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Rule of Law and Democracy: Dynamics in The Constitutional System of The Republic of Indonesia

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Abstract

The rule of law and democracy are inextricably linked concepts that cannot be separated. The constitution of the rule of law incorporates the principles of the rule of law (nomocratic), according to which law enforcement must also be able to protect the rights of its citizens from injustice with humanity and mutual respect for the continuation of existing law. Moreover, the notion of democracy incorporates the ideals of popular sovereignty (democratic). Democracy has a crucial role in the allocation of power within a nation. This study intends to examine the rule of law, democracy, and constitutional system developments in Indonesia. This analysis. The sort of research employed in this study is normative legal research. According to the findings of this study, law enforcement mechanisms must be able to protect the rights of citizens against injustice in accordance with the values of humanism and mutual respect for the viability of current laws. It becomes a fundamental component of the legal system with law enforcement agencies. As a democratic rule of law, Indonesia respects both the sovereignty of the people and the rule of law. In the dynamics of a legal and democratic state's constitutional system, there must be the principle of limiting state power to prevent arbitrariness, the principle of legality to ensure that all actions comply with applicable law, and the principle of separation of powers to ensure that human rights are effectively protected.

Keywords

Rule of Law, Democracy, Constitutional System.

Introduction

The rule of law is a product of history since its formulation and meaning continue to evolve in tandem with the history of human civilization (Fallon, 1997).

To accurately grasp the notion of the rule of law, it is required to first know the historical description of the evolution of political and legal thought, which led to the conception and growth of the rule of law concept (Tamanaha, 2004). The rule of law is a contemporary concept that is multifaceted and continually current. Historically, legal thought and statehood, the rule of law, have been evolving since 1800 B.C. The earliest origins of the rule of law concept can be traced back to the ancient Greeks (Krygier, 2016). According to Beatty (2004), the Roman tradition gave rise to the concept of popular sovereignty, while the ancient Greek tradition gave rise to the concept of rule of law.

The concept of the rule of law can be grouped into three concepts, namely the concept of *rechtsstaat*, which developed in Continental European countries; the concept of the rule of law, which developed and was implemented in Anglo-Saxon countries and socialist legality, which was developed and applied, among others, in -communist state (Zolo, 2007). Until now, the various concepts of the rule of law still have a considerable influence on the legal order in each region and influence each other between one legal system and another, especially in developing or newly independent countries after the second world war (von Benda) Beckmann & von Benda-Beckmann, 2006).

Rule of law states are primarily designed to prevent the state or government from engaging in arbitrary activities, which is one of the primary purposes of the idea and concept of rule of law states (Kelemen, 2019). Because of this, however, a government that is not controlled by strong and concrete legal tools will be susceptible to a variety of irregularities and abuses of authority (O'Donnell, 2004). Even in this day and age, it is possible to say that a nation is highly relevant and ideal if all of the operations carried out by the state are founded on legal procedures that are unambiguous and unyielding (Storey & Tether, 1998).

Indonesia, a country born in the 20th century, adopted the concept of a legal state according to the principles of constitutionalism. This can be seen from the agreement (consensus) of the Indonesian nation since the 1945 Constitution was established as the Indonesian state constitution (Hosen, 2007). It is this agreement that, in its development, has transformed into shared ideals, which are also commonly called the state philosophy or *stateside* (state ideals), which function as *grondslag* philosophies and common platforms or *kalimun sawa* among fellow citizens in the context of state life (Pinilih, 2018).

Democracy and freedom are often assumed to be two things in one package. Getting democracy "certainly" also gets freedom. On the other hand, democracy and freedom sometimes still encounter many problems in their implementation, especially those related to citizens' freedom. In contrast, freedom can only be obtained if there is democracy and a constitution that guarantees it (Linz & Stepan, 1996). In essence, democracy cannot guarantee absolute freedom, and there needs to be a commitment to building a tradition of freedom, a tradition among all citizens which is embodied in strict rules and law enforcement, that everyone is free to speak and express their opinions (Allan, 1985).

