

CONSTITUTIONAL SUPREMACY IN LEGAL STATES IN INDONESIA

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Abstract

The aim of this paper is to explore the significance of constitutional supremacy within the legal framework of Indonesia. The research methodology employed is normative legal research, utilizing both a statutory regulation approach and an analytical approach. Legal resources are accessed through library research techniques. The findings indicate that constitutional supremacy serves as the foundation for upholding constitutionalism, ensuring the sovereignty of the people. The future of constitutionalism hinges on the decisions made by the Constitutional Court, acting as the guardian of constitutional principles. Amendments to the 1945 Constitution, whether through formal or informal means, are crucial in solidifying Indonesia's status as a legal state. However, changes resulting from the ratification of international agreements may pose challenges by potentially undermining the constitution's authority. This could lead to conflicts between domestic laws and international obligations, creating a dilemma for the Government in balancing national interests with international commitments. Therefore, it is imperative to establish a robust judicial system to safeguard the supremacy of the constitution. Any constitutional interpretations must be shielded from political influences. A system of checks and balances among government institutions, along with a review of laws and regulations to ensure alignment with the 1945 Indonesian Constitution, is essential to uphold constitutional supremacy.

Keywords: *Supremacy of the Constitution, Rule of Law, Implications of changes to the 1945 UUDNRI*

1. INTRODUCTION

Law and society are interconnected entities. The Latin phrase "*Ubi societas, ibi ius*" emphasizes the necessity of law in any society. It plays a crucial role in ensuring a harmonious social order and ultimately, peace within the community. Law acts as a unifying force that binds different aspects of society together, serving as the cornerstone for a stable social structure (Windari & SH, 2021).

Discussions on law are inherently intertwined with the community within a specific region, particularly in relation to law and the state. Indonesia has established itself as a legal state, where the national and state affairs are consistently governed by the law. Typically, a country's inception is marked by its documentation in the constitution. The Constitution serves as an official testament or document validating the establishment of a nation. Consequently, as a nation progresses, its constitution evolves in alignment with the political and legal advancements within that country.

Indonesia as an independent country has a constitution as the basis for the state to run its government. Initially, the history of drafting the Indonesian constitution was the realization of Japan's promise to give Indonesia independence, by forming the *Dokuritu Junbi Cosakai* (BPUPKI). Since the formation of this body, the Indonesian nation has formulated and prepared for its independence so that the requirements as a country are fulfilled. History records that the Indonesian constitution has changed several times, until

finally the 1945 Constitution was reinstated and in its development changes were made in accordance with demands for reform.

The notion of Indonesia as a state governed by the rule of law has been ingrained since the enactment of the 1945 Constitution, even before subsequent amendments that underscored Indonesia as a "state of law (*rechtsstaat*)" rather than one founded on power ("*machtstaat*"). This concept is echoed in Article 1, paragraph (1) of the 1949 RIS Constitution, which describes the Republic of the United States of Indonesia as a democratic legal state within a federal structure, and in Article 1, paragraph (1) of the 1950 Constitution, which portrays the Republic of Indonesia as an independent and sovereign legal state, characterized by democracy and unitary governance. Despite the explicit inclusion of the rule of law as a fundamental principle in state administration, there remains an observable phenomenon where the legal system sometimes succumbs to the influence of power (Windari & SH, 2021).

Daniel S. Lev expressed scathing criticism of the chaotic world of Indonesian law since 1960, where the decline in justice occurred after the physical revolution ended (Windari & SH, 2021). The shift began to occur since Soekarno decreed his decision to restore the 1945 Constitution as a constitution and introduce guided democracy where a legal product called Presidential Implementation (*Penpres*) could then form a Provisional MPR, dissolve political parties, dissolve the DPR resulting from the general election and form a replacement DPR called DPR GR (Mutual Cooperation). Meanwhile, under Soeharto's government, which was initially intended as a total correction of the deviations that had occurred previously, in fact, symbolically and politically, it again resulted in a consequent violation of the rule of law (Kamis, 2000).

