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**RESEARCH ARTICLE**

## The Philosophy of Freedom and Its Limitations in a Democratic Legal System

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**ABSTRACT**

This article investigates the philosophical foundations of freedom and its legal limitations within a democratic legal system, focusing on the perspectives of Hans Kelsen, Hugo Grotius, and the Indonesian model of *Pancasila* democracy. The study addresses the central question: how can freedom be preserved while lawfully restricted in a manner that respects justice and democratic values? This research draws on primary legal materials, judicial decisions, and philosophical theories by employing a normative juridical method combined with philosophical and conceptual approaches. The findings reveal that while freedom is a core value of democracy, it must be exercised with responsibility and within the framework of proportionate legal constraints to ensure social harmony and protect the rights of others. Kelsen's theory underscores participatory lawmaking as a compromise between majority and minority interests. Grotius insists on the rational and moral basis of law that safeguards inalienable human rights. The Indonesian context, through *Pancasila* democracy, offers a unique model that integrates individual liberty with communal values such as deliberation (*musyawarah*) and cooperation (*gotong royong*). The article concludes that legal systems must balance individual autonomy and collective well-being through a just, rational, and culturally grounded framework of law.

**KEYWORDS**

Legal Philosophy, Democracy, Freedom, Legal Limitations, Human Rights, *Pancasila* Democracy.

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### 1. Introduction

Democracy is a system of governance that places the people as the highest authority. In practice, democracy inherently requires freedom as a fundamental pillar that ensures active public participation in decision-making processes. However, freedom within a democratic legal system is not without limits. It must be subject to proportional legal restrictions to guarantee order, justice, and the protection of others' rights. Hans Kelsen conceptualises democracy as a compromise between the will of the majority and the minority, legally institutionalised through participatory lawmaking.<sup>1</sup>

Legal philosophy offers a deeper dimension to the meaning of freedom and its limitations within a democracy. Grotius emphasised that ideal law must be rooted in rationality and universal moral values to ensure justice and equality.<sup>2</sup> In the Indonesian legal context, *Pancasila* democracy represents a distinct model that does not adhere to liberal individualism but is founded upon deliberation (*musyawarah*), cooperation (*gotong royong*), and a balance of rights and responsibilities.<sup>3</sup>

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<sup>1</sup> HM Thalbah, "Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen", *Jurnal Hukum*, Vol. 16 No. 3 (2009): 416.

<sup>2</sup> Aulia Rahmat, "Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi", *Undang: Jurnal Hukum*, Vol. 2 No. 2 (2019): 435.

<sup>3</sup> Topan Indra Karsa, "Perkembangan Paradigma Demokrasi Pancasila dalam Pembangunan Hukum di Indonesia", *Keadilan Jurnal Fakultas Hukum Universitas Tulang Bawang*, Vol. 17 No. 2 (2019): 130.

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For instance, freedom of expression and opinion is constitutionally protected under Article 28E of the 1945 Constitution. However, such freedoms are limited by Article 28J, which stipulates that every person must respect the human rights of others and comply with legal restrictions established to ensure public order. A concrete example of a legally legitimate restriction is the regulation of public demonstrations under Law No. 9 of 1998 concerning the Freedom to Express Opinions in Public.<sup>4</sup>

From an international perspective, the International Covenant on Civil and Political Rights (ICCPR) also acknowledges that the rights to freedom of expression and assembly may be restricted for reasons of national security, public order, and public morality (Articles 19(3) and 21 of the ICCPR).<sup>5</sup>

In practice, Indonesian courts have affirmed the legal standing of such restrictions. Constitutional Court Decision No. 14/PUU-VI/2008 asserted that any restriction on freedom must adhere to the principle of proportionality and not arbitrarily suppress fundamental rights.<sup>6</sup> A recent example of the implementation of such legal limits can be seen in Supreme Court Decision No. 187 K/Pid.Sus/2021, which upheld the conviction of an individual who spread misinformation about COVID-19, as it was deemed to endanger public order.<sup>7</sup>

