



The Role of Constitution in a Democratic System and Human Rights Protection in Indonesia

Firmansyah¹, Budiyo²

¹Fakultas Hukum, Universitas Lampung, Indonesia

Email: fsyah3401@gmail.com

²Fakultas Hukum, Universitas Lampung, Indonesia

Email: budiyo192910@gmail.com

Submitted: August 31, 2024; Reviewed: Oct 12, 2024; Accepted: Oct 25, 2024

Article's Information

Abstract

keywords:

Human Rights,
Democracy, Constitution

DOI :

<https://doi.org/10.25041/plr.v5i1.3659>

The constitution is the legal foundation of a country, which includes the protection of human rights and the regulation of the division of power in running the country's government. The Indonesian Constitution has specific purposes and functions in ensuring democracy and human rights. As a legal instrument of democracy, the Constitution is important in a country's legal system. General elections are an important moment in realizing the sovereignty of citizens. The Indonesian system of government, as stipulated in the 1945 Constitution and its explanations, is a democracy, both in direct and representative forms. The Constitution guarantees the rights of the people, including the rights to assembly, association and expression. The right to life is considered a basic right that must be respected and upheld according to the Indonesian constitution.

A. Introduction

The constitution of a country serves several critical functions, including asserting the nation's existence in the international sphere, establishing a national identity, and demonstrating the state's political maturity. The term constitution originates from the French language and is commonly defined as a compilation of provisions and principles governing state administration. The foundation of a state is generally predicated on the existence of a constitution.¹

There are two primary types of constitutions commonly implemented across various countries: written and unwritten constitutions. A written constitution delineates the

¹ Ridlwan, Z. (2015). Cita Demokrasi Indonesia dalam Politik Hukum Pengawasan Dewan Perwakilan Rakyat terhadap Pemerintah. *Jurnal Konstitusi*, 12(2), 305-327.



fundamental principles governing the formation of the state, the distribution of power, the functions of state institutions, and the protection of human rights.² The constitution is the outcome of a collective agreement among the people in establishing a democratic state. As the supreme law, it binds both its creators—the people—and the state institutions formed under its authority. Additionally, the constitution serves as the foundation of a country's legal order, ensuring the protection of human rights and the division of power within the government.

In Indonesia, the constitution plays a crucial role in upholding democracy and safeguarding human rights. Democracy, as a system of government, vests political power in the people, either directly or through their elected representatives. Human rights, in contrast, are inherent entitlements derived from an individual's status as a human being and must be upheld, protected, and respected by all members of society.³

This paper aims to examine the role of the constitution in ensuring democracy and human rights in Indonesia, particularly in addressing ongoing challenges such as human rights violations and democratic deficiencies. The study relies on a review of relevant literature, including sources on constitutional law, democracy, and human rights, obtained from books, academic journals, articles, and credible websites. This research employs a literature review methodology, which involves systematically reading, interpreting, and analyzing scholarly works relevant to the research theme.

B. Discussion

Constitution serves as the supreme legal framework that regulates the fundamental principles governing the state. As the highest form of law, the constitution must possess greater stability than other legal instruments. According to Sri Soemantri, a constitutional law expert, the constitution can be analyzed through a legal science approach. Broadly, the concept of the constitution comprises two primary elements. First, it defines the structure of state governance, the system of government, the identity of power holders, the guarantees of citizens' rights, and the relationship between the government and its citizens.

Second, the constitution also encompasses a set of fundamental rules that regulate the distribution of power, the functions and authorities of government, the limitations of power, and the relationship between citizens and the government concerning their respective rights and obligations. As the supreme written law, the constitution governs the mechanisms of state administration and places constraints on government power to prevent its abuse. From a legal theoretical standpoint, the existence of a constitution is instrumental in establishing the rule of law, specifically a democratic rule of law. Consequently, the state operates within the parameters defined by its constitution, ensuring governance that upholds legal principles.

In Indonesia, the 1945 Constitution serves as a prime example of a written constitution acting as the supreme law. Its primary focus is to establish a robust and stable framework for the nation, a principle that is applied uniformly across Indonesia. As outlined in Law Number 12 of 2011, the 1945 Constitution forms the foundational basis for all laws in Indonesia in enforcing the democracy and protecting human rights.

