protection of human dignity and liberty, alongside the bolstering of the State's responsibilities, especially those of the President, in guaranteeing the constitutional rights of its citizens. This represents the concrete realization of law not only as a shield against arbitrariness but also as the guarantor of a democratic and socially just civic life.

From the foregoing sub-chapters, we can discern the enduring relevance of the *Pengayoman* principle within Indonesia's presidential system during the Reformasi era. As a legal purpose, the idea of *Pengayoman* persists to this day; however, as was the case in the Old Order and the New Order, its interpretation and application have evolved. In the Reformasi period, *Pengayoman* is emphasized primarily through the limitation and separation of powers and the reinforcement of checks and balances as preventive measures against potential arbitrariness by state authorities. The President and Vice President, as the highest executive officeholders, receive constitutional guarantees to restrain themselves through their oath and pledge of office. This serves as a symbol of their commitment to upholding the rule of law, justice, and service to the nation and state.

Moreover, human rights (HR) have become an essential component of the President's protective function in the Reformasi era. Human rights reflect the aspirations of the people toward those entrusted with exercising power. Since law and the executive have become distinct entities, discourse on human rights now provides a crucial moral foundation for enforcing a just legal order that genuinely serves the interests of the populace.

Recontextualization of The *Pengayoman* Idea in The Post-Reformasi Legal and Governance System

In the post-Reformasi period, the *Pengayoman* concept has been recontextualized through various state policies that prioritize the protection of citizens. Measures such as strengthening the mandate of the National Commission on Human Rights (*Komnas HAM*), the establishment of the Ombudsman, the application of restorative justice within the criminal justice system, and the expansion of the national social security program exemplify the contemporary legal embodiment of *Pengayoman*'s spirit. The President, as Head of Government, assumes the principal role in advancing these policies as manifestations of the protective function in a modern context.

From the perspective of fortifying the presidential institution, *Pengayoman* furnishes the President with ethical legitimacy to execute state functions in an active, responsive, and humane manner. This means that the President must go beyond merely relying on constitutional legal authority; he or she must also demonstrate a substantive commitment to the people's welfare through affirmative policies that safeguard the rights and needs of the underprivileged. In this regard, presidential leadership is evaluated not only on administrative competence but also on the quality of protection provided to the citizenry, as envisioned by Sahardjo when he asserted that law exists not only to punish but also to nurture the whole Indonesian person.

Nevertheless, a tension arises when one revisits the origins of the *Pengayoman* idea within the presidential system: the conflict between its paternalistic ethos and the liberal-constitutional ethos that underpins the Reformasi movement. The liberal paradigm emphasizes limiting state power to guarantee individual freedom, decentralizing authority, and strengthening judicial review. In contrast, the *Pengayoman* approach contains paternalistic and integralistic elements, whereby the state plays an active role in determining the common good. This tension prompts the critical question: "Is the *Pengayoman* approach still relevant within a more democratic and liberal legal system?"

Although Indonesia's governance has indeed undergone democratization and liberalization, the *Pengayoman* approach remains practicable and may even serve as a foundational principle for the country's presidential system. The Banyan Tree of *Pengayoman* demands that leaders assume continual responsibility by proactively protecting and nurturing society. In the past, this was achieved through decolonization and centralization of authority to establish order and harmony. Today, however, to realize the core values of the Banyan Tree of *Pengayoman* (order and harmony) the legal mechanisms employed should be persuasive rather than repressive, for example by ensuring transparency, accountability, and public participation.

Thus, the interpretation of *Pengayoman* within the Banyan Tree paradigm retains its noble objective: to protect all citizens so as to secure order and harmony. Previous provisions have already stipulated the State's duty to guarantee the fulfillment of citizens' rights. Moreover, the *Pengayoman* principle endures in Article 9 For instance, Article 14 of the 1945 Constitution provides that the President may grant pardons and rehabilitation with the Supreme Court's advice, and may grant amnesty and abolition with the House of Representatives' counsel. These provisions demonstrate that the President retains a humanitarian function within Indonesia's legal system, acting as the ultimate remedy in the administration of justice. This role signifies that the President is not solely the head of the executive branch managing state administration but also the supreme protector vested with authority to correct or intervene in the formal legal system in pursuit of substantive justice. Granting clemency, amnesty, abolition, and rehabilitation thus constitutes the concrete realization of *Pengayoman* at the highest level of state power, balancing the rigidity of law to ensure the legal system remains committed to humanity and social justice. (1) and (2) regarding the Presidential (and Vice-Presidential) oath and pledge. A systematic reading of the chapters on executive power in the 1945 Constitution reveals that, although the governmental form no longer mirrors Soepomo's Integralistic State or Sahardjo's vision in every respect, the spirit of protection persists.

