

Research Article

The State of Law and Democracy: History of Development and Challenges in Indonesia

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Abstract. The state of law and democracy are two concepts that are interrelated in the mechanism of managing the government of a country. Democracy provides the foundation for creating equality and equality of rights for all citizens, while the state of law emphasizes that power in a country must be subject to the rule of law, not the will of a particular individual or group. This research is a normative legal research with a normative juridical approach that seeks to explore the harmony of legal rules with applicable norms. The results of the study show that from the colonial period to the reform era, a lot of progress has been made in strengthening the principles of the rule of law, both formally and substantially. The 1998 reform was a momentum that marked a strong commitment to make Indonesia a democratic country of law, where every citizen has rights and obligations protected by law. In Indonesia, democracy has gone through various phases from the parliamentary era, Guided Democracy, New Order, to the reform era that provides greater space for people's involvement.

Keywords: Government, Human Rights, Protection Of Rights, The Development Of Democracy, The State Of Law.

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1. Introduction

The conception of the state of law and democracy is a crucial issue as the administrative practices of the existing government regime are carried out. The two concepts cannot be separated from each other because they have complementary roles. Democracy provides the foundation for creating equality and equal rights for all citizens, while the rule of law emphasizes that power in a country should be subject to the rule of law, not to the will of a particular individual or group. The interconnectedness of these two concepts strengthens the foundation of a state based on justice, where the applicable laws are based on mutual agreement expressed in the form of a constitution (Humaira, 2010).

Democracy plays a role in creating mechanisms that allow for the active participation of the community in the decision-making process. At the level of praxis the principle of democracy or people's sovereignty provides space for the community to express their aspirations and be involved in determining public policies. With this participation, every resulting legislation will better reflect the community's sense of justice. As a result, the policies implemented are not only an instrument of the government, but are also considered as a

manifestation of the collective will of the community that is fought for through democratic mechanisms (Humaira, 2010).

The rule of law emphasizes the importance of the rule of law as an instrument to control power. In a state of law, the law must be placed in the highest position, which means that every action and policy of the government must be based on a mutually agreed law (Ardianthi & Dewi, 2023). This is in line with the concept of constitutional supremacy which emphasizes that the constitution is the highest law that must not be violated by anyone, including the government. This constitutional supremacy not only protects individual rights but also guarantees equal justice for all citizens (Hadi, 2022).

The relationship between the state of law and democracy can be seen in the context of the social agreement that is the basis for the formation of the constitution. Based on the theory of the social contract, people collectively make agreements to limit individual rights in order to achieve common goals. In this context, the constitution serves as the highest form of social agreement that sets the boundaries of the rights and responsibilities of individuals and governments. Thus, the constitution is not only the supreme law but also the embodiment of the collective aspirations of society (Fitrah, 2023).

The principle of the rule of law affirms that any policy issued by the government must be subject to the constitution and applicable laws. Policies that deviate from the constitution not only undermine the principle of justice but also undermine public trust in the government. Therefore, the rule of law is an absolute requirement in a state of law, where the law acts as a guardian of justice that protects the rights of every citizen indiscriminately (Nurwahyuni dkk., 2023).

Democracy provides a mechanism that ensures the involvement of the community in the policy-making process. In a democratic country, the legislative process cannot be carried out unilaterally by the government. Involving the community in the legislation process ensures that the resulting law not only reflects the interests of the government but also accommodates the interests of the community. Thus, democracy guarantees that government power does not run absolutely, but remains based on people's aspirations (Thahira, 2020).

The relationship between the state of law and democracy is also reflected in the principle of *checks and balances*. This principle aims to prevent abuse of power by dividing the power of government into three main branches: executive, legislative, and judicial. Each branch has different authority but supervises each other, so no one branch has absolute power. This system guarantees that every policy issued has gone through a rigorous monitoring process and considers the public interest (Fitrah, 2023).

The application of a democratic rule of law, freedom of opinion and freedom of the press are also important instruments. This freedom provides space for the public to criticize government policies and provide better alternative solutions. With freedom of opinion, the government can listen to the aspirations of the community and improve policies that are considered unfair. This is a tangible form of applying democratic principles within the framework of the rule of law that ensures transparency and accountability of the government.

A good rule of law must not be separated from democratic values. A democratic state of law is not an *absolute rechtsstaat*, that is, a state of law that is absolute without the involvement of the community. In contrast, a democratic state of law is the *demokratische rechtsstaat*, which places society as a legal subject who has the right to participate in the process of law-making.