The idea of democracy is a significant one in and of itself, particularly in the field of political science. This is due to the fact that democracy is widely seen as a measure of the political development of a country at the moment (Fish, 2006). Because democracy holds such an important place in relation to the distribution of governmental authority derived from the people, it is imperative that it be utilized for the sake of the people's well and prosperity (Noris, 2012). When historical facts record the power of the government, it is very important to take into account the principle of this kind of trias politica. In this scenario, the executive, which is so large, turns out to be unable to form a whole society that is just and civilized, and even the power of the government frequently causes violations of human rights. rights of humans (Lev, 1978).

In order to establish a state that abides by the rule of law, it is necessary to acknowledge the significance that democratic processes play. The two are inextricably linked, and their bond cannot be severed. The rule of law will lose its form and direction if democracy does not have it, while democracy will lose its meaning if the rule of law does not have it (Rosenfeld, 2000). That is to say, in the contemporary setting, the rule of law and democratic procedures are obligatory components of state management. It is generally accepted that democracy and the idea of popular sovereignty are very closely related. Since popular sovereignty places an emphasis on the fact that people hold the power to make decisions that affect their lives, the synergy of the two ideas lies in the question of how to form a government based on the will of the people as a whole and how to advance their interests (Canovan, 2002).

According to Robert Dahl (2008), the urgency of democracy in a rule of law consists of six essential elements, namely the existence of elected officials, fair and periodic free elections, freedom of speech, access to alternative sources of information, associational autonomy, and inclusive citizenship rights, or more generally, can be understood as the government's continuous responsiveness to the preferences or interests of its citizens. [Citation needed] [Citation needed] [Citation needed] [Citation needed] [Citation needed] [C There is a direct connection between the people's sovereignty being exercised through a democratic system and a state that is governed by the rule of law and bases its authority on the constitution. The participation of people is necessary for understanding this correlation (Chesterman, 2008).

Countries that adhere to a democratic system will not be separated from the law. Harmony between political supra-structure and political infrastructure relations will be established if corridors or standard rules are agreed upon and carried out together (Jacobs & Shapiro, 2000). This is where the role of law as a reference will bring democracy to life by minimizing various violations committed by the government or society (Carothers, 2007). If a violation occurs, it is clear that the law regulating it is the reference for handling and taking action on the violation. Because the law itself, in principle, creates social order (Jones, 2014).

The history of state administration demonstrates that the concept of the

rule of law and democracy evolves proportionally to the intellect of a nation (Chavez, 2004). Therefore, according to Bingham (2007), the rule of law and democracy as a notion appear shaky, as nearly all countries are deemed to have a rule of law. Moreover, he stated that it would not be an exaggeration to say that the more the rule of law and democracy are applied and taught, the more we become aware of their flaws (Zhao, 2006).

The question that must be asked is whether Indonesia as a rule of law and democracy, as emphasized by the 1945 Constitution of the Unitary State of the Republic of Indonesia in implementing its constitution, is based on the theory of the rule of law according to the system of politics-law, system-culture, and customs that apply across the Republic of Indonesia's territory. Has the implementation of constitutional principles under a rule of law and democracy been ideal in order to achieve the desired result, a state founded on democratic law and fairness for all citizens? This study will attempt to further the research topic titled State of Law and Democracy: Dynamics in the Constitution of the Republic of Indonesia.

Methods

The approach used in this study is normative law because what is used as data comes from literature. This normative legal research focuses on specific legal principles related to certain principles by first identifying the legal principles formulated in specific laws (Diantha, 2016). The normative juridical method also refers to research that leads to a philosophical basis, especially concerning the principles of a rule of law and democracy and the dynamics of the Indonesian constitutional system (Efendi & Ibrahim, 2018). The type of data used is qualitative data, namely presenting data in words or sentences, then compiled in legal writing. Legal materials are normative-perspective, used to examine problems in research.

