



Analysis of People's sovereignty and the implementation of democracy in the perspective of constitutional law

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Abstract

This research aims to analyze the concept of people's sovereignty and the implementation of democracy in the perspective of constitutional law in Indonesia. People's sovereignty, which is the main foundation in a democratic system of government, places the people as the holder of the highest power in determining the direction of state policy. However, in practice, the implementation of democracy often faces various challenges that hinder the achievement of ideal people's sovereignty. This research uses a normative juridical method by examining various laws and regulations, constitutional law doctrines, and case studies related to the implementation of democracy in Indonesia. The results of the study show that although the principles of people's sovereignty have been regulated in various regulations, their implementation has not fully reflected the will of the people due to various factors, including oligarchic political practices, corruption, and weak public participation. This study recommends more effective policy reforms and strengthening the role of civil society to improve the implementation of democracy in accordance with the principle of people's sovereignty.

Keywords: People's sovereignty, democracy, constitutional law, public participation, policy reform

Introduction

People's sovereignty is a fundamental principle in a democratic system of government that places the people as the holders of the highest power in the state. This concept is rooted in the idea that all forms of state power and policies must be based on the will and interests of the people.^[1] In Indonesia, the sovereignty of the people is expressly stated in Article 1 paragraph (2) of the Constitution of the Republic of Indonesia of 1945, which states that "sovereignty is in the hands of the people and is exercised in accordance with the Constitution." This principle is the basis for the implementation of a democratic government and oriented towards the fulfillment of the rights and aspirations of the people.^[2]

However, the implementation of democracy in Indonesia faces various challenges that can hinder the achievement of ideal people's sovereignty. One of the problems faced is the practice of oligarchic politics, where power tends to be controlled by certain groups that have great access and influence on state policies. In addition, corruption in government institutions and lack of public participation in the decision-making process are also factors that weaken the implementation of healthy and fair democracy.^[3]

On the other hand, the understanding of people's sovereignty and the implementation of democracy cannot be separated from the perspective of constitutional law, which regulates how state power is organized, distributed, and exercised. Constitutional law has an important role in ensuring that the principles of people's sovereignty are carried out in accordance with the constitution and applicable laws. Therefore, the study of the implementation of democracy from the perspective of constitutional law is important to assess the extent to which the government has fulfilled the mandate of the constitution in exercising the sovereignty of the people.^[4]

The implementation of democratic principles in the constitutional law system is an important foundation in building a just, just, and civilized society. Democracy in

principle recognizes the power of the people as the source of government legitimacy, so a democratic legal system must reflect these values. The principle of democracy ensures the active participation of all citizens in the formation and implementation of laws. This is reflected in an open and transparent legislative process, where citizens have equal access to provide input, express opinions, and supervise the course of lawmaking. The democratic constitutional legal system also respects the principle of equality before the law, where every individual has the same right to fair and proper treatment in the judicial system.^[5]

This research aims to analyze the application of the principle of people's sovereignty and the implementation of democracy in Indonesia through a constitutional law approach. This research will examine various existing regulations, as well as identify factors that are obstacles in realizing people's sovereignty. Thus, this research is expected to contribute to understanding the current state of democracy in Indonesia and provide recommendations to strengthen the implementation of democracy in accordance with the principle of people's sovereignty.

In the context of constitutional law, it is important to affirm the separation of powers between the executive, legislative, and judiciary. Each branch of government has different roles and responsibilities, which are designed in such a way that they can supervise each other and limit each other's power. This separation aims to prevent the accumulation of power on one side which can result in abuse of authority and violation of basic rights of citizens.

In addition to the separation of powers, effective oversight mechanisms also play an important role in maintaining balance between branches of government. Through this control and balance system, each branch has the authority to evaluate and supervise the actions of other branches. Thus, this system ensures that each branch of power continues to carry out its duties in accordance with the constitutional mandate and maintains the integrity and sovereignty of the country's law.^[6] The principle of checks and balances plays

an important role in preventing abuse of power and ensuring that decisions taken reflect the interests of society at large. The principle of democracy encourages inclusion and fair representation in the drafting of laws. This means ensuring that various community groups, including minorities and vulnerable groups, have a heard and accommodated voice in the policy-making process. A democratic constitutional legal system must recognize and protect the human rights of every individual, regardless of their social, economic, or political background.^[7]

By applying democratic principles in the constitutional legal system, a country can ensure that public power is exercised responsibly, fairly, and based on the interests of the people. This creates a strong foundation for the development of a prosperous and civilized society, where every individual has an equal opportunity to thrive and contribute.

