



The Constitution as the Foundation of the Rule of Law in Realizing a Democratic and Just State

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Abstract

The constitution as a very official legal and political document of a country. The constitution has a substance that contains fundamental agreements on the existence of a country, regulates various political organs in the country and is closely related to the rule of law. This study aims to analyze the function and application of the constitution and rule of law in maintaining unity, justice, and diversity amidst the challenges of globalization and today's socio-political dynamics. The method used is a literature review with a descriptive-analytical approach to explore the implementation of the constitution in the context of the state. The results of the study show that the constitution regulates the power between state institutions, the relationship between state institutions and society (citizens) and the protection and fulfillment of human rights (HAM). So that the constitution must contain human rights values, because it is a collection of elements of basic legal norms and also as the highest law of a country.

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INTRODUCTION

The constitution has a very fundamental role in national life, not only as the highest legal document, but also as the main foundation for upholding the principle of the rule of law and a just democratic system (Buchori, 2020). The emergence of the concept of constitutional government is a historical response to unlimited absolute power. In the view of constitutionalism, state power must be limited and regulated by law, with the aim of avoiding tyranny and abuse of authority (Marwah, 2012). Therefore, the constitution does not merely regulate the structure and authority of state institutions, but also guarantees the basic rights of citizens and places the law as the main controller of the course of government.

Conceptually, constitutionalism implies that political power must be limited through legal norms that are expressly written in the constitution (Murniati, 2015). The constitution as a political and legal document reflects a national consensus concerning the identity, goals, and basic principles of state administration (Syamsuddin, 2003). The substance of the constitution includes basic rules on the division of power, relations between state institutions, and relations between the state and citizens in the form of recognition, protection, and fulfillment of human rights. In this context, the constitution has a dual dimension as the basic law of the state as well as an ethical and moral guideline in the administration of public power.

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The phenomenon that is currently in the spotlight is the emergence of a paradox between the existence of the constitution as the highest normative document and the reality of its implementation in the life of the nation and state (Rasyid, 2008). In many countries, including Indonesia, various violations of the principle of the rule of law still often occur (Kadir, 2022). For example, rampant corruption practices, legal inequality, discrimination, and abuse of power by political elites show that the supremacy of the constitution has not been fully realized in real action. This shows a serious gap between the ideal legal norms in the constitution and political and legal practices in the field.

Historically, the idea of a state of law has undergone a long evolution, starting from 16th century Europe to the early 20th century. This development reflects the philosophical and practical search for a state model that is able to balance power and law (Marwah, 2012). In the Continental European legal system, the concept of *Rechtsstaat* is known, which emphasizes the importance of legality and legal certainty (Mutiarra, 2017). Meanwhile, in the Anglo Saxon tradition, the concept of Rule of Law emerged which emphasizes the supremacy of law and protection of individual rights (Setiawan & Djafar, 2023). These two concepts basically have the same goal, namely placing law above power, but have different approaches and legal traditions.

In the context of Indonesia, the constitution has recognized the principle of the rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution. However, various studies show that the implementation of this principle has not been optimal. Many laws and regulations that contradict the spirit of the constitution, weak judicial control over government policies, and the rampant practice of impunity indicate the weak function of the constitution as a tool to limit power. In addition, the low level of legal awareness among the public and the lack of constitutional culture among state administrators have also exacerbated this situation.

From an academic perspective, a number of previous studies have focused more on normative constitutional studies or formal analysis of state structures. However, there is still a lack of research that critically explores how the constitution interacts with socio-political dynamics and the extent to which it is effective in ensuring substantive justice for society. This research gap is important to bridge in order to provide a more comprehensive understanding of the role of the constitution not only as a legal text, but also as an instrument of social transformation.

Therefore, this study aims to analyze in depth how the constitution plays a role as a foundation in upholding the principle of a state of law in order to create a democratic and just state. With a more interdisciplinary and critical approach, this study is expected to provide new contributions to the study of constitutional law, especially in understanding the challenges of implementing the constitution in the context of complex political and social realities.

