

**DRAWING THE LAW STATE OF INDONESIA AFTER 75 YEARS OF
INDEPENDENCE**

Dadang Gandhi

dadanggandhi@yahoo.co.id

Faculty of Law Universitas Pamulang

Abstract

This study aims to determine and understand the extent to which the state administration of the unitary Republic of Indonesia is based on the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), which was established by the Preparatory Committee for Indonesian Independence on August 18, 1945, especially during the trip. As the rule of law by emphasizing the judicial power held by the Supreme Court, continued according to the 1949 Constitution of the Republic of Indonesia (RIS Constitution), then according to the Provisional Constitution of 1950 (UUDS 1950), according to the 1945 Constitution of the Presidential Decree on July 5, 1959, and according to the 1945 Constitution of the amendment and since the amendment has been completed up to now.

Keywords:

INTRODUCTION

In the atmosphere of the three-quarter century anniversary of the independence of the Unitary State of the Republic of Indonesia, can the statement in the title of the article be continued with the statement, "is there is still an idea of the rule of law being a subject in-depth and what is the format of the rule of law after 75 years of independence". Regarding the journey of the Indonesian nation in filling independence for 75 years, the author will now explain that the beginning of the formation of the Basic Law until now, which is 75 years old.(Firdaus, 2015; Redi, 2018) The debate of our Founding Fathers when formulating the 1945 Constitution (UUD 1945) was in a position at the edge of Japanese power, both in the Indonesian Independence Preparatory Investigation Agency and the Preparatory Committee for Indonesian Independence.(Astomo, 2016)

Referring to the treatise on the discussion of the 1945 Constitution, the first mention of the rule of law, when Prof. Soepomo conveyed his conclusions about the government system in the Draft Constitution at the large meeting of the BPUPKI on July 15, 1945, which stated that

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"The Draft Constitution calls for the rule of law. (Aditya & Winata, 2018; Asshiddiqie, 2011; Astomo, 2016) This means wanting a state based on law, wanting rechtsstaat, not a state based on power (machtsstaat). (Muabezi, 2017; Nasarudin, 2020) Furthermore, reaffirming the "constitutional government system," which means a government based on the constitution (basic law), not a government that is absolutism (unlimited power). In the discussion meeting, the regulation on the rule of law has never become the formulation of norms in the RUUD produced by BPUPKI, even when BPUPKI's duties have ended and the RUUD discussion is continued by PPKI, regarding the rule of law have never been touched by PPKI members. (Muslimin, 2016; Soraya, 2014)

Subsequently, the formulation of a new rule of law became part of the basic law when on August 18, 1945, the PPKI had stipulated the Draft Constitution to become the 1945 Constitution, while the explanation was only published one year later which was published in the News of the Republic of Indonesia Year, Number 7, February 15, 1946. (Puspitasari, 2014) Apart from the debate about and around the explanation of the 1945 Constitution, among its substance was a statement regarding "Indonesia is a country based on (rechtsstaat). The affirmation "Indonesia is a country based on law, in the explanation of the 1945 Constitution, it is far from sufficient to trace the type of state based on Indonesian law. For example, when Prof. Soepomo, conveyed a rule of law that is matched with rechtsstaat, whether the type of rule of law that is being implemented is the type of state rechtsstaat or rule of law. (Rowiyan, 2018)

Because both have different characteristics, both in terms of concept and background, in doctrinaire terms, rechtsstaat is based on the continental European legal system (civil law), which prioritizes written law and develops in a revolutionary manner. (Siallagan, 2016) Meanwhile, the rule of law rests on the Anglo Saxon legal system, which is supported by the common law system that relies on jurisprudence and grows evolutionarily. (Likadja, 2015) Or in the pre-independence era, Indonesian law was more influenced by the civil law tradition, and the terms used also came from countries adhering to civil law, the general assumption that the constitution created by the nation's founders produced the rule of law with the rechtsstaat type.