The two primary characteristics of modern states are the adoption of the principle of democracy and the existence of a constitution, which serves as the fundamental legal framework for the nation's collective life. These two elements are not only interrelated but also inseparable. The constitution can be viewed both as a reflection of and a legal instrument for implementing democracy. As a democratic nation grounded in the principle of popular

² Rohman, A. (2020). Sisi Positif dan Negatif Demonstrasi Pada Negara Demokrasi Dimasa Pandemi. *BinamuliaHukum*, 9(2), 153-170.

³ Romadlon, S. G. (2016). Implikasi Pergeseran Sistem Politik terhadap Hukum dan Birokrasi di Indonesia. *JurnalKonstitusi*, 13(4), 868-885.

sovereignty, Indonesia has witnessed significant changes in its democratic processes and characteristics. These developments include a transition from direct to indirect democracy. Direct democracy has proven difficult to implement in Indonesia due to its vast territory and dense population. Consequently, Indonesia has adopted an indirect democracy, where the people elect representatives to sit in both the executive and legislative branches. This system of indirect democracy ensures that the people retain control over the governance process by holding periodic elections to choose their representatives. The connection between democracy and elections is rooted in the participation of the people in the electoral process. General elections provide a critical opportunity for citizens to exercise their rights and realize their sovereignty. Public participation is a key avenue for conveying the aspirations and needs of the people to the candidates they elect. Higher the level of public participation ensures greater the likelihood of a successful general election.⁴

Democracy, which primarily operates through the mechanism of elections, is regarded as the most effective form of government in contemporary times. However, drawing from past experiences, democracy should not merely be seen as a procedural system for electing representatives and forming a government chosen by the people. It must be substantively interpreted in alignment with the will of the people. State policies or laws, even if enacted by democratically elected institutions through legitimate procedures, must be overturned if they conflict with the core principles of democracy. Consequently, the constitution, as the supreme social covenant, not only dictates the procedural aspects of democracy but also defines the substance of democratic governance. Both dimensions serve to protect democracy from potential abuses of power that could undermine its very existence.

General elections are a key mechanism for ensuring democratic governance. Law Number 7 of 2017 emphasizes that elections represent a manifestation of the people's sovereignty, underscoring their significance in realizing democratic principles. The constitution governs the procedures for conducting democratic elections, encompassing the rights of citizens to vote and stand for election, the integrity of the electoral system, and the independent oversight of relevant institutions⁵

Democracy guarantees individual freedoms, and within the electoral context, this translates to resolving conflicts through democratic institutions. The constitution also outlines the structure of the country's system of government. According to the Big Indonesian Dictionary, a "system" is defined as a set of tools or components that work together to achieve a specific objective. The concept of "government," however, is defined in various ways by scholars, with some equating it with the executive branch.

Constitution regulates the mechanisms of state administration, establishes rules for the distribution of state power, and seeks to prevent the abuse of governmental authority. From a legal theoretical perspective, the existence of a constitution has the potential to establish different forms of state governance from a state of law, a state of law and democracy, and a democratic state of law. The separation of powers between state organs asserts that the government is synonymous with the executive branch. According to Montesquieu's doctrine of separation of powers, the state is divided into three branches: the legislative, executive, and judicial organs.⁶

There are various perspectives regarding the form of government established by the original 1945 Constitution and its subsequent amendments, which will be examined in further detail in the following chapter. Under the original 1945 Constitution, the President was not

⁴ Puspitasari, Sri Hastuti. "Menegakkan Demokrasi dan Konstitusionalitas Pemilihan Umum Kepala Daerah." *Jurnal Konstitusi* 8, no. 3 (2011): 373-390.

⁵ Sudrajat, Hendra. "Kewenangan Mahkamah Konstitusi Mengadili Perselisihan Hasil Pemilukada." *Jurnal Konstitusi* 7, no.4 (2010): 159-178.

⁶ Akbar, A., Sihabudin, M. Y., Firdaus, R. E., & Pahreji, R. (2023). Perkembangan Demokrasi di Indonesia. *Advances In Social Humanities Research*, 1(5), 627-635.

accountable to the People's Representative Council (DPR) because they were considered equal branches of government. Instead, the President was accountable to the People's Consultative Assembly (MPR). The DPR lacked the authority to hold the President accountable, and if the DPR believed the President had violated the law, it could request the MPR to convene a Special Session to address the matter. This arrangement created a complex power dynamic, leading to numerous interpretations of Indonesia's governmental system as defined by prior 1945 Constitution.⁷

A government system can be defined as a pattern or procedure that organizes the activities of the state. In the context of Indonesia, this refers to the processes that govern the conduct of government activities. To provide some historical context, on April 29, 1945, the Japanese colonial administration established BPUPKI (Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia), which was tasked with investigating all matters related to Indonesia's path to independence. BPUPKI later formed a smaller committee of nine individuals, which successfully drafted the Constitution of Independent Indonesia on July 16, 1945.