Moving on from the situation above where various legal problems indicate that the rule of law is not working or in other words there has been a period of legal deficit in Indonesia where several prerequisites for the rule of law in the constitution are not heeded by state administrators, triggering amendments that can clarify the criteria required by a state. law. Since the third amendment to the 1945 Constitution (subsequently referred to as the 1945 NRI Constitution), it is evident that our constitution embraces the concept of "*rechtsstaat*," emphasizing the balanced implementation of the rule of law to ensure legal certainty and uphold substantial justice (Ni'matul Huda, 2013).

Rechtsstaat is a rule of law state where in its implementation there is integration between the constitution, democracy and the law itself (Pureklolon & MM, 2020). The constitution as the basic law or highest law in a country has a central role in maintaining stability, justice and protecting individual rights in the legal system. One important aspect of the rule of law is the supremacy of the constitution.

Constitutional supremacy refers to the principle that the constitution is the highest law in the country and all government actions and policies must comply with constitutional provisions. The presence of a constitution is a necessity, with the development of the times it is necessary to improve the constitution so that it can keep up with the developments of the times. Constitutional issues reflect the existence of a nation, because the constitution is likened to a reflection of the nation's autobiography. The welfare and survival of citizens will depend greatly on the extent to which the nation's constitutionalism is able to provide a solid foundation in facing and responding to the challenges of change and development over time (Asshiddiqie, 2005).

The constitution, as a result of agreement and the embodiment of the will of the people, provides concrete guarantees for the survival of society. Therefore, the

constitutional guarantee for the lives and rights of citizens is clear evidence of the essence, position and role of the constitution itself for all the people of the country. This concept places the constitution as a legal umbrella that binds all government institutions, including the executive, legislative and judiciary in carrying out their respective functions to realize the welfare of the people (Sabon & SH, 2019).

Constitutional supremacy provides the basis for maintaining checks and balances between state powers so as to prevent abuse of power. By ensuring that all government actions and decisions are in accordance with constitutional provisions, constitutional supremacy protects human rights, guarantees fair treatment and ensures that the government is not arbitrary and can be held accountable (Kusniati, 2011).

The history of constitutional development in Indonesia has gone through various stages of development which have given rise to changes in the government structure. It is recorded that the foundation of the Indonesian constitution at the beginning of independence was the "1945 Constitution which was formed by BPUPKI, and ratified on the 18th of August 1945 by PPKI. Then it was replaced with the 1949 RIS Constitution". The formation of a federal state was a Dutch strategy with political nuances aimed only at the interests of Dutch colonialism in Indonesia, and was not in accordance with the character of the Indonesian nation, so on May 19 1950 it was agreed between the government of the United Republic of Indonesia and the Government of the Republic. Indonesia re-formed the Unitary State of the Republic of Indonesia as proclaimed on August 17 1945 (Rosmawan, 2015).

In 1959, Presidential Decree was issued on July 5 1959 which reinstated the 1945 Constitution as a constitution in effect from the date of the decree and declared the 1950 Provisional Constitution no longer valid (Sartono, 2009). The implementation of the 1945 Constitution lasted until the reform era when the people demanded changes to the basic laws of the Indonesian State. One of the objectives of reforming the state administration of the Republic of Indonesia is to refine the Constitution, as outlined in the Preamble to the 1945 Constitution, to realize national aspirations and bolster the unity of the Indonesian state in alignment with Pancasila, while also reinstating sovereignty to the people through general elections (Tamrin, 2015).

One important point to consider is that merely improving the constitution is insufficient to safeguard people's rights effectively. This is evident in the historical context of constitutional amendments in South Korea from the First Republic to the Fourth Republic, where state officials manipulated changes to consolidate power and reinforce dictatorship, leading to political turmoil. The focus of legal development post-reform is on establishing a responsive legal framework. This goal can be achieved through a constitution serving as the foundation of a democratic legal system in a rule of law state. In addition to upholding rule of law principles, it is crucial to establish mechanisms that ensure the smooth functioning of constitutionalism. Therefore, it is essential to explore the relationship between constitutional supremacy and law enforcement in a rule of law state, as well as the implications of amendments to the 1945 Constitution of the Republic of Indonesia on constitutional supremacy within the Indonesian legal system.