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(Ramadhan, 2018) However, the results of tracing the treatise have not found the intent and treatise of the formulator of the 1945 Constitution (original intent), which explicitly states that the type of the rule of law Indonesia adheres to *rechtsstaat*. (Qamar et al., 2018; Simamora, 2014)

Even though they did not find the original intent, the founders of the state and nation have provided an important foothold in building the rule of law. At least, the presence of the provisions of Article 24 and Article 25 of the 1945 Constitution has embodied one of the fundamental principles of the rule of law, namely the recognition of the regulation of recognition of independent judicial power. Recognition of the importance of the independence of the judiciary is also the foundation of Montesquieu's *The Spirit of Law* (1689 - 1755). According to Montesquieu, if the judicial power is combined with the legislative power, arbitrary regulations will be born because the judge is also the maker of the law. Likewise, when combined with executive power, judges can transform into oppressive power.) What if the executive power is also a legislative maker? Even though there is a legislative role, legislative role therapy is only in the form of approval. At the same time, the position of legislators is stated the executive power is firmly and directly held, the provision can be seen in Article 5 Paragraph (1) of the 1945 Constitution. (Lane, 2017)

Furthermore, compared to the 1945 Constitution, the State of Indonesia once enacted the "Constitution of the United Republic of Indonesia of 1949 (RIS Constitution 1949) and the Provisional Constitution of 1950 (UUDS 1950), both of these constitutions clearly and firmly stated as the rule of law based on the phrase Article 1 Paragraph (1). In both constitutions, it is stated that "Indonesia, which is independent and sovereign, is a state based on law. (Asshiddiqie, 2011) "But if we look closely between the two constitutions, it does not regulate the design of the relationship between the Supreme Court and the powers of other state institutions, and the end is the independence of the judicial power so that a definite understanding of the position of judicial power becomes blurred and its application is easily drawn into support for other powers.

Especially executive power. Under the UUD S 1950, the Supreme Court's judicial power is subordinated to the government or as an extension of executive power; even in every state agenda, the chairman of the Supreme Court is given equal status and position with members of the parliament.

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(Hartono, 2013) And this went on for quite a long time, until finally, after the Presidential decree on July 5, 1959, the positioning of the Supreme Court's head as part of the executive power was continuing. When the Dwikora cabinet was formed, all state institutions were positioned as tools for the revolution, including the Supreme Court.

Furthermore, the desire to separate judicial power as part of building the rule of law was stated in the Decree of the People's Consultative Assembly (MPR Tap) Number X / MPR / 1998 and continued with its formation. Law Number 35 the Year 1999 instead of Law Number 14 the Year 1970 Concerning Judicial Power. (Langi, 2013; Simamora, 2014)The substance of Law Number 35 the Year 1999, in essence, emphasizes that the so-called organizational, financial, and administrative affairs of the court are below the Supreme Court.) However, the regulation at the statutory level is still far from the level of expectations. Therefore, in line with the existence of constitutional reform, the option of asserting an independent judicial power in the constitution is the best way. The arrangement of judicial power becomes a strategic way to uphold the constitutional basis of the Indonesian rule of law. In line with the constitutional reforms in 1999 to 2002 carried out by the MPR, the direction of the rule of law regulation was drawn up as follows:

1. Amend the 1945 Constitution without distinguishing the rule of law over rechtsstaat or rule of law. This means that what is meant is the constitutional state of Indonesia which includes rechtsstaat and rule of law.
2. Indonesia is a democratic constitutional state, although the word democratic is not included, in its implementation, it must not neglect the meaning of a democratic constitutional state.
3. Adhering to the principle of the rule of law and a constitutional system that leads to a constitutional democracy system, government or power is limited in such a way by the 1945 Constitution.

The purpose of amending the 1945 Constitution is to improve the basic rules regarding the guarantee and protection of Human Rights. Following the development of human rights understanding and human civilization, which is also a requirement for a rule of law that the 1945 Constitution aspires to. To achieve this is regulated in Article 24 Paragraph (1) of the 1945 Constitution, namely, "Judicial power is an independent power to administer judiciary to uphold law and justice.

METHODOLOGY

This research is normative legal research, namely research that prioritizes library research to obtain secondary data. The approach used in this research is the statutory approach (statute approach). (Gumilang, 2016; Nazir, 2014) The approach through this statutory regulation departs from the comparison of the constitutional constitution in force in the Republic of Indonesia for 75 (seventy-five) years from the independence of the Republic of Indonesia to the 1945 Constitution, which was amended in 1999 to 2002 by the People's Consultative Assembly (MPR) added by Law Number 14 the Year 1970 and Law Number 35 Concerning Judicial Power. The material obtained from literature searches is analyzed by qualitative methods, namely the method of analysis of legal materials, which classifies and selects materials obtained from library research so that answers can be obtained in a flow on the problems and implementation of the rule law.