Based on the above explanation, the formulation of the problem in this study is: 1) How is the concept of people's sovereignty regulated in the Indonesian constitutional law system?, What is the role of constitutional law in ensuring the implementation of democracy based on people's sovereignty? What steps can be taken to strengthen the implementation of people's sovereignty in a democratic system based on the perspective of constitutional law??

Methods

This study uses a normative juridical approach, namely to analyze the principles of people's sovereignty and democracy based on the applicable laws and regulations in Indonesia. This method involves the study of various rules in the 1945 Constitution of the Republic of Indonesia, related laws, and constitutional law doctrines related to people's sovereignty and the implementation of democracy.^[8]

In this approach, the researcher will explore the basic concepts of people's sovereignty and democracy from the perspective of constitutional law. This aims to understand the principles underlying the implementation of democracy and how the concept of people's sovereignty is implemented in the legal order of the state.

This research will use secondary data in the form of literature reviews from books, scientific journals, articles, and legal documents such as laws, court decisions, and government policies. This secondary data will provide a theoretical and empirical basis to understand the extent to which the implementation of democracy reflects the sovereignty of the people. The data obtained will be analyzed qualitatively, by interpreting information and explaining the relationship between legal regulations and democratic practices in Indonesia. This qualitative analysis will help assess the effectiveness of constitutional law in safeguarding the principle of people's sovereignty and identify problems that hinder the implementation of ideal democracy.

Result and Discussion

The Concept of People's Sovereignty is Regulated in the Indonesian Constitutional Law System

The current condition of democracy in Indonesia is complex and continues to change along with the political, social, and economic dynamics in the country. In general, Indonesia is a democratic country that has a strong constitutional framework, stipulated in the 1945 Constitution, which regulates the system of government, human rights, and other

democratic mechanisms.^[9] On the one hand, Indonesia has successfully adopted and implemented various democratic principles, such as regular and relatively free elections, freedom of opinion, freedom of the press, and the establishment of democratic institutions such as parliament and independent judicial institutions. In addition, the diversity of cultures, religions, and ethnicities in Indonesia also reflects the spirit of inclusion and pluralism in the context of democracy.^[10]

After the amendment of the 1945 Constitution, Indonesia's constitutional system applied the principle of checks and balances, which became an important basis in maintaining the balance of power. This principle is expressly stated by the MPR as one of the main objectives of the amendment of the 1945 Constitution, namely to improve the basic rules in the constitution. With this principle, it is hoped that state power is not concentrated on one party only, but is divided fairly and proportionally between various state institutions. This division of power also aims for each institution to supervise and balance each other in carrying out its duties, so as to create a more democratic state administration.

The principle of checks and balances is also a step towards modern governance, with a stricter and more transparent system of supervision and balance. This is in line with the concept first put forward by Montesquieu in the Age of Enlightenment, which is known as the period of the emergence of great ideas about freedom and balance of power. Montesquieu saw the importance of the division of power as an effort to avoid tyranny and ensure that power was not abused. By adopting this principle, Indonesia's constitutional system aims to achieve stability and justice in running the government.^[11]

Etymologically, checks and balances come from two words, namely the word "check" which means control and the word "balances" which means balance. The control in question means a control between one branch of power and another, while the balance in question is so that each power holder does not tend to be too strong on one side.

The principle of checks and balances is a constitutional principle that aims to ensure that legislative, executive, and judicial powers are at an equal level and can control each other. This principle ensures that no one branch of power dominates or abuses its power. After the amendment of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), the concept of people's sovereignty was applied by dividing power horizontally, where each branch of power was given balanced rights and authorities in accordance with their respective functions. This division is based on the concept of *trias politika*, which puts the three branches of power in a position that controls and complements each other.

With such a division of powers, the legislative, executive, and judicial branches of power have the responsibility to carry out their functions in a balanced and mutually protective manner. This system of checks and balances not only reflects democratic principles, but also serves as an important internal oversight mechanism in Indonesia's constitution. Each branch of power, in the performance of its duties, must be able to control each other so that the policies or decisions taken are always within the legal framework and in accordance with the interests of the people. Through the application of this principle, it is hoped that fair, transparent, and able to prevent the abuse of power will be created.^[12] State power can be optimally regulated,

limited, and supervised, so that the potential for abuse of power by state administrative apparatus and by individuals occupying positions in relevant state institutions can be effectively prevented and overcome. The principle of checks and balances allows each state institution to carry out its functions proportionately, while providing supervision over other institutions. This creates a balance in the exercise of state power and ensures that every action taken by an institution remains within the limits of its authority.