2. LITERATURE REVIEW

2.1. An examination of theoretical aspects in relation to Indonesia

This literature review explores the theoretical aspects of constitutional supremacy in legal states, particularly in the context of Indonesia. It investigates different legal theories and frameworks that form the basis of constitutional supremacy, analyzing their suitability and significance within the Indonesian legal framework. By critically analyzing existing literature, this review sheds light on the theoretical underpinnings of constitutional supremacy and its impact on legal interpretation, judicial review, and the safeguarding of fundamental rights in Indonesia.

2.2. Perspective and Their Relevance to the Indonesia Legal Landscape

This study delves into various theoretical perspectives regarding constitutional supremacy in legal systems, focusing specifically on how they impact the Indonesian legal framework. It assesses fundamental theoretical models like legal positivism, legal realism, and constitutionalism in the context of Indonesia's historical and socio-political background. Through a comprehensive analysis of different theoretical viewpoints, this examination offers a detailed comprehension of the foundational principles of constitutional supremacy and its role in advancing the rule of law and democratic governance in Indonesia.

2.3. A comparative theoretical Analysis with reference to Indonesia

This theory conducts a comparative theoretical analysis of constitutional supremacy in legal states, drawing parallels with the Indonesian legal framework. It examines how different theoretical perspectives conceptualize constitutional supremacy and assesses their relevance to Indonesia's unique legal and political landscape. By juxtaposing various theoretical approaches, including legal pluralism, constitutional pluralism, and legal formalism, this review offers insights into the challenges and opportunities of implementing constitutional supremacy in Indonesia and underscores the need for context-specific theoretical frameworks.

3. RESEARCH METHODS

The research method applied by researchers in this research is a normative legal research method, where legal research images law as a prescriptive discipline which only looks at law from the perspective of its norms or as a system of norms. The approaches used are the statutory regulation approach and the analysis approach. With regard to the legal materials applied in this research, they were explored using library techniques (document study). Based on the thoughts of Marzuki (2010), normative research is seen as a process that aims to discover legal rules, legal principles and legal doctrine in an effort to answer current legal problems.

4. RESULTS AND DISCUSSION

4.1. Research Results

A. The Relationship Between Constitutional Supremacy and Legal Enforcement in a Rule of Law State

Adhering to the concept of a rule of law according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the law is the leader, not politics or economics. In a democratic rule of law state, the principle of constitutional supremacy is adhered to. In other words, the constitution is the highest law of the country, so that all constitutional practices are based on the constitution as commander in chief so that regulations and actions that conflict with the constitution are not permitted (Mukti Fajar & Achmad, 2010). This principle originates from the first and main requirement or characteristic of a constitutional democratic state, namely constitutionality. However, constitutionalism is not just a constitutional doctrine or a doctrine that states the constitution must be placed as all sources of law. However, more than that it covers the subject which includes the development of constitutional theory and practice throughout human history which later gave birth to the idea of constitutionalism (I Dewa Gede Palguna, 2013).

The principle of the rule of law referred to by Jimly Asshiddiqie is a normative and empirical recognition of the rule of law where all existing problems are resolved with the constitution as the highest law. From the point of view of the rule of law, a person is not the one who leads a country, but the constitution is the highest law. Thus, the rule of law state has a constitutional source of law with the highest position, which is often said to be the supremacy of the constitution as "the highest law of the state" or "constitutional supremacy" (Jimly Asshiddiqie, 2021).

By creating constitutional supremacy where the law is the commander in chief in national life, a mechanism or system will be created to prevent power being exercised arbitrarily. Apart from that, constitutional supremacy also requires the existence of a legal order, namely that each legal system is connected and built into one unified system, where one rule cannot override other rules and avoid legal conflicts. One of the conditions for constitutional supremacy is that it wants to place the constitution as the basic law which is the source of all law, so that there is a mechanism for reviewing regulations under the constitution against the constitution to maintain legal order so that contradictions do not arise between norms.

By examining the constitution, it can prevent absolutism of power, so that there is no deviation or abuse by the authorities in making regulations that implement the constitution. Apart from that, reviewing laws against the constitution also guarantees the protection of constitutional human rights arising from laws enacted by state institutions that have the authority to make laws.

