DEVELOPMENT OF CONSTITUTIONAL LAW IN INDONESIA

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Abstract: *The term constitutional law is also commonly used in the legal lecture literature, where it is known as the term state law, which in fact both terms are translations of the Dutch term staatsrecht. The development of constitutional law in Indonesia starts from customary HTN. During the reign of the Dutch East Indies, the HTN of the Dutch East Indies was in force. When the Japanese occupied Indonesia, what applied was the HTN during the Occupation of the Japanese Army. After Indonesia was proclaimed its independence on August 17, 1945, what took effect was HTN Indonesia (Initial Period of Independence - Validity of the 1945 Constitution in the Republic of Indonesia which was one of the states within the RIS Country - Period of Validity of the 1950 Constitution - Old Order Period - New Order Period - Period Reform Order). The demand for changes in the representation system was followed by the emergence of debates about the general election system (for example between districts or proportional, between open and closed list systems) and parliamentary structure (for example the problem of parliamentary chambers and the existence of the DPD). The demand for a more equitable relationship between the center and the regions is followed by theoretical studies on the form of the state and models for implementing regional autonomy. These demands cover many aspects. The existing regulatory and institutional framework according to the positive Constitutional Law at that time was no longer in accordance with the development of people's aspirations and life.*
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Keywords*: Development, Law, Governance, State.*

Introduction

Constitutional Law studies various theories and practices in implementation that are known in various countries. Constitutional Law covers various issues regarding relations between state institutions and between the state and its citizens: how the state is organized, organized, to be managed in achieving state goals. Although not all countries have a written constitution, state organizations are generally documented in a constitution that applies as the law that underlies the country, to constitute the country. countries were conceived, practiced, and developed. Following are some of the objectives of constitutional law:
1. Disseminate the new understandings contained in the post-amendment 1945 Constitution of the Republic of Indonesia.
2. Encouraging awareness of Indonesian citizens regarding their fundamental rights and obligations as subjects of Indonesian Constitutional Law based on the 1945 Constitution of the Republic of Indonesia.
3. Help beginners understand the outline of the scope of knowledge on Constitutional Law.
4. Familiarize the Indonesian people with knowledge of Constitutional Law.

5. Encouraging further development of the Study of Constitutional Law in Indonesia.
The term constitutional law is also commonly used in the legal lecture literature, where it is known as the term state law, which in fact both terms are translations of the Dutch term staatsrecht. In Dutch literature, the term staatsrecht consists of staatsrecht in ruimere zin (State Law in a broad sense), and staatsrecht in engere zin (State Law in a narrow sense). The use of the term State Law is meant to distinguish it from staatsrecht in engere zin (State Law in the narrow sense) (Kusnardi and Ibrahim, 1985).

Literature Review

1. Object of Constitutional Law Study

According to Burkens, the object of investigation in Constitutional Law is the decision-making system within the state, as structured in positive law. Thus, we can find this decision-making system in various positive constitutional laws, such as in the Constitution, laws, regulations of various state institutions, and conventions. As for Belinfante, it does not limit this only in positive constitutional law. This means that even those that are not regulated in positive constitutional law are objects of investigation in constitutional law. An example is the establishment of a cabinet by cabinet formers in a state government system (Asshiddiqie, 1997).

Meanwhile A.M. Donner argues that the object of investigation into Constitutional Law is the breakthrough of the state by law (de doordringing van de staatmet het recht). That is, the state as an organization (power, position, people) is penetrated by various kinds of laws that apply in a country. As a doctrine of legal science, constitutional law is usually understood as a separate field of legal science that discusses the constitutional structure in a static sense, the mechanism of relations between state institutions, and the relationship between the state and its citizens. In a broad sense, this State Administration Law also includes State Administrative Law, or sometimes it is narrowed down by the term State Administrative Law as an aspect of State Administrative Law in a dynamic sense. If the Constitutional Law focuses on the static structure of the state, then the State Administrative Law discusses the dynamic aspects of state organizations or the process of moving the functions of the state organizations in the form of an order commonly referred to as administrative..

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Sources of Constitutional Law

According to Soedikno Mertokusumo, sources of law can be interpreted in several senses, including: (Mertokusumo, 1996)

a. The source of law is defined as a legal principle, as something that is the beginning of law, for example God's will, human reason, naughty soul and so on;
b. Sources of law show previous laws that provide material for laws that are currently in effect, such as French law, Roman law, and others.
c. The source of law as the source of its entry into force, which gives the power to apply formally to legal regulations (rulers or society)
d. Legal sources as sources from which we can get to know the law, for example documents, laws, and so on
e. The source of law is the source of the occurrence of law or the source that gives rise to law.

According to Utrecht, the sources of constitutional law can be divided into formal and material terms. The source of law in the formal sense is a source of law that is known from its form. Because of that form, the law is generally accepted, known, and obeyed. This is where a rule acquires qualifications as a rule of law and for those in authority it is a guide of life that must be given protection. As for what is meant by material sources of law are the sources of law that determine the content of constitutional law, namely the societal factors that influence the formation of law, factors that influence the material (content) of legal rules, or the place from which the legal material comes from. taken. Pancasila as the way of life of the Indonesian nation which later became the state philosophy, is a source of material law which not only animates, but must be implemented by every form of statutory regulation. Therefore, Pancasila is a test tool for any applicable laws and regulations, whether they conflict with Pancasila or not, so that laws and regulations that conflict with Pancasila may not apply.