On the other hand, the media and legal observers often argue that the enforcement of these restrictions tends to be excessive and poses a threat to democracy itself. Opinion pieces in *Kompas* and *The Conversation Indonesia* have highlighted cases such as the dissolution of academic discussions and the criminalisation of activists as forms of power abuse that run counter to the democratic spirit.<sup>8</sup>

## 2. Discussion

### 2.1 The Philosophical Concept of Freedom and Its Limitations in a Democratic Legal System

The philosophy of freedom within a democratic legal system cannot be separated from the socio-political context in which the law operates. In a democracy, freedom is viewed as an inherent right attached to human beings. However, such freedom is not absolute. Hans Kelsen asserted that in a democratic state, the principle of freedom should not be understood as "freedom from rules," but rather as the right to participate in forming laws that govern oneself.<sup>9</sup>

Kelsen criticised the notion of freedom as a release from all forms of constraint, arguing that in societal life, law serves as a mechanism to unite the will of both the majority and the minority through legitimate compromise.<sup>10</sup> According to Kelsen, the core of democracy lies in the willingness of all parties to adjust to one another through just legal norms, rather than the dominance of an absolute majority.

Meanwhile, through natural law philosophy, Hugo Grotius emphasised that freedom and justice must be grounded in rationality and universal moral values. He believed that fundamental human rights are natural and inalienable by the state, and therefore, restrictions on freedom are only legitimate when aimed at preserving universal justice.<sup>11</sup> In Grotius's view, law emerges from social interaction and must embody moral principles that are accepted by society's collective reasoning. As such, limitations on freedom must be aligned with the values of justice, equality, and the public interest.

On the other hand, *Pancasila* democracy offers a unique synthesis. Freedom is not understood in the sense of Western-style liberal individualism but as a right that must be balanced with social obligations and respect for the nation's collective values. The principles of *Pancasila* democracy frame freedom within the spirit of deliberation (*musyawarah*), cooperation (*gotong royong*), and respect for human dignity.<sup>12</sup>

<sup>4</sup> Undang-Undang No. 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum.

<sup>5</sup> International Covenant on Civil and Political Rights (ICCPR), Articles 19(3) & 21.

<sup>6</sup> Putusan Mahkamah Konstitusi No. 14/PUU-VI/2008.

<sup>7</sup> Putusan Mahkamah Agung No. 187 K/Pid.Sus/2021.

<sup>8</sup> "Pembatasan Demokrasi Lewat Pembubaran Diskusi", *The Conversation Indonesia*, 2020, <https://theconversation.com>; "Demokrasi dan Tantangan Otoritarianisme Baru", *Kompas*, 21 Oktober 2023.

<sup>9</sup> HM Thalbah, "Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen", *Jurnal Hukum*, Vol. 16 No. 3 (2009): 416

<sup>10</sup> Ibid., hlm. 417-418

<sup>11</sup> Aulia Rahmat, "Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi", *Undang: Jurnal Hukum*, Vol. 2 No. 2 (2019): 435-443.

<sup>12</sup> Topan Indra Karsa, "Perkembangan Paradigma Demokrasi Pancasila dalam Pembangunan Hukum di Indonesia", *Keadilan Jurnal Fakultas Hukum Universitas Tulang Bawang*, Vol. 17 No. 2 (2019): 130-139.

## **2.2 Implementation of Freedom and Its Limitations in the Indonesian Legal System**

The Indonesian legal system regulates guarantees of freedom and limitations through various normative instruments. Article 28E paragraph (3) of the 1945 Constitution guarantees the freedom of association, assembly, and expression. However, this freedom is limited by Article 28J paragraph (2), which states that restrictions may only be imposed to respect the rights and freedoms of others, and to meet the demands of justice based on moral considerations, religious values, security, and public order.<sup>13</sup>

Law No. 9 of 1998 on the Freedom to Express Opinions in Public is a concrete example of procedural and preventive regulation of freedom. This law restricts freedom in public spaces by requiring prior notification and prohibiting actions that may disturb public order.<sup>14</sup>