According to the meaning of the word, the constitution is the basis from which state institutions obtain authority. The constitution regulates the entire constitutional system of a country, which consists of establishing, governing or governing the country (Karyanti, 2012). There are two concepts of constitution when viewed in terms of their content: "a. In a broad sense, a constitution means a set of laws or UUD (*droit constitutionnelle*), in written or unwritten form or a combination of both; b. In a narrow sense, a constitution is defined as charter or UUD (*loi constitutionnelle*), namely the complete state constitutional document" (Tutik & SH, 2016).

The establishment of the constitution as the highest law which is often referred to as constitutional supremacy, in Indonesia the regulation of constitutional supremacy is regulated in " Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia asserts that "Sovereignty belongs to the people and is exercised in accordance with the Constitution." Consequently, the aforementioned provision conveys the idea that the Constitution serves as the executor of the people's sovereignty". With the principle of constitutional supremacy, all forms of state administration activities must be carried out based on constitutional provisions. Hans Nawiasky revealed the legal essence of a *staatsfundamental* norm, where a norm no longer needs to be debated so that it becomes something fundamental that is translated into implementing regulations.

The rules which are the basis of the state are regulated more specifically, namely *formel Gesetz* (formal law), where *formel gesetz* is the implementing regulations for the regulations above. Due to the position of legal standards with such a hierarchical structure, the application of lower legal standards is very dependent on higher standards, which are the basis for establishing these standards. In English the enactment of a law is called "validity", in Dutch it is called "*geltung*". A legal provision can be said to have legal force to apply if it is based on different points of view and factors. There are several teachings about legal validity, including:

1. *Juristische Geltungslehre* that law is a set of rules or regulations that only exist in contracts or laws that are valid if made by an authorized body.
2. *Sociologische Geltungslehre* that statutory regulations can be considered positive law only if the people who have an interest in these regulations are well accepted and truly obeyed in society.
3. *Philosophische Geltungslehre* that apart from the two things above, these rules fulfill a valuable philosophy of life for mankind (Jimmy Asshiddiqie, 2015).

Regulations that are determined to be regulations that have higher provisions are *das sollen* for the formation of lower regulations. In this case, it means that the lower regulations will not apply if the higher regulations or the regulations that were the basis (constitution) for the formation no longer apply. With regard to the constitution as the basis for the formation of all statutory regulations, it is very closely related to the basic basis of constitutionalism according to Jimly Asshidiqie, namely that the consensus that guarantees the upholding of constitutionalism is based on three elements of agreement, namely: a. Agreement regarding shared goals; b. Agreement on "the rule of law" as the basis for government and state administration; c. Agreement on institutional forms and constitutional procedures (Syarifin, 1999).

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms the supremacy of the constitution that "Indonesia is a country of law" which is then manifested in the form of distribution and limitation of power in administering government in Indonesia, furthermore with the existence of the Constitutional Court which guarantees the upholding of constitutionalism values with authority. Adjudicating both initially and conclusively with a definitive verdict to assess the compatibility of laws with the Constitution; resolving conflicts concerning the jurisdiction of state bodies as stipulated by the Constitution; addressing disputes regarding electoral outcomes; and determining the dissolution of political parties.

It is evident that the primacy of the constitution forms the foundation for the practice of constitutionalism, ensuring the sovereignty of the people within a constitutional

framework. The fate of constitutionalism hinges on the performance of the Constitutional Court, which serves as the custodian of constitutional principles. Should the Constitutional Court fail to fulfill its duties effectively, the prospects for constitutionalism would diminish.