Especially in exercising judicial power. Qualitative analysis is carried out using norms analysis of findings in the literature and the judicial power law and other statutory regulations.

RESULT AND DISCUSSION

Since the proclamation of 17 August 1945 until now, the historical stages of the Indonesian constitution can be said to have placed 6 (six) periods of development, namely:

1. The period from 18 August 1945 to 27 December 1949.
2. The period from December 27, 1949, to August 17, 1950.
3. The period from 17 August 1950 to 5 July 1959.
4. Period 5 July 1959 to 19 October 1999.
5. Period 19 October 1999 to 10 August 2002.
6. Period 10 August 2002 up to now.

In the first period, the 1945 Constitution applies, the second period applies the 1949 Constitution, the third period applies the 1950 S Constitution and the fourth period applies the 1945 Constitution and its explanations. After that, the 1945 Constitution was amended

successively in 1999, 2000, 2001, and 2002 by using the text that was in effect on July 5, 1959, as the standard for making changes outside the text, which then became an integral part of the 1959 version of the 1945 Constitution. To provide a clearer picture of the development of the texts of the 1945 Constitution, these six periods can be briefly described one by one, which has to do with the provisions of the Indonesian state as a rule of law that is identical to the existence of judicial power.

1. First Period, 1945 Constitution

Whereas according to Article 4 paragraph (1) of the 1945 Constitution, "that the President of the Republic of Indonesia holds the power of state governance according to the Constitution. This provision has not changed since the beginning of independence until now after the amendments to the 1945 Constitution, this is the main principle known as the characteristic of "Constitutional Government" as an essential element of a modern rule of law, followed by the provisions of Article 24 and Article 25, with the explanation as following:

- a. Article 24 Paragraph (1), that "Judicial power is exercised by a Supreme Court and other judicial bodies according to law. Paragraph (2) "The power structure of the judicial bodies is regulated by law.
- b. Article 25, "The conditions for becoming and to be dismissed as a judge are stipulated by law.

With the provisions of Article 4 Paragraph (1), Article 24 and Article 25 have published one of the fundamental principles of the rule of law, namely recognition of independent judicial power. In fact, nothing in any of the articles determines that Indonesia is the rule of law.

Recognition of the importance of the independence of judicial power is also the foundation for Montesquieu's "The Spirit of Laws" (1689 - 1755), namely that when judicial power is combined with legislative power, arbitrary rules will be born because the judge is also the maker of the law. Likewise, when combined with the executive, the judge will become an oppressor.

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This is what has happened in the provisions of Law Number 14 of 1970 Concerning Basic Provisions of Judicial Power, namely organizational, administrative and financial arrangements which were originally under the control of the respective departments concerned, namely under the defense and security department and department of justice (now ministry, author).

Based on the Decree of the People's Consultative Assembly (MPR Decree) Number X / MPR / 1998 concerning the Principles of Development Reform in the Framework of Saving and Normalizing National Life as a State Direction, especially in Chapter IV C, emphasizes "The need for reform in the field of law to support crisis management in the field of law.

One of the agendas that must be carried out is a strict separation between the judicial and executive functions. Based on the MPR - RI Decree, an amendment was made to Law No. 14 of 1970, which aims to create an independent judicial power independent of government power, meaning that it is necessary to separate strictly between the judicial and executive functions.

So with Law Number 35 of 1999 concerning Basic Provisions of Judicial Power, a transfer of organization, administration, and finance was carried out from the judicial bodies which were originally under the authority of each ministry which was under the authority of the Supreme Court (MA). In addition, the transfer of authority from the Minister of Defense and Security and the Minister of Justice (now minister of law and human rights, writer) to the Supreme Court in determining the judiciary body that oversees connectivity cases.