The relationship of checks and balances between legislative, executive, and judicial institutions in Indonesia can be explained as a system of mutual supervision. The legislative body plays a role in making laws and supervising their implementation by the executive, while the executive implements policies and is responsible for the running of the government, which is also supervised by the legislature and the judiciary. On the other hand, the judiciary has a role to enforce the law fairly and independently, supervising that the executive and legislature do not exceed the limits of their authority. Through this mechanism, each branch of power maintains each other so that state power runs in accordance with democratic and legal principles, which are as follows:

1. The relationship between the executive and the legislature resulted in equality of status of state institutions through the amendment of the 1945 Constitution. With this change, the MPR institution is no longer the highest institution of the state that conducts the presidential and vice presidential elections. The amendment to the 1945 Constitution creates a constitutional system that allows checks and balances between existing state institutions, meaning that there is a relationship of cooperation and supervision between the House of Representatives and the President. Although the two institutions are obliged to cooperate in the field of legislation, supervision of government policies is currently only carried out by the House of Representatives.
2. The relationship between the executive and the judiciary is reflected in the president's authority to carry out judicial actions such as clemency, revocation, and rehabilitation. However, the authority to grant clemency and rehabilitation must pay attention to the consideration of the Supreme Court, and the authority to grant clemency and annulment must pay attention to the consideration of the House of Representatives. Furthermore, the relationship between the executive and the judiciary is reflected in the Supreme Court's authority to test the rule of law in accordance with the law.
3. The relationship between the legislative and judicial institutions lies in the authority of the Constitutional Court to examine laws that violate the 1945 Constitution of the Republic of Indonesia (judicial review). This power provides an opportunity for the judiciary to review legal documents issued by the President and the House of Representatives and determine whether the document is in accordance with the 1945 Constitution of the Republic of Indonesia or not a legal document.^[13]

The state institutional system with a check and balance mechanism makes state institutions separate from one power and another. The regulation of state institutions is regulated in the constitution as well as the form and function of the institution. Checks and balances are the underlying principles of the system of government where power is divided between various branches of government to prevent abuse of power. For example, in a democratic country, the executive, legislative, and judicial powers have their respective roles and responsibilities.

The government can be strong, but it will not be too strong because of this check and balance mechanism. For example, when the executive makes a decision, the legislature can oversee and evaluate the decision. On the other hand, the judiciary has the authority to assess the validity of the decision in accordance with the law and the constitution.^[14] Thus, each branch of government supervises each other, creating a balanced system and preventing excessive abuse of power.

The Role of Constitutional Law in Ensuring the Implementation of Democracy Based on People's Sovereignty

The conception of democracy always puts the people in a very strategic position in the constitutional system. The people have a major role in determining the direction and policies of the state through a democratic mechanism. However, in practice, the implementation of democracy can differ from country to country, depending on the history, culture, and political needs of each country. These differences create variations in the form and implementation of democracy in various countries.

Due to the various variations in the application of democracy, state literature recognizes several terms that describe different types of democracy. Some of these are constitutional democracy, where government is governed by a constitution that protects individual rights; parliamentary democracy, which places parliament as the center of power; guided democracy, where leaders have a dominant role; Pancasila democracy typical of Indonesia; people's democracy, soviet democracy, national democracy, and many more. Each form of democracy has different characteristics and approaches, but in essence it still places the people as the central element in government.^[15]

Constitutional Law plays an important role in ensuring the implementation of democracy based on the principle of people's sovereignty. In the context of democracy, people's sovereignty means that the supreme power is in the hands of the people, and constitutional law serves as a framework that governs how that sovereignty is implemented in the state structure. Through constitutional law, various state institutions are formed and given authority in accordance with the constitution or the basic law, which describes the principles of democracy.

First, constitutional law establishes rules regarding the separation of powers between executive, legislative, and judicial institutions, which aims to prevent abuse of power and ensure that each institution performs its functions independently. With this separation of powers, constitutional law ensures a system of checks and balances that avoid the domination of one institution over another. This is important to maintain democracy, because without this control, power can be abused and threaten the rights of the people.

Second, constitutional law also regulates the mechanism of people's participation in government, such as through free and fair elections. Elections are the main means for the people to express their will and elect their representatives who will run the government. Thus, constitutional law guarantees not only the right to vote, but also the right to vote, which is the main foundation in a people's sovereign democratic system.