4.2. Discussion

A. Implications of Amendments to the 1945 Constitution of the Republic of Indonesia on the Supremacy of the Constitution in the Indonesian Legal State

The 1945 Constitution of the Republic of Indonesia received legitimacy from the people as holders of sovereignty. With its positions as a constitution and having validity from the people, the 1945 Constitution cannot easily be annulled by lower legislation but rather through a mechanism that has been regulated therein. According to K.C. Wheare, the constitution can be changed in three ways, namely (Fahmi, 2020):

- a. Through a formal amendment process carried out through careful consideration, through democratic procedures regarding input from the people, protection of minority rights and through rigid procedures regulated in the constitution
- b. Through judicial decisions, customs and traditions of constitutional law, where judges may one day be faced with a conflict between the law and the constitution, thus allowing judges to make interpretations of the constitution which can have an impact on constitutional changes;
- c. Through customs, traditions or non-legal mechanisms that are binding and regulate state institutions

The 1945 Constitution, which was ratified on August 18 1945, was the first constitution of the Republic of Indonesia which adopted an impure presidential system (quasi-presidential). Because if it is related to the broader understanding of the constitution, constitutional practice was then changed to a parliamentary system within two months after the constitution was adopted. This change was carried out without changing the substance of the 1945 Constitution, but there were differences in the constitutional basis and government practices at that time.

Apart from that, there are MPR decrees with content that is different from the contents of the 1945 Constitution. During the New Order era, the MPR easily made changes to the constitution through interpretation and additions to the original provisions without changing the text of the 1945 Constitution. For example, MPR Decree No. IV/MPR/1983 which regulates referendums as a mechanism for changing the 1945 Constitution has changed the provisions of Article 37 of the 1945 Constitution that changes to the 1945 Constitution are carried out by the MPR. In addition to constitutional practices, formal changes to the 1945 Constitution have been executed through the mechanism outlined in Article 37 of the constitution. This process mandates that proposed amendments be presented by at least one-third of the members of the MPR, and changes can only be enacted if they garner approval from at least fifty percent plus one of the MPR members present at the MPR Session. This procedure was undertaken on four occasions between 1999 and 2002. These changes were driven by the reformist spirit, resulting in amendments to the 1945 Constitution, which were conducted during the MPR Annual Sessions.

- a. In the 1945 Constitution, the MPR is the highest institution. Therefore, in the constitutional structure, power focuses only on the MPR as the institution

implementing people's sovereignty (MPR supremacy). This has an impact on the weakness of other state institutions due to the lack of checks and balances between state institutions.

- b. The 1945 Constitution places the President as the holder of government power which is often considered executive heavy with very large powers. This constitutional right is often claimed as a prerogative where the President can grant pardon, amnesty, abolition and rehabilitation without consideration from other forums and gives legislative power to the President.
- c. There are many articles that provide general regulations that allow for multiple interpretations in interpreting the formulation of the 1945 Constitution. In the amendments to the 1945 Constitution, several things were maintained, including: the preamble to the 1945 Constitution, the form of the state, systematics, welfare aspects and originality. Matters of a normative nature that are in the body are included in the body of the Constitution, then the explanation of the Constitution is deleted. The amendments to the 1945 Constitution contain stronger protection for human rights regulated in the body of the constitution. The fundamental changes in the 1945 Constitution include:

- a) Programmatic nature of the Preamble to the 1945 Constitution

Changes or amendments are one of the demands of reform, therefore the MPR as a result of the 1999 elections formed the MPR Working Body (BK MPR) which consists of 90 people from 11 factions. After that, the MPR Review Body formed 3 Ad Hoc Committees, including:

- 1) Ad Hoc Committee I which has the task of formulating Outlines of State Policy which will later be ratified through an MPR Decree;
- 2) Ad Hoc Committee II discussed the Draft MPR Decree Non-Outlining State Policy;
- 3) The Ad Hoc Committee III was tasked with discussing the Draft Amendment to the 1945 Constitution. Where in its agreement PAH III agreed not to change the Preamble to the 1945 Constitution, the matter that was taken into consideration was because the Preamble to the 1945 Constitution was the most basic thing which was then translated into the body and changed. The opening of the 1945 Constitution means changing the foundations of the state where in the fourth paragraph of the Preamble to the 1945 Constitution there is the phrase "Then from that..." This phrase refers to the Proclamation of Independence of the Republic of Indonesia, and in that paragraph, there is Pancasila as the basis of the state. Apart from that, the Preamble to the 1945 Constitution is the philosophical basis and normative basis of the Indonesian state, then this philosophical and normative basis is translated into articles in the body of the NRI Constitution. The opening of the 1945 Constitution was also the foundation of the birth of the Unitary Republic of Indonesia (NKRI) where there were the goals of the state in the fourth paragraph and the foundations of the state which could not be changed.

