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Preface

Constitutional law faces an enduring challenge: the task of interpreting policy through the lens of constitutionalism. Its vocabulary—encompassing concepts such as rights, morality, participation, and so on—functions much like a “constitutional grammar”, creating a space to re-examine the established policies. Yet, therein lies the complexity: every policy possesses its own internal logic and perspective, demanding a more nuanced approach.

The five articles in this edition offer diverse policy analyses through the lens of constitutionalism. Maharini et al. examine the issue of pre-legislative oversight by the judiciary—specifically, the Constitutional Court. Drawing on a comparative study of the “ex ante” review system in France, they explore uncharted territory for the Indonesian Constitutional Court, including the potential use of advisory opinions.

The dynamics of checks and balances and the separation of powers in policy formulation are also central to the work of Rayhan et al. They address the limitations that the Constitutional Court when adjudicating cases with the nature of "open legal policy." This highlights a complex relationship between political representation in parliament and the judicial authority of the Constitutional Court.

Amid growing awareness regarding the right to a healthy environment, Ananda et al. explore the concept of a "Green Constitution." They trace the normative foundations within the Indonesian legal system that are, to a certain extent, both relevant and crucial espescially with the current haze issue that we are facing. Furthermore, policies within a democratic setting presuppose an open space for civil society. In this context, Muhaimin et al analyze the exercise of the freedom of assembly in the context of civil society organizations (CSOs). They unpack the interplay between legal certainty, freedom of assembly, and public interest—as they relate to CSOs and civic participation—which both shape and are shaped by the policy-making process. Also, there can be no policy without a careful planning mechanism. Hasan et al. revisit the "Garis-Garis Besar Haluan Negara" (GBHN) and the possibility of its application within the contemporary legal system. They argue that the GBHN model remains relevant for strengthening long-term planning in policy formulation.

At last, we from the editorial team believed that all of the presented articles in this edition reflecting an effort to understanding and avoidung grammatical error within the “constitutional grammar”.

Editorial Team

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Pre-Legislative Scrutiny through the Constitutional Court: Urgency, Opportunities and Challenges from a Constitutional Perspective

Pra Legislative Scrutiny melalui Mahkamah Konstitusi: Urgensi, Peluang dan Tantangan dalam Perspektif Konstitusional

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Abstract
The frequent annulment of laws by the Constitutional Court after their enactment often creates legal uncertainty and significant socio-economic losses. This study examines the urgency, opportunities, and challenges of expanding the Constitutional Court's authority to conduct pre-legislative scrutiny as a preventive mechanism for constitutional oversight. Through a normative juridical approach using comparative methods, this research analyzes the ex ante review system in France, particularly the mechanisms of loi organique and the Conseil Constitutionnel, while exploring implementation options in Indonesia. The findings indicate that expanding the Constitutional Court's powers through the review of organic category Bill drafts and advisory opinions has a strong constitutional basis, but requires strict procedural design to prevent excessive judicial intervention. This study recommends gradual implementation through limited constitutional amendments and revisions to the Constitutional Court Law, with clear safeguards to maintain the balance of separation of powers.

Keywords: Advisory Opinion; Loi Organique; Judicial Preview.

Abstrak
Gelombang tinggi pembatalan undang-undang oleh Mahkamah Konstitusi setelah undang-undang tersebut diberlakukan kerap menimbulkan ketidakpastian hukum dan kerugian sosial ekonomi yang signifikan. Penelitian ini mengkaji urgensi, peluang, dan tantangan perluasan wewenang Mahkamah Konstitusi dalam melakukan pra legislative scrutiny sebagai mekanisme preventif pengawasan konstitusionalitas. Melalui pendekatan yuridis normatif dengan metode komparatif, penelitian ini menganalisis sistem *ex ante review* di Perancis khususnya mekanisme *loi organique* dan *Conseil Constitutionnel*, serta mengeksplorasi opsi yang dapat diimplementasikan di Indonesia. Temuan penelitian menunjukkan bahwa perluasan wewenang MK melalui mekanisme pengujian Rancangan Undang-Undang kategori organik dan *advisory opinion* memiliki landasan konstitusional yang kuat, namun memerlukan desain prosedural yang ketat untuk mencegah campur tangan yudisial yang berlebihan. Penelitian ini merekomendasikan implementasi bertahap melalui amandemen konstitusi terbatas dan revisi UU Mahkamah Konstitusi dengan safeguard yang jelas untuk menjaga keseimbangan pemisahan kekuasaan.

Kata Kunci: Pendapat Hukum; Undang-Undang Organik; Tinjauan Yudisial.

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Pendahuluan

Aristoteles berpendapat bahwa tujuan tertinggi negara adalah mewujudkan kehidupan baik bagi seluruh warganya.[1] Di Indonesia masa kini, cita-cita mulia tersebut sedang berada pada titik kritis karena proses pembentukan undang-undang masih sarat dengan persoalan mendasar. Mahkamah Konstitusi Republik Indonesia telah menjalankan fungsi sebagai pengawal konstitusi (*the guardian of constitution*) sejak dibentuk pada tahun 2003.[2] Dalam rentang waktu lebih dari dua dekade, Mahkamah Konstitusi (MK) telah mengabulkan ratusan permohonan pengujian undang-undang yang dinyatakan bertentangan dengan UUD 1945, baik secara keseluruhan maupun sebagian. Data MK menunjukkan bahwa hingga akhir 2024, terdapat lebih dari 4046 putusan, dimana 1897 perkara Pengujian Undang-Undang diajukan, dan 327 diantaranya dikabulkan. Tentunya jumlah perkara tersebut terus mengalami peningkatan setiap tahun, terbukti pada tahun 2025 terjadi penambahan sebanyak 33 putusan dikabulkan. [3] Fenomena ini mengindikasikan bahwa proses legislasi di Indonesia masih menghadapi persoalan serius terkait dengan jaminan konstitusionalitas produk legislasi.[4] Pembatalan undang-undang setelah berlaku tidak hanya menimbulkan ketidakpastian hukum, tetapi juga menimbulkan kerugian sosial dan ekonomi yang tidak sedikit, terutama bagi pihak-pihak yang telah mendasarkan tindakan hukumnya pada undang-undang yang kemudian dibatalkan.[5]