METHOD

This study uses a qualitative approach with a descriptive-analytical research type. The purpose of this study is to explore a deep understanding of the role of the constitution and the principle of the Rule of Law in shaping a democratic and just national and state life. This method was chosen because the main focus of the study is to critically understand the relationship between constitutional norms and the practice of political and legal life in Indonesia. This study does not aim to test hypotheses statistically, but rather to explore, describe, and analyze normative and socio-political phenomena related to the implementation of the constitution (Sugiyono, 2019). The data in this study are sourced from library research that includes primary and secondary documents, namely (Tanzeh, 2018): 1) Legal and constitutional documents, such as the 1945 Constitution, laws, regulations, and decisions of the Constitutional Court. 2) Scientific books and academic works that discuss constitutional theory, rule of law, and the principles of the rule of law in both the Anglo Saxon and Continental European traditions. 3) Scientific journal articles,

research reports, and other academic publications relevant to the theme of the constitution, democracy, and law. 4) Historical and political documents, such as the Magna Carta manuscript, the Clarendon Constitution, and international documents that influenced the development of the concept of the modern rule of law.

Data collection was carried out using the documentation method, namely identifying, organizing, and classifying relevant documents to be analyzed systematically. Data analysis was conducted using content analysis developed by Krippendorff and Weber. The analysis stages include (Yusuf, 2017):

1. Data Reduction

Grouping data based on major themes such as: the meaning of the constitution, implementation of the rule of law, the principle of checks and balances, human rights, and challenges of modern state administration.

2. Data Display

Arranging information in a narrative and systematic format according to the topic structure, such as comparing the Rule of Law model in the Anglo Saxon and Continental European traditions with its implementation in Indonesia.

3. Conclusion Drawing

Examining the gap between constitutional norms and government practices and offering a more contextual and relevant rule of law implementation model to contemporary socio-political dynamics.

RESULTS AND DISCUSSION

This study found that the constitution has a very fundamental position in the modern state system. The word "constitution" comes from the French *constituer* which means "to form", referring to the formation and arrangement of a country. In the legal and political tradition, the constitution is understood as a basic legal document that is the highest foundation in a country, both written and unwritten.

In the explanation of the 1945 Constitution (UUD), it is stated that the Constitution is only part of the basic law of the state. In addition, there is also an unwritten basic law called a convention, namely basic rules that grow and develop in the practice of state administration. Therefore, conceptually, the constitution can be understood in two meanings (Hefner, 2007):

1. In a broad sense, including written and unwritten basic laws, and
2. In a narrow sense, referring to the written basic law or the basic law itself.

The constitution not only regulates the division of power between state institutions, but also contains basic norms that regulate the relationship between the state and citizens. It contains the principles of human rights protection, the supremacy of law, and limitations on state authority so that power is not exercised arbitrarily. Thus, the constitution is the heart of the rule of law system (*Rechtsstaat* or Rule of Law), namely a state that upholds the law as the commander, not the will of the ruler.

This study also confirms that in the context of a constitutional democratic state, such as Indonesia, the constitution has a unique function, namely limiting government power so that it does not exceed predetermined limits. This idea is known as constitutionalism, namely the understanding that state power must be limited by law and that the basic rights of citizens must be protected by the constitution. Within the framework of constitutionalism, popular sovereignty is understood as a source of legitimacy for state power, which is implemented through the principle of checks and balances and guarantees of civil liberties.

In Indonesia, the influence of the concept of a rule of law comes from two major traditions: the Continental European tradition with the concept of *Rechtsstaat* and the Anglo-Saxon tradition with the concept of Rule of Law. Despite differences in legal approaches and traditions, the two concepts have essential similarities, namely the supremacy of law, limitations of power, and protection of human rights. Legal figures such as Notohamidjojo and Sumrah stated that *Rechtsstaat* and Rule of Law have meanings that are

parallel to the term "state of law" in Indonesian legislation.

This opinion is also in line with the thoughts of Sunaryati Hartono who emphasizes that the enforcement of the Rule of Law must be understood substantively. This means that law is not only seen as a collection of formal rules, but also as a means to realize social justice and people's welfare. Law must be based on moral values, justice, and public ethics.

The Indonesian Constitution contains these values, because in addition to being sourced from European and Anglo-Saxon legal traditions, it is also rooted in the Indonesian nation's outlook on life as reflected in Pancasila. Therefore, the Indonesian state of law is not an individualistic liberal state of law, but rather a state of law based on collective, spiritual, and social values that live in society.

However, this study also highlights serious challenges in implementing the principles of constitutionalism and the rule of law. Reality shows that there is still a gap between constitutional norms and the practice of state administration. Corruption, abuse of power, discrimination, and human rights violations still often occur. The constitution, although normatively guarantees basic rights, is not automatically able to eliminate poverty, structural injustice, or social inequality.