Based on these reasons, the Preamble to the 1945 Constitution has not undergone any changes and in fact the Preamble to the 1945 Constitution is the basis in the body, the objectives and limits of the changes made to the 1945 Constitution are in accordance with the programmatic nature. Where the Preamble to the 1945 Constitution contains directions related to the actions to be taken or the formulation of goals to be achieved.

The Preamble to the 1945 Constitution contains moral, political and religious ideas that are prioritized by the 1945 Constitution and the direction that the Preamble to the 1945 Constitution aims to achieve is the embodiment of the will of the people.

b) From the Supremacy of the MPR to the Supremacy of the Constitution

The fundamental shift lies in the transition from the MPR's supremacy to the supremacy of the constitution, as stipulated in Article 1, paragraph two of the 1945 Constitution, which asserts that sovereignty resides with the people and is exercised in accordance with the Constitution. This signifies that the MPR is no longer the highest state institution. Consequently, the amended 1945 Constitution redefines the role of the MPR as solely responsible for the inauguration and dismissal of the President and Vice President, distinct from its previous role where it acted as the executor of the people's sovereignty and the president was mandated by the MPR.

Through the General Election process for electing the President and Vice President, citizens have gained the freedom to select their leaders, resulting in structural and functional changes to the MPR. Previously, the MPR exercised people's sovereignty and implemented it through the Constitution, but now there is a growing emphasis on the presidential system of government (Aritonang, 2010). Under this system, the President holds the authority to propose legislation by consulting with the DPR, while the appointment and removal of Ministers remain within the President's discretion. Furthermore, the President and Vice President serve limited five-year terms and are eligible for only one reelection. The MPR is no longer empowered to dismiss the President or Vice President prematurely. However, if either official engages in treason, corruption, bribery, disgraceful conduct, or other serious crimes, they can be dismissed before completing their term. The DPR initiates dismissal proceedings by presenting the case to the Constitutional Court for investigation. If wrongdoing is confirmed, the DPR can propose impeachment to the MPR for trial and potential dismissal of the President or Vice President (Aritonang, 2010).

c) The rule of law as the basis for changes to the 1945 Constitution

With the abolition of the Explanation to the 1945 Constitution and the related provisions containing the normative content of the Body of the 1945 Constitution, including Article 1 paragraph (three) of the 1945 Constitution which reads "Indonesia is a rule of law", is an act of consciously accepting the understanding or teachings of the rule of law as the foundation in make changes to the 1945 Constitution. Every country that adheres to the rule of law has the principle of constitutional supremacy where the constitution contains the constitutional rights of citizens where these rights are maintained through court decisions. So that if these principles are adopted by a country, that country will have characteristics, including: the existence of human rights which are protected by the state, there is an independent judiciary and the state is in accordance with the law, which means that the government and citizens in When carrying out any action it is not permissible to contravene the law or all actions must be based on the law. Apart from the above, the characteristics of a rule of law are:

- 1) Supremacy of law with the constitution c.q. The 1945 Constitution, as the highest law. The constitution as the highest law must be obeyed and practiced in a legal system where the constitution is used as the formation of regulations that are under

the constitutional hierarchy, so that there are no regulations that conflict with the constitution.