Persoalan ini sesungguhnya dapat diminimalisir jika terdapat mekanisme pengawasan konstitusionalitas yang bersifat preventif atau dikenal dengan istilah *pre-legislative scrutiny* atau *ex ante review.*[6] Beberapa negara dengan tradisi constitutional review yang matang, seperti Perancis dengan sistem *loi organique dan Conseil Constitutionnel*-nya, Austria dengan *Verfassungsgerichtshof* dan Jerman dengan *Bundesverfassungsgericht*, telah mengadopsi mekanisme pengujian konstitusionalitas sebelum undang-undang diundangkan. [7] Model ini terbukti efektif dalam meningkatkan kualitas legislasi dan mengurangi potensi konflik konstitusional di kemudian hari. Namun demikian, adopsi mekanisme serupa di Indonesia menghadapi tantangan konstitusional yang tidak sederhana, mengingat Pasal 24C ayat (1)

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1 Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 1st edn (Depok: Rajawali Pers, 2022) at 77.

2 David Edyson, "Peran Mahkamah Konstitusi dalam Menjaga Demokrasi dan Memperkuat Supremasi Hukum: Evaluasi Kritis" (2024) 3:1.

3 "Rekapitulasi perkara PUU Mahkamah Konstitusi", online: <https://www.mkri.id/perkara/rekapitulasi-perkara/puu>.

4 Janpatar Simamora & Risma Manik, "The Design Of The Idea Of Judicial Preview Authority Of The Constitutional Court In The Indonesian Constitutional System" (2024) 13:1 J Huk dan Peradil 167.

5 Geofani Milthree Saragih, Mirza Nasution & Eka NAM Sihombing, "Makna Filosofis Putusan Mahkamah Konstitusi Dalam Constitutional Review Dan Urgensi Judicial Activism" (2024) 53:3 Masalah Masalah Hukum 335–344.

6 Diya Ul Akmal, Fatkhul Muin & Pipih Ludia Karsa, "Prospect of Judicial Preview in the Constitutional Court Based on the Construction of Constitutional Law" (2020) 8:3 JCH.

7 Desy Wulandari, "Ex Ante Review dalam Mewujudkan Konstitusionalitas Peraturan Perundang-Undangan di Indonesia" (2018) 1:1 Indonesian State Law Review 37–52 at 5.

UUD 1945 secara eksplisit hanya memberikan kewenangan kepada MK untuk menguji undang-undang terhadap UUD, bukan rancangan undang-undang.[8]

Kajian akademis tentang perluasan wewenang MK melalui mekanisme judicial preview atau pre-legislative scrutiny sesungguhnya telah mulai berkembang dalam beberapa tahun terakhir. Sejumlah gagasan kewenangan judicial preview bagi MK dalam sistem ketatanegaraan Indonesia telah diusulkan dengan menekankan perlunya amandemen konstitusi untuk memberikan landasan hukum yang kuat.[9] Peluang penerapan mekanisme tersebut juga dikemukakan dengan merujuk pada praktik di Perancis, Austria, dan Jerman sebagai model yang dapat diadaptasi.[10] Sedangkan di kawasan asia, pemerintah dapat merujuk pada negara Kamboja dan Thailand yang juga menerapkan *judicial preview*.

Model *ex ante review* sebagai instrumen untuk menjamin konstitusionalitas peraturan perundang undangan di Indonesia telah dianalisis melalui perbandingan antara pendekatan preventif dan represif.[11] Akan tetapi, studi-studi terdahulu masih menyisakan sejumlah keterbatasan yang patut dicermati. Pertama, mayoritas studi menggunakan pendekatan normatif komparatif tanpa disertai perumusan teknis yang jelas mengenai desain dan operasional mekanisme pre-legislative scrutiny dalam praktik ketatanegaraan di Indonesia.[12] Kedua, analisis mengenai sistem *loi organique Perancis* yang menjadi rujukan utama masih bersifat deskriptif umum, belum mengeksplorasi secara mendalam mekanisme teknis, prosedur operasional, dan pengalaman praktis selama lebih dari enam dekade implementasinya.[13] Ketiga, pembahasan tentang *safeguard* untuk mencegah judicial activism dan menjaga keseimbangan *separation of powers* masih terbatas pada ranah konseptual, belum menawarkan kriteria objektif yang dapat dijadikan pedoman operasional.[14] Keempat, belum ditemukan kajian yang secara menyeluruh menelaah berbagai alternatif hukum yang tersedia untuk memperluas kewenangan baru kepada MK, baik melalui mekanisme amandemen konstitusi maupun interpretasi konstitusional yang progresif.[15]

Penelitian ini berupaya mengisi kekosongan tersebut dengan memberikan kontribusi keilmuan yang bersifat aplikatif dan bermanfaat secara praktis. Kebaruan penelitian ini terletak pada tiga aspek utama. Pertama, penelitian ini mengembangkan model *hybrid advisory opinion* dengan bobot konstitusional yang secara formal bersifat tidak mengikat namun memiliki

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8 *UUD NRI 1945*.

