EXISTENCE OF CONSTITUTIONAL COURT RULING I
STRENGTHENING LEGAL CIVILIZATION AND INDONESIAN
DEMOCRACY

Abustan

ABSTRACT

Objective: The purpose of this study is to examine the existence of Constitutional Court decisions in strengthening legal civilization and Indonesian democracy.

Theoretical framework: Civil law focuses more on administration and norm systems, while common law focuses more on judicial activities. Even more than that, the concept of rechtsstaat prioritizes the principle of wetmatigheid (written law), which later developed into rechtmatigheid (action based on law).

Method: This is a qualitative method study with a type study studies library. Data taken can form journal scientific, books, articles, and source information other relevant ones with topic research. In method elitism, studies librarian, researcher usually carry out the search process and data collection via various source information.

Results: The results of this research are that the position of the constitution in a country is inseparable from the ideal image of the characteristics of a legal and democratic state; After the reform, the Constitutional Court appeared as part of judicial power. The authority of this institution is to adjudicate at the first and final level whose decisions are final and binding. The upholding of a constitution in a country strengthens legal civilization and democracy itself.

Conclusion: The constitutional court and all citizens must continue to make efforts to bring constitutional ideas closer to each other and fill the pulse of national and state life.

Keywords: constitution, civilization, rule of law, democracy, legal.

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EXISTÊNCIA DE DECISÃO DO TRIBUNAL CONSTITUCIONAL I
FORTALECENDO A CIVILIZAÇÃO JURÍDICA E A DEMOCRACIA
INDONÉSIA

RESUMO

Objective: O objectivo deste estudo é, por enquanto, a existência de decisões do Tribunal Constitucional que fortalece a civilização jurídica e a democracia indonésia.

Enquadramento teórico: O direito civil centra-se mais na administração e nos sistemas normativos, enquanto o direito consuetudinário centra-se mais nas atividades judiciais. Mais do que isso, o conceito de rechtsstaat prioriza o princípio do wetmatigheid (lei escrita), que mais tarde evoluiu para rechtmatigheid (ação baseada na lei).

Método: Existe método de estudo qualitativo com tipo biblioteca de estudos de estudo. Os dados coletados podem formar periódicos científicos, livros, artigos e outras fontes de informações relevantes com o tema da pesquisa. No método elitismo_estudos, o bibliotecário e o pesquisador geralmente realizam o processo de pesquisa e coleta de dados por meio de diversas fontes de informação.

Resultados: Os resultados desta pesquisa são que a posição da constituição em um país é indissociável da imagem ideal das características de um Estado legal e democrático; Após a reforma, o Tribunal Constitucional apareceu como parte do poder judicial. A autoridade desta instituição é julgar no primeiro e último nível, cujas decisões são finais e vinculativas. A defesa de uma constituição num país fortalece a civilização jurídica e a própria democracia.

Conclusão: O tribunal constitucional e todos os cidadãos devem continuar a envidar esforços para aproximar as ideias constitucionais e preencher o pulso da vida nacional e estatal.

Palavras-chave: constituição, civilização, estado de direito, democracia, legal.

1 INTRODUCTION

Since Indonesia gained independence, the founding fathers, or founders of the country, have promised to develop the country by implementing democracy and the concept of a rule of law. To fulfill this promise, a state was founded based on law, as shown in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) which reads, "then Indonesia's independence was formulated in a Constitution of the State of Indonesia." This conclusion confirms that the constitution must be used as the basic law of the state when operating. From here, the term "rule of law" is a translation of "rechtsstaat" or "rule of law". However, the rechtsstaat or rule of law is a legal state, even though it has different institutions, traditions and legal settings. However, once again, both have something in common: both recognize the principle of protecting human rights through a fair and free judicial system (Cahyadi & Danardono, 2009).
As is known, according to (Malida, 2022) many Continental European countries adhere to rechtsstaat, which focuses on the civil law system, while the rule of law is adhered to by countries with the Anglo-Saxon legal tradition which is based on the common law system. Civil law focuses more on administration and norm systems, while common law focuses more on judicial activities. Even more than that, the concept of rechtsstaat prioritizes the principle of wetmatigheid (written law), which later developed into rechtmatigheid (action based on law). However, the law prioritizes the principle of justice before the law, which gives judges the freedom to make laws for the sake of justice.

