

THE CONCEPT OF THE RULE OF LAW IN THE INDONESIAN CONSTITUTION

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Abstract

This research aims to analyse the concept of the rule of law in the 1945 Constitution of the Republic of Indonesia (UUD 1945) and evaluate the extent to which the principle of the rule of law is implemented in Indonesia's constitutional structure. Using a normative juridical approach and a positivistic paradigm, this research finds that the implementation of the principle of the rule of law in Indonesia still faces significant challenges, including inharmonious regulations, corruption, and limited independence of the judiciary. This research provides recommendations for improvements to the legal system and government institutions to reflect the principle of the rule of law that is more consistent with constitutional values, which is expected to strengthen fair and transparent legal governance in Indonesia.

Keywords: *concept, rule of law, Indonesian constitutionalism*

INTRODUCTION

The concept of the rule of law has been an important discourse in various traditions of political and legal thought, evolving along with efforts to limit absolute power and ensure the protection of individual rights. Different countries have different terms to describe this concept, such as *Rechtsstaat* in Germany, *Etat de Droit* in France, *Rule of Law* in the UK and America, and *Estado de Derecho* in Spain. These terms reflect differences in the historical, social and cultural context of each country, although in essence they all refer to the idea of limiting power through law to realise justice and freedom for its citizens (Prasetyoningsih, 2020). In the development of its thinking, the rule of law is not only understood as a limitation on the power of the ruler, but also as a mechanism to maintain a balance between state power and the rights of citizens, which are protected through a fair legal system.

The idea of the rule of law comes from the view of constitutionalism which aims to organise a system of government that does not solely depend on the will of the ruler (Effendi, 2020). Initially, this concept emerged as a response to the absolute power of kings in the past, with the main objective of limiting power and avoiding arbitrariness. It developed into an important part of modern constitutional systems that prioritise the rule of law and the protection of human rights. The rule of law is a basic principle that guarantees that all state actions must be based on applicable law, and no one is outside the law, including the authorities themselves.

In Indonesia, the concept of the rule of law has also been integrated into the constitutional system through the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the 1945 Constitution, Indonesia is described as a state based on law or better known as *rechtsstaat*. This affirmation reflects the commitment of the Indonesian people to make law the main foundation in the administration of the state, not merely unlimited power.

The Indonesian rule of law does not only aim to limit state power, but also to realise the *welfare* of the people in accordance with the principles of the *welfare state* reflected in Pancasila. This shows that the Indonesian rule of law has distinctive characteristics, namely prioritising social justice and welfare for all the people.

However, although the Indonesian constitution affirms the rule of law, in practice there are various challenges in its implementation. Criticism of law enforcement, unequal access to justice, and concentration of power in certain groups often hinder the achievement of the ideal rule of law. In this case, the question that arises is to what extent the principle of the rule of law in the 1945 Constitution is applied in the structure and practice of Indonesian state administration, as well as how the role of the constitution in shaping a more just and transparent legal system.

This research aims to examine in depth the concept of the rule of law in the perspective of the Indonesian constitution, using a normative juridical approach. This research will analyse how the concept of the rule of law is explained in the 1945 Constitution, as well as how it is applied in Indonesian constitutional practice. The purpose of this research is to provide a clearer picture of how the rule of law should be applied in the Indonesian system of government and provide recommendations for improving the implementation of the principles of the rule of law in the future.

This research aims to examine qualitatively the concept of the rule of law in the perspective of the Indonesian constitution, using a normative juridical approach. Specifically, this research aims to analyse the meaning of the concept of the rule of law in the 1945 Constitution of the Republic of Indonesia (UUD 1945) and assess the extent to which the principle of the rule of law is implemented in the structure and practice of the Indonesian state administration. In addition, this research also seeks to provide recommendations regarding the improvement of Indonesia's legal and governance systems to better reflect the principle of the rule of law in accordance with constitutional values.