The resulting law must also reflect the values of justice believed in by the community, not just to perpetuate the power of the government. (Muabezi, 2017)

The state of law and democracy are two pillars that support each other in creating a fair and just governance. The rule of law guarantees legal certainty and justice for all people, while democracy guarantees the involvement of the community in the decision-making process. Thus, the integration between the state of law and democracy is the main topic of discussion or focus in this paper.

2. Literature Review

This section must contain a state-of-the-art explanation. It can be explained in several ways. First, you can discuss several related papers, both about objects, methods, and their results. From there, you can explain and emphasize gaps or differences between your research and previous research. The second way is to combine theory with related literature and explain each theory in one sub-chapter.

Conception of the State of Law

The conception of the state of law is more popular with the terms *rechtsstaat* and rule of law. These two terms are understood in the same sense as the state of law. Although there are those who think that the two terms are not the same, in principle they are meant as a state or government based on the law. The different characteristics are due to the fact that both *rechtsstaat* and rule of law come from different processes of emergence. The *Rechtsstaat* was motivated by a revolutionary movement against absolutism while the rule of law developed evolutionarily (Azahary, 1995).

Indonesia as a country that declares itself as a country of law, in its development there are dynamics that affect how this concept is built and implemented in the government system. Therefore, with elements of the concept of the state of law as a guideline in exercising power based on the law. For example, with the affirmation of the provisions for the division of power from the branches of power and the strengthening of the ideas of protection of citizens' rights.

The Conception of a Democratic State

The concept of democracy was first developed in Greece in the 4th century BC. The model of democracy practiced at the time was direct democracy where the people were directly involved in the processes of implementing the public interest. As a result, democracy runs effectively because of the relatively simple implementation both demographically and territorially as a city-state with a population of only about 300,000 people (Mahfud MD, 2003).

Thinking and practice about democracy in Indonesia continue to develop in the dynamics of the state. The concept of democracy is affirmed directly through the constitution so that the rights of citizens in the process of state administration are more guaranteed. Models of democratic system implementation continue to look for ideal forms in relation to government. A democratic country, a democratic government, is a discourse that continues not only in the momentum of the general election but also in the participatory public service process.

3. Proposed Method

This research is a normative legal research or "*legal research*," focusing on a normative juridical approach that seeks to explore the alignment of legal rules with applicable norms (Adlini et al., 2022). This approach directs research on the search for coherence truth, which is to determine whether a rule of law truly reflects the values and legal principles that apply in society. Not only does it evaluate written rules, it also considers whether the commands or prohibitions in those norms are in line with broader legal principles and assess whether the actions of a particular individual or entity are in accordance with legal norms, not just legal rules. In this process, the data sources used are secondary data obtained through literature review, review of laws and regulations, and analysis of jurisprudence or court decisions relevant to the research topic (Adlini et al., 2022).

Data collection is carried out through the literature study method, where this technique plays an important role in normative law research. Literature studies involve collecting and reviewing data obtained from library sources, such as books, scientific literature, legal records, and reports on various cases relevant to the legal issues being studied. The literature material studied is divided into primary materials, such as laws and regulations and jurisprudence, as well as secondary materials that include legal expert comments and related scientific analysis, both of which complement each other to enrich the analysis process. Once the data is collected, the analysis is carried out with a qualitative approach to reveal the fundamental principles that play a role in the dynamics of the law in society (Darmalaksana, 2020).

4. Results and Discussion

The state of law in Indonesia is a concept that has undergone development from time to time, from the colonial period to the reform era. The concept of the state of law itself derives from the term "*rechtsstaat*" in the Continental European legal tradition and the "*rule of law*" in the *Anglo-Saxon* tradition, which contains the essence that government should be governed by law, not the absolute power of individuals or groups. Along with changes in the system of government, the constitution, and the political challenges faced, the concept of the rule of law in Indonesia continues to evolve to adapt to social, political, and cultural dynamic (Greenstein, 2022).

The Development of the State of Law and its Challenges in Indonesia

The development of the state of law in Indonesia can be seen since the Dutch colonial period. At that time, Indonesia was known as the Dutch East Indies and was ruled by colonial law principles that prioritized the interests of the colonizers. The positive law of the time only aimed to perpetuate colonial power and exploit natural resources and labor. The legal system at that time was highly discriminatory and did not provide fair legal protection for indigenous peoples. However, despite its discriminatory nature, the colonial era introduced a formal judicial system and written legislation that became the basic foundation for Indonesia's modern legal system (Sembiring dkk., 2023).