- 2) The principle of legality dictates that the government, encompassing legislative, executive, and judicial branches, must adhere to the law when exercising its authority or fulfilling its duties.
- 3) Equality under the law entails that all individuals hold an equal standing before both the law and government, with the prohibition of discriminatory practices, and the consistent and reasonable application of legal principles.
- 4) Democratization, transparency and accessibility in the process of forming and changing laws. In making laws and changing laws, the wider community must be involved so that laws will be created that are useful and have a sense of justice for the community.
- 5) Efficient and timely application of the law. However, if the implementation of a law is inefficient and not timely then good law is useless.
- 6) Limitation of state power. Each state's power must be limited both vertically and horizontally through separation of powers so that mutual monitoring and balance is created in each branch of power.
- 7) Protection of human rights, intellectual rights, including contracts. By including human rights in the constitution, these human rights will become constitutional rights which become the basic law of a country. Which contains the consequences that every action by the authorities that violates human rights regulated in the constitution will be annulled by the court because it fundamentally contradicts the nature of the constitution.
- 8) An independent and impartial court. An independent judiciary means that it is free from political interference and is free to uphold justice. If judicial power is combined with legislative power, the regulations that emerge will be arbitrary. And if the powers of the 17 judiciaries are merged into the powers of the executive then the judges will be labeled as oppressors.
- 9) There is an administrative and state administrative court, so that by regulating the powers of the administrative court separately, it proves that the court is independent and impartial, so that every member of society who feels disadvantaged by the decision of a state administrative official can apply to the state administrative court.
- 10) There is a state administrative court. With the principle of constitutional supremacy, there must be an institution that guarantees that this principle must be translated into constitutional practice. Therefore, a special institution is needed, namely the Constitutional Court.
- 11) The function of realizing the goals of the state. The aim of the rule of law is to realize general welfare.

In addition to the various mechanisms mentioned earlier, the 1945 Constitution underwent modifications through the interpretation of the Constitutional Court. Specifically, in case no. 008/PUU-II/2004, which involved the review of the 2003 Election Law, President Abdurrahman Wahid proposed a revision to Article 6 letter (d) of the law. This article required Presidential and Vice Presidential candidates to meet certain physical and spiritual criteria. President Wahid argued that this provision was discriminatory and contradicted the principle of equality enshrined in the 1945 Constitution. However, the Constitutional Court disagreed, stating that the restrictions

imposed by the law were not discriminatory but rather aimed at ensuring that individuals with severe disabilities could effectively exercise their rights. Through this review process, the Constitutional Court indirectly altered the meaning of Article 6 paragraph (1) of the 1945 Constitution, resulting in an informal change to the constitution itself.

The amendments to the 1945 Constitution have been facilitated through the endorsement and ratification of international treaties. For instance, the ASEAN Charter was ratified as domestic law in Indonesia under Law Number 38 of 2008, which pertains to the Ratification of the Charter of the Association of Southeast Asian Nations. Under the framework of international agreements, the Charter operates as a binding agreement, thereby obligating member states to adhere to its provisions, even if they may not entirely align with the respective constitutions of member countries.

Through the ratification of the ASEAN Charter, the principles of free investment, single market and regional economic integration regulated therein also directly bind Indonesia legally, which has implications for changing the substance of Article 33 paragraph (1) of the 1945 Constitution which states that the economy is based on the principle of kinship. In this case, the constitution should act as a demarcation limit regarding what can and cannot be negotiated when negotiating a draft international agreement.

The ratification of the ASEAN Charter involved a sacrifice of the principle of the national economy. Despite undergoing negotiation, signing, and ratification stages, the inclusion of provisions in international agreements that contradict Article 33, paragraph (1) of the 1945 Constitution should be a deliberate decision made by the Indonesian Government. By prioritizing the benefits of the international agreement, the government implicitly altered aspects of the state constitution, particularly concerning the national economy principles, without adhering to the procedures outlined in Article 37 of the 1945 Constitution. Furthermore, the Constitutional Court's dismissal of a lawsuit challenging the constitutionality of the ASEAN Charter, ratified under Law Number 38 of 2008, further legitimizes these informal constitutional changes.

5. CONCLUSION

Constitutional supremacy is the basis for the implementation of constitutionalism which guarantees the sovereignty of the people in a constitutional state. The future of constitutionalism depends on the decision of the Constitutional Court as the guardian of constitutionalism. Constitutional changes are a necessity in order to perfect the constitution. Amendments or changes to the 1945 Constitution support Indonesia as a rule of law state through: supremacy of law with the constitution; the principle of legality or the principle that the government follows the law; equality under the law; democracy, transparency and accessibility in the process of forming and changing laws; efficient and timely application of the law; limiting state power; protection of human rights; an independent and impartial judiciary; there are administrative and state administrative courts; and there are constitutional courts.