Before the changes to the 1945 Constitution were made in 1999–2002, it was at this point (Indonesia). The term rechtsstaats is mentioned explicitly in the explanation of the 1945 Constitution. This is what makes Indonesia seem to adhere to the concept of a rechtsstaat legal state like a cibil law state. However, after the 1945 Constitution was changed (amendment), Article 1 Paragraph (3) stated that "The Indonesian state is a state of law", the concept of a state of law which was previously synonymous with rechtsstaat was neutralized to become just a state of law. Apart from that, it can be obtained from other legal systems which are integrated and whose manifestations are adapted to changing needs and conditions of the times. Therefore, the changes to the 1945 Constitution in Indonesia from 1999 to 2002 provided the right momentum to build and strengthen Indonesia's legal civilization towards a constitutional legal state. The Constitution is the main law of the country (Putri & Suprobowati, 2022).

Napitupulu & Firdausy, (2020) Explain that Indonesia is a legal state based on Pancasila and the 1945 Constitution. This is confirmed in Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a legal state. Law is the highest rule in the life of society, nation and state. Law functions to regulate people's lives, protect citizens' rights, and realize justice. Democracy is one of the basic principles of the Indonesian state. Democracy is a system of government that gives power to the people to determine the course of government. Democracy is also a system of government that guarantees freedom and human rights. The Constitutional Court (MK) is a state institution that plays an important role in maintaining legal civilization and democracy in Indonesia. The Constitutional Court has the authority to review laws against the 1945 Constitution. This authority is an effort to ensure that applicable laws do not conflict with the constitution. The Constitutional Court's decision has broad implications for legal civilization and democracy in Indonesia. The Constitutional Court's decision can
strengthen legal civilization by ensuring that applicable laws are in line with the constitution. The Constitutional Court's decision can also strengthen democracy by protecting citizens' rights and realizing justice.

Therefore, it must function as a foundation and guideline for all parts of the country in running state organizations. There should be no reason to wait for the constitution. The constitution is the basic law of the country, so if it is not obeyed, the foundations of the country will be fragile. This is certainly a comparison with previous governments, where there was sometimes a lack of clarity in the legislative hierarchy. In addition, the independence of the judiciary was also very vulnerable to intervention from the previous government, known as the New Order regime.

2 METHODOLOGY

Method research used by researcher There is method study Qualitative with type study studies library. According to (Adlini et al., 2022) Study Studies References is Wrong One type research conducted with collect data from various source related literature with topic ongoing research done i.e. about The Existence of Constitutional Court Decisions i Strengthen Legal Civilization And Indonesian Democracy. Data taken can form journal scientific, books, articles, and source information other relevant ones with topic research. In method study studies librarian, researcher usually carry out the search process And data collection via various source information. After that is, the data collected will analyzed And evaluated For support formulation hypothesis, framework theory, or conclusion in study And Then interesting thread red And make conclusion.

3 RESULTS AND DISCUSSION

Pay attention to the dynamics of changes in the constitution, especially in the third amendment (amendment) to the 1945 Constitution of the Republic of Indonesia, in 2001. Article 24 paragraph (1) confirms that the judicial power is an independent institution to administer justice to uphold law and justice. Meanwhile, Article 24 paragraph (2) states that judicial power in Indonesia is exercised by the Supreme Court and the Constitutional Court. At the same time, new provisions were included in Article 24 B, namely regarding Judicial Affairs, which are outlined in four paragraphs (Arenas et al., 2023). Despite the fact, we must honestly admit that quite a few judicial decisions are considered controversial (problematic). In fact, this includes decisions issued by the
top judicial institution, namely the Supreme Court, which are considered to contain irregularities and oddities. In fact, ideally the process of a dispute can end with the judge's decision in court. If the decision is truly able to present or accommodate the values of truth and justice that exist in society. In particular, a decision reflects the value of judicial independence (Hofi & Wicaksono, 2023).