Laws that are formed and enforced in Indonesia must be based on and imbued with Belief in the One and Only God, just and civilized humanity, uniting Indonesia, having a populist nature led by wisdom in representative deliberations, and guaranteeing social justice for all Indonesian people. Pancasila is a benchmark in the application of positive law in Indonesia. As an example it can be stated that in Indonesia it will not be regulated that a person may not have a religion, because the first principle in Pancasila is Belief in One Almighty God, when the values of God live and animate various aspects in the life of the nation and state. Indonesia also will not regulate and approve various policies that harm the humanity of other nations, such as agreeing to attacks by international forces under the coordination of international agencies against a country, as well as other matters that are contrary to the five precepts of Pancasila. Meanwhile, the various sources of formal constitutional law are as follows:

a. Constitutional Laws and Regulations
b. Constitutional customary law
c. Customary constitutional law, or constitutional conventions
d. State jurisprudence

e. Constitutional treaty
f. State doctrine.

2. Development of Constitutional Law in Indonesia

The demand for changes in the representation system was followed by the emergence of debates about the general election system (for example between districts or proportional, between open and closed list systems) and parliamentary structure (for example the problem of parliamentary chambers and the existence of the DPD). The demand for a more equitable relationship between the center and the regions is followed by theoretical studies on the form of the state and models for implementing regional autonomy. These demands cover many aspects. The existing regulatory and institutional framework according to the positive Constitutional Law at that time was no longer in accordance with the development of people's aspirations and life. On the other hand, various theoretical studies have emerged and provided new alternative regulatory and institutional frameworks. As a result, positive constitutional law experienced "descralization". Matters that previously could not be questioned were sued. The MPR's position as the highest state institution was questioned. This is also the case with the President's power which is seen as too large because it holds government power and the power to form laws. Various demands for change culminated in demands for changes to the 1945 Constitution which had long been sacred.

Amendments to the 1945 Constitution which were made in four amendments have resulted in fundamental changes in Indonesian Constitutional Law. These changes include (i) changes to basic norms in state life, such as the affirmation that the State of Indonesia is a state of law and sovereignty lies in the hands of the people and is carried out according to the Constitution; (ii) Changes in state institutions with the existence of new institutions and the disappearance of some of the existing institutions; (iii) Changes in relations between state institutions; and (iv) Human Rights Issues. The changes resulting from the constitutional reform have not been fully spelled out in laws and constitutional practices, so that various theoretical frameworks are still needed to develop these constitutional foundations.

The formation of the Constitutional Court is an affirmation of the principle of a rule of law and guarantees for human rights as emphasized in the 1945 Constitution. The formation of the Constitutional Court is also a manifestation of the concept of checks and balances in the constitutional system. In addition, the formation of the Constitutional Court is intended as a means of solving several constitutional problems that were not previously regulated, causing uncertainty. Based on Article 24 paragraph (2) of the 1945 Constitution, the Constitutional Court is one of the actors of judicial power besides the Supreme Court. The authority of the Constitutional Court is regulated in Article 24C paragraph (1) of the 1945 Constitution which includes deciding on the review of laws against the Constitution, deciding on disputes over the authority of state institutions, deciding on the dissolution of political parties, and resolving disputes about the results of general elections. In addition, Article 24C paragraph (3) states that the Constitutional Court is obliged to decide on the opinion of the DPR on alleged violations of law committed by the President and/or Vice President. Furthermore, the existence of the Constitutional Court is regulated based on Law Number 24 of 2003 concerning the Constitutional Court.

One of the important theories in the field of Constitutional Law is the legal theory put forward by Hans Kelsen. Many argue that theoretically the existence of the Constitutional Court was introduced by Hans Kelsen. Hans Kelsen stated that the effective implementation

of constitutional rules regarding legislation can only be guaranteed if there is an organ other than the legislature that is given the task of examining the constitutionality of a legal product. For this reason, a special organ can be held, such as a special court called the constitutional court. This special organ that controls it can completely abolish unconstitutional laws so that they cannot be enforced by other organs (Kelsen, 1961).

If seen briefly, the development of constitutional law in Indonesia starts from customary HTN. During the reign of the Dutch East Indies, the HTN of the Dutch East Indies was in force. When the Japanese occupied Indonesia, what applied was the HTN during the Occupation of the Japanese Army. After Indonesia was proclaimed its independence on August 17, 1945, what took effect was HTN Indonesia (Initial Period of Independence - Validity of the 1945 Constitution in the Republic of Indonesia which was one of the states within the State of RIS - Period of Validity of the 1950 Constitution - Old Order Period - New Order Period - Period Reform Order).

Conclusion

The development of constitutional law in Indonesia starts from customary HTN. During the reign of the Dutch East Indies, the HTN of the Dutch East Indies was in force. When the Japanese occupied Indonesia, what applied was the HTN during the Occupation of the Japanese Army. After Indonesia was proclaimed its independence on August 17, 1945, what took effect was HTN Indonesia (Initial Period of Independence - Validity of the 1945 Constitution in the Republic of Indonesia which was one of the states within the RIS Country - Period of Validity of the 1950 Constitution - Old Order Period - New Order Period - Period Reform Order). The demand for changes in the representation system was followed by the emergence of debates about the general election system (for example between districts or proportional, between open and closed list systems) and parliamentary structure (for example the problem of parliamentary chambers and the existence of the DPD). The demand for a more equitable relationship between the center and the regions is followed by theoretical studies on the form of the state and models for implementing regional autonomy. These demands cover many aspects. The existing regulatory and institutional framework according to the positive Constitutional Law at that time was no longer in accordance with the development of people's aspirations and life.

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