Apart from formal mechanisms, changes to the 1945 Constitution of the Republic of Indonesia as a basic law were changed through informal methods, including: through the habits and interpretations of judges as well as ratifying international agreements. Changes to the 1945 Constitution also occurred as a result of the ratification of international agreements which reduced the existence of the constitution as the highest

form of state power. This can trigger a legal conflict between the constitution and international agreements and result in a dilemma for the Government in safeguarding the interests of the people and on the other hand having to comply with international agreements. Ratification of international agreements should not conflict with the constitution. To avoid legal conflicts, an appropriate negotiation process is needed by the Government so that the interests of the people and the interests of the state can be aligned.

REFERENCES

- Aritonang, D. M. (2010). Penerapan Sistem Presidensial di Indonesia Pasca Amandemen UUD 1945. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 22(2), 391–407.
- Asshiddiqie, J. (2005). *Pengantar. I Dalam Hak Asasi Manusia dalam Konsitusi Indonesia: Dari UUD 1945 sampai dengan Amandemen UUD 1945 Tahun 2002*. Majda el-Muhtaj. Jakarta, Prenada Media.
- Fahmi, K. (2020). Perubahan Konstitusi melalui Perjanjian Internasional dan Dampaknya terhadap Kedaulatan Negara. *Staatsrecht: Indonesian Constitutional Law Journal*, 5(1), 47–88.
- I Dewa Gede Palguna. (2013). *Indonesian Constitution and Constitutionalism, Material for the Constitutional Guidance and Technology Guidance Center for Pancasila and Constitutional Education*.
- Jimly Asshiddiqie, S. H. (2021). *Konstitusi dan konstitusionalisme Indonesia*. Sinar Grafika.
- Jimmy Asshiddiqie. (2015). *Regarding Laws, Rajagrafindo Persada, Jakarta*.
- Kamis, M. (2000). Mencari Relevansi Teori dalam Menganalisis Sikap MPR 1998-2000 terhadap Gagasan Negara Hukum yang Demokratis. *Jurnal Hukum IUS QUIA IUSTUM*, 7(14), 101–114.
- Karyanti, T. (2012). Sistem Ketatanegaraan Indonesia Sebelum dan Sesudah Amandemen UUD 1945. *Majalah Ilmiah INFORMATIKA*, 3(1).
- Kusniati, R. (2011). Sejarah Perlindungan Hak Hak Asasi Manusia dalam Kaitannya dengan Konsepsi Negara Hukum. *INOVATIF| Jurnal Ilmu Hukum*, 4(5).
- Marzuki, M. L. (2010). Konstitusi dan Konstitusionalisme. *Jurnal Konstitusi*, 7(4), 1–8.
- Mukti Fajar, N. D., & Achmad, Y. (2010). *Dualisme penelitian hukum: normatif & empiris*. Pustaka pelajar.
- Ni'matul Huda. (2013). *Ilmu Pengetahuan Negara, Rajawali Press, Jakarta*, p. 105.
- Purekholon, T. T., & MM, M. S. (2020). *Negara Hukum Dalam Pemikiran Politik*. PT Kanisius.
- Rosmawan, W. (2015). Sejarah Perkembangan Konstitusionalisme Dunia Dan Indonesia (Tinjauan Perbandingan). *Jurnal Ilmiah Galuh Justisi*, 3(2), 271–281.
- Sabon, M. B., & SH, M. (2019). *Ilmu negara: Bahan pendidikan untuk perguruan tinggi*. Penerbit Unika Atma Jaya Jakarta.
- Sartono, K. E. (2009). “*Studi Konstitusi Indonesia dari Awal Kemerdekaan hingga Era Reformasi*.” *Humanika, General Subject Scientific Studies 9.1* (2009).
- Syarifin, P. (1999). *Pengantar Ilmu Hukum*. Pustaka Setia, Bandung.
- Tamrin, A. (2015). Perubahan Konstitusi Dan Reformasi Ketatanegaraan Indonesiaa. *Jurnal Cita Hukum*, 3(1).

-
- Tutik, T. T., & SH, M. H. (2016). *konstruksi hukum tata negara Indonesia pasca amandemen UUD 1945*. Prenada Media.
- Windari, R. A., & SH, M. H. (2021). *Pengantar Hukum Indonesia-Rajawali Pers*. PT. RajaGrafindo Persada.

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