

Research Article

The Rule Of Law, The Constitution, And Democracy In Indonesian State Administration Practice

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Abstract: Indonesia constitutionally declares itself as a state based on the rule of law as mandated in Article 1 paragraph (3) of the 1945 Constitution after the amendments. This principle requires that governance and law enforcement be conducted under constitutional supremacy, legal certainty, equality before the law, and an independent judiciary. However, various political interferences, regulatory inconsistencies, and discriminatory legal practices continue to undermine these ideals. This research examines: (1) the effectiveness of the hierarchy of legislation and judicial review mechanisms by the Constitutional Court (MK) and the Supreme Court (MA) in preventing regulatory conflicts and discriminatory law enforcement; and (2) the extent to which the rule of law principle post-amendment has been manifested in equal protection before the law and judicial independence. Using a normative legal research method with statute, conceptual, case, and historical approaches, this study finds that although constitutional reforms have strengthened checks and balances and judicial authority, the persistence of selective and politically influenced law enforcement indicates that equality before the law has not been consistently implemented. Strengthening institutional integrity, improving regulatory harmonization, and ensuring the judiciary's independence remain crucial to realizing Indonesia's constitutional aspirations as a democratic state governed by the rule of law.

Keywords: Constitutional Court; Constitutional Democracy; Judicial Independence; Legal Hierarchy; Rule of Law.

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1. Preliminaries and Background of the Issue

According to Article 1 paragraph (3) of the 1945 Constitution, the Republic of Indonesia is a state founded on the rule of law (2020). According to this theory, the law serves as the cornerstone of social, national, and state life as well as government administration. Indonesia upholds constitutional democracy, which is based on Pancasila as its guiding concept. This means that the constitution serves as the ultimate guide for safeguarding citizens' rights and restricting the authority of the state. (Muntoha, 2009).

Significant reforms were brought about by changes in the state structure following the 1945 Constitution's amendment, especially with regard to the exercise of people's sovereignty, which is now done in compliance with the constitution, and the reinforcement of the system of checks and balances between state institutions. Through judicial assessment of legislation, the Supreme Court (MA) and the Constitutional Court (MK) have acquired strategic authority in upholding legal coherence. This system should ideally be used as a tool to avoid

regulatory conflicts and guarantee that all laws do not violate constitutional principles. (Susanti, 2017).

. However, there are still significant issues with Indonesian law enforcement, most notably the unequal application of the law, which is sometimes referred to as "sharp at the bottom but blunt at the top." The phenomenon of discrimination in law enforcement demonstrates that the fundamental tenet of a state founded on the rule of law equality before the law has not been fully realized (Aditya & Winata, 2018). This is demonstrated by the way several corruption cases have been handled, which have persisted uninterrupted despite changes in government, as well as by the judiciary's independence, which is still problematic in terms of its efficacy and decisiveness when confronted with influence from those in positions of authority (Waliden et al., 2022).

To what degree are regulatory conflicts and discriminatory practices in law enforcement actually prevented by the hierarchy of laws and regulations and the judicial review process by the Constitutional Court and the Supreme Court? These are important questions that require further investigation. Examining how the rule of law was applied following the 1945 Constitutional amendment is also essential, particularly with regard to the application of equality before the law and the judiciary's independence in performing its judicial duties in a fair, impartial, and pressure-free manner.

In order to present an objective image of the difficulties and direction of national legal reform in order to actualize equitable law enforcement for all citizens, it is crucial to evaluate the current conditions of the application of the rule of law principle in Indonesia.

2. Research Method

This study uses a normative legal research method (juridical normative) that focuses on examining legal principles, legal norms, and laws and regulations applicable in the Indonesian constitutional system (Efendi & Ibrahim, 2018a). This study uses a legislative approach (Soekanto, 2007) and a historical approach (Efendi & Ibrahim, 2018b). These approaches were chosen because the issues examined relate to the implementation of the principle of the rule of law within the framework of the hierarchy of regulations and the mechanism for testing constitutionality by judicial institutions, as well as the history of these issues.