9 Simamora & Manik, *supra* note 4.

10 Akmal, Muin & Karsa, *supra* note 6.

11 Wulandari, *supra* note 7.

12 M Fadly Hasibuan & Iza Rumesten, "Reorientasi Kewenangan Judicial Review Di Mahkamah Konstitusi Berdasarkan Prinsip Supremasi Konstitusi" (2023) 22:2.

13 Akmal, Muin & Karsa, *supra* note 6.

14 Labib Muttaqin, Andy Omara & Sudjito Atmoredjo, "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia" (2025) 10:1 Journal of Indonesian Legal Studies 44.

15 Puguh Apriyanto & Lego Karjoko, "Judicial Review of Constitutional Court Decisions (An Idea for Future Procedural Review System)" in Abdul Kadir Jaelani et al, eds, *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)* Advances in Social Science, Education and Humanities Research (Paris: Atlantis Press SARL, 2024) 468.

kekuatan moral konstitusional yang kuat melalui mekanisme transparansi dan akuntabilitas publik. Kedua, penelitian ini mengadaptasi konsep *loi organique Perancis* ke dalam sistem hukum Indonesia dengan mengusulkan gagasan pembentukan kategori "Undang-Undang Organik" yang wajib diuji konstitusionalitasnya sebelum diundangkan, sehingga tidak membebani MK dengan volume perkara yang berlebihan. Ketiga, penelitian ini merumuskan kriteria objektif dan prosedural yang ketat untuk membatasi ruang aktivisme yudisial, antara lain melalui penerapan *political question doctrine* dan prinsip *judicial self-restraint* yang dirumuskan ulang dengan karakter ketatanegaraan Indonesia.[16]

Berdasarkan latar belakang tersebut, penelitian ini merumuskan dua permasalahan pokok. Pertama, bagaimana tingkat urgensi serta peluang konstitusional bagi perluasan wewenang Mahkamah Konstitusi dalam pelaksanaan *pra legislative scrutiny* di Indonesia? Kedua, persoalan apa saja yang muncul pada tataran yuridis dan prosedural dalam implementasi penerapam kewenangan tersebut, serta bagaimana desain mekanisme yang tepat untuk menjaga keseimbangan *separation of powers?* Tujuan penelitian ini adalah untuk menganalisis landasan konstitusional dan urgensi perluasan wewenang MK dalam ranah *pre legislative scrutiny*, serta merumuskan desain implementasi yang realistis dengan mempertimbangkan tantangan yuridis, politik, dan kelembagaan yang ada. Untuk mencapai tujuan tersebut, penelitian ini menggunakan pendekatan yuridis normatif dengan metode komparatif. Bahan hukum primer yang digunakan meliputi UUD 1945, UU Nomor 7 Tahun 2020 tentang Mahkamah Konstitusi, putusan-putusan MK terkait, serta konstitusi dan regulasi negara pembanding khususnya Perancis. Bahan hukum sekunder berupa jurnal ilmiah, buku-buku hukum tata negara, dan artikel ilmiah yang relevan. Pengumpulan bahan hukum dilakukan melalui studi kepustakaan, sedangkan analisis dilakukan secara deskriptif analitis dengan membandingkan karakter sistem hukum Indonesia dan negara lain, sebagai dasar perumusan konsep yang sesuai dengan kebutuhan ketatanegaraan Indonesia

Urgensi dan Peluang Konstitusional Perluasan Wewenang Mahkamah Konstitusi

Pengujian undang-undang telah menimbulkan berbagai persoalan dalam sistem hukum Indonesia. Berbagai putusan MK pada kenyataannya tidak sekedar membatalkan norma, melainkan juga menafsirkan ulang ketentuan konstitusi sehingga memicu perubahan praktik ketatanegaraan yang signifikan.[17] Akan tetapi, perubahan tersebut seringkali terjadi setelah undang-undang berlaku dalam waktu yang cukup lama, sehingga konsekuensi hukum yang timbul telah meluas dan tidak mudah untuk

[16] Zainal Arifin Mochtar, "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes" (2025) 11:1 ConsRev 36–62.

[17] Arief Rokhman & Edi Pranoto, "Polemik Pelaksanaan Putusan Pengadilan Tata Usaha Negara" (2025) 22:1 j.n.a.huk 73.

dipulihkan sepenuhnya.[18] Situasi tersebut menegaskan adanya kelemahan mendasar dalam mekanisme pengawasan konstitusionalitas yang bersifat represif.

Permasalahan utama dari model *ex post review* sebenarnya terletak pada ketidakpastian hukum yang berkepanjangan. Ketika sebuah undang-undang dinyatakan inkonstitusional dan dibatalkan setelah berlaku bertahun-tahun, muncul pertanyaan tentang status tindakan hukum yang telah dilakukan berdasarkan undang-undang tersebut. [19] Meskipun MK dalam beberapa putusannya telah menerapkan prinsip *prospective overruling* atau membatasi keberlakuan putusan untuk masa mendatang, namun langkah ini belum sepenuhnya dapat menghilangkan ketidakpastian hukum yang telah terjadi.[20] Persoalan semakin meningkat serius ketika putusan MK bersifat *non-self-implementing*.[21] Dalam banyak kasus, tidak sedikit putusan MK yang tidak segera ditindaklanjuti oleh DPR dan Pemerintah, sehingga menimbulkan kekosongan hukum yang justru memperburuk ketidakpastian.[22]

