

Implementation of the Principle of the Rule of Law in the Dynamics of Indonesian Constitutional Affairs After the Amendment of the 1945 Constitution

Maria Ulfa

State Islamic University of Walisongo Semarang, Indonesia

Abstract

The amendment to the 1945 Constitution brought fundamental changes in the Indonesian constitutional system, especially in an effort to realize the principle of the rule of law. Changes in the country's institutional structure, strengthening the checks and balances mechanism, and the presence of the Constitutional Court are part of the constitutional transformation intended to uphold democracy and justice. This article aims to analyze the implementation of the rule of law principle in the dynamics of Indonesia's constitutional system after the amendment of the 1945 Constitution, focusing on constitutional arrangements, the role of state institutions, and implementation challenges. Through a juridical-normative approach, this study found that although normatively the principle of the rule of law has been affirmed in the constitution, Indonesia's constitutional practice still faces various problems, including regulatory disharmony, weak law enforcement, and the dominance of political interests in policy formation. Therefore, strengthening the principle of the rule of law requires not only institutional reform, but also the internalization of the legal culture in society. This article concludes that the success of the implementation of the principle of the state of law after the amendment of the 1945 Constitution is largely determined by the consistency of law enforcement, the integrity of state institutions, and the participation of the community in overseeing the practice of constitutional democracy.

Keywords: state of law, 1945 Constitution, amendments, constitutionality, Constitutional Court.

Research Background

The concept of the state of law (*rechtsstaat* or *rule of law*) is the fundamental foundation for the implementation of fair and democratic government around the world. Since the early 19th century, this idea has been considered ideal, prompting many countries to adopt the principle as their constitutional basis (Busthami, 2023).

The principle of the state of law places the law as the supreme supremacy, being the commander and main command in regulating the state and government (Busthami, 2023; Tursina et al., 2023). This means that all actions, both by citizens and state administrators, must be based on the applicable legal rules, and ensure the protection of human rights as a universal natural right inherent in every individual (Susanti, 2021). In the modern context, this principle continues to be the focus of studies in understanding the transformation of globalization and the role of law (Konca, 2021; Leheza et al., 2022).

In Indonesia, the history of the constitution has shown a long way in internalizing the principle of the rule of law. The conception of the state of law in Indonesia tends to lead to the concept of *a legal state rechtsstaat* in the Netherlands or the continental European legal system that emphasizes law in written form (Yusuf, 2022). Since the beginning of independence, the 1945 Constitution has been the main axis in the national development process (Kartika, 2023). Although the 1945 Constitution initially contained only seven provisions regarding human rights, Indonesia's commitment as a state of law has been affirmed from the beginning (Andriani & Sapipto, 2022). The history of legal development in Indonesia has gone through various phases, from the pre-colonial period, colonial, to the independence phase, with continuous efforts to formulate modern laws based on Islamic customs and laws (Andriani & Sapipto, 2022).

After the 1945 Constitution Amendment, there were significant changes aimed at strengthening the principles of the rule of law and democracy. Article 1 paragraph of the 1945 Constitution explicitly states that "The State of Indonesia is a state of law" (Busthami, 2023; Juanda & Juanda, 2023; Nurwahyuni et al., 2023). This amendment also substantially expanded the provisions on human rights, making the 1945 Constitution one of the most comprehensive constitutions in the protection of human rights (Hadiarto & Karyadie, 2022; Ibrizzahra et al., 2024). Furthermore, these amendments strengthen the rule of law and democratic principles through the establishment of new institutions such as the Constitutional Court and the Judicial Commission, which play an important role in constitutional oversight and judicial independence (Anwar & Saputro, 2022; Hippy et al., 2024; Simanjuntak & A.L.W, 2022).