In this context, it is important to understand that constitutionalism is not an instant solution that can solve all of the country's problems. Moreover, constitutionalism must be built on the foundation of a political culture that upholds ethics, public participation, transparency, and accountability. Therefore, building constitutional awareness is an important part of upholding a democratic and just rule of law.

Constitutional democracy also cannot be separated from the concept of electoral democracy. In an electoral democracy system, competitive multi-party elections are the main instrument in realizing people's sovereignty. However, healthy electoral democracy is not only measured by honest and fair election procedures, but also by the guarantee of civil liberties, freedom of expression, freedom of association, and protection of minority rights.

The constitution is a vehicle for protecting these values. Therefore, democracy and the rule of law are two sides of the same coin that cannot be separated. A democratic system will only be meaningful if it is implemented under the supremacy of fair law, and the law will only be effective if it is enforced within a participatory and accountable democratic framework.

Recognition of individual freedom in an electoral democratic system is also a prerequisite for the functioning of the check and balance system. Freedom of speech, freedom of the press, and the right to information are important elements for building public participation and control over power. In a system like this, the constitution becomes a living document that not only regulates the structure of the state, but also protects basic human rights.

This study also identified two models of citizen authority in controlling the government. First, direct control through elections, where the people elect their representatives democratically. Second, indirect control through mechanisms of openness and transparency in government. This mechanism is strengthened by the principle of publicity, where government policies and actions must be accessible and supervised by the public.

On the other hand, political ethics emphasizes the importance of ethical principles in the implementation of power. One of the challenges in modern democracy is the tendency of the majority to dominate the political process absolutely. Therefore, the constitution must contain limitations on the power of the majority so that there is no tyranny of the majority that ignores the rights of the minority. This is a manifestation of the principle of constitutionalism which emphasizes that no political will either from the majority or the minority is absolute.

Finally, the concept of Rule of Law becomes the main foundation in the legal state system. This principle emphasizes that the law must apply to all without exception (rule by law, not by man), and the law must guarantee justice, be impartial, and objective. Law enforcement must be carried out by an independent judicial institution and is not subject to

executive or legislative power.

1. The Concept of Rule of Law in the Anglo Saxon Tradition

The concept of the Rule of Law was first systematically formulated by Albert Venn Dicey in the 19th century, although its historical roots can be traced back much earlier, namely during the reign of Henry II in England in 1164 AD through the Constitution of Clarendon. This constitution is considered an early attempt to limit the king's power in the realm of church law and justice. This idea later developed into the monumental document Magna Carta in 1215, which explicitly limited the king's authority in matters of taxation, individual property rights, and provided legal protection for citizens. Magna Carta became an important foundation that inspired the birth of the Bill of Rights and shaped the constitutional character of the English kingdom in the following period.

According to Dicey, the Rule of Law has three main pillars:

- a. Supremacy of law over power no individual is above the law
- b. Equality before the law all people are subject to the same legal jurisdiction; and
- c. The Constitution as a result of individual rights protected by a common judicial system, not as a result of the will of the government.

However, as (Mudzakkir, 2016), the meaning and application of the Rule of Law have shifted along with historical developments and socio-political challenges. A major transformation occurred after World War II, when the welfare state emerged. Within this framework, restrictions on state intervention in the social and economic lives of citizens became less relevant. The state is not only present as a guardian of security and order, but also has an active responsibility in regulating, providing, and guaranteeing the welfare of society.

Consequently, the Rule of Law is no longer only understood in the context of limiting power, but also as an instrument to ensure social justice. This concept is in line with the views of Roscoe Pound in the United States, who introduced the idea of law as a tool of social engineering. Law, according to Pound, is a tool of social engineering that can be used to change the structure of society towards a more just and balanced direction. This is marked by the presence of various regulations and laws that regulate the education system, social security, employment, and economy, as part of the realization of a welfare state.

This change shows that the Rule of Law in the Anglo Saxon tradition has evolved from a legal concept that restrains power to a legal paradigm as a facilitator of development and distribution of justice in national life. Although its basic principles are maintained, the interpretation of its implementation is now more adaptive to the needs of the times and the complexity of modern society.

2. The Concept of Rule of Law in the Continental European Tradition

In contrast to the Anglo-Saxon tradition, in Continental Europe the concept of the rule of law developed through criticism of the absolute state or *Polizeistaat* (police state), where state power was so dominant and penetrated all aspects of citizens' lives. Although this model of state claimed to be responsible for all the needs of its people, the reality often showed authoritarian and arbitrary practices of power.