Although it is not explicitly active in the provisions of the 1945 Constitution that Indonesia is the rule of law, it is clearly stipulated in Article 4 Paragraph (1), Article 24, and Article 25 that Indonesia is quite firm and clear as the rule of law. But the next question will arise, whether the Indonesian state adheres to a continental European rule of law or is it called rechtsstaat, or an anglo saxon legal state in the 1945 Constitution.

In the pre-independence era, Indonesian law was more influenced by the civil law

tradition, and the terms used also came from countries that adhered to civil law. The general opinion, including the author himself, that the constitution created by the nation's founders produced a rule of law *rechtsstaat* type. However, the results of tracking the minutes of Basic Law Draft discussion by BPUPKI and continued by PPKI did not find the intent and opinion of the 1945 Constitution drafters (original intent), which explicitly declared Indonesia as a state of law *rechtsstaat*.

Even if the original intent was not found, the founders of the state have provided an important foothold in building the rule of law, at least the presence of Article 4 Paragraph (1), Article 24, and Article 25. Although there is no provision that Indonesia is a rule of law. The author returns to Law Number 14 of 1970 Concerning the Principles of Judicial Power. Prior to the existence of this law, intervention on judicial power is regulated by Law Number 19 of 1964 concerning the Principles.

Judicial Power, in this law. Courts judge according to the law as a means of revolution based on Pancasila towards Indonesian socialist society. Besides, the president can interfere in the courts for the sake of revolution. Whereas in Law Number 14 of 1970, judicial power is placed as an independent power, but this independence is only limited to judicial technicalities.

Tracing back to the treatise of all the substance of the amendments to the 1945 Constitution, the discussion regarding the rule of law becomes one of the crucial issues. The discussion is increasingly strategic because it is related to rearranging the judicial power within the state power structure. Moreover, when the People's Consultative Assembly agreed to the explanation of the 1945 Constitution and moved things that were normative in the explanation of the 1945 Constitution to become constitutional norms.

One of the explanatory substances that have been appointed as the constitutional norm, namely, "Indonesia is a country based on the law (*rechtsstaat*). In making changes to the 1945 Constitution, it seems that the MPR has done everything through careful planning, unlike at the time of the formation of the 1945 Constitution by the nation's founders.

2. 2nd PERIOD, CONSTITUTION OF THE REPUBLIC OF INDONESIA (RIS), 1949

Compared to the 1945 Constitution, the 1945 Constitution is a substitute for the 1945 Constitution, which was formed based on the Renville agreement dated January 17, 1948. Article 1 concerning the form of the state and sovereignty, namely in Article 1 paragraph (1), states that "the Unitary State of the Republic of Indonesia which is independent and sovereign is a state a democratic law that takes the form of a federation." The RIS Constitution does not regulate the relationship between the holders of judicial power, namely the Supreme Court. With other state institutions, as a result, the independence of the judicial power becomes blurred so that it is easily drawn into the support of other powers, especially the executive power. The strength of the RIS constitution is to become a state law state, but this theory does not characterize it as a rule of law state.

3. The 3rd Period Of The Temporary Basis Of Law Of 1950.

The Provisional Constitution of 1950 instead of the 1949 RIS Constitution, which became the Federation Republic. In Article 1 Paragraph (1), it is explained that "The Republic of Indonesia, which is independent and sovereign, is a constitutional state which is democratic and in the form of unity. In the practice of state power, the position of the Supreme Court is subordinated to the government. In fact, in many state agendas, the Supreme Court's head is given equal status with members of the parliament.

Although given the status of the rule of law, it seems that the position of the Supreme Court as a characteristic of a rule of law state still shows uncertainty in its position in the rule of law, in the case that the Supreme Court according to the theory of the rule of law must really be placed as power without interference from the state, instead of as the subordination of the government.)

4. The 4th Period, The Temporary Basis Of Law Of 1950

After returning to the 1945 Constitution with Presidential Decree on July 5, 1959, the position or position of the Chief Justice of the Supreme Court as part of the executive still continued. The real thing was that when the dual cabinet was formed, all state

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institutions were positioned as tools for the revolution, including the Supreme Court. According to the records of research results from the independent judiciary research and advocacy institute (IP), in 2016, the peak of intervention in judicial power was when the Chief Justice became the Coordinating Minister for the Law and Home Affairs Compartment during the Dwikora Cabinet. Even long before that, in the 1960 MPRS session, there was an affirmation to end the doctrine of separation of powers. Therefore, the existence of Law Number 19, the Year 1964 concerning Basic Provisions of Judicial Power, is a form of legitimacy for executive power to interfere with the judicial power.