However, the implementation of these restrictions has not always been ideal. In several cases, limitations on freedom have been applied repressively and selectively. Constitutional Court Decision No. 14/PUU-VI/2008 emphasised that restrictions on human rights must adhere to the principles of proportionality, legality, and a legitimate aim within a democratic society.<sup>15</sup> Nevertheless, in practice, certain court decisions tend to justify excessive restrictions on freedom, such as in cases involving the dissemination of hoaxes or the forced dispersal of public demonstrations.<sup>16</sup>

The media and legal scholars have also raised criticism. For instance, the dissolution of academic discussions and the criminalisation of activists have been viewed as exceeding the legal boundaries of justifiable restriction. These phenomena reflect existing loopholes in the Indonesian legal system that allow authorities to misuse freedom restrictions for political or power-related interests.<sup>17</sup>

Applying legal philosophy is essential to providing an ethical and rational framework for limiting freedom. Law should not merely be viewed as a set of enforceable rules but as a moral construct that upholds justice, public participation, and respect for human dignity.

## **2.3 Comparative Perspectives on Legal Limitations of Freedom in Other Democracies**

The tension between individual freedom and legal limitation is a common challenge faced in Indonesia and established democracies worldwide. While democratic states are built upon the protection of fundamental freedoms, most legal systems acknowledge that these rights are not absolute and may be restricted under certain conditions to safeguard the public interest, national security, or the rights of others.

Article 5 of Germany's *Grundgesetz* (Basic Law) guarantees freedom of expression, the press, and information. However, it also stipulates that such freedoms may be limited by general laws and in personal honour or youth protection cases.<sup>18</sup> German constitutional jurisprudence employs the *Verhältnismäßigkeit* (proportionality), requiring that any restriction be necessary, appropriate, and the least intrusive means of achieving a legitimate goal.<sup>19</sup> This doctrine is deeply aligned with freedom grounded in legal and rational considerations, much like Grotius's moral justification for law.

In the United States, the First Amendment vigorously protects freedom of speech and expression. However, even in this liberal framework, limitations exist, particularly in national security or public safety contexts. For instance, the *USA PATRIOT Act*, passed after the 9/11 attacks, granted broad powers to the government to surveil and detain individuals in the name of counterterrorism.<sup>20</sup> These measures have been criticised as infringing on civil liberties, highlighting the dilemma of balancing liberty and security in times of crisis.<sup>21</sup>

France offers a unique example of how freedom is reconciled with secularism and public order. The French concept of *laïcité* permits the state to restrict certain expressions of religion, particularly in public institutions, to preserve the republic's secular

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<sup>13</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28E dan 28J.

<sup>14</sup> Undang-Undang No. 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum.

<sup>15</sup> Putusan Mahkamah Konstitusi No. 14/PUU-VI/2008.

<sup>16</sup> Putusan Mahkamah Agung No. 187 K/Pid.Sus/2021.

<sup>17</sup> "Pembatasan Demokrasi Lewat Pembubaran Diskusi", *The Conversation Indonesia*, 2020, <https://theconversation.com>; "Demokrasi dan Tantangan Otoritarianisme Baru", *Kompas*, 21 Oktober 2023.

<sup>18</sup> *Grundgesetz für die Bundesrepublik Deutschland*, Art. 5(2), 1949.

<sup>19</sup> Kommers, Donald P., and Russell A. Miller. *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd ed. Duke University Press, 2012.

<sup>20</sup> USA PATRIOT Act, Pub. L. 107–56, 115 Stat. 272 (2001).