After completing the drafting of the Indonesian Constitution, BPUPKI was dissolved, and on August 9, 1945, a new body, the PPKI (Indonesian Independence Preparation Committee), was established. At that time, the PPKI was regarded as a representative body of all the Indonesian people. The system of government outlined in the 1945 Constitution, along with its accompanying explanations, emphasizes democracy in both its direct and representative forms. The constitution is intricately linked to the limitation and distribution of power within the state. A democratic system of governance must ensure the sovereignty of the people, and the constitution regulates the democratic division of state power, including the separation of legislative, executive, and judicial authorities.⁸

The democratic division of power aims to prevent the concentration of authority in a single branch of state power, thereby safeguarding against the abuse of power. The Constitution also guarantees fundamental rights for the people, including the right to associate, assemble, and express opinions. These rights are essential and must be protected by the state, encompassing human rights such as freedom of religion, the right to association, the right to peaceful assembly, recognition and protection under the law, the right to fair legal certainty, the right to work with equitable treatment, and the right to citizenship.

According to Notonegoro, a right is defined as the power or privilege to receive or perform something in accordance with established principles, and this right cannot be exercised by others. In essence, this right can be enforced by an interested party. The following are the rights and obligations of Indonesian citizens that should be understood and implemented:⁹

- a. The right to decent work and livelihood: Every citizen has the right to a job and a livelihood that is decent for humanity (Article 27 paragraph 2).
- b. The right to life and survival: Every person has the right to live and to defend his or her life and livelihood (Article 28A).
- c. The right to form a family and continue offspring through legal marriage (Article 28B paragraph 1).
- d. The right to survival: Every child has the right to survival, growth, and development.
- e. The right to self-development and fulfillment of basic needs and the right to education, science, technology, art, and culture to improve the quality of life and human welfare (Article 28C paragraph 1).

⁷ Munthe, Abdul Kholik, Anazwa Khairani Dalimunthe, Abdul Syahir Falah, Tyara Sulastri, Gita Rahmayani Purba, Rizki Khairunisa Sembiring, Ayu Saniah Sihotang, Anis Khairiyah, Syahri Anggi Rezeki, and Dwi Rizki Amalia. "Perjalanan dan Problematika Konstitusi di Indonesia." *Educandumedia: Jurnal Ilmu pendidikan dan kependidikan* 2, no. 1 (2023): 33-47.

⁸ Nabawi, Ahmad Naufal. "Konsep Trias Politica Dan Penerapannya Di Sistem Pemerintahan Indonesia." *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora* 1, no. 02 (2023).

⁹ Zahra, Annisa, Christian Alam Tegar Charisma, Muhammad Afir Ridho Azaby, and Siti Nurul Fadilah. "Teori Pemisahan Kekuasaan Trias Politica Dalam Pemikiran Filsafat Hukum Montesquieu." *Praxis: Jurnal Filsafat Terapan* 1, no. 01 (2022).

- f. The right to advance themselves in fighting for their rights collectively to develop their community, nation and country (Article 28C paragraph 2).
- g. The right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law (Article 28D paragraph 1).
- h. The right to own private property, the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be diminished under any circumstances is a human right not to be held hostage, to be recognized as an individual in the eyes of the law, and not to be convicted under retroactive laws.

As Indonesian citizens, we possess rights that must be protected and fulfilled, as well as responsibilities that must be carried out as part of our obligations to the state and society. These rights play a crucial role in ensuring individual freedom and fostering community participation in national life. Etymologically, rights are normative elements that guide behavior, safeguard freedom, and guarantee human dignity. Human rights, on the other hand, are the most fundamental entitlements of every individual. These rights are intrinsic to human beings from the moment of their creation by Allah SWT, as part of their *fitrah* (natural state), and thus cannot be interfered with or revoked by others. These include the right to life, the right to liberty, property rights, and other fundamental rights.¹⁰

Human rights are those rights that individuals possess solely by virtue of their humanity, not granted by society or based on positive law, but rather inherent in their dignity as human beings. Kuntjoro Purbopranoto defines human rights as rights that are intrinsic to human beings, inseparable from their nature, and therefore sacred. The discourse surrounding human rights is not new in the context of Indonesian politics and state administration. The conversation on human rights has been embedded in the nation's history, with discussions predating Indonesia's independence. The founding fathers of Indonesia recognized the importance of advocating for the betterment of human dignity, which laid the foundation for the nation's commitment to human rights.