The hypothesis proposed in this research is how the concept of the rule of law in the perspective of the constitution in Indonesia. Although the concept of the rule of law has been affirmed in the 1945 Constitution, its application in Indonesian constitutional practice still faces various challenges. One of the main challenges is the mismatch between the principle of the rule of law contained in the constitution and the reality of law enforcement and governance, which is often influenced by factors of dominant political power, unequal access to justice, and weak oversight institutions.

This research is expected to make theoretical and practical contributions to the understanding of the concept of the rule of law in the perspective of the Indonesian constitution. Theoretically, this research will enrich the study of the relationship between the constitution, the rule of law, and its application in constitutional practice. Practically, the results of this research are expected to provide constructive recommendations for legal reform and strengthening the principles of the rule of law in Indonesia, by emphasising the need for law enforcement that is more fair, transparent, and in accordance with the values of Pancasila as the basis of the state.

The conceptual framework in this study focuses on two main concepts, namely "rule of law" and "constitution". The rule of law is understood as a system of government that places law as the basis for regulating the life of the nation and state, with the aim of limiting state power and protecting human rights. The Constitution, in this case the 1945 Constitution, functions as the highest legal basis that regulates the constitutional system and provides a foundation for the implementation of the rule of law. This research will use the theories of constitutionalism and the rule of law as an analytical lens to evaluate the extent to which the rule of law principles in the 1945 Constitution are implemented in Indonesian constitutional practice, as well as identify the challenges in upholding the rule of law.

LITERATURE REVIEW

The Concept of the Rule of Law in the Indonesian Constitution

The rule of law is a state based on law, where every state action, including the actions of the government and other state institutions, must be subject to applicable rules, including the constitution. This concept evolved along with the evolution of thinking about the limits of state power and the protection of individual rights within a legal framework. In the context of the Indonesian constitution, the rule of law refers to a system of government that is bound by basic law, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the 1945 Constitution, the rule of law is reflected in the principle of popular sovereignty, the limitation of state power, and the protection of citizens' rights. It also reflects the recognition that the state is not an absolute power, but is limited and controlled by law.

Origin and Definition of Constitution

Linguistically, constitution comes from the English word "constitution", which means "to form" or "formation" (Achmad, et al., 2023). A constitution is essentially a document or collection of rules governing the structure and organisation of the state and the relationship between the state and its citizens. In this sense, the constitution serves as the basis for state formation and the regulation of state power. Allen & Thompson (2011) define a constitution as "*a document which contains the rules for the operation of an organisation*", which shows the role of the constitution in regulating mechanisms and procedures in the state. This constitution not only includes written law, but in some cases, also involves constitutional conventions that develop in society.

Constitutionalism and the Limitation of State Power

Constitutionalism is the underlying principle that the state must be limited by law. This involves limiting the power of the state so that it is not abused by the ruler. In the tradition of constitutionalism, there is an understanding that the rule of law aims to keep government power from being absolute and arbitrary but rather bound by clear and transparent laws. Friedrich (2018) explains that the constitution serves to regulate state power through a system of restrictions and oversight of state action, which oversight is key in maintaining the rule of law.

The Constitution as the Foundation of the Indonesian Rule of Law

In the Indonesian context, the 1945 Constitution as the country's constitution contains fundamental principles of the rule of law, which are reflected, among others, in the system of separation of powers, protection of human rights, and government based on law. For example, articles in the 1945 Constitution regulate the division of powers between the executive, legislative and judiciary, which aims to control and balance the powers of each state institution. In addition, the 1945 Constitution also regulates the basic rights of citizens that must be protected by the state, thus providing a strong foundation for the implementation of a just and equitable rule of law.

Indonesian constitutional conventions

In addition to the written provisions in the 1945 Constitution, Indonesia also has constitutional conventions that reflect the legal practices followed in state life. These conventions, although not listed in the legal text, are considered an integral part of the Indonesian constitutional system, as they follow principles that have developed in government practice. Examples include the important role of the House of Representatives in overseeing government policies, as well as government mechanisms that must follow the principle of deliberation for consensus. These constitutional conventions reinforce the values in the constitution, while also showing the dynamics of the implementation of the rule of law in the practice of Indonesian governance.