<sup>21</sup> Cole, David. *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*. The New Press, 2003.

nature.<sup>22</sup> While intended to uphold neutrality, these limitations, such as the ban on religious symbols in schools, have sparked debates about minority rights and cultural freedom.<sup>23</sup>

In recent years, countries like Hungary and Turkey have witnessed democratic backsliding under the pretext of maintaining national unity and stability. Legal instruments have been used to dissolve protests, censor the media, and imprison political dissidents. Although presented as necessary restrictions, such actions are often criticised as authoritarian, lacking the legal proportionality and moral legitimacy required in a constitutional democracy.<sup>24</sup>

These global examples illustrate that the question of balancing freedom and its limitations is not only legal but also cultural and political. While legal frameworks vary across jurisdictions, a common thread remains: restrictions must be grounded in legitimate purposes, enforced proportionally, and subject to judicial oversight to prevent abuse. Indonesia, with its commitment to *Pancasila* and constitutional democracy, stands to benefit from engaging in this global dialogue, learning from best practices and other nations' missteps.

#### **2.4 Philosophical and Ethical Evaluation of Freedom Limitation Practices in Indonesia**

The application of legal limitations on freedom in Indonesia, while normatively grounded in constitutional provisions, often reveals inconsistencies when evaluated through philosophical and ethical frameworks. The principle of *the rule of law* demands that all forms of restriction be legally valid, morally justified, and socially acceptable. This section critically reflects on whether current legal practices align with core philosophical tenets, particularly those advanced by Hans Kelsen, Hugo Grotius, and contemporary legal theorists.

From Hans Kelsen's perspective, legal legitimacy is derived from democratic participation and normatively structured procedures.<sup>25</sup> When the formation and implementation of laws lack inclusivity or transparency, the democratic character of legal authority becomes questionable. In this sense, the selective application of laws to dissolve peaceful assemblies or suppress dissent without clear proportional justification undermines the spirit of participatory democracy and violates the principle of legal equality.<sup>26</sup>

Hugo Grotius, emphasising natural law and moral universality, argued that legal restrictions must serve justice and respect the inalienable dignity of every person.<sup>27</sup> In the Indonesian context, cases such as the forced dispersal of academic discussions, arbitrary arrests of protestors, or the surveillance of civil society groups raise ethical concerns. These practices often contradict Grotius's assertion that law must be rational, moral, and oriented toward the common good.<sup>28</sup>

Moreover, when analysed through the lens of **John Rawls's theory of justice**, restrictions are only acceptable if they protect the equal liberty of all and benefit society's least advantaged.<sup>29</sup> Policies or actions that disproportionately affect minority voices or political opponents fail to meet Rawlsian standards of fairness and neutrality. A legal system that prioritises order over justice risks degenerating into formalism, upholding the law in form, but violating it in substance.

The lack of consistent judicial enforcement of constitutional safeguards compounds the ethical challenges. Although the Constitutional Court of Indonesia has affirmed the importance of proportionality and legitimacy in human rights restrictions,<sup>30</sup> subsequent enforcement often depends on political will, media pressure, or civil society advocacy rather than institutional integrity.

Ultimately, the Indonesian legal system, inspired by *Pancasila* values, must reaffirm its ethical foundation: that law exists not merely to control but to empower; not to silence dissent but to channel it constructively. Without a strong philosophical and ethical anchor, the risk persists that freedom will be curtailed not in the name of justice, but in the interest of power.

<sup>22</sup> French Constitution, Article 1; Law No. 2004-228 prohibiting religious symbols in public schools

<sup>23</sup> Bowen, John R. *Why the French Do not Like Headscarves: Islam, the State, and Public Space*. Princeton University Press, 2007.

<sup>24</sup> Freedom House. *Freedom in the World 2024: The Mounting Damage of Democratic Decline*. <https://freedomhouse.org/report/freedom-world>

<sup>25</sup> Kelsen, Hans. *Pure Theory of Law*. Trans. Max Knight. University of California Press, 1967.

<sup>26</sup> Thalbah, HM. "Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen." *Jurnal Hukum*, Vol. 16 No. 3 (2009): 416–430.

<sup>27</sup> Grotius, Hugo. *The Rights of War and Peace*. Trans. A.C. Campbell. Batoche Books, 2001.