Retrieval of research data was carried out using document study techniques. This document study technique is one way to do library research. The document study technique, namely collecting legal materials with a normative-perspective nature, is carried out by tracing and collecting secondary data regarding the object of research conventionally and using information technology, such as the internet and others. For data analysis using, qualitative analysis, which describes the data obtained, then classifies it according to quality and correctness to answer the problem.

Results And Discussion

Rule of Law and Democracy

A dynamic notion, the rule of law and democracy can be revised and improved throughout time. The protection of human rights is a part of the ideals of the rule of law, and the protection of citizens' rights is an expression of people's sovereignty, which is central to the idea of democracy, thus the two ideas naturally merge when it comes to the protection of citizens' rights.

The ever-changing character is visible in both location and time, and the idea of a rule of law is realized in the course of past events. The idea of the rule of law has changed and evolved throughout history. Following the teachings of *nachwachter staat* (the state as a night guard), a liberal rule of law state (*liberale rechtsstaat*) emerged, and eventually gave way to the formal rule of law state (*formele rechtsstaat*) of Friedrich Julius Stahl. The idea of a material rule of law (*material rechtsstaat*) also emerged, paving the way for the rise of welfare states (*welvarstaat*) (Stahl, 1847).

Protection of human rights and checks on government power are key tenets of both the rule of law and democracy, which are distinct concepts. The principle of the rule of law (nomocracy) has often coexisted with the principle of democracy in the evolution of contemporary states. There is no inherent tension between the rule of law and democratic principles. The rule of law and democracy are complementary ideas. Democracy (here, citizen engagement) and respect for human rights are essential tenets of many definitions of the rule of law (Peerenboom, 2004). The United Nations defines the rule of law as a principle of governance in which all individuals, organizations, and the state itself are held to the same set of laws that have been publicly promulgated, are equally enforced and independently adjudicated, and are in accordance with universally recognized human rights. There must be safeguards in place to prevent any violations of the following values: supremacy of law; equality before the law; accountability to law; fairness in the application of law; separation of powers; citizen participation in decision-making; legal certainty; avoidance of arbitrariness; procedural and legal transparency (Fitschen, 2008).

The fight for democracy has deep roots in the idea of the rule of law. This is why a democratic rule of law is often used as a synonym for the rule of law. This is because of how the values upon which a democracy is founded relate to the components of a rule of law. As a result of these parallels, the ideal form of a rule of law that safeguards citizen rights can be mentioned in a single breath: a democratic rule of law (Muller, 2015). Understanding that the law in a democratic state is set by the people—that it is nothing more than the regulation of relations between fellow citizens and the protection of citizens' rights in the context of the relationship between rulers and people—illustrates the democratic nature of the concept of a rule of law (Teson, 2018).

The idea of constitutional democracy emerges from a democratic framework; it refers to a state in which the government has restricted authority and where it would be unjust for officials to behave arbitrarily against their own people. The Constitution lays down these limits. We can also refer to this idea as "government based on a constitution" (Wilson, 1908). According to CF Strong (1963), the constitution is a set of rules that establishes the connection between the government and the people, the rights of the people, and the limits of government power. The constitutional system of a country is a set of rules that together decide and regulate or establish the government; these rules are

described in the constitution. Consistent with advancements in safeguarding human rights and limiting state power, constitutional democracies continue to mature.

Limiting governmental power and protecting citizens are important to both constitutional democracy and a democratic rule of law. In a functioning democracy, the rule of law dictates that everyone must abide by the rules (Licht, 2008). To avoid confusing the application of the principle of equality before the law with authoritarian or autocratic power, which is almost certain to be accompanied by legal certainty, the absence of an independent and impartial judiciary, and a failure to implement the principle of equality before the law, authoritarian and autocratic power must be excluded from the discourse of the rule of law (Miguel, 1997). It's crucial to make this argument, as authoritarian nations often make similar claims about being a rule of law state. Therefore, the term "rule of law" needs to be augmented with the adjective "democratic."