Constitutionalism and Pancasila Rule of Law

Constitutionalism in Indonesia is also inseparable from the basic ideology of the state, namely Pancasila. Pancasila as the foundation of the state provides direction and purpose for the implementation of the rule of law in Indonesia. The Indonesian Constitution, in this case the 1945 Constitution, integrates the values of Pancasila in every legal principle regulated in the constitution, including in terms of limiting power and protecting human rights. Therefore, the rule of law in Indonesia's perspective is not only a state that is subject to the law, but also a state that is based on the values of Pancasila as a moral and ethical guide in state administration.

METHOD

This research methodology uses a normative juridical approach with a positivistic paradigm to reveal the truth and reality contained in the concept of the rule of law from the perspective of the Indonesian constitution. This research is qualitative in nature and relies on primary, secondary, and tertiary legal materials as the main source of analysis. The method used is descriptive analytical, which aims to describe and analyse systematically and accurately phenomena related to the concept of the rule of law in the Indonesian constitution, both in terms of legal theory and constitutional practice. The approach used includes a juridical approach to analyse applicable legal norms as well as a historical approach to understand the development of the concept of the rule of law in Indonesia's constitutional history. Using these methods, this research will systematise existing legal materials and

analyse them qualitatively to produce a deeper understanding of the application and implementation of the rule of law in the Indonesian constitution, as well as identify factors that influence the concept.

RESULT AND DISCUSSION

Constitutional Foundations of the Rule of Law in Indonesia

The concept of the rule of law in the context of the Indonesian Constitution is based on the principles set out in the 1945 Constitution, which lays the foundation for law as a tool that regulates all aspects of state and civic life. Article 1 Paragraph (3) states explicitly that "Indonesia is a state of law," emphasising that the state must operate under the rule of law. This principle places the law above any form of individual or group interest, thus creating an environment that demands accountability and transparency at all levels of government (Damaitu, 2019; Bagiastra, 2020). In this case, the law functions as a director and controller of political and social activities, ensuring that decisions and actions taken by the state and citizens are within the corridors of applicable law.

This provision also emphasises the importance of human rights protection as part of the concept of a rule of law that emphasises justice and legal certainty. The protection of human rights is guaranteed in various articles, such as Articles 27 and 28, which form the basis for the fulfilment of citizens' rights in the social, economic and political fields. The protection of these rights requires the state to play an active role in ensuring access to justice for every citizen and encouraging the fulfilment of human rights within the applicable legal framework (Pirdaus, 2024; Husen, 2023). This is where it can be seen that the concept of the rule of law in Indonesia is not only focused on formal rules, but also on substantive aspects that include social justice for all people.

Independence of the Judiciary as a Pillar of the Rule of Law

In the implementation of the rule of law, the existence of an independent judiciary is crucial. Judicial independence ensures that the law can be applied fairly without pressure from any party, including the executive and legislature. The Indonesian Constitution underlines the important role of the judiciary which is responsible for upholding the law impartially. An independent judiciary is the last bastion of justice, which not only protects individual rights but also controls state power from exceeding the limits set by law (Zoelva, 2021). The role of the judiciary in overseeing the constitutionality of laws, such as through the Constitutional Court, is also important evidence that this independence supports law enforcement based on the principles of justice and democracy (Husen, 2023).

However, although the independence of the judiciary is guaranteed, the reality is that there are still several cases that show political intervention in the judicial process. Corruption and "judicial mafia" practices remain serious obstacles that threaten the integrity of the judiciary. These cases show that independence requires not only formal rules, but also sustained commitment and reforms to strengthen oversight and enforce integrity standards across legal institutions (Pierreaus, 2024). Therefore, internal revamping of the judiciary and

increased transparency in the judicial process are necessary steps to ensure the achievement of a true rule of law.