Nevertheless, the implementation of the principle of the rule of law in post-amendment Indonesia is not free from various challenges and complex dynamics. Law enforcement problems are still often complained about, where the law is felt to be "sharp downwards but blunt upwards" (Widayati, 2022). In addition, Indonesia faces the issue of "hyper-regulation" and regulatory disharmony, where there are inconsistencies in planning, a tendency for deviations in content materials, and overlapping regulations that have the potential to cause conflicts between policymakers (Ma'ruf & Wardhani, 2022; Scotland, 2022; Taufik & Dewi, 2020). This

situation is an obstacle to development and creates legal uncertainty (Sinaga, 2022). Factual data show that corruption is still a serious problem; For example, Indonesia's Corruption Perception Index had declined from 40 in 2019 to 37 in 2020 (Asmorojati et al., 2022). The high number of corruption cases, as reported by Indonesia Corruption Watch, which recorded an increase in cases and state losses, directly eroded public trust in law enforcement (Kartika & Aulia, 2023).

State institutions, such as the executive, legislative, and judicial, play a crucial role in realizing the rule of law through the implementation of *the trias politica* concept and checks and balances *mechanisms* (Mulyasandi & Jaman, 2024; Pulungan & A.L.W., 2022). This mechanism is designed to prevent domination and arbitrariness of one institution, while ensuring that all citizens receive their rights (Mulyasandi & Jaman, 2024). However, there are *overlapping dynamics* of authority and competition between institutions that can be detrimental to the interests of the state (Rohmah, 2023). Better systems and regulations are needed, as well as strict supervision of the implementation of the duties and functions of each institution (Rohmah, 2023). Public trust in the judiciary is also an important indicator; Although the publication of court decisions and electronic-based judicial reforms have been carried out to increase trust, efforts to ensure legal certainty and justice that are able to respond to the demands of the community continue to be a concern (BADALU, 2025; Saputra, 2021; Suadi, 2020).

Various previous studies have examined the implementation of the principle of the rule of law in Indonesia after the amendment of the 1945 Constitution. Several studies have focused on the impact of constitutional changes on the constitutional structure, highlighting the strengthening of democracy and the rule of law through the establishment of new institutions such as the Constitutional Court (Abustan et al., 2020; Hippy et al., 2024). Another study explores the history and development of law in Indonesia from a constitutional perspective (Andriani & Sacipto, 2022), affirming the conception of Indonesia as a distinctive legal state with Pancasila as the basis (Hadi et al., 2020). There are also those who discuss the importance of the role of the community in the enforcement of restorative justice (Miftahuddin, 2023) and highlight the dynamics of the authority of state institutions (Rohmah, 2023). These studies provide an understanding of the normative and institutional frameworks that have been formed post-amendment.

However, there are research gaps that need to be filled. Most research tends to focus on normative and descriptive analyses of constitutional changes and institutional structures, as well as the identification of law enforcement problems in general. However, a study that in-depth analyzes the interconnection between complex administrative dynamics (such as regulatory disharmony and the role of political actors) and the implementation of the rule of law principle in the context of post-amendment practices of the 1945 Constitution, still requires more detailed exploration. In particular, analyses that integrate up-to-date factual data on the

effectiveness of implementation and the social impact of the rule of law principle in dealing with contemporary challenges holistically, are still limited.

Therefore, this study is urgent to fill this gap by comprehensively examining the implementation of the principle of the rule of law in the dynamics of Indonesian constitutional affairs after the 1945 Constitution Amendment. By analyzing various aspects that affect the practice of the rule of law—ranging from the constitutional framework, the role of state institutions, to sociological and political challenges, as well as utilizing relevant factual data—this study is expected to provide a deeper understanding of the effectiveness and challenges in realizing the ideals of the rule of law in Indonesia. The study also aims to identify crucial areas for policy improvement and legal reform that are adaptive and responsive to the demands of justice in society.