<sup>28</sup> Rahmat, Aulia. "Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi." *Undang: Jurnal Hukum*, Vol. 2 No. 2 (2019): 435–452

<sup>29</sup> Rawls, John. *A Theory of Justice*. Harvard University Press, 1971.

<sup>30</sup> Constitutional Court Decision No. 14/PUU-VI/2008, on the principle of proportionality in restricting freedom of expression.

2.5 Visual Framework: Harmonising Freedom and Legal Limitation in Democratic Law

To further illustrate the relationship between individual freedom, legal regulation, and democratic values, the following table presents a simplified conceptual model. It shows how philosophical theories, legal norms, and practical implementations interact to shape a balanced democratic legal system. This model serves to clarify how abstract legal-philosophical concepts such as *natural rights*, *participatory democracy*, and *justice as fairness* are operationalised within the rule of law.

By structuring these elements side by side, the table offers a comparative lens through which one can evaluate whether a particular legal system—such as Indonesia’s *Pancasila* democracy—achieves coherence between its normative ideals and real-world practices. It also reinforces the central argument of this article: that freedom and its limitation must not be treated as binary opposites, but as interdependent components of a just and ethical legal order.

Table 1. Conceptual Framework: Balancing Freedom and Legal Limitation in a Democratic Legal System

Conceptual Element	Explanation	Philosophical Reference
Individual Freedom	Fundamental human rights are inherent to every individual.	Hugo Grotius – <i>natural rights</i>
Democratic Legal Framework	Legal instruments (constitution, laws, judicial review) that define and limit the exercise of freedom.	Hans Kelsen – <i>participatory legality</i>
Legitimate Limitation	Restrictions based on proportionality, public order, morality, and protection of others’ rights.	John Rawls – <i>justice as fairness</i>
Ethical Safeguards	Ensures that restrictions are not arbitrary and remain within moral and rational boundaries.	Ronald Dworkin – <i>law as integrity</i>
Balanced Legal Outcome	A just and stable society where freedom and order are respected and promoted.	<i>Pancasila social harmony and deliberation</i>

This framework is not intended as a rigid formula but as an evaluative tool to assess whether a legal system maintains fidelity to democratic and philosophical principles. In the Indonesian context, where *Pancasila* offers a culturally rooted democratic ideology, such a framework can help critically assess whether laws and their enforcement genuinely reflect the intended balance between liberty and order. It also encourages philosophical reflection in interpreting constitutional principles, thereby enriching legal practice with ethical depth.

3. Results and Discussion

3.1 Key Philosophical Findings on Freedom and Legal Limits

The philosophical foundation of freedom within a democratic legal system reveals that liberty is not merely the absence of restraint, but a condition within a structured and just legal order. This study highlights three significant philosophical contributions that inform the normative limits of freedom: Hans Kelsen's concept of legal democracy, Hugo Grotius's natural law theory, and John Rawls's theory of justice.

Hans Kelsen’s positivist approach to democracy emphasises that freedom must be understood as participation in the lawmaking process, rather than freedom from law itself.<sup>31</sup> According to Kelsen, democracy achieves legitimacy when laws are formed through public involvement, including both majority and minority voices. Therefore, legal limitations are justified so long as they reflect a procedural compromise born from inclusive and rational deliberation. This implies that legal restrictions on freedom must be participatory in origin and equal in application.

<sup>31</sup> Kelsen, Hans. *Pure Theory of Law*. Trans. Max Knight. University of California Press, 1967.

Hugo Grotius, as one of the pioneers of natural law theory, presents a contrasting yet complementary view. He asserts that human rights are inherent and cannot be arbitrarily revoked by any political authority.<sup>32</sup> For Grotius, legitimate legal limitations on freedom must be grounded in rationality and universal moral principles such as justice, equality, and the common good. Any law that deviates from these values loses its ethical foundation, even if it holds formal legal status. In this framework, the state has a duty not only to maintain order but to protect the moral dignity of its citizens.