Historically, from the preparation to the implementation of the Indonesian government, it can be said that Indonesia adopted a constitutional system, making human rights a critical issue in the nation's governance. According to A.A.H. Struycken, the constitution embodies the views, aspirations, and the evolution of the state's development, as envisioned by national figures who sought the establishment of a legal state that upholds and protects human rights.¹¹ The reform period marked a significant era for the advancement of human rights, contrasting sharply with the New Order era, which was characterized by its suppression of human rights issues. President B.J. Habibie and the DPR (People's Representative Council) were notably responsive to the demands for reform. Before the constitutional amendment process began, the president submitted the Human Rights Bill to the House of Representatives for discussion. The deliberations in the DPR progressed swiftly, and on September 23, 1999, a consensus was reached to ratify Law Number 39 of 1999 concerning Human Rights.

The legal framework in Indonesia is derived from the MPR Decree No. XVII/MPR/1998, which pertains to Human Rights. Law No. 39 of 1999 on Human Rights is highly comprehensive, encompassing a wide array of civil, political, economic, social, and cultural rights. It also recognizes the specific rights of marginalized groups, including children, women, and indigenous peoples. This law explicitly acknowledges the principle of natural rights, inherent to all humans, and aligns with various international human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child, among others. In this manner, the law incorporates the

¹⁰ Manan, Bagir, and Susi Dwi Harijanti. "Artikel Kehormatan: Konstitusi dan Hak Asasi Manusia." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 3, no. 3 (2016): 448-467.

¹¹ Asshiddiqie, Jimly. "Konstitusi dan hak asasi manusia." *makalah disampaikan pada Lecture Peringatan 10* (2008).

rights standards enshrined in these international agreements.

Human rights and the constitution within the rule of law framework are inextricably linked, akin to two interconnected sides of a coin. Law serves as the principal mechanism for safeguarding and upholding human rights within a state. To ensure the protection and enforcement of these rights, it is crucial that the law functions as a tool for limiting the power of the government, thereby preventing potential abuses that could lead to human rights violations. In this context, the law serves to control state power and protect individual freedoms.

Human rights instruments manifest in the form of statutory laws and regulations, as well as through institutions dedicated to human rights enforcement, such as the National Human Rights Commission and the Human Rights Court. The government is also responsible for protecting individuals from actions that contravene the law, ensuring that violations of rights are prohibited and providing remedies to those whose rights are threatened.

Human rights in constitutional practice in various countries have various systematics. For example, the United States formulates human rights in amendments I to X, known as the Bill of Rights. Most constitutions resulting from regime change regulate human rights in a special chapter, as is the case in the Philippines and South Africa. In Indonesia, the same thing happened through the second amendment of the 1945 Constitution.¹² There are also constitutions that do not regulate human rights in a special chapter, but are scattered in several articles, as is the case in Australia. However, in social reality, there is often a gap between expectations and reality.

According to Sri Soemantri, a constitution typically addresses three core elements: the guarantees of human rights and citizens' freedoms, the establishment of a fundamental constitutional structure, and the classification and limitation of state duties and authority, often through a system of checks and balances. In the pre-amendment 1945 Constitution of Indonesia, human rights are enshrined both in the Preamble and within the body of the Constitution, with at least seven articles directly addressing human rights. The right to life, a fundamental right for all individuals, is specifically regulated in Article 27, paragraph 2, and Article 28A of the 1945 Constitution. The Constitution ensures the protection of the right to life from acts such as murder, torture, and other forms of inhumane treatment. Together, the right to life and the broader framework of human rights provide the foundational basis for promoting the welfare and progress of society, the nation, and the state.

The right to liberty is fundamental to human dignity and a decent life. The Constitution protects liberties such as movement, religion, and expression. In Indonesia, the 1945 Constitution safeguards freedom, including freedom of speech, which is vital to democracy. However, freedom is not absolute and may be restricted to protect public interest and others' rights. This is reflected in Law No. 39/1999 on Human Rights, which guarantees the right to express opinions in accordance with conscience, while considering decency, peace, public interest, and national integrity. Protecting this right ensures individual liberty and active citizen participation in state affairs.

The right to justice is essential for legal certainty. The Constitution guarantees legal protection and the right to a fair trial, ensuring justice for all. This right is enshrined in the 1945 Constitution, which affirms equal treatment and protection before the law, including for vulnerable groups who are entitled to fair assistance from an impartial court.