Democracy and Public Participation in the Rule of Law

Indonesia's legal system is inseparable from the principles of democracy, where public participation has an important role in law formation. The Constitution implicitly emphasises that laws must reflect the will of the people, as part of a democratic state. This participatory mechanism can be seen in the legislative process that involves the public and requires transparency in the formulation of public policies (Damaitu, 2019; Iswari, 2020). The use of public hearings and consultations in the formation of regulations shows Indonesia's commitment to ensuring that the laws produced represent the interests of the people, so that legal legitimacy can be obtained from this participation.

Public participation also provides space for the community to play a role in overseeing government performance and providing input regarding regulations that are considered less relevant or discriminatory. Thus, democracy in the rule of law emphasises the importance of interaction between the government and the people in shaping and enforcing the law. This reflects the principle of a rule of law that is not only repressive, but also responsive to the needs of society, and therefore, provides space for public involvement (Harianti, 2024).

Legal Pluralism in the Indonesian Rule of Law

The rule of law in Indonesia also recognises the concept of legal pluralism, namely the recognition of various legal systems that live in society. Article 18B Paragraph (2) of the 1945 Constitution recognises the existence of customary law communities and their traditional rights as long as they do not conflict with national interests. This diversity includes the existence of customary law and Islamic law that exist alongside national law, so that Indonesia has a more complex and multicultural legal system (Hariri et al., 2022).

This legal pluralism gives respect to local wisdom that is often more relevant and effective in certain socio-cultural contexts, especially in rural areas or indigenous communities that have different social structures from urban areas. As such, the recognition of legal pluralism supports the creation of a legal system that is inclusive and relevant to the needs of society. However, legal pluralism also faces challenges in terms of harmonisation with national law, especially if there are conflicts in the principles or norms regulated by each legal system.

Challenges in the Implementation of the Rule of Law

Although the principle of the rule of law has been formally adopted in the constitution, its implementation still faces many obstacles. Corruption, which is a chronic disease in Indonesia, continues to undermine various legal institutions, both at the legislative, executive and judicial levels (Pakpahan, 2024). This has led to the perception that the law can be bought and only serves the interests of influential parties. This creates a crisis of public confidence in the law and jeopardises the integrity of the rule of law.

In addition, overlapping regulations and rules that are often not harmonised between one law and another are also a major obstacle. These inconsistencies often lead to confusion and legal uncertainty, which in turn slows down the judicial process and dispute resolution. Therefore, legal reform that focuses on regulatory harmonisation is a top priority to improve legal certainty in Indonesia.

Efforts to Strengthen the Rule of Law in Indonesia

To overcome various challenges in the implementation of the rule of law, several strategic measures have been proposed, including institutional reform, strengthening the supervisory system, and improving the quality of human resources in the legal sector (Pierreaus, 2024). In addition, strengthening control mechanisms against corruption in the judiciary and bureaucracy through independent oversight is an important step to maintain the integrity of legal institutions. This approach requires the support of all elements of society, including non-governmental organisations, the media, and the general public, for these reforms to be effective and sustainable.

The concept of the rule of law in Indonesia has formed an important foundation for fair and democratic governance. However, the challenges in its implementation demand continuous efforts that involve revamping the legal structure, increasing the accountability of state institutions, and the active involvement of the community in the legislative and oversight processes. Thus, the rule of law in Indonesia is not only a concept contained in the constitution, but a reality applied in everyday life, which guarantees justice, protection of human rights, and legal diversity in accordance with the nation's cultural context.

CLOSING

Conclusion

This research concludes that the concept of the rule of law as stated in the 1945 Constitution emphasises the importance of the rule of law, the protection of human rights, and the independence of the judiciary as pillars of Indonesian state administration. Although the principle of the rule of law has been formally adopted in the constitutional structure, its implementation in the field still faces various challenges, such as overlapping regulations, corrupt practices, and weak control mechanisms over the institutions involved. Therefore, in order to realise the ideal rule of law, it is necessary to increase commitment to legal reform and strengthen institutional capacity to ensure the law can function in accordance with constitutional principles based on justice and equality.