According to Jimmy Ashidique (2008), the concept of democracy contains the principles of popular sovereignty (*democratie*), whereas the concept of the rule of law contains the principles of the rule of law (*nomocratie*), with each concept carrying the principles of the other as two sides of the same coin. This understanding of the rule of law is referred to as a "democratic rule of law state" (*democratische Rechtsstaat*) or as constitutional democracy. It is referred to as a "democratic rule of law state" because it adheres to the rule of law and democratic principles, namely the separation of powers:

1. Law Supremacy. The rule of law, the idea that legal processes should be the final arbiter of disputes, has widespread acceptance both theoretically and in practice.
2. Equality in Law. Each and every citizen is treated equally under the law and by the government. Except for limited and temporary measures taken to aid the growth of certain groups, all forms of discrimination are strictly forbidden.
3. The Legality Precept All government activities must be based on valid, documented statutes and rules. These rules and regulations must exist and be applicable before any action can be conducted.
4. By implementing the principles of vertical separation of powers or horizontal separation of powers, there are constraints on state power and state organs. This limitation of power is intended to prevent power abuse and establish a system of checks and balances amongst branches of government.
5. For the purpose of limiting authority, independent government institutions, such as the central bank, army, police, and judiciary, are now being established. In addition, new institutions have been established, including the National Human Rights Commission, the General Elections Commission, the Ombudsman, and the Indonesian Broadcasting Commission, among others.
6. A rule of law nation has a free and impartial court (independent and impartial judiciary). Judges are prohibited from taking sides other than

those of truth and justice, and they cannot be influenced by office or financial interests.

7. The State Administrative Court is a component of the larger judiciary, which must be impartial and independent, but its existence must be expressly stated. In every country governed by the rule of law, citizens must be able to contest administrative judgments that fall under the purview of state administrative justice.
8. In addition to the State Administrative Court Commonly, the current rule of law also incorporates the notion of establishing a constitutional court to bolster a system of checks and balances between parts of government to ensure democracy. For instance, this court is tasked with reviewing the legality of laws and resolving conflicts between state institutions, reflecting the distinct branches of state power.
9. There is constitutional protection of human rights with legal safeguards for the enforcement of requests through a fair procedure.

Is Political (Demokratische Rechtsstaat). Adopting and practicing the principle of democracy or people's sovereignty guarantees the participation of the community in the decision-making process of the state, so that every law implemented and enforced reflects the community's sense of justice.

10. Assists in attaining the state's objectives (Welfare Rechtsstaat). The purpose of a democratic rule of law in Indonesia, as stated in the preamble to the 1945 Constitution, is to achieve national goals.

Every process of making and enforcing laws is subject to social oversight and transparency so that institutional mechanisms for ensuring truth and justice can be improved. Direct participation is imperative because the mechanism of representation in parliament cannot always be relied upon as the sole conduit for the aspirations of the people. This is a type of representation in ideas that is only occasionally inherent to representation in presence.

Rule of law grounded in the constitution and popular sovereignty realized through a democratic process are inextricably linked; consequently, the rule of law necessitates a democratic framework for its maintenance. To put it simply, democracy relies on the active participation of its citizens. Law without democracy will be meaningless and formless, but democracy will lose its direction and structure without the rule of law.

Rule of Law and Democracy: Dynamics in the Constitution of the Republic of Indonesia

Efforts are made consciously by every person and government institution to secure mastery and fulfillment of life's welfare. State institutions such as Trias Politica institutions whose position and authority are regulated in the Hierarchy of laws and regulations. As well as its relationship with state administrative law which is the embodiment of state institutions in carrying out their services.

One of the most important ideas in state administrative law is democracy.

This makes sense, considering that nowadays democracy is held up as a symbol of a nation's progress in terms of its legal system. When it comes to deciding how power is divided up in a given nation, democracy plays a pivotal role (often based on the ideas and principles of the trias politica), as the power of the state is derived from the people and must be used for their benefit. Facts from history show that when the executive branch of government has too much power, it cannot create a just and civilized society, and that even absolute power in the hands of the government can lead to violations of human rights, so principles like the trias politica become very important to consider (the constitution, 2016).