The Constitution emphasizes that human rights are fundamental to the rule of law. Article 1, paragraph (3) of the 1945 Constitution affirms that Indonesia is a state governed by law, highlighting that human rights protections are central to Indonesia's identity as a constitutional state, not a state of arbitrary power.

¹² Marzuki, Suparman. "Perspektif Mahkamah Konstitusi tentang hak asasi manusia." *Jurnal Yudisial* 6, no. 3 (2013): 189-206.

C. Conclusion

A country's constitution is the supreme fundamental law that governs the administration of the state, outlining the division of state powers and limiting government authority to prevent arbitrary actions. It serves as both a legal framework and a tool for democracy. In Indonesia, a democracy based on popular sovereignty, the implementation of democracy requires oversight by the people over the state administration process. Human rights are inherent to all individuals due to their dignity as human beings. These rights are not granted by society or derived from positive law, but are intrinsic to human nature. The relationship between human rights and the constitution within the rule of law framework is akin to two interconnected sides of the same coin, with law acting as the primary instrument to protect and uphold human rights within the state.

D. Suggestion

State institutions responsible for administering state affairs are clearly outlined in the 1945 Constitution of the Republic of Indonesia. The Constitution affirms that Indonesia is a state governed by law, and democracy, with full oversight entrusted to the people. The author suggests that all state institutions must effectively carry out their duties and authorities as stipulated in the Constitution, to realize the vision of the Indonesian state outlined in the Preamble. Furthermore, state institutions play a crucial role in fostering a good and ideal democracy to enhance the welfare of the Indonesian people.

References

- Akbar, A., Sihabudin, M. Y., Firdaus, R. E., & Pahreji, R. (2023). Perkembangan Demokrasi di Indonesia. *Advances In Social Humanities Research*, 1(5), 627-635.
- Asshiddiqie, Jimly. "Konstitusi dan hak asasi manusia." *makalah disampaikan pada Lecture Peringatan 10* (2008).
- Manan, Bagir, and Susi Dwi Harijanti. "Artikel Kehormatan: Konstitusi dan Hak Asasi Manusia." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 3, no. 3 (2016): 448-467.
- Marzuki, Suparman. "Perspektif Mahkamah Konstitusi tentang hak asasi manusia." *Jurnal Yudisial* 6, no. 3 (2013): 189-206.
- Munthe, Abdul Kholik, Anazwa Khairani Dalimunthe, Abdul Syahir Falah, Tyara Sulastri, Gita Rahmayani Purba, Rizki khairunisa Sembiring, Ayu Saniah Sihotang, Anis Khairiyah, Syahri Anggi Rezeki, and Dwi Rizki Amalia. "Perjalanan dan Problematika Konstitusi di Indonesia." *Educandumedia: Jurnal Ilmu pendidikan dan kependidikan* 2, no. 1 (2023): 33-47.
- Nabawi, Ahmad Naufal. "Konsep Trias Politica Dan Penerapannya Di Sistem Pemerintahan Indonesia." *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora* 1, no. 02 (2023).
- Puspitasari, Sri Hastuti. "Menegakkan Demokrasi dan Konstitusionalitas Pemilihan Umum

- Kepala Daerah." *Jurnal Konstitusi* 8, no. 3 (2011): 373-390.
- Ridlwani, Z. (2015). Cita Demokrasi Indonesia dalam Politik Hukum Pengawasan Dewan Perwakilan Rakyat terhadap Pemerintah. *Jurnal Konstitusi*, 12(2), 305-327.
- Rohman, A. (2020). Sisi Positif dan Negatif Demonstrasi Pada Negara Demokrasi Dimasa Pandemi. *Binamulia Hukum*, 9(2), 153-170.
- Romadlon, S. G. (2016). Implikasi Pergeseran Sistem Politik terhadap Hukum dan Birokrasi di Indonesia. *Jurnal Konstitusi*, 13(4), 868-885.
- Sudrajat, Hendra. "Kewenangan Mahkamah Konstitusi Mengadili Perselisihan Hasil Pemilu." *Jurnal Konstitusi* 7, no. 4 (2010): 159-178.
- Zahra, Annisa, Christian Alam Tegar Charisma, Muhammad Afir Ridho Azaby, and Siti NurulFadilah. "Teori Pemisahan Kekuasaan Trias Politica Dalam Pemikiran Filsafat Hukum Montesquieu." *Praxis: Jurnal Filsafat Terapan* 1, no. 01 (2022).