Research Methods

This research uses a juridical-normative approach with a focus on the analysis of laws and regulations and constitutional law doctrines related to the principle of the state of law in the post-amendment 1945 Constitution. The main source of data is in the form of primary legal materials, namely the 1945 Constitution and its amendments, as well as relevant laws and decisions of the Constitutional Court. Secondary legal materials in the form of literature, journals, and opinions of constitutional law experts were used to strengthen the analysis. The data collection technique is carried out through literature studies, while the data analysis is carried out in a descriptive-analytical manner, namely by explaining, interpreting, and evaluating the implementation of the principle of the rule of law in the dynamics of Indonesian governance. Through this method, the research seeks to find the compatibility between the applicable legal norms and the constitutional reality, as well as identify the challenges of implementing the principle of the rule of law in Indonesia.

Results and Discussion

The Principle of the Rule of Law in the Indonesian Constitution

The concept of Rechtsstaat and Rule of Law Indonesia, as a country that adheres to the principle of the rule of law, adopts the concept of *rechtsstaat* which emphasizes the rule of law, protection of human rights, division of power, and an independent judiciary (Asmara et al., 2019). This approach is rooted in the legal history in Indonesia, which seeks to replace conservative legal thinking from the colonial legacy with a more responsive thinking to the needs of society (Andriani & Sapiro, 2022). This is in line with the noble ideals that became the spirit of the proclamation of independence and were enshrined in the Preamble to the 1945 Constitution, where Indonesia aspires to become a democratic legal state that actively

realizes the protection and welfare of the general public (Syamsudin et al., 2009) (Ridlwan, 2014). The Constitution of Indonesia explicitly states that "The State

Indonesia is a country of law," as stipulated in Article 1 paragraph of the 1945 Constitution, which is the result of the third amendment at the 2001 Annual Session of the People's Consultative Assembly (MPR), affirming the fundamental foundation of legal sovereignty that is not based on power alone (Nurwahyuni et al., 2023). This principle emphasizes that all forms of state administration must be subject to the law and not to the will of individuals or groups, in line with the noble goals of the Indonesian nation as stated in the Preamble to the 1945 Constitution to protect the entire nation, advance public welfare, and educate the nation's life (Juanda & Juanda, 2023). The implication of this affirmation is that every action of the state and all aspects of the life of the nation and the state must be based on clear legal provisions, provide legal certainty, and avoid arbitrary actions (Syamsudin et al., 2009). It is important to note that the concept of the Indonesian legal state does not adopt absolutely the continental **rechtsstaat** model or the Anglo-Saxon rule of law, but rather develops its own identity that is adapted to national values (Akmal, 2021). The affirmation of Indonesia as a state of law is not an immediate thing, but the result of a long journey of constitutional history that is rich in values and morals, including the influence of customary law as a manifestation of local wisdom (Maladi, 2011).

The interpretation of Article 1 paragraph of the 1945 Constitution shows that the Indonesian state of law has distinctive characteristics, where people's sovereignty and democratic principles are harmoniously combined with law enforcement (Busthami, 2023). This reflects that the law not only functions as an instrument of social control, but also as a means to realize the ideals of social justice and welfare for all Indonesian people (Syamsudin et al., 2009). This principle is manifested in the guarantee of human rights, including the right to equality and justice, as well as the responsibility of the state in providing decent public service facilities (Fadhillah et al., 2025). The government has a constitutional obligation to ensure fair legal recognition, protection, and certainty for every citizen, as stipulated in Article 28D paragraph of the 1945 Constitution (Susanti, 2021). In addition, the rule of law in Indonesia is defined as a principle in which the law functions as the commander-in-chief, directing every action of the government and citizens (Tursina et al., 2023). This means that no one, including the ruler, is above the law, and every individual has an equal position before the law (Syamsudin et al., 2009). In this context, Article 27 paragraph of the 1945 Constitution explicitly affirms that all citizens have the same position in law and government, and are obliged to uphold the law and government without exception (Syamsudin et al., 2009).

This principle of the rule of law is also strengthened by the existence of judicial and constitutional supervision mechanisms that ensure that laws and regulations and government actions do not conflict with the 1945 Constitution (Santoso & Yusa, 2021). This conception of the state of law in Indonesia tends to lead to the concept of a legal

state **rechtsstaat** which emphasizes written law, based on the evolution from classic **rechtsstaat** to modern with a distinctive social, political, economic, and cultural background (Yusuf, 2022). This model inherently involves elements such as the protection of human rights, power-sharing, and an independent judiciary, all of which are designed to prevent abuses of power and guarantee justice (Huda et al., 2022) (Pobela, 2023).