Pembatalan undang-undang setelah diberlakukan tidak jarang menimbulkan kerugian sosial dan ekonomi yang tidak sedikit.[23] Apabila undang-undang yang dibatalkan mengatur sektor ekonomi atau investasi, pembatalan tersebut dapat mengganggu iklim investasi dan kepercayaan pelaku usaha terhadap stabilitas sistem hukum Indonesia.[24] Demikian pula pada undang-undang yang mengatur hak-hak konstitusional warga negara, pembatalan yang terlambat berarti telah terjadi pelanggaran hak konstitusional dalam rentang waktu tertentu yang seharusnya dapat dicegah sejak awal.[25] Oleh karena itu jaminan perlindungan hak konstitusional warga negara menuntut keberadaan mekanisme yang tidak hanya berhenti pada koreksi setelah pelanggaran terjadi, tetapi mampu mencegahnya sebelum berdampak luas.[26]

Kebutuhan akan mekanisme preventif semakin menguat ketika kita melihat kecenderungan meningkatnya *judicial activism* MK dalam beberapa tahun terakhir.[27] Pentingnya *judicial activism* untuk menegakkan nilai filosofis UUD

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[18] Sitinur Febby Pattimahu et al, "Menelisik Efektivitas Konstitusi : Independensi Lembaga KPK Pasca Putusan MK No.36 Tahun 2017 Sebagai Anomali Hukum" (2023) 3:1 JKK 76.

[19] Raihan Muhammad, "Peranan dan Problematika Mahkamah Konstitusi sebagai Positive Legislature di Tengah Regresi Demokrasi Indonesia" (2025) 10:1 Lex renaiss 65–93.

[20] Ali Alatas, Ficky M Zulfickar & Patio Alfredo Nugraha Hutabarat, "Teori Kemaslahatan Sebagai Batasan Judicial Activism Dalam pengujian undang-undang oleh Mahkamah Konstitusi" (2024) 4:2 JKD 148.

[21] Eka NAM Sihombing & Cynthia Hadita, "Bentuk Ideal Tindak Lanjut Atas Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang" (2022) 1:1 japhtnhan 35–46.

[22] *Ibid* at 15.

[23] Pradina Kurnia Sari Hidayah, Bambang Giyanto & Mala Sondang Silitonga, "Regulatory Impact Analysis Dalam Formulasi Kebijakan Pembentukan Peraturan Di Sekretariat Jenderal Dewan Perwakilan Rakyat Republik Indonesia" (2023) 4:3.

[24] Victor Imanuel W Nalle & Martika Dini Syaputri, "SROI: Metode Alternatif dalam Riset Evaluasi Pasca-Legislasi" (2021) 9:3 JurnalIUS-KHK.

[25] Vicko Taniady & Laili Furqoni, "Perluasan Kewenangan Mahkamah Konstitusi: Penerapan Constitutional Complaint dalam Menjaga Hak Konstitusional Warga Negara" (2022) 24:1 JJR 135–148 at 3.

[26] *Ibid* at 5–7.

[27] Mochtar, "Guarding Democracy", *supra* note 16.

1945 tidak dapat dipungkiri, namun terdapat problem implementasi pada adresat putusan yang perlu dicermati secara kritis. Bahkan berkembang istilah "komodifikasi kewenangan" untuk menggambarkan meluasnya kewenangan MK secara aktual melalui praktik aktivisme yudisial.[28] Fenomena ini menunjukkan bahwa dalam praktiknya, MK telah berperan tidak hanya sebagai *negative legislator* yang membatalkan norma inkonstitusional, tetapi juga sebagai *positive legislator* yang mengisi kekosongan norma melalui putusan-putusannya.[29] Dari kondisi ini timbul pertanyaan mendasar mengenai posisi legislator yang sesungguhnya, mengingat ketegangan yang terus terjadi antara fungsi yudisial dan mekanisme legislasi yang berdasarkan prinsip demokrasi.

Mekanisme *pre-legislative scrutiny* layak dipandang sebagai instrumen yang penting dan mendesak untuk dikaji penerapannya. Mekanisme ini akan bekerja sebagai pendeteksi dini terhadap inkonstitusionalitas undang-undang sebelum disahkan dan diberlakukan.[30] Sehingga kerugian yang ditimbulkan oleh pembatalan undang-undang dapat diminimalisir, bahkan dihindari sejak awal. Peluang *judicial preview* di Indonesia terbilang sangat terbuka, terutama jika merujuk pada pengalaman sukses negara-negara seperti Perancis, Austria, dan Jerman yang telah menerapkan mekanisme serupa selama puluhan tahun.[31]

1. Pembelajaran dari Model *Loi Organique* Perancis dan *Conceil Constitutionnel*

Sistem *loi organique Perancis* menawarkan model yang menarik untuk diadaptasi dalam pengembangan mekanisme serupa di Indonesia. Sejak Konstitusi Perancis 1958, sistem hukum Perancis mengenal kategori khusus undang-undang yang disebut *loi organique* atau undang-undang organik, yang mengatur hal-hal fundamental tentang penyelenggaraan kekuasaan publik.[32] Undang-undang kategori ini memiliki hierarki yang lebih tinggi dari undang-undang biasa (*loi ordinaire*) dan wajib diuji konstitusionalitasnya oleh *Conseil Constitutionnel* sebelum diundangkan.[33] Mekanisme tersebut telah berjalan efektif selama lebih dari enam dekade dan dinilai berkontribusi positif terhadap peningkatan kualitas produk legislasi sekaligus menekan potensi konflik konstitusional.[34]

Keunggulan model Perancis tercermin dari sejumlah karakteristik utama. Pertama, pengujian bersifat wajib untuk kategori *loi organique,* sehingga tidak bergantung pada inisiatif pihak tertentu untuk mengajukan permohonan.[35]

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[28] Syafa'at Anugrah Pradana et al, "Komodifikasi Kewenangan Mahkamah Konstitusi Republik Indonesia melalui Ikhtiar Aktivisme Yudisial" (2024) 5:2 ALJ 106–116.