The peak of this resistance to absolutism occurred in the French Revolution of 1789, in response to the tyranny of Louis XIV who claimed divine and absolute power. This revolution was a key moment that marked the transition from an absolutist state to a constitutional rule of law, with an emphasis on the division of powers, human rights, and popular political participation.

One of the important figures in the formation of the theory of the rule of law in Continental Europe was Immanuel Kant (1724–1804). In his famous work *Metaphysische Anfangsgründe der Rechtslehre*, Kant stated that the rule of law must guarantee the freedom and moral autonomy of individuals, and ensure that state actions are limited by rational universal law. According to Kant, the role of the state should be limited to maintaining public order and security, while economic and welfare matters are left to civil society—especially the

bourgeoisie and intellectuals. However, this approach was later criticized because it only benefits a handful of elites and does not address the needs of the poor as a whole.

In response to global developments, the International Commission of Jurists (ICJ) in a conference in Bangkok in 1965 revitalized the concept of the Rule of Law both in the Anglo Saxon and Continental European frameworks. They formulated a modern version of the Rule of Law by emphasizing that the concept must be adaptive and dynamic. This new concept is known as "the dynamic aspects of the rule of law in the modern age", which includes six main principles (Khasanah & Paryanto, 2023):

- a. Strong constitutional protection of basic rights.
- b. An independent judiciary free from intervention by other powers.
- c. Free, fair and regular general elections as a manifestation of democracy.
- d. Freedom to express opinions without the threat of repression.
- e. The right to associate, organize and form a political opposition.
- f. Civic education as a foundation for public legal awareness.

According to Miriam Budiardjo, this new conception differs significantly from the more limited 19th century formula. In a modern state, the role of the executive is no longer as minimalist as in the *Nachtwachterstaat* (night watchman state) era, but must instead actively implement inclusive and progressive public policies. Modern governments are required to carry out social responsibilities more broadly, without sacrificing the basic principles of the Rule of Law.

Understanding the Rule of Law in the two major traditions above, Anglo Saxon and Continental Europe, provides a comprehensive perspective in analyzing the dynamics of constitutional law in Indonesia. The Indonesian Constitution explicitly adopts the principle of a state based on law as stated in Article 1 Paragraph (3) of the 1945 Constitution. However, its implementation still faces various serious challenges, such as weak judicial independence, rampant corruption, social inequality, and low legal education and constitutional awareness of the community.

In practice, Indonesia is still in transition between a formal state based on law to a substantive state based on law. This can be seen from the continued dominance of executive power in the legislative and law enforcement processes, as well as the minimal bias in policies towards marginalized groups. Therefore, the idealized Rule of Law cannot only be oriented towards procedures, but must be directed towards achieving social justice, people's welfare, and respect for human dignity.

The conceptual renewal as formulated in the Bangkok Conference by the ICJ can be an important foothold for Indonesia to strengthen the integrity of legal institutions, expand public participation, and build a healthy constitutional culture. This study shows that the Rule of Law is not a static concept, but rather a principle that continues to develop according to the needs of the times. By making the constitution the main source of legal and governmental orientation, the Indonesian state has a strong foundation for realizing a just, participatory, and civilized democracy.

CONCLUSION

The constitution comes from the French term "constituer" which means to form. The use of the term constitution is intended for the formation of a country or to compile and declare a country. The constitution can also mean basic (initial) regulations regarding the formation of a country. The term constitution can be equated with basic law or basic law. The Rule of Law in leading literature has the same meaning as the State of Law. Likewise, in Indonesian literature, the term State of Law is a direct translation of *Rechtstaat*. This statement is strengthened by the opinions of legal experts in Indonesia, including Notohamidjojo and Sumrah, their statements are: With the emergence of the main ideas formulated in the constitutions of the 9th century, the term state of law (*rechtstaat*) also emerged. What we have known for a longer time is the meaning of *Rechtstaat* or state of law or to guarantee the words in the Explanation of the 1945

Constitution, a state based on law. The constitution occupies a very important position in the constitutional life of a country because the constitution is a barometer of national and state life that is full of historical evidence of the struggles of the predecessors. In addition, the constitution is also the basic ideas outlined by the founding fathers, and provides direction to the next generation of the nation in steering a country that they lead. The constitution and constitutionalism in today's era are a necessity for every modern country. The main basis is a general agreement or consensus among the majority of the people regarding the ideal institution regarding the state. So, the key word is consensus or basic agreement of the nation concerned. If the agreement collapses, the legitimacy of the power of the state concerned will also collapse, and in turn there will be a civil war or a revolution.

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