Upholding the rule of law (respect for human rights and eradicating KKN), regional autonomy, freedom of the press, and realizing democratic life. It is no exaggeration that, according to the people, what happened in the pre-reformation country was the culmination of the absence of the rule of law (nomocracy) and the absence of justice. The presumption of ignoring the law, disrespecting the law, distrusting the law, misuse of the law by the authorities. All these are the implications of guarantees by law because there are sanctions, at least the reaction from the wider community (Qamar, 2013).

Since "Indonesia is a rule of law state," as stated in the Explanation of the 1945 Constitution, it has been appointed and included in the body of the 1945 Constitution to change from "Indonesia is a rechtsstaat, not machtsstaat state." This means that all attitudes, policies, and behaviors of state instruments and the populace must be based on and in accordance with law. The law (nomos) itself is the primary governing principle of a state. People's sovereignty is the source of the rule of law and the supremacy of law (Fahmi, 2016).

After the reformation, the Indonesian country became a democratic and rule-of-law state that protects every person in exercising freedom of expression and transmitting ideas verbally and in writing. Article 28 of the 1945 Constitution and Law Number 12 of 2005 regulate the protection of civil and political rights in Indonesia. These laws and regulations outline the rights that the state must protect, including freedom of speech, freedom of association, participation in government through voting and election, and access to justice.

According to Sargent (2008), the principles of democracy include 1. Citizen involvement in the formation of political decisions; 2. A certain degree of equality among citizens; 3. A certain degree of independence or freedom recognized by citizens; 4. A representative system; 5. An election system for majority rule. From Lyman's statement, in a democratic system in a country, two principal things in democracy can be found, namely equality and freedom of citizens.

The basic tenet of Indonesia's democratic system is that all citizens are created equal and deserve respect from one another in all their social interactions. Maintaining a functioning democratic system, as well as ensuring that justice and human rights are protected, requires an unwavering commitment to a rule of law state. Guaranteeing human rights and freedom, defining and restricting governmental authority, and exerting significant influence over the way that

authority is actually exercised are all essential components of a successful new constitution.

In the principle of constitutionalism, a democratic rule of law must have the following characteristics or elements:

- a. There are restrictions on the power of the state against individuals, meaning that the state cannot act arbitrarily even though in a democracy it guarantees freedom, state actions are limited by law, individuals have rights against the state, or people have rights against those in power;
- b. Principle of Legality. Every state action must be based on a law that has been held beforehand, which the government or its apparatus must also obey; and
- c. Separation of Powers. For these fundamental rights to truly be protected, it is necessary to separate powers; namely, the bodies that make laws, implement them, and adjudicate them must be separate from one another and not be in one hand.

Furthermore, there are two constitutional dynamics in the effort to realize a rule of law and democracy; the first is a paradigmatic problem in the form of ambiguity in the orientation of the conception of a rule-of-law state. The second is a political problem in the form of a legacy of corrupt bureaucracy and wrong political recruitment.

The paradigmatic problem is an ongoing and essential issue. To implement the rule of law-oriented towards justice and substantial truth, a paradigm shift in the vision of a rule of law state from *rechtsstaat* to the rule of law, as developed in many Anglo-Saxon countries, is required. With this paradigm, every law enforcement endeavor will be able to break free from the constraints of procedural formalities, encouraging officers to be innovative and daring in investigating the values of justice and preserving ethics and morals in society in every legal case settlement. This paradigm change must also be regarded as an effort to restore a sense of justice and morals as the soul of the law that will be established for Indonesia's legal state in the future. It is today relatively easy to carry out a paradigm shift because the Amendment to the 1945 Constitution no longer clearly specifies "*rechtsstaat*" as a reference for Indonesia's rule of law. The phrase *rechtsstaat*, which was once contained in the Elucidation of the 1945 Constitution, is no longer formally incorporated. Article 24 paragraph (1) demonstrates the rule of law's orientation toward justice: "The judicial power is an autonomous power to administer justice in order to uphold law and justice." Furthermore, Article 28D provides everyone's right to enough legal protection and assurance, as follows: "Everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law."