[29] Muhammad, *supra* note 19.

[30] Noor Sidharta et al, "Judicial Preview on the Bill on International Treaty Ratification" (2017) 3:1 CONSREV 24.

[31] Rifa Qodar, "Kedudukan Mahkamah Konstitusi dalam Menyelesaikan Sengketa Kewenangan Lembaga Negara: Studi Komparatif dengan Mahkamah Konstitusi Jerman" (2024) 2:1 JLE 39–49.

[32] Wulandari, *supra* note 7.

[33] *Ibid* at 10.

[34] Akmal, Muin & Karsa, *supra* note 6 at 10.

[35] Dewi Nurul Savitri, "Constitutional Preview and Review of International Treaties: France And Indonesia Compared" (2019) 5:1 CONSREV 039.

Dengan pola demikian, setiap pengaturan yang menyentuh ranah fundamental negara dipastikan memperoleh pengawasan konstitusional sejak tahap awal. Kedua, pengujian dilakukan dalam jangka waktu yang relatif singkat (maksimal satu bulan, atau delapan hari dalam kondisi darurat), sehingga tidak menghambat proses legislasi secara berlebihan.[36] Ketiga, kewenangan *Conseil Constitutionnel* tidak terbatas pada pembatalan undang-undang secara keseluruhan, tetapi juga mencakup penilaian parsial terhadap sebagian pasal atau ayat tertentu inkonstitusional dengan memberikan arahan perbaikan yang spesifik. Keempat, putusan *Conseil Constitutionnel* bersifat final dan mengikat, sehingga memberikan kepastian hukum yang tinggi.[37]

Selain mekanisme *loi organique,* sistem ketatanegaraan Perancis juga mengenal mekanisme *advisory opinion* atau pendapat hukum yang dapat diminta oleh Presiden, Perdana Menteri, atau pimpinan parlemen terkait dengan konstitusionalitas rancangan undang-undang yang sedang dibahas.[38] Meskipun bersifat opsional dan tidak mengikat secara hukum, dalam praktiknya pendapat hukum *Conseil Constitutionnel* memiliki otoritas konstitusional yang sangat kuat dan hampir selalu dijadikan rujukan oleh pembentuk undang-undang.[39] Keberadaan mekanisme tersebut memberikan ruang konsultasi yang fleksibel kepada legislator tanpa harus menunggu selesainya proses legislasi, sehingga dapat mengantisipasi persoalan konstitusional sejak tahap awal perumusan.

Penerapan model Perancis ke dalam sistem hukum Indonesia tentu tidak dapat dilakukan secara copy-paste, mengingat perbedaan sistem hukum, struktur ketatanegaraan, dan kultur politik. Kendati demikian, prinsip-prinsip dasar dari sistem *loi organique* dapat diadopsi dengan penyesuaian yang diperlukan. Dalam kerangka Indonesia, dimungkinakan untuk merumuskan kategori "Undang-Undang Organik" yang mencakup pengaturan mengenai aspek-aspek fundamental seperti pemilihan umum, partai politik, lembaga negara, otonomi daerah, hak asasi manusia yang bersifat mendasar, serta anggaran negara.[40] Rancangan undang-undang yang termasuk dalam kategori ini wajib diuji oleh MK sebelum diundangkan, sementara undang-undang di luar kategori ini tetap mengikuti mekanisme pengujian ex post sebagaimana praktik yang berjalan saat ini.[41] Dengan pola selektif semacam ini, beban kerja MK tidak akan meningkat secara berlebihan karena tidak semua rancangan undang-undang harus melalui pengujian preventif.

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[36] Cholidin Nasir, "Judicial Review Di Amerika Serikat, Jerman, Dan Indonesia" (2020) 8:1 HP 67–80.

[37] Apriyanto & Karjoko, *supra* note 15.

[38] Ahmad Ahmad, Fence M Wantu & Dian Ekawaty Ismail, "Convergence of Constitutional Interpretation to the Test of Laws Through a Constitutional Dialogue Approach: Konvergensi Penafsiran Konstitusional Terhadap Pengujian Undang-Undang Melalui Pendekatan Constitutional Dialogue" (2023) 20:3 JK 514–535.

[39] Wulandari, *supra* note 7.

[40] Harry Setya Nugraha, "Gagasan Amandemen Ulang Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (2018) 3:1 JLR.

[41] Wulandari, *supra* note 7.

2. Peluang Perluasan Wewenang Mahkamah Konstitusi

Isu pokok dalam perdebatan mengenai perluasan wewenang MK terletak pada landasan konstitusional yang menopangnya. Pasal 24C ayat (1) UUD 1945 secara tegas membatasi ruang lingkup kewenangan MK, yaitu mengadili pada tingkat pertama dan terakhir yang putusannya bersifat final untuk menguji undang-undang terhadap Undang-Undang Dasar, memutus sengketa kewenangan lembaga negara, memutus pembubaran partai politik, dan memutus perselisihan tentang hasil pemilihan umum. Frasa "menguji undang-undang" dalam pasal tersebut apabila ditafsirkan secara bahasa, merujuk pada undang-undang yang telah disahkan dan diundangkan, bukan rancangan undang-undang yang masih dalam tahap pembahasan.[42] Oleh karena itu, gagasan pemberian kewenangan MK untuk melakukan pengujian sebelum pengundangan menuntut keberadaan landasan konstitusional yang tegas dan tidak menimbulkan ambiguitas.