After Indonesia became independent on August 17, 1945, the legal state system began to be built based on the nation's values and the ideals of independence. In the Preamble to the 1945 Constitution, it was stated that the purpose of the establishment of the Indonesian state was to protect the entire nation and create social justice for all Indonesian people. This shows

that the ideal of becoming a state of law has existed since the beginning of independence (Novriyanto dkk., 2023).

The 1945 Constitution as a constitutional basis has not affirmed in its provisions that the Indonesian state is a state of law. However, other provisions affirm the division of power. For example, the division of power between the executive, legislature, and judiciary shows that Indonesia seeks to apply the basic principles of the rule of law to avoid absolute power. However, during the Old Order period (1945–1966), Indonesia was still in a situation full of legal uncertainty due to political instability and dominant power in the executive, especially after the enactment of Guided Democracy by President Soekarno (Sedana, 2022).

Guided Democracy is a system that combines the president's large role as the sole leader and the limited role of the legislative and judicial institutions (Widariyanti, 2022) This results in a weak application of the principles of the rule of law, especially the principle *of checks and balances*, in which the judiciary and legislature lose autonomy in overseeing the government. As a result, many decisions and policies are taken without adequate control, resulting in many abuses of power (Ilmar, 2018)

During the New Order period (1966–1998), the government under President Suharto claimed to be committed to the rule of law and national stability as the top priority. The government issued various laws and established institutions to support political, social, and economic stability, which was claimed as a step to strengthen the principles of the rule of law. In this era, many changes were made, including the establishment of formal and structured judicial institutions, the reform of various laws, and law enforcement in order to create stability. However, the basic principles of the rule of law are often ignored, especially when it comes to civil liberties, human rights, and judicial independence (Lutpiani, 2021).

The New Order government was considered very repressive and used the law as a tool to maintain power. The existence of the rule of law in this period was more formal or symbolic than substantial, because the rights of citizens were violated many times, and there was no effective control over executive power. For example, many economic policies that benefit government cronies and human rights abuses often go unfollowed by law. At this time, the judiciary was less independent, and the government's interference in legal affairs was very strong, so many policies only benefited certain parties without regard for justice for the people (Subari & Hidayati, 2023).

The 1998 reform became an important milestone for strengthening the rule of law in Indonesia (Lutpiani, 2021). The reforms brought major changes to the constitutional system and prompted amendments to the 1945 Constitution. The constitutional amendment carried out from 1999 to 2002 expressly placed Indonesia as a state of law. Article 1 paragraph (3) of the 1945 Constitution as amended states that "The State of Indonesia is a state of law". This recognition demonstrates a strong commitment to substantially exercising the principles of the rule of law.

One of the important aspects of the reform is the decentralization and autonomy of the regions which provide more space for the regions to manage government affairs independently. This decentralization is based on the desire to restore the principle of people's sovereignty and increase community involvement in decision-making at the local level. In the context of the rule of law, decentralization is one way to reduce the centralistic power that has been dominating and allow for better supervision of local governments (Siroto & Atmaja, 2020).

In addition, the reform era brought significant changes in efforts to strengthen the independence of the judiciary. The birth of the Constitutional Court (MK) in 2003 was an important step to uphold the principle of the rule of law, because the Constitutional Court functions as the guardian of the constitution and the protector of the constitutional rights of citizens. The Constitutional Court has the authority to test laws against the Constitution, resolve disputes over authority between state institutions, and decide disputes over the results of general elections. The role of the Constitutional Court is crucial in ensuring that every law made does not contradict the constitution, so that the principle of the rule of law can truly be realized (Iryana & Mustofa, 2023).

Indonesia, in the reform era, also adopted various regulations to protect human rights and civil liberties, including Law Number 39 of 1999 concerning Human Rights and the establishment of the National Commission on Human Rights (Komnas HAM). These measures are a tangible form of commitment to the principle of the rule of law, which guarantees that every citizen has basic rights recognized and protected by the state (Azis, 2019).

Indonesia, although much progress has been made since the reform era, the application of the principle of the rule of law still faces various challenges. One of them is the practice of corruption that is still rampant in various government sectors. Corruption not only undermines public trust in state institutions, but also hinders the achievement of justice and equity for all people. Efforts to eradicate corruption carried out through the Corruption Eradication Commission (KPK) continue to be carried out, but the challenges are still big considering that corruption has become a structural problem that is difficult to eradicate completely (Lestari dkk., 2023).