Suggestion and Recommendation

In an effort to strengthen the implementation of the rule of law, the government needs to carry out a more holistic and consistent reform of the legal system, including the improvement of overlapping regulations and increased transparency in the legislative process. Strengthening the independence of the judiciary should also be prioritised, by strengthening oversight and corruption control mechanisms at every institutional level. In addition, public participation in policy formation and oversight needs to be expanded as a

form of active community involvement in the democratic process. Through these steps, it is hoped that the principle of the rule of law can be realised in a real and sustainable manner in Indonesian governance.

REFERENCES

- Achmad, D. R., Yudiansyah, R. M., Mufidah, S. M., & Oktivanny, V. (2023). Landasan Hukum Dan Fondasi Tatanegaraan Yang Kuat. *Advances In Social Humanities Research, 1*(5), 636-642.
- Allen, M., & Thompson, B. (2011). *Cases and materials on constitutional and administrative law*. Oxford University Press, USA.
- Bagiastra, I. N. (2020). The ontological of state of law of pancasila as the basis of welfare state in indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 9(4), 701. <https://doi.org/10.24843/jmhu.2020.v09.i04.p03>
- Damaitu, E. R. (2019). Progress and decline of legal thought: ex-corrupor as a legislative candidate (analysis of general election commission regulation (pkpu) no. 20/2018). *Journal of Indonesian Legal Studies*, 4(1), 129-142. <https://doi.org/10.15294/jils.v4i01.29690>
- Effendi, O. (2020). Pembatasan Kekuasaan Berdasarkan Paham Konstitusionalisme Di Negara Demokrasi. *Politica: Jurnal Hukum Tata Negara Dan Politik Islam*, 7(2), 111-133.
- Friedrich, C. J. (2018). *Constitutional reason of state: The survival of the constitutional order*. Pickle Partners Publishing.
- Harianti, I., Anggono, B. D., & tanuwijaya, F. (2024). Legal transformation: realizing nomocracy and transparency in the field of land distribution in indonesia. *Jurnal Indonesia Sosial Teknologi*, 5(5), 2294-2310. <https://doi.org/10.59141/jist.v5i5.1086>
- Hariri, A., Wicaksana, S. U., & Arifin, S. (2022). A critical study of legal positivism as a legal system in a pluralist country. *KnE Social Sciences*. <https://doi.org/10.18502/kss.v7i15.12131>
- Husen, L., Anwar, A. I., Rahman, S., & Hidjaz, M. K. (2023). Implementation of legal guarantees for human rights protection in indonesia. *Journal of Law and Sustainable Development*, 11(4), e624. <https://doi.org/10.55908/sdgs.v11i4.624>
- Iswari, F. (2020). Aplikasi konsep negara hukum dan demokrasi dalam pembentukan undang-undang di indonesia. *JCH (Jurnal Cendekia Hukum)*, 6(1), 127. <https://doi.org/10.33760/jch.v6i1.285>
- Pakpahan, Z. A., Yasmin, A. S., Safitri, I. T., Nainggolan, E. S. C., & Nasution, T. A. M. (2024). Implementation of the state of law principles from the constitutional law perspective: a case study of legislative aspects in law enforcement in indonesia. *Mahadi: Indonesia Journal of Law*, 3(01), 16-22. <https://doi.org/10.32734/mah.v3i01.15452>
- Pirdaus, D. I., Sidiq, F., & Rusyn, V. (2024). Violation of the code of ethics for constitutional judges in the constitutional court's decision on requirements for presidential and vice

presidential candidates. *International Journal of Humanities, Law, and Politics*, 2(1), 7-11. <https://doi.org/10.46336/ijhlp.v2i1.84>

Prasetyoningsih, N. (2020). Substance of Ideas in Several Rule of Law Concepts. *Nurani Hukum*, 3, 59.

Undang-undang Dasar Negara Republik Indonesia Tahun 1945

Zoelva, H. (2021). The threat of judicial mafia in indonesia in discrediting the principle of the rule of law. *International Journal of Criminology and Sociology*, 10, 839-844. <https://doi.org/10.6000/1929-4409.2021.10.99>

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