Beberapa alternatif hukum yang dapat dipertimbangkan untuk memberikan kewenangan baru kepada MK. Pilihan yang paling kuat adalah melalui amandemen UUD 1945, khususnya Pasal 24C ayat (1). [43] Amandemen konstitusi merupakan jalur yang paling aman secara yuridis karena memberikan landasan konstitusional yang eksplisit dan tidak dapat diganggu gugat. Dalam kerangka *pre-legislative scrutiny*, amandemen dapat diwujudkan melalui penambahan huruf baru dalam Pasal 24C ayat (1) yang menyatakan bahwa MK berwenang "menguji rancangan undang-undang organik terhadap Undang-Undang Dasar sebelum disahkan" dan "memberikan pendapat hukum atas permintaan Dewan Perwakilan Rakyat atau Presiden mengenai konstitusionalitas rancangan undang-undang yang sedang dibahas".[44] Amandemen ini juga perlu dilengkapi dengan pasal baru yang mendefinisikan kategori undang-undang organik dan mengatur mekanisme dasar pengujiannya.

Alternatif kedua adalah melalui revisi UU Nomor 7 Tahun 2020 tentang Mahkamah Konstitusi tanpa mengamandemen UUD 1945. Pandangan ini berangkat dari asumsi bahwa ruang untuk memperluas kewenangan MK melalui undang-undang masih terbuka, sepanjang tidak bertentangan dengan konstitusi. [45] Akan tetapi, opsi ini menghadapi persoalan konstitusionalitas yang serius. Jika kewenangan baru diberikan melalui undang-undang tanpa amandemen konstitusi, maka undang- undang tersebut berpotensi diuji dan dibatalkan oleh MK sendiri karena dianggap telah memperluas kewenangan MK di luar yang ditentukan oleh konstitusi. Risiko ini menunjukkan pentingnya menjaga konsistensi dan pembatasan kewenangan MK agar tidak merusak integritas sistem hukum.

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[42] Edyson, *supra* note 2.

[43] Igam Arya Wada, Felix Alexander Kurniawan & Agnes Sinta, "Ius Constituendum Kewenangan Judicial Preview Di Mahkamah Konstitusi Republik Indonesia" (2023) 3:1 JKK 1.

[44] *Ibid*.

[45] Muhammad Daffa Alfandy, "Ekstensifikasi Kewenangan Mahkamah Konstitusi Melalui Konstruksi Mekanisme Constitutional Complaint dan Constitutional Question" (2024) 7:1 JAH 116–131.

Opsi ketiga adalah melalui interpretasi konstitusional yang bersifat progresif tanpa perubahan formal terhadap teks UUD 1945. Dalam beberapa putusan, MK telah memperlihatkan kecenderungan penggunaan tafsir yang melampaui pendekatan kebahasaan, dengan menekankan pemaknaan konstitusi secara dinamis sesuai dengan kebutuhan ketatanegaraan yang berkembang. [46] Dalam konteks ini, frasa "menguji undang-undang" dalam Pasal 24C ayat (1) dapat dimaknai lebih luas hingga mencakup pengujian rancangan undang-undang, terutama dalam bentuk pemberian pendapat hukum yang tidak menimbulkan akibat mengikat. Namun demikian, opsi ini juga menghadapi kritik kuat karena dinilai membuka ruang *judicial activism* yang melanggar prinsip *separation of powers.*

Pilihan keempat yang paling realistis adalah mengkombinasikan antara amandemen konstitusi terbatas dengan revisi UU Mahkamah Konstitusi. Amandemen konstitusi dilakukan hanya untuk memberikan landasan dasar kewenangan MK dalam melakukan *pre-legislative scrutiny*, sementara pengaturan teknis dan prosedural diatur dalam undang-undang dan peraturan internal MK. Model ini memberikan kepastian konstitusional sekaligus fleksibilitas dalam pengaturan teknis operasional. Pentingnya kepastian finalitas putusan sebagai pilar penjagaan konstitusi, yang hanya dapat diwujudkan melalui landasan konstitusional yang tegas.[47]

Tantangan Yuridis-Prosedural dan Desain Mekanisme Implementasi

Tantangan paling fundamental dalam perluasan wewenang MK untuk melakukan pre-legislative scrutiny adalah potensi pelanggaran prinsip *separation of powers* atau pemisahan kekuasaan. Dalam teori klasik Montesquieu, pemisahan kekuasaan bertujuan untuk mencegah tirani melalui distribusi kekuasaan kepada tiga cabang yang berbeda: legislatif, eksekutif, dan yudikatif.[48] Ketika MK diberikan kewenangan untuk menguji rancangan undang-undang sebelum disahkan, muncul kekhawatiran bahwa lembaga yudisial telah memasuki wilayah legislasi yang secara konstitusional menjadi kewenangan DPR bersama Presiden. Situasi ini berpotensi mengaburkan batas fungsi antar cabang kekuasaan dan membuka ruang konflik kelembagaan.

Beberapa akedimisi juga menyoroti kecenderungan MK yang tidak lagi terbatas pada pembatalan norma yang inkonstitusional tetapi juga turut mengisi kekosongan norma, bahkan menciptakan norma baru melalui putusannya.[49] Praktik tersebut menunjukkan bahwa dalam praktiknya telah terjadi pergeseran peran MK yang melampaui konsep *negative legislator*

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[46] Rivan Hidayat & Ritika Sahzana Adiba, "Reformulation of Absolute Judicial Review Authority in the Constitutional Court to Uphold the Principle of Constitutional Supremacy" (2023) 4:2 sosial 107–122.

[47] Moh Thohir & Didik Sukriono, "Implementation Authority of the Constitutional Court in the Indonesian Constitutional Law System" (2024) 6:2.

[48] Rohmatul Jannah et al, "Efektivitas Perkembangan Implementasi Trias Politica dalam Kinerja Lembaga Tinggi Negara" (2024) 1:4 16–27.