Meanwhile, John Rawls provides a more contemporary perspective on how legal systems should evaluate limitations on freedom. His theory of justice posits that any restriction is permissible only if it upholds equal liberty for all and contributes to the fairness of societal structures.<sup>33</sup> The principle of *justice as fairness* demands that no liberty be curtailed unless doing so protects the broader framework of basic freedoms and benefits society's most disadvantaged. Thus, limitations must be not only legal and rational but also equitable in their real-world effects.

In synthesis, these three philosophical views converge on one core principle: freedom in a democracy must be exercised and limited through morally legitimate, procedurally fair, and socially responsive structures. Legal limitations are valid only when they promote justice, not when they serve the interests of power, repression, or arbitrary control. These foundational insights serve as a normative lens through which the Indonesian legal system must be critically evaluated.

### **3.2 The Indonesian Legal Reality: Alignment and Tension**

Indonesia's constitutional and statutory legal framework explicitly recognises freedom as a fundamental right while acknowledging the need for lawful restrictions. Article 28E of the 1945 Constitution guarantees freedom of expression, association, and opinion. Yet, Article 28J introduces limitations on these rights to ensure respect for the freedoms of others and uphold morality, religious values, public order, and national security. This structure reflects a theoretical alignment with the philosophical principles articulated by Kelsen, Grotius, and Rawls.

However, several tension points emerge when evaluated against actual legal practice and state behaviour. Although the law formally embodies the principle of proportionality, enforcement often lacks consistency, transparency, and ethical accountability. For example, while Hans Kelsen emphasised participatory legal legitimacy, public engagement in legislative processes in Indonesia is frequently symbolic rather than substantive.<sup>34</sup> Key civil liberties laws, such as revisions to the Criminal Code (KUHP), have been criticised for being passed without sufficient deliberation or public consensus.

Moreover, cases involving the dispersal of peaceful protests or the criminalisation of dissent suggest a deviation from Grotius's insistence that law must uphold universal moral standards and protect human dignity.<sup>35</sup> While legal justifications may cite the need to preserve public order, the selective application of these restrictions, especially against minority groups, student movements, or civil society organisations, raises questions about whether such laws serve justice or merely political convenience.

From a Rawlsian perspective, Indonesia's implementation of freedom-limiting measures often fails to meet the standard of fairness. Rawls demands that any inequality or restriction must benefit the least advantaged. However, legal sanctions disproportionately affect those with limited political influence, such as rural protestors, academic critics, and human rights activists.<sup>36</sup> This indicates a risk of structural injustice embedded within the current enforcement system.

Despite these challenges, it is important to note that Indonesia's *Pancasila*-based democracy provides a strong normative foundation to support ethical and culturally rooted governance. Its emphasis on balance (*keseimbangan*), deliberation (*musyawarah*), and social cohesion (*gotong royong*) offers a uniquely Indonesian approach to legal legitimacy. The task remains to translate these ideals into consistent legal interpretation and just implementation.

<sup>32</sup> Grotius, Hugo. *The Rights of War and Peace*. Trans. A.C. Campbell. Batoche Books, 2001

<sup>33</sup> Rawls, John. *A Theory of Justice*. Harvard University Press, 1971.

<sup>34</sup> Thalbah, HM. "Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen." *Jurnal Hukum*, Vol. 16 No. 3 (2009): 416–430.

<sup>35</sup> Rahmat, Aulia. "Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi." *Undang: Jurnal Hukum*, Vol. 2 No. 2 (2019): 435–452

<sup>36</sup> Human Rights Watch. *Indonesia: Crackdown on Dissent*. 2020. <https://www.hrw.org/news/2020/11/16/indonesia-crackdown-dissent>

### **3.3 International Comparative Reflection**

Examining how other democratic states conceptualize and implement the limitation of freedom provides valuable insights for Indonesia. Despite varying cultural and legal traditions, mature democracies such as Germany, France, and the United States grapple with similar challenges: maintaining civil liberties while ensuring national security, public order, and social cohesion.