However, in fact this is not the case. Because in practice there are still many decisions found, both District Court (PN) and High Court (PT) decisions as well as Supreme Court (MA) decisions with legal considerations that are quite "unsettling" for justice seekers. Likewise, the decisions issued by the Constitutional Court (MK) also often sound a bit strange, forcing us to curse in our hearts that why was this MK institution established if it is unable to correct legal products that are considered discriminatory against citizens. However, it cannot be denied that the judge's decision is very important as a legal reference that ensures justice for everyone. Therefore, legal texts contain norms and ideals aimed at protecting society. This means that justice in society is achieved when the legal order functions effectively. However, legal texts do not become living law until they are tested in dispute cases and produce quality decisions, which in turn strengthen legal civilization and democracy itself.

Once again, Indonesia is a state of law, which has become an important postulate contained in the constitutional text of the 1945 Constitution of the Republic of Indonesia. This means that Indonesia is committed that the rule of law as an idealized preposition to be achieved must always be pursued and consistently enforced. This emphasizes that Indonesia wants the law to be positioned as the front guard in resolving all problems in social, national and state life. In this context, the position of the constitution in a country becomes inseparable from the ideal image of the characteristics of a rule of law and a democratic state. Therefore, Indonesia does not want the emergence of disorder/order which ultimately triggers acts of anarchy which have the effect of distancing itself from a dignified/civilized country. Even falling into a failed state (Abustan, 2023).

According to Asdhie & Ista, (2019) Constitutional changes that change the paradigm of state power from MPR supremacy to Constitutional Supremacy. The position of the constitutional court (MK) is part of the judicial power with a number of authorities. So, it is hoped that the decision of the Constitutional Court (MK) will provide enlightenment amidst the powerlessness of constitutional enforcement. Because the Constitutional Court's decision will position the constitution as the ideal image of the
characteristics of a rule of law state. The third constitutional amendment to Article 24 concerning judicial power, which in its operations was blocked into SEMA NO 10/2005: places judicial power in institutions (the Supreme Court) and the Constitutional Court (MK). Through the decisions produced by the two judicial institutions, we must always maintain consistency and application of the law to enlighten justice seekers (justiciablen). (Gaffar, 2013).

Thus, the existence of the Constitutional Court (MK) decision is as confirmed in Article 2 of the Constitutional Court Law which is one of the State institutions exercising independent judicial power to administer justice to uphold law and justice. (Azhar, 2021). The Constitutional Court is part of the judicial authority which is given the mandate to carry out judicial functions. The role of the Constitutional Court itself is to examine the constitutionality of laws (materially and formally) requiring the use of legal interpretations of the Constitution. This means that, by interpreting the legal interpretation of the Constitution, the Constitutional Court can expand or narrow the meaning, aims and objectives of the Constitution (Daulay, 2006: 56). So, the right to review laws against the Constitution is given to the Constitutional Court as a judicial institution that is equal to law makers based on the view of the need for checks and balances between state institutions. (Asshiddiqie, 2021).

Meanwhile, Daulay (2006) believes that the starting point is that the Indonesian people (the public) expect a lot from the judiciary to make and produce plenary (quality) decisions. In order to clarify (correct) various legal rules which actually conflict with or violate the existence of the constitution as the highest hierarchical legal rule (gronswet). Because, the enactment of a constitution and enforcement of the constitution are very much needed, as in the Indonesian rule of law. Because of this, the Constitutional Court is needed to oversee the production of fair legal regulations. The changes to the 1945 Constitution that occurred in Indonesia in 1999 – 2002 which gave birth to the Constitutional Court were the right moment to build Indonesian civilization and constitution towards a democratic state and a constitutional state of law. The constitution as the basic law of the land (the supreme law of the land) must be the foundation and guideline for all elements of the state, in running the wheels of state organizations.