In addition, constitutional law protects human rights as part of the principle of people's sovereignty. These rights, which include the right to assembly, freedom of opinion, and the right to legal protection, are guaranteed in the constitution or the constitution. This protection aims to enable the people to actively participate in democracy without fear of repression or violation of rights. Thus, constitutional law holds the state accountable in protecting the rights of citizens and facilitating freedom of opinion.

The law is also used to uphold individual rights and protect society from various adverse actions. Meanwhile, a democratic state is a country where power and sovereignty are in the hands of the people over the state to be run by the government. A democratic country is also known as a state of law, where the law is above all and is carried out by a government that is elected by the people periodically through elections. Law is used to legitimize power so that the power can be recognized, and vice versa where law is used to control power so that it does not conflict with democracy. Since Indonesia is a country of law and a democracy, all aspects of state life must be based on the law.

One of the most important basic principles of a country with law is an independent, free, and impartial judiciary in deciding a case to create fair law enforcement. Law does not contradict freedom, but rather frees all parties from their attachments, because ignorance of freedom is the direction of the compass to direct oneself towards the good through the mediation of law, because good law will exist based on arrangements on the basis of work and aim for general happiness. In addition, the existence of the law can also create peace among the community. However, it should be noted that the legal system in Indonesia has experienced some mixing. This is because the law in Indonesia is greatly influenced by past factors. Although in general, the source of Indonesian law comes from Pancasila and the 1945 Constitution, unfortunately the principles contained in Pancasila are not entirely substituted into Indonesian law.

Good law is certainly a law that has many roles in ensuring security and justice, such as the law functions in a directive manner, where the law is useful for building to form a society that is to be achieved in accordance with the goals of state life. The integrative role of law can also help foster national unity.^[16]

The existence of a stabilitative role in law can also help in maintaining harmony and balance in the life of the state and society. In addition, the law can also play a role in perfection, where the law can be used as a refinement of state administrative actions and citizens' attitudes in life and society. The corrective role is also owned by the law, namely as a good view of the citizens of the country and the state administration in obtaining justice.

Implementation of People's Sovereignty in a Democratic System Based on the Perspective of Constitutional Law

Democracy and the state of law are two concepts that are interrelated and inseparable from each other. In the concept

of democracy, there are principles of people's sovereignty (democratie), which places the people as the holder of the highest power in a country. Meanwhile, in the concept of the state of law, there are principles of the state based on law (nomocratie), which emphasizes that all government actions must be in accordance with the applicable rule of law.

These two principles go hand in hand, like two sides of one coin, where democracy gives legitimacy to the people to determine the government, while the state of law ensures that the power exercised remains within the limits of the law. The understanding of the rule of law based on democratic principles is known as the Democratic State of Law, which combines the sovereignty of the people with the rule of law as the main basis for the implementation of government.^[17]

According to Jimly Asshiddiqie, the conception of democracy contains the principles of people's sovereignty (democratie), while the conception of the state of law contains the principles of a state based on law (nomocratie). The two principles of the conception go hand in hand, like two sides of one coin, where the sovereignty of the people and the rule of law complement each other in regulating the administration of the state. This understanding is known as the term "democratic state of law" (democratische rechtsstaat) which emphasizes that state power comes from the people and must be exercised in accordance with the law.

In addition, in constitutional form, this principle is referred to as constitutional democracy. This concept combines the sovereignty of the people with the rule of law regulated in the constitution as the main foundation, thus creating a balance between the power of the people and the rule of law in a country.^[18] It is referred to as a "democratic state of law", because it accommodates the principles of the state of law and the principles of democracy, namely:

1. **Supremacy of Law.** This principle emphasizes the recognition of the rule of law both normatively and empirically, which means that all problems are solved by making the law the highest guideline.
2. **Equality before the Law.** This principle states that everyone has an equal standing before the law and government. All forms of discriminatory attitudes and actions are prohibited, except for special and temporary measures aimed at accelerating the development of certain groups (affirmative action).
3. **The Principle of Due Process of Law.** All government actions must be based on valid and written laws and regulations. These laws and regulations must exist and apply first before any action or deed is carried out. This principle emphasizes that no person can be sanctioned or treated legally without a clear legal basis, thus ensuring legal certainty and protection of individual rights in a country.
4. **There is a restriction of state power and state organs by applying the principle of vertical division of power and horizontal separation of power.** This limitation of power aims to avoid abuse of power and to develop a mechanism of checks and balances between branches of power. Thus, each branch of power can supervise and balance each other, so that a more transparent and accountable system of government is created.