In **Germany**, the *Grundgesetz* (Basic Law) allows freedom of expression under Article 5(1), but also stipulates that such freedom may be restricted by general laws, laws for the protection of youth, or the right to personal honour under Article 5(2).<sup>37</sup> German courts rigorously apply the *Verhältnismäßigkeit* (proportionality) principle to assess whether restrictions are necessary, suitable, and the least intrusive means of achieving a legitimate goal.<sup>38</sup> This model provides a benchmark for legal justification that Indonesia could emulate more consistently.

In **France**, *laïcité* (state secularism) doctrine justifies limitations on religious expression in public institutions. Laws banning religious symbols in schools and public buildings have sparked debate, particularly among minority communities.<sup>39</sup> France illustrates how the legal justification for freedom limitation can align with national identity and values, yet still risk marginalising vulnerable groups. This is an important warning for Indonesia as it balances majority norms with minority protections.

The **United States**, with its strong First Amendment protections, allows restrictions on speech only under narrowly defined exceptions such as incitement to violence or defamation.<sup>40</sup> Even post-9/11 legislation like the USA PATRIOT Act, though widely criticised, was subject to intense judicial scrutiny and sunset provisions. The U.S. example underscores the role of independent courts and civil society in checking the abuse of restrictive powers.

Conversely, countries like **Hungary** and **Turkey** have shown how legal mechanisms can be co-opted to suppress dissent and centralise power under populist regimes. Laws on media control, protest regulation, and national security are often used to silence opposition under the pretence of public order.<sup>41</sup> These cases serve as cautionary tales for emerging democracies, including Indonesia, where legal formalism can be exploited to erode democratic space.

Indonesia's legal culture, grounded in *Pancasila* values, may not be identical to Western liberalism, but it nonetheless aspires to the same democratic ideals. Comparative reflection reveals the necessity of strong institutional safeguards, judicial independence, and clear legal standards to ensure that the regulation of freedom does not become a tool of political control. By learning from best practices and cautionary failures abroad, Indonesia can refine its legal system to become more just, consistent, and resilient.

### **3.4 Philosophical-Ethical Implications for Indonesian Democracy**

The findings presented in this article underline a fundamental philosophical tension within Indonesia's democratic legal framework: how to uphold freedom as a constitutional right while allowing its restriction in an ethically defensible and democratically legitimate manner. The core issue lies not merely in the presence of legal mechanisms but in the ethical orientation of how those mechanisms are applied.

Philosophically, the enforcement of restrictions must meet the criteria of **moral legitimacy**, as proposed by Hugo Grotius, and **procedural fairness**, as emphasised by Hans Kelsen. In practice, however, legal decisions in Indonesia sometimes lack both. The dissolution of academic discussions, selective law enforcement against activists, and vague regulations used to silence dissent raise concerns about whether current legal practices uphold the dignity and reason-based justice that Grotius insisted upon.<sup>42</sup>

The ethical implications deepen when viewed through **John Rawls's framework** of *justice as fairness*, which asserts that any deprivation of liberty is only justifiable if it strengthens the broader system of liberties for all.<sup>43</sup> However, in many Indonesian cases, those most affected by legal restrictions are marginalised groups whose voices are least heard in political decision-making

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<sup>37</sup> *Grundgesetz für die Bundesrepublik Deutschland*, Article 5(2), 1949.

<sup>38</sup> Kommers, Donald P., and Russell A. Miller. *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd ed. Duke University Press, 2012.

<sup>39</sup> Bowen, John R. *Why the French Do not Like Headscarves: Islam, the State, and Public Space*. Princeton University Press, 2007.

<sup>40</sup> Chemerinsky, Erwin. *Constitutional Law: Principles and Policies*. 5th ed., Aspen Publishers, 2015.

<sup>41</sup> Freedom House. *Freedom in the World 2024: The Mounting Damage of Democratic Decline*. <https://freedomhouse.org/report/freedom-world>

<sup>42</sup> Rahmat, Aulia. "Rasionalisasi Hukum Alam oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi." *Undang: Jurnal Hukum*, Vol. 2 No. 2 (2019): 435–452.