The independence of the judiciary is also still a challenge that is sometimes questionable. Although there are constitutional guarantees for judicial independence, some cases show the intervention of certain parties in the judicial process. In addition, law enforcement is also often inconsistent, especially in handling cases involving authorities or political elites. This inconsistency can reduce the credibility of the rule of law and reinforce the perception of the public that the law is only sharp downwards and blunt upwards (Lesza, 2022).

On the other hand, although decentralization provides space for regions to manage government affairs, its implementation also poses challenges. Many regions do not fully understand the principles of the rule of law, so the policies taken are sometimes contrary to national law. (Wicaksono, 2012) This challenge requires the central government to strengthen supervision of local governments without violating the autonomy of the regions themselves. (Lestari, 2023)

The Direction and Challenges of Democracy in Indonesia

The development of democracy in Indonesia has undergone a long journey influenced by various socio-political dynamics and changes in the system of government. Democracy in Indonesia can be divided into several phases. In the early phase of independence, Indonesia implemented a parliamentary democratic system. This system gives the parliament an important role in running the government. President Soekarno plays more of a role as the head of state with limited powers, while the government is held by the prime minister. However, this system did not last long due to frequent cabinet changes and political instability. This situation made Sukarno finally enact a Presidential Decree in 1959, which dissolved the *Constituent Assembly* and returned to the 1945 Constitution (Syaputri dkk., 2023).

Guided Democracy was the period in which Sukarno took a dominant role in the government. In this era, Sukarno created a system in which the role of political parties and legislative institutions was increasingly limited, and government policies tended to be centralistic. This period is often considered less democratic because there are restrictions on political freedom and civil rights of the community. Although it was enacted to create political stability, Guided Democracy actually caused dissatisfaction and political conflicts that eventually led to changes in the system of government (Sedana Arta, 2022).

After the fall of Sukarno, Indonesia entered the New Order period under Suharto's leadership. The New Order government implemented pseudo-democracy, known as Pancasila democracy. In practice, Suharto controlled executive, legislative, and judicial powers, as well as limited the role of the opposition and freedom of the press. Elections are held regularly, but they do not reflect the principles of true democracy because of the influence of the government on the electoral process. The New Order succeeded in creating political stability, but was widely criticized for human rights abuses and widespread corruption (Mahpudin, 2020).

After the fall of Suharto in 1998, Indonesia entered an era of reform that paved the way for a more substantive democratic development. The constitutional amendment made through the amendment of the 1945 Constitution strengthened the role of the legislative body, expanded the rights of citizens, and ensured a clearer separation of powers between the executive, legislative, and judiciary. Democracy in Indonesia is also strengthened by the implementation of free and fair elections, as well as direct elections for presidents, governors, regents, and mayors. This reflects the desire of the Indonesian people to practice the principles of democracy in a more complete and inclusive manner.

Although democracy has become a popular system of government around the world, its implementation is not without challenges. One of the biggest challenges for modern democracy is the existence of social and economic inequality that can disrupt political stability and create public distrust of the government. As social and economic inequality increases, there is a tendency for certain groups to exploit the political system to their advantage, which can undermine the principles of inclusive democracy (Margianto, 2020).

In addition, the development of information technology and social media is also a new challenge for democracy. On the one hand, technology provides wider access to information and increases people's political participation. On the other hand, social media is often used to spread fake news (*hoax*) and propaganda that can threaten the integrity of the democratic process (Margianto, 2020).

5. Conclusions

The development of the state of law in Indonesia is a long journey that continues with its various dynamics. From the colonial period to the reform era, much progress has been made in strengthening the principles of the rule of law, both formally and substantially. The 1998 reforms were an important turning point that marked a strong commitment to make Indonesia a democratic state of law, where every citizen has rights and obligations protected by law. However, various challenges such as corruption, independence of the judiciary, and inconsistency in law enforcement are still homework that must be resolved. In the future, the

hope for strengthening the rule of law in Indonesia is to create a fair, transparent, and accountable legal system, which truly serves the interests of all Indonesian people.

The development of democracy is a long and ever-evolving process. From direct democracy in ancient Greece to modern representative democracy, the principles of democracy are constantly being refined to suit the needs of society. In Indonesia, democracy has experienced various phases from the parliamentary era, Guided Democracy, the New Order, to the reform era which provides greater space for people's involvement. Although much progress has been made, democracy in the modern era still faces various challenges, both in Indonesia and around the world. These challenges demand collective efforts to strengthen democratic institutions, safeguard human rights, and most importantly ensure the well-being of all people.

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