3. Results and Discussion

Indonesian Constitutional Practice In Terms Of Being A State Based On The Rule Of Law

The 1945 Constitution, which is a written law that is binding and contains regulations that all residents must abide by, is Indonesia's highest law. In order to become a modern nation with a democratic government founded on law and good governance, Indonesia underwent a period of reform around 1997. Indonesia is a nation founded on the rule of law, which upholds the legality principles that govern all facets of Indonesian law. Law Number 12 of 2011's Article 7 on the Formation of Legislation (2011).

Additionally, it states that the hierarchy mentioned in paragraph 1 (one) is in line with the legislation's legal force. This indicates that the rules' legal standing is in line with the hierarchy. It should be mentioned that the Constitutional Court will decide whether a

regulation is in contradiction with the 1945 Constitution, and the Supreme Court will decide whether a rule is in disagreement with the law.

The legislative, executive, and judicial branches of government make up the Indonesian state's limited authority. Every function has a distinct role that complies with the law's mandate and does not overlap (Isra, 2010). In line with the idea of the rule of law, the judicial job is to uphold policies or laws, oversee and monitor procedures, and defend citizens' human rights.

The rule of law has evolved in Indonesia, as seen by the various ways that the government has implemented it. The police, the Attorney General's Office, the courts, the Corruption Eradication Commission (KPK), the Supreme Court (MA), the Constitutional Court (MK), legislative institutions and their authorities like the DPR, and other institutions are examples of state institutions that exist to legalize the law. It is made clear that Indonesia is a state founded on the rule of law in the 1945 Constitution and its modifications. This implies that the law must be the foundation for everything and that all citizens must abide by it. The two distinct ideas or schools of thought around the rule of law—the rule of law in the sense of *rechtsstaat* and the rule of law in the sense of the rule of law—are not specifically included in the principle of the rule of law. The protection of human rights and the separation or division of powers—that is, the exercise of people's sovereignty and the administration of government in accordance with Indonesian laws and regulations—must, however, serve as the foundation for the application of the Indonesian rule of law. All of the aforementioned components must be applied consistently since this is consistent with the goals of the Indonesian rule of law as outlined in the Preamble to the 1945 Constitution.

Judging from current developments, Indonesia has not yet fully implemented the legal principle of equality of the law. This can be seen from several cases reported in both electronic and print media, which still appear to be selective in their application of the law. Political factors are suspected to have interfered in the handling of several cases, resulting in the law tending to be harsh on those at the bottom and lenient on those at the top (Muntoha, 2009). This is certainly very saddening, considering that Indonesia is a developing country that is being eyed by foreign investors who actually need legal certainty (Philipus, 1987). In Indonesia, politics has a big impact on the law (Mahfud, 1998), which is closely related to what is produced in the form of laws. The relationship between constitutional law and political science was first discussed by J. Barent in his book entitled *De Wetenschap der Politiek*. Barent stated that constitutional law is the human framework, while political science is the flesh that surrounds it. This is not an exaggeration because political decisions are events that greatly influence the law and cannot be separated from politics (Budiardjo, 2003).

As outlined above, in our country there are at least six sources of constitutional law that can be used, namely (Huda, 2011):

Legislation

Laws and their derivative regulations governing norms are formal laws used by a country that have legal force and are binding on all citizens without exception, enforced by the state authorities. Not all laws govern norms, but there are also regulations made based on delegated authority, such as Ministerial Regulations. Generally, these regulations are technical in nature and must not conflict with the provisions above them, namely those of the authority granting the delegation.

Jurisprudence

Jurisprudence can be defined as previous court decisions on cases not covered by law, which can be used as guidelines for other judges in resolving similar or identical cases (Wicaksono, 2012).

Treaty

A treaty is an agreement between countries that is binding on both parties to the agreement (Huda, 2011). Generally, agreements can be made between two countries, which are also known as bilateral agreements, or agreements made by two or more countries, which are known as multilateral agreements (Huda, 2011).