Adhering to the principles of the rule of law and a constitutional system that leads to a system of constitutional democracy, in simpler terms, constitutional democracy is a government whose political power is limited in such a way by a constitution. This view is in line to form a constitution as an instrument to limit power. With the completion of amendments to the 1945 Constitution as a form of constitutional reform, the basic rules' improvement as a characteristic of the rule of law can be determined in several provisions of the 1945 Constitution resulting from amendments for 4 (four) consecutive years, namely: 1. Article 1 Paragraph (3), that "Indonesia is a state based on law". Article 24 Paragraph (1), that, "Judicial power is an independent power to administer justice to uphold law and justice. Article 24 Paragraph (2), that "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court, religious courts, religious courts, military courts, state administrative courts, and a court. Constitution". Article 28A through Article 28J, regulating guarantee and protection of human rights. With the aforementioned regulation, it is difficult to argue that independent judicial power is a foundation that independent judicial power is a solid foundation for upholding the law. When compared to the regulations concerning guarantee and protection of human rights between the 1945 Constitution and the previous constitution applicable in the Indonesian constitutional system, the amendments from 1999 to 2002 are far more comprehensive. It can be seen and observed that there are 10 articles and 24 (twenty-four) paragraphs which regulate the substance of human rights.

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In this way, the perpetrators of judicial power held by the Supreme Court and the Constitutional Court must ensure that acts that ignore human rights will be examined, tried, and decided by the two independent judicial power institutions. Now the question is whether the People's Consultative Assembly, which has made changes to the 1945 Constitution of 1945, is satisfied enough in compiling a rule of law design in the territory of the unitary state of the Republic of Indonesia (NKRI) at the age of 75 (seventy-five) years of independence of the Republic of Indonesia based on evaluation results during Approximately 20 (twenty) years of the implementation of the rule of law since the amendment was made. There have been many incidents that have taken place in the implementation of the rule of law since changes were made that involved high-ranking Supreme Court and Constitutional Court officials who were supposed to maintain the spirit of upholding law and justice. Instead, they became perpetrators who tarnished the enforcement of the law of justice itself. In fact, the 1945 Constitution of the Republic of Indonesia has more than sufficiently regulated the main characteristics of a modern rule of law. The Republic of Indonesia has found its identity as a modern rule of law state, it can even be aligned with other countries in the world, and there is no need for the MPR to carry out its duties as a constitution modifier to seek the formulation phase of the rule of law, considering that in recent years the MPR has been carrying out various efforts to accommodate various inputs to make efforts to revise the 1945 Constitution to seek the ideal form as a modern legal state, meaning whether the concept of a rule of law that has been formed is still not suitable for the future constitutional system.

According to the author, at the age of seventy-five years of independence for the Republic of Indonesia, what needs to be done is precisely that independent judicial power must continuously be upheld and maintained properly so that other countries that have run as a modern rule of law conduct comparative studies to our country or for many. Learn in exercising judicial power in the Republic of Indonesia.

CONCLUSION

The provisions regarding the concept of the rule of law since Indonesia's independence until now, at the age of 75 (seventy-five) years of independence, have changed along with several constitutional changes that have been promulgated in Indonesia, and this has colored the Indonesian constitutional system, especially in the judiciary.

1. This can be seen from the position of the Supreme Court as the holder of judicial power in the period:
2. The 1945 Constitution.
3. The, 1949; The RIS Constitution.
4. Provisional Constitution of 1950.
5. The 1945 Constitution after a presidential decree.
6. The amended 1945 Constitution.
7. The 1945 Constitution until now.

Whereas the People's Consultative Assembly no longer needs to make changes to the 1945 Constitution of the Republic of Indonesia, especially about the judicial power held by the Supreme Court, whose implementation requires continuous supervision so that judicial power in the Unitary State of the Republic of Indonesia becomes judicial power which is independent and there is no interference from the invisible and free power and is independent not only in the technicalities of the judiciary but also for the mafias who always influence the judicial power itself.

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