Implementation in the 1945 Constitution as amendedThe application of the principle of the state of law after the amendment of the 1945 Constitution shows a significant shift, especially in the affirmation of people's sovereignty and the establishment of independent state institutions that function as constitutional guards (Hippy et al., 2024). The amendment strengthens guarantees of human rights and a mechanism of supervision of state power, as seen in Articles 28A to 28J of the 1945 Constitution, which comprehensively regulate the various basic rights of citizens. (Setiawan et al., 2020) (Herman, 2019) The emphasis on these rights reflects a commitment to placing human dignity as a key pillar within the framework of a responsive state of law (Medhika et al., 2022). This constitutional reform also aims to prevent authoritarian practices and corruption that have occurred in the past, in line with the demands for social reform that requires clean and accountable governance (Syamsudin et al., 2009). These changes also include restructuring the state power structure through term limits for the president and vice president and strengthening the role of the legislative and judicial institutions (Syamsudin et al., 2009).

Specifically, the amendment has changed and added several important articles, such as Article 5, Article 7, Article 9, Article 13, Article 14, Article 15, Article 17, Article 20, and Article 21 of the 1945 Constitution, which substantially limit the president's authority and transfer legislative authority from the president to the House of Representatives (Simanjuntak & A.L.W, 2022). Other fundamental changes include the judicial power system, especially related to the mechanism for testing the constitutionality of laws by the Constitutional Court of the Republic of Indonesia. This institution, which was formed post-amendment, has strategic authority in overseeing the constitution and ensuring that every legal product is in line with the basic values of the state of law (Harisudin & Alfiella, 2022). In addition, this post-amendment change also eliminates the concept of presidential power that tends to be dominant and authoritarian as has happened in the past, where the 1945 Constitution is often distorted to legitimize centralized power (Purnomo, 2022). This change underscores the commitment to strengthen the presidential system by emphasizing a clearer division of power, especially in the law-making process, which was previously dominated by the President (Azzahra, 2021) (Syamsudin et al., 2009). This is in line with efforts to implement constitutionalism comprehensively, limit the potential for abuse of executive power, and strengthen the function of legislative representation (Purnomo, 2016) (Pradijonrika, 2022).

Transformation of State Institutions After the Amendment of the 1945 Constitution

Changes in the structure and distribution of power after the amendment of the 1945 Constitution introduced a more functional principle of checks and balances, in order to prevent the dominance of executive power and encourage the creation of a democratic constitutional government (Purnomo, 2022). The application of this principle has resulted in the establishment of new independent state institutions, such as the Constitutional Court, which play a significant role in interpreting the constitution and resolving disputes between state institutions to promote a democratic constitutional system (Harisudin & Alfiella, 2022). Historically, before the amendment, power was not strictly separated according to executive, legislative, and judicial functions, but was divided among state institutions with the main power focus on the President (Purnomo, 2022). However, after the amendments, the system of government underwent a shift towards a stronger presidential one with a clear division of powers and the strengthening of the role of the House of Representatives in law-making (Azzahra, 2021). This check and balance mechanism also serves to prevent potential arbitrariness from one institution and ensure agreement is reached in the legislation process, although it can sometimes hinder the completion of the formation of laws if there is no consensus (Pulungan & A.L.W, 2022). In this context, Article 37 of the 1945 Constitution provides a normative basis for constitutional amendments, although it does not specifically regulate the details. S