[49] Sulistyowati Sulistyowati et al, "Government Regulation Substituting the Law on Job Creation in the Perspective of Constitutional Law" (2023) 39:2 Jurnal Hukum 231.

sebagaimana dirumuskan dalam teori klasik. Apabila kemudian MK diberikan kewenangan untuk menguji rancangan undang-undang, dikhawatirkan peran positive legislator ini akan semakin menguat dan pada akhirnya melemahkan legitimasi demokratis proses legislasi.

Potensi menguatnya aktivisme yudisial menjadi semakin nyata ketika kita melihat kecenderungan peran MK yang meningkat dalam beberapa tahun terakhir. Sebuah studi internasional menyoroti fenomena judicial activism dan bangkitnya positive legislator dalam analisis konstitusional terhadap MK Indonesia.[50] Kajian tersebut mengajukan enam kriteria normatif untuk membatasi peran positive legislator MK, yang mencakup prinsip judicial self-restraint, penghormatan terhadap ruang diskresi legislator, penerapan *political question doctrine*, pengujian proporsionalitas intervensi yudisial, transparansi dalam pertimbangan hukum, serta akuntabilitas putusan. Rangkaian kriteria ini menjadi penting untuk diadopsi dalam desain mekanisme *pre-legislative scrutiny* agar perluasan kewenangan tidak menimbulkan judicial activism.

Di sisi lain, perdebatan mengenai finalitas dan kemungkinan kekeliruan (*fallibility*) dalam putusan MK turut memperumit persoalan ini.[51] Putusan MK bersifat final dan mengikat, namun pada saat yang sama tidak sepenuhnya bebas dari potensi kesalahan sebagai konsekuensi inheren dari proses peradilan. Dalam skema *pre-legislative scrutiny*, ketegangan ini menjadi lebih rumit objek yang dinilai masih berupa rancangan undang-undang yang belum mencapai bentuk final. Apabila MK memberikan penilaian yang keliru atau terlalu jauh mencampuri substansi pada tahap ini, dampaknya bisa sangat luas karena dapat menghambat atau bahkan menggagalkan proses legislasi yang sesungguhnya merupakan hasil kompromi politik yang demokratis.

1. Desain Mekanisme *Advisory Opinion* dengan *Safeguard* Konstitusional

Menjawab tantangan *separation of powers* dan risiko *judicial* activism, penelitian ini mengusulkan model hybrid "*advisory opinion* yang diberi bobot konstitusional" yang dirancang dengan safeguard yang ketat. Dalam desain ini, pendapat hukum MK terhadap rancangan undang-undang bersifat tidak mengikat secara yuridis (non-binding), namun memiliki bobot konstitusional yang kuat melalui mekanisme transparansi, kewajiban pubikasi, dan akuntabilitas politik. Dengan demikian, model ini dimaksudkan untuk menghormati supremasi DPR dan Presiden sebagai pembentuk undang-undang, sembari memberikan panduan konstitusional yang otoritatif agar potensi penggaran konstitusi dapat dikenali lebih dini.

Secara operasional mekanisme ini disusun dalam tiga tahap. Tahap pertama adalah tahap konsultasi awal yang bersifat opsional, Dimana DPR atau Presiden dapat mengajukan konsultasi informal kepada MK tentang isu

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[50] Ramlani Lina Sinaulan, Rahmat Saputra, & Sugeng Sugeng, "The Constitutional Court as a Positive Legislative through the Living Constitution Approach" (2025) 2:4 IJLS 70–84.

[51] Bakti Siahaan, Saleh Sjafei & Arfan Tarigan, "Adjudicating Certainty: Paradigms of Finality and Fallibility in the Decisions of Indonesia's Constitutional Court" (2025) IX:VI IJRISS 1–6.

konstitusional tertentu dalam draf rancangan undang-undang yang sedang dibahas. MK memberikan *preliminary opinion* yang bersifat tidak mengikat dan tidak dipublikasikan secara luas, sehingga tidak menimbulkan tekanan politik yang berlebihan dan memberikan ruang bagi dialog konstitusional yang konstruktif antara legislator dan MK sejak tahap awal. Tahap kedua adalah pengujian formal yang bersifat wajib untuk kategori Undang-Undang Organik. Setelah mendapat persetujuan oleh DPR dan Presiden, rancangan tersebut wajib dikirimkan kepada MK untuk diuji konstitusionalitasnya dalam batas waktu tertentu dengan putusan yang bersifat final dan mengikat. Tahap ketiga adalah tahap respon dan revisi. Untuk rancangan undang-undang di luar kategori organik, DPR atau Presiden dapat meminta advisory opinion kepada MK secara opsional. Jika MK memberikan pendapat bahwa terdapat masalah konstitusional dalam rancangan undang-undang, DPR dan Presiden memiliki tiga opsi: merevisi rancangan sesuai rekomendasi MK; tetap mengundangkan dengan memberikan alasan tertulis yang dipublikasikan bersamaan dengan pengundangan; atau menunda pengundangan untuk kajian lebih lanjut. Jika opsi kedua dipilih, maka undang-undang tersebut otomatis menjadi prioritas untuk diajukan *judicial review* oleh pihak yang berkepentingan setelah berlaku.