5. In an effort to limit power, independent government institutional arrangements are also developing, such as the central bank, army organizations, police, and prosecutor's offices. This institution aims to prevent abuse of power by the government and ensure that each institution can carry out its functions objectively and professionally. In addition, there are also new institutions formed to strengthen the democratic system and protect human rights, such as the National Commission on Human Rights, the General Election Commission, the Ombudsman, the Indonesian Broadcasting Commission, and others. These institutions have an important role in supervising and upholding the principles of democracy and social justice in society.
6. Independent and impartial judiciary is one of the elements that absolutely exists in the state of law. Judges must carry out their duties impartially, except for truth and justice. They must not be influenced by anyone, be it by the interests of office (politics) or money interests (economy). The existence of an independent and impartial judiciary is essential to ensure that every case is decided based on the facts and applicable laws, thus creating public trust in the judicial system and supporting the upholding of the rule of law. Thus, each individual can feel protected and get equal justice before the law.
7. The State Administrative Court is part of a wider judicial system, and its existence needs to be specifically emphasized. In every country of law, it is important to provide an opportunity for citizens to challenge decisions taken by administrative officials who are competent in the country's administrative judiciary. This aims to ensure accountability and transparency in administrative decision-making, as well as to protect the rights of citizens from arbitrary actions by the government. With the existence of the state administrative justice mechanism, the public can demand justice and legal certainty, as well as ensure that the administrative decisions issued are in accordance with the applicable legal provisions.
8. In addition to the State Administrative Court. Modern legal states also commonly adopt the idea of establishing a constitutional court as an effort to strengthen the system of checks and balances between branches of power to ensure democracy. For example, this court is given the function of testing the constitutionality of the law and deciding disputes of authority between state institutions that reflect the separated branches of state power.^[19]
9. There is a constitutional protection of human rights with legal guarantees for the demands of its enforcement through a fair process.
10. democratic (demokratische rechtsstaat). The principle of democracy or people's sovereignty is embraced and practiced which guarantees the participation of the community in the process of state decision-making, so that every law and regulation that is implemented and enforced reflects the community's sense of justice.
11. Functions as a means of realizing the goals of the state (Welfare Rechtsstaat). In the Indonesian context, the idea of a democratic state of law is to achieve national goals as stated in the preamble to the 1945 Constitution.
12. There is transparency and social control over every process of making and enforcing laws so that it can improve the weaknesses of institutional mechanisms to ensure truth and justice. Direct participation is urgently needed because the mechanism of representation in parliament is not always reliable as the only channel for people's aspirations. This is a form of representation in ideas that is not always inherent in representation in presence. Therefore, the state of law must be supported by a democratic system.^[20]

Because there is a clear correlation between the state of law that relies on the constitution, and the people's sovereignty which is carried out through a democratic system. In a democratic system, the participation of the people is the essence of this system. However, democracy without legal regulation will lose its form and direction, while law without democracy will lose its meaning.

Conclusion

The concept of people's sovereignty is regulated in the Indonesian constitutional law system as the main principle that places the people as the holders of the highest power. In the 1945 Constitution, especially in Article 1 paragraph (2), it is stated that "Sovereignty is in the hands of the people and is carried out in accordance with the Constitution." This means that all power in this country is basically sourced from the people and must be exercised in accordance with the rules contained in the constitution. In other words, Indonesian constitutional law not only recognizes the rights of the people as the main source of power, but also regulates how such power is allocated, limited, and exercised through state institutions. This principle regulates the division of power between the executive, legislative, and judiciary, and establishes the general election mechanism as a way to realize the people's sovereignty in the government.

Constitutional Law has an important role in ensuring the implementation of democracy based on people's sovereignty by establishing legal foundations and basic principles that safeguard the rights and obligations of the people in the government system. Through constitutional law, it is regulated how state power is distributed and exercised fairly, thus preventing a monopoly of power and ensuring that the government functions in the interests of the people. One form of implementation is the division of power between executive, legislative, and judicial institutions designed to create a check and balance system. With this separation of powers, constitutional law seeks to prevent the abuse of power by one particular institution, so that the interests of the people can be better protected. Through this regulation, the principle of democracy becomes more concrete because power does not only lie with one party, but is spread by a control mechanism between institutions that supervise each other.

The implementation of people's sovereignty in a democratic system based on the perspective of constitutional law in Indonesia means that all state power comes from the people and is exercised according to the rules set by the

constitution. In a democratic system governed by constitutional law, people's sovereignty is realized through a general election mechanism, where the people have the right to elect representatives who will fill positions in the legislative, executive, and sometimes judicial institutions, in accordance with their respective roles in running the wheels of government. Elections are the main means for the people to channel their political will and ensure that the holders of power are elected and act according to the people's mandate.

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