In addition, the establishment of the Regional Representative Council is a historic effort to overhaul parliament into bicameral, aiming to create an effective internal oversight mechanism (internal checks and balances) in representative institutions and ensure regional representation (Hardenta & Pangestu, 2021). The fundamental changes in Indonesia's constitutional structure after the amendment of the 1945 Constitution have significantly reduced the President's power, especially in the formation of laws, making him no longer have full power in the legislative process (Pradijonrika, 2022). This reflects a commitment to a more balanced division of power (trias politica), in which the executive, legislature, and judiciary have independent but supervisory roles (Abdulkarim & Ratmaningsih, n.d.). Implicitly, this paradigm shift encourages the creation of more transparent and accountable governance, in line with the principles of the modern state of law (Rohmah, 2023) (Abdulkarim & Ratmaningsih, n.d.). However, the implementation of the principle of the modern state of law still faces various challenges, especially in maintaining the independence of the judiciary from political intervention and ensuring the effectiveness of law enforcement (Wicaksono et al., 2023).

Amendment to the 1945 Constitution, the Constitutional Court became the main pillar in the Indonesian constitutional system, functioning as the guardian of the constitution who has the authority to test laws against the 1945 Constitution, decide disputes of authority between state institutions, decide on the dissolution of political parties, and decide disputes about the results of general elections (Noviyanti et al., 2016) (Syamsudin et al., 2009). The existence of the Constitutional Court is vital in maintaining the supremacy of the constitution and preventing the occurrence of legal

products that are contrary to the 1945 Constitution, including the Government Regulation in Lieu of Law issued by the President in a precarious situation (Perdhana, 2021).

The Constitutional Court also plays a role in interpreting the constitution to ensure harmony between legal products and the values of Pancasila and the 1945 Constitution (Indrawan et al., 2020). In addition, the role of the Constitutional Court in deciding disputes over authority between state institutions is essential to maintain political stability and avoid overlapping functions that can interfere with the effective and efficient running of government. However, there are concerns regarding legislative accountability to voters and the democratic balance between legislative and executive powers, which has remained relevant since the 1998 reforms (Abdulkarim & Ratmaningsih, n.d.). Furthermore, the role of the Constitutional Court also includes maintaining the independence of the judicial system from political interference, a crucial challenge in the context of legal development in Indonesia (Indrawan et al., 2020). Despite this, the synergy between the executive, legislative, and judicial institutions, which are physically independent, still shows a lack of a clear vision in development and law enforcement efforts (Indrawan et al., 2020).

The implications of the Constitutional Court's decision, which is **erga omnes** and as the final interpreter of the constitution, requires that each decision always provide an interpretation that prospers the people and upholds the constitution (Prabowo, 2022). The vital functions of the Constitutional Court also include its role as the guardian of the constitution, the final interpreter of the constitution, the protector of human rights, the protector of the constitutional rights of citizens, and the protector of democracy, including the authority to conduct judicial review of laws (Harisudin & Alfiella, 2022). The importance of the role of the Constitutional Court in the constitutional system is strengthened by its function as a guardian of constitutional supremacy and a balance of power, so that it is able to "neutralize" legislative products that tend to have a thick political element and have the potential to conflict with the basic rights or human rights of the people (Sanusi & Hadinatha, 2023). This strengthens the Constitutional Court's position as an independent and impartial judicial institution in ensuring the functioning of the constitutional justice system (Alsyam, 2023) (Hasibuan et al., 2024).

Challenges in Implementing the Principle of the Rule of Law in Indonesia

The practice of legal politics and corruptionThe phenomenon of trial buying and selling and judicial mafia is a clear indicator that legal development in Indonesia still needs serious attention (Indrawan et al., 2020). This is exacerbated by the overlap of authority between state institutions that are detrimental to the interests of the nation and the lack of a clear vision between the executive, legislature, and judiciary in law enforcement efforts (Rohmah, 2023) (Indrawan et al., 2020). Ironically, the performance of the House of Representatives often has not shown a significant improvement in accordance with applicable regulations, even though the institution

participates in the formation of regulations that must be obeyed (Syamsudin et al., 2009). Law enforcement is still characterized by the practice of bribery and money politics, where personal and group interests are often prioritized over national interests (Syamsudin et al., 2009). In addition, the irregularities that occur often cannot be enforced by the law, even the law enforcement officials themselves are involved in the practice of Corruption, Collusion, and Nepotism as well as the judicial mafia, making the law only a symbol with no meaning for the people (Syamsudin et al., 2009).