Furthermore, a systematic review reveals that Articles 28A through 28J of the 1945 Constitution, which encompass the recognition and protection of human rights, also

represent a manifestation of the value of patronage in its reformed version. To guarantee these fundamental rights, the state, through the President, bears the constitutional responsibility not only to enforce the law formalistically but also to protect vulnerable groups through affirmative action policies and social protection measures. Thus, it can be asserted that although Soepomo's integralistic and Sahardjo's paternalistic approaches are not explicitly inscribed in the post-reform Constitution, the spirit of patronage persists in the form of the state's responsibility towards the welfare of its people.

This function of patronage is also evident in the President's duties as the holder of governmental power (Article 4, paragraph (1) of the 1945 Constitution), which is practically translated into inclusive development policies, public services, and the protection of socio-economic rights. It is here that the value of patronage is revived in the form of a democratic and participatory welfare state, rather than through authoritarian or top-down approaches as in the Old Order era. Moreover, with the existence of checks and balances mechanisms from independent institutions such as the Constitutional Court, the DPR (People's Representative Council), and the Ombudsman, the spirit of patronage is, in fact, reinforced through public oversight and participation.

Hence, a systematic review reveals that Articles 28A through 28J of the 1945 Constitution, which encompass the recognition and protection of human rights, also represent a manifestation of the value of patronage in its reformed version. To guarantee these fundamental rights, the state, through the President, bears the constitutional responsibility not only to enforce the law formalistically but also to protect vulnerable groups through affirmative action policies and social protection measures. Thus, it can be asserted that although Soepomo's integralistic and Sahardjo's paternalistic approaches are not explicitly inscribed in the post-reform Constitution, the spirit of patronage persists in the form of the state's responsibility towards the welfare of its people.

Thus, the banyan tree, symbolizing the idea of patronage, no longer serves as a symbol of hegemonic power as it did in the past, but has transformed into a symbol of

democratic and inclusive protection. Within the framework of constitutional reform, the spirit of patronage has, in fact, undergone an expansion of meaning – no longer solely interpreted as protecting the people from external threats, but also as an internal corrective to the potential abuse of law and state power. Therefore, a systematic interpretation of the 1945 Constitution indicates that patronage has not been abandoned, but rather re-contextualized to better align with the principles of a modern state of law.

From the above discussion, it can be concluded that the idea of Patronage, as a legal concept originating from the thoughts of figures such as Soepomo and Sahardjo, has not been entirely abandoned in the era of reform. Although the pattern of Indonesian constitutional law has shifted from an integralistic state model towards a modern democratic state that emphasizes the principles of human rights, separation of powers, and public participation, the spirit of patronage remains present and alive in various positive legal norms and state practices.

The President, as the holder of governmental power, continues to play a pivotal role in ensuring the protection of the fundamental rights of citizens. In this regard, the constitutional prerogatives vested in the office (such as the granting of clemency and amnesty, alongside the formulation of inclusive public policies) represent a tangible actualization of protective values within the framework of a modern legal system. Thus, it can be asserted that the strengthening of the Presidential institution in the reform era does not contradict the spirit of protection; rather, this spirit serves as a moral and constitutional foundation for the just and humanistic execution of executive functions.

Consequently, the transformation of the value of protection from a paternalistic approach towards a participatory protection of citizens' rights signifies the maturity of the Indonesian legal system. This exemplifies that the intellectual legal heritage of the past can still be imbued with new meaning in the contemporary context, representing a recontextualization that is not only relevant but also necessary to address the challenges of social justice in the reform era.

CONCLUSION

Based on a comprehensive analysis of historical developments, cultural values, and constitutional provisions, the principle of Pengayoman—as an indigenous value of protection—remains a vital foundation for strengthening Indonesia’s post-Reformasi presidential system. The President’s moral and constitutional duty to protect, nurture, and empower all citizens is enshrined in key provisions of the 1945 Constitution, from the presidential oath (Article 9) and clemency powers (Article 14) to the guarantee of human rights (Articles 28A–28J). Although modern governance emphasizes separation and limitation of powers, the protective ethos persists through checks and balances and explicit constitutional safeguards, demonstrating that institutionalizing Pengayoman harmonizes with, rather than contradicts, Indonesia’s democratic and legal values.

To embed Pengayoman within a dedicated Presidential Institution Act, two normative steps are essential. First, include a clause on the President’s protective function, mandating affirmative policies for vulnerable groups, public oversight of clemency and amnesty decisions, and annual reporting on human rights and social welfare protection. Second, enshrine the principle of protection in the Draft Law’s general provisions so that the Presidency is inherently bound by its role as guarantor of order and harmony in state life. The author declares that there is no conflict of interest in the publication of this article.

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