Untuk mencegah *judicial activism*, desain ini dilengkapi dengan beberapa pengamanan prosedural yang ketat. Pertama, penerapan kriteria *exceptionalitas*, di mana MK hanya dapat memberikan hanya pada kondisi tertentu seperti adanya kekosongan hukum, ancaman terhadap hak fundamental warga negara, atau potensi konflik kelembagaan yang serius.[52] Kedua, penerapan *political question doctrine*, di mana MK tidak dapat memberikan pendapat terhadap isu yang sepenuhnya merupakan kebijakan politik seperti besaran anggaran, prioritas pembangunan, atau pilihan kebijakan yang sama-sama konstitusional. Ketiga, prinsip proporsionalitas diterapkan sebagai ukuran bahwa setiap intervensi MK harus merupakan cara yang paling proporsional untuk mengatasi masalah dan manfaatnya harus lebih besar dibandingkan risiko terganggunya pemisahan kekuasaan. Aspek transparansi dan akuntabilitas ditempatkan sebagai unsur kunci guna menjaga legitimasi demokratis dan mencegah penyalahgunaan kewenangan.[53] Keterbukaan akses publik merupakan salah satu elemen penting dalam proses transparansi mengingat MK akan menilai rancangan undang-undang yang masih dalam proses pembahasan dan belum final. Prinsip transparansi diterapkan dalam beberapa mekanisme. Pertama, setiap permohonan pengujian atau permintaan *advisory opinion* yang diterima oleh MK dan dinyatakan lengkap wajib dipublikasikan di website resmi MK dalam waktu maksimal 3 hari kerja. Publikasi mencakup identitas pemohon, ringkasan permohonan, dan naskah rancangan undang-undang yang dimohonkan pengujian (dengan pengecualian untuk bagian yang bersifat rahasia negara). Langkah ini memungkinkan masyarakat mengetahui rancangan undang-undang apa yang sedang diuji beserta alasan pengujiannya.

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[52] Alatas, Zulfickar & Hutabarat, *supra* note 20.
[53] Alfandy, *supra* note 45.

Kedua, persidangan diselenggarakan secara terbuka dan dapat diakses oleh publik, baik secara langsung di ruang sidang maupun melalui *live streaming*. Namun demikian, untuk bagian persidangan yang membahas informasi yang bersifat rahasia negara atau rahasia pribadi, MK dapat melakukan persidangan tertutup dengan memberikan alasan yang jelas. Ketiga, putusan atau pendapat hukum MK wajib dipublikasikan secara lengkap, termasuk pendapat berbeda (*dissenting opinion*) jika ada.[54] Publikasi dilakukan segera setelah pengucapan putusan dan dapat diakses secara gratis oleh publik melalui website MK. Pertimbangan hukum harus disusun secara sistematis, dan komprehensif, sehingga dapat dipahami tidak hanya oleh kalangan hukum tetapi juga oleh masyarakat umum. Hal ini dikarenakan kualitas putusan dan transparansi merupakan kunci legitimasi MK sebagai lembaga penjaga konstitusi. Selain itu, partisipasi publik ditempatkan sebagai unsur pelengkap yang penting. Di samping mekanisme *amicus curiae*, MK dapat menyelenggarakan *public hearing* atau dengar pendapat publik yang didalamnya terdapat elemen masyarakat sipil, organisasi profesi, akademisi, dan kelompok kepentingan yang relevan untuk rancangan undang-undang yang memiliki dampak luas terhadap masyarakat.[55] Keterlibatan ini tidak hanya memperkaya perspektif MK dalam melakukan pengujian, tetapi juga memperkuat legitimasi demokratis dari keseluruhan proses pengujian.

2. Kategori Undang-Undang Organik dan Mekanisme Diferensiasi

Salah satu faktor penentu efektivitas model *loi organique* Perancis terletak pada adanya diferensiasi yang tegas antara undang-undang yang wajib diuji secara preventif dengan undang-undang biasa yang tetap mengikuti mekanisme pengujian *ex post*. Diferensiasi ini penting untuk dua alasan. Pertama, untuk menghindari beban kerja MK yang berlebihan jika semua rancangan undang-undang harus diuji sebelum disahkan. Kedua, untuk memfokuskan pengawasan preventif MK pada undang-undang yang benar-benar fundamental dan krusial bagi penyelenggaraan negara dan perlindungan hak konstitusional. Oleh karenanya penelitian ini mengusulkan enam kategori Undang-Undang Organik yang wajib diuji oleh MK sebelum diundangkan. Kategori pertama adalah undang-undang tentang pemilihan umum, termasuk pemilu legislatif, pemilu presiden, dan pemilu kepala daerah. Pengaturan di bidang ini berkaitan langsung dengan demokrasi dan kedaulatan rakyat, sehingga setiap cacat konstitusional berpotensi menimbulkan sengketa serius serta instabilitas politik.

Kategori kedua meliputi undang-undang tentang partai politik dan sistem kepartaian. Partai politik merupakan instrument utama demokrasi yang keberadaan dan perannya dijamin oleh konstitusi, sehingga pengaturannya harus mampu menyeimbangkan kebebasan berserikat dengan tuntutan

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[54] Gunawan Sri Wibowo & Sahril Fadli, "Dissenting Opinion of the Constitutional Court Justice in Regards to the Court Decision Number 90/PUU-XXI/2023" (2025) 5:01 flj 141–150.

[55] Cokorda Agung Anuradha Darmaning Ksatria, "Prinsip Amicus Curiae terhadap Putusan Hakim dalam Perkara Pidana di Indonesia" (2025) Ethics and Law j: -bus and n.a, online: <https://journals.ldpb.org/index.php/eljbn/article/view/255>.

akuntabilitas dalam kehidupan demokratis.[56] Kategori ketiga adalah undang-undang tentang lembaga negara, baik lembaga negara yang disebut dalam UUD 1945 maupun lembaga negara yang dibentuk dengan undang-undang seperti KPK, Ombudsman, dan lain-lain. Undang-undang ini mengatur struktur kekuasaan negara dan mekanisme *checks and balances*, sehingga kepastian konstitusional sejak awal menjadi kebutuhan yang tidak dapat ditawar.

Kategori keempat adalah undang-undang