This creates a deep gulf of trust between the public and law enforcement institutions, making the urgency to reform the justice system even more urgent. Moreover, the dualism of testing laws and regulations in Indonesia, where the Supreme Court tests the rules under the law and the Constitutional Court tests the law against the Constitution, is an anomaly that needs to be reviewed to achieve the consistency and effectiveness of the judicial review system (Chalid, 2017). In addition, the rampant practice of trial buying and selling and judicial mafia has further aggravated the condition of law enforcement in Indonesia, showing a systemic failure that requires in-depth intervention (Lailam, 2016). This problem is rooted in extreme legal pluralism after the reform, where various groups of people want the application of the law based on their beliefs or customs, thus creating complexity in the drafting and enforcement of laws based on Pancasila and the 1945 Constitution (Indrawan et al., 2020). This legal crisis is exacerbated by the substance of laws and regulations that are still incomplete, weak, and even overlapping, and prioritize the interests of the government over the community (Yanto et al., 2022) (Biroli, 2015).

Often, the substance of the law applied, such as the Criminal Code and related regulations, shows incompatibility with the legal culture or the perspective of society, which results in legal problems that are difficult to solve optimally (Yulianto & Muhammad, 2021). This can be seen from the fact that there are still indications of declining public trust in the formal law enforcement process through trials, where the court is considered no longer the last bastion for justice seekers but rather an accommodation for the interests of certain parties (Hutauruk, 2023). This condition is exacerbated by the use of the partial development paradigm that ignores important concepts in political and legal development (Syamsudin et al., 2009). The problem of legal substance is also exacerbated by the dualism of the judicial review system implemented in Indonesia after the 1945 Constitutional Amendment, where the Supreme Court has the authority to test regulations under the law and the Constitutional Court tests the law against the Constitution, which often leads to inconsistency in decisions and legal complexity (Chalid, 2017). This dualism system poses significant challenges in creating legal certainty and consistency of jurisprudence (Faiz, 2016). This underlines the urgency to reform the legal testing system in Indonesia in order to end the practice of dualism and centralize judicial review authority (Chalid, 2017). This condition reflects the urgent need for a review of the structure and testing mechanism of laws and regulations to be in line with the

principles of the modern state of law that upholds certainty and justice (Hidayat et al., 2020).

The gap between ideal legal norms and their implementation practices is becoming increasingly apparent, especially in the context of law enforcement in the post-1945 Constitution Amendment era, where legal pluralism and political interests often obscure the essence of justice (Indrawan et al., 2020). This situation shows that although Indonesia formally adheres to the principle of the rule of law, substantial challenges in the form of unclear vision of legal development, corrupt practices, and regulatory disharmony still hinder the realization of a just rule of law (Indrawan et al., 2020). Therefore, a strong synergy is needed between the executive, legislative, and judicial institutions to build a solid legal umbrella for the integrity of the unitary state of the Republic of Indonesia (Indrawan et al., 2020).

Cover

The implementation of the principle of the rule of law in the dynamics of Indonesia's constitutional system after the amendment of the 1945 Constitution shows progress as well as challenges. The amendment to the 1945 Constitution has strengthened the constitutional foundation by affirming the principle of separation of powers, expanding the democratic space, and presenting new institutions such as the Constitutional Court as guardians of constitutionality. However, in practice, various problems are still found, ranging from disharmony in laws and regulations, weak legal culture, to the dominance of political interests that often obscure the ideals of the state of law. Therefore, consistency in upholding the principles of the rule of law, institutional strengthening, and the active role of civil society are the keys to realizing a substantive, not just formal, state of law. Thus, after the amendment of the 1945 Constitution, Indonesia is faced with a great opportunity to strengthen the principle of the rule of law, as long as it is accompanied by a joint commitment of all elements of the nation in maintaining the rule of law, justice, and democracy.

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