Meanwhile, the political problems we face today are the still strong corrupt bureaucracy as a legacy from the past and the many old political actors and bureaucrats which then hinder law enforcement efforts. Many old political actors who helped build a corrupt system today are still active in politics and government

using new political clothes. At the same time, new political actors emerged who were also corrupt because they interpreted their presence on the political stage as an opportunity for political revenge or to enjoy what in the past could not be enjoyed due to the domination of specific political forces. The meeting between old players and new players, who indicated corruption, synergized the emergence of a lot of new corruption and collusion under the bureaucracy and procedures, which are still corrupt.

This problem must be solved by efforts to reform the bureaucracy so that it is immediately cleared of corrupt systems, procedures, and officials. The belief that one of the essential keys to the success of reform is bureaucratic reform has yet to be realized in concrete and firm steps. Meanwhile, to overcome cases of KKN and human rights violations inherited from the past, it is necessary to immediately resolve them with a firm political decision to sever ties with cases left over from the past. Two ways can be chosen to break the relationship. First, amputate bureaucratic officials, especially law enforcement bureaucrats at a certain age and level, through the Lustration Law so that legal action can be taken firmly and straightforwardly. With large-scale amputations, it will be easier to reconcile old cases involving those charged with legal action.

Second, carry out bleaching by granting pardon nationally (national pardon) to the perpetrators of past violations because it is challenging to carry out a firm settlement based on the law for the many and complex cases committed by them as a result of a coercive system when. The reason that can be added for carrying out this bleaching is that the Lustration Law may be difficult to enact because the making of the law will involve those who will be affected by amputations. The policy option that seems more realistic is amnesty or pardon, provided every violation after the bleaching is carried out must be quickly and openly subject to severe punishment.

In addition, to better guarantee the appearance of capable and credible political actors, political recruitment for representative institutions needs to be under the umbrella of a more appropriate electoral system (for example, open proportional or even district systems) and maintain the election of political officials at all levels with a direct election system. . Such a system is not perfect and does not guarantee one hundred percent goodness. However, it can minimize fraud in money politics, collusion, and nepotism in political recruitment. Concerning the direct election system for the President, it must be accompanied by an instrument or sub-system for the recruitment of officials that encourages the President to form a *zaken* cabinet (expert, clean and professional cabinet) by freeing him from the shackles of compensation and support political transactions. For this reason, it is also necessary to organize the party system, especially towards only a few parties.

Conclusion

The State of Indonesia is a democratic country with an existing legal consensus, ushering in a more flexible and dynamic legal order, as well as

democratic enforcement of the perception that every Indonesian citizen has constitutional rights in laws and regulations as the full authority of the state. The main idea or basic idea of the democratic system in Indonesia is the upholding of human rights because of human nature; that is, every citizen has the same dignity in social relations with fellow citizens, including channeling aspirations in expressing opinions in public. The rule of law is necessary for upholding the democratic system and defending justice and human rights. The new constitution is ideal if it includes a guarantee of human rights and freedom, the formulation and limitation of government power, and solid control over the exercise/execution of government power and law enforcement. The Indonesian government must make the enforcement of the rule of law a top priority so that legal authority can be established. A democratic rule of law must adhere to the elements of constitutionalism, namely the limitation of power regulated by law, which in this case takes the form of legislation, the principle of legality, according to which every state action must be based on applicable law, and the separation of powers. In order for the separation of powers, also known as the *trias politica*, to protect human rights, the central pillar of rule of law and democracy. Moreover, constitutionalism has two dynamics with regard to the realization of the rule of law and democracy. The first is a paradigmatic problem in the form of ambiguity in the orientation of the concept of a state governed by the rule of law. The second problem is a political one consisting of a legacy of corrupt bureaucracy and poor political recruitment.

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