In such a context, the role of the Constitution becomes important to ensure that the values contained in democracy are still implemented in accordance with its rules. Both by all state institutions, as well as by all citizens. Therefore, the establishment of legal
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Civilization and the realization of democracy in a country, basically depends on the commitment of every citizen to the rules of the state (the rule of law) so that with public awareness it is mandatory to obey them. Even though it is realized, theoretically the existence of legal structures (legal institutions) and legal substance/legal material (legislative regulations) have been fulfilled and are quite adequate. However, this does not necessarily guarantee that law and democracy will be perfectly upheld. Developing a legal culture and strengthening democratic civilization is an important and basic essence in realizing national prosperity and strengthening the leadership of the Indonesian nation. Legal civilization is not only related to awareness of the fulfillment of rights and obligations in accordance with existing provisions, but also includes compliance and participation of all citizens of the nation in complying with existing legal norms and playing a role in monitoring them. (Siahaan, 2005).

Likewise, in strengthening democratic civilization, democracy according to the 1945 Constitution is a democracy with popular sovereignty, that is, the highest power is in the hands. In principle, it is the people who own/hold sovereignty. People's sovereignty is implemented according to the Constitution and as sovereignty is entrusted to the people's representatives who are elected through elections. The authority for election disputes is now the authority of the Constitutional Court. In fact, it also resolves regional head election disputes as mandated in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors. So, cases of disputes over determining the vote tally in the final stages of the election results will be examined and tried by the Constitutional Court until a special judicial body is formed (Siallagan & Syuhada, 2023).

All of these things are implementing the values of democratic principles, namely as an embodiment of people's sovereignty. Popular sovereignty here is one that is consistent with the rules and values of the Almighty God and not one that is secular or emphasizes purely materialistic values. Therefore, political parties as one of the pillars of democracy must express the spirit of popular sovereignty. Thus, popular sovereignty must be exercised intelligently, and not solely rely on the "legitimacy of truth" which relies on the largest number of votes or a majority. That is the basic assumption that makes the people's sovereignty in question have a moral character, Trust in the Almighty God and
which is carried out intelligently, empowering the people, to increase their intelligence, because that is a condition sine qua non for democracy with people's sovereignty.

It cannot be denied and denied that Indonesia is a country based on law (rule of law). As a country, the Indonesian state is also a power organization that can have power/exercise that power by force. However, generally rule of law states the state must have legal legitimacy and/or be legally regulated (constitutionalism), so that state power is power that is limited by law. In this regard, the essence of democracy with the rule of law is that state power must provide protection, in the form of protection, and develop legal truth, not what is practiced by "thug" democracies. In essence, state power provides legal justice and not democracy in the form of formal and false justice which in turn triggers protests because there is dishonesty (distrust) from the community. In fact, ideally, state power guarantees legal certainty (legal security) and not democracy which allows chaos and anarchy which ultimately gives rise to chaotic situations/conditions.

Once again, state power develops benefits or legal interests such as order (peace) and ongoing development (human productivity). So, it is not a democracy that is full of hate speech, so that it only popularizes slander and insults, or creates conflict (division), hostility and system damage. In fact, more than that, democracy with the rule of law means that all citizens have the same position before the law (equality before the law), have the same access and rights to legal services, without discrimination based on political choices. which is different. On the other hand, all citizens without exception are also obliged to uphold and obey all legal regulations wholeheartedly or with a high level of legal awareness. As a result, democracy with the rule of law principle requires that the law be built with an awareness of conscience, as well as with clarity of thought/action, so that it truly reflects the sovereignty of the people who believe in one Almighty God. Therefore, the law must not be under authority and/or dependent on authority. Whatever the name, the authority of the Presidential Institution, the DPR, cannot act or make regulations (law products) by showing power. Because, if that happens you will face the Constitutional Court (MK). Of course, the Constitutional Court will correct the law with a final and binding decision.

4 CONCLUSION

Based on the findings and discussion above, the position of the constitution in a country is inseparable from the ideal image of the characteristics of a legal and democratic
state; After the reform, the Constitutional Court appeared as part of judicial power. The authority of this institution is to adjudicate at the first and final level whose decisions are final and binding. The upholding of a constitution in a country strengthens legal civilization and democracy itself. The constitutional court and all citizens must continue to make efforts to bring constitutional ideas closer to each other and fill the pulse of national and state life.
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