Doctrine

Doctrine is a source of law since it is a storehouse of standards. According to Apeldoorn, doctrine simply aids in the creation of norms; in order for it to become an indirect source in the application of law, it must first be incorporated into direct norms, such as laws or court rulings. This is due to the fact that theory and practice are not the same in practice (Philipus, 1987).

Habit

The Indonesian legal system lists habits as one of the sources of law. An act that is performed frequently in accordance with a consistent, usual, and regular behavior that many people find enjoyable is referred to as a habit (Huda, 2011).

Indonesian State Practices In Terms Of The Constitution

According to K.C. Wheare (1975), the Constitution is a set of rules that create, govern, or regulate a nation's administration and constitute its complete constitutional system. It should be noted that the constitution is different from laws. Many people believe that the constitution is the same as or equivalent to laws, when in fact they are different. The constitution is a broader term that encompasses all basic rules of state administration, both written and unwritten, while the constitution specifically refers to a single written basic legal document that contains the basic provisions of the state. In other words, the UUD is one form of constitution, but a constitution does not always have to be in the form of a UUD. A constitutional state governs human rights protection as well as the establishment, allocation of authority, and operation of various governmental agencies. In order for state institutions to be established, this is governed by the distribution of powers according to the different kinds of powers. Therefore, a state institution that is in charge of using that specific kind of power cannot be established until the type of power has been identified as a reference. Sometimes the people want to amend the constitution because this is inevitable if the mechanisms for governing the state as stipulated in the current constitution are no longer in line with the aspirations of the people. Not to mention the existence of irregularities in the implementation of state administration, which usually leads to change. Furthermore, the Constitution typically includes provisions pertaining to constitutional amendments themselves. The procedures for these amendments are designed so that the changes that take place are genuinely the aspirations of the people and not based on arbitrary, transient desires or the desires of a small group of people.

Indonesian State Practices In Terms Of Democracy

Every citizen has equal rights under a democratic system of governance. They are entitled to make choices regarding their own lives. This is due to the fact that the state permits residents to take part directly or through representatives in order to construct the country as a whole. In a democracy, individuals must be guided by the values contained in the Pancasila ideology, which also serves as the philosophy of life for the Indonesian people. This is due to the possibility that the democratic process will turn into a contest of ideas to address current issues. Since independence, the Old Order, the New Order, and the Reformation era, democracy has experienced a number of transformations. Currently, democracy is considered fairly equitable because each individual's rights are guaranteed by law and are open. However, the democracy practiced today should not be excessive. One of the things the author objects to is that democracy is sometimes incompatible with the customs of the Indonesian people, who are known for their friendliness and mutual respect. An example of this is when demonstrators burn photos of leaders or other institutions during demonstrations to express their aspirations. This should not be necessary, as the expression of aspirations should be a means of providing input for improvement. Furthermore, during the era of President Susilo Bambang Yudhoyono, some demonstrators brought buffaloes as a form of expressing their aspirations. This should not be necessary, considering that the President is a symbol of the state whose dignity must be upheld. In addition, other countries' views of democracy in Indonesia will have a negative impact.

4. Conclusions

In implementing the law in Indonesia, the parties involved must be guided by the legal basis, namely the 1945 Constitution, which is recognized as an instrument to ensure that the state is always consistent in its implementation, without discrimination and consistent in its implementation. Putting aside ego and politics, the law should be developed through the implementation of existing regulations. This will ensure that Indonesian citizens are treated equally before the law. Constitutional guarantees related to equal rights should be implemented in Indonesia. According to the 1945 Constitution, Indonesia is a nation founded on the rule of law. The preamble of the 1945 Constitution states that the country's goals are to educate the populace, advance general welfare, and contribute to the establishment of a global order founded on freedom, eternal peace, and social justice. Since constitutional law governs the fundamentals of national and state life, including the objectives of the state and the nation, trust is one of the reforms made to Indonesian constitutional law in order to accomplish these aims. This reform must address every facet, from the approach and strategy to the content, and it must be adjusted to the current developments in line with the demands of society while maintaining a sense of fairness.

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