<sup>43</sup> Rawls, John. *A Theory of Justice*. Harvard University Press, 1971.

processes. This discrepancy undermines both the egalitarian spirit of constitutional democracy and the philosophical foundation of justice.

To summarise the relationship between normative philosophical standards and real-world practice, the following table provides a comparative evaluation:

Table. Evaluative Comparison between Philosophical Principles and the Practice of Legal Limitations in Indonesia

Philosophical Principle	Theoretical Source	Expected Legal Implications	Indonesian Legal Reality
Moral legitimacy of law	Hugo Grotius	Law must reflect universal justice and protect human dignity.	Vague or repressive restrictions on protest and expression
Participatory legitimacy	Hans Kelsen	Laws must be created through inclusive, democratic processes	Limited public input in major legislative reforms (e.g., KUHP) <sup>44</sup>
Justice as fairness	John Rawls	Restrictions must benefit the least advantaged and uphold equal liberty	Legal sanctions disproportionately affect activists and minorities
Law as moral interpretation	Ronald Dworkin	Law must express a community's moral reasoning, not merely enforce rules	Overreliance on legal formalism; inconsistent judicial application. Symbolic invocation of values, weak realisation in practice
Deliberative democracy	Pancasila philosophy	Legal reasoning must embody the values of <i>musyawarah</i> and <i>gotong royong</i>	Symbolic invocation of values, weak realisation in practice

This framework is not intended as a rigid formula but as an evaluative tool to assess whether a legal system maintains fidelity to democratic and philosophical principles. In the Indonesian context, where *Pancasila* offers a culturally rooted democratic ideology, such a framework can help critically assess whether laws and their enforcement genuinely reflect the intended balance between liberty and order. It also encourages philosophical reflection in interpreting constitutional principles, thereby enriching legal practice with ethical depth.

Therefore, Indonesia's challenge is not merely to craft regulations that align with democratic form but to implement them in ways that substantively uphold dignity, justice, and public participation. Only then can legal limitations on freedom be justified not only in law but also in conscience.

#### 4. Conclusion

Based on the previous discussion, it can be concluded that the philosophical concept of freedom within a democratic legal system cannot be separated from the principles of responsibility and social interconnectedness. Freedom does not imply the absence of limits, but rather a form of liberty subject to lawful, rational, and just restrictions to preserve public order and protect the rights of others.

Hans Kelsen's ideas emphasise that true democracy requires citizens' participation in lawmaking, reflecting a compromise between majority and minority interests. Meanwhile, Hugo Grotius argues that law must be grounded in universal moral values, rationality, and respect for human rights principles that should remain inviolable within any legal system. *Pancasila* democracy offers a unique approach that balances individual rights with collective values such as deliberation (*musyawarah*) and cooperation (*gotong royong*).

In the Indonesian legal context, limitations on freedom are regulated through the 1945 Constitution and other statutory laws. However, in practice, instances still contradict the principles of proportionality and democracy, such as the forced dissolution of academic discussions, the criminalisation of activists, and the repressive restriction of public demonstrations. Therefore, a

<sup>44</sup> Thalbah, HM. "Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen." *Jurnal Hukum*, Vol. 16 No. 3 (2009): 416–430.



philosophical understanding of freedom and its limitations is crucial to ensure that law does not merely function as an instrument of power but serves as a vehicle of justice that upholds human dignity.

### 5. Suggestion

- **Legislators and policymakers** should formulate more specific and stringent provisions regarding limiting freedoms, prioritising the principle of proportionality to prevent misuse by authorities or the government for political purposes.
- **Law enforcement agencies and the judiciary** must consistently apply a substantive justice approach when assessing cases involving restrictions on freedom so as not to compromise the principles of human rights and constitutional democracy.
- **Academics and civil society** are encouraged to continue developing legal philosophical studies and exercising critical oversight of legal practices that arbitrarily restrict freedoms to maintain a healthy and civilised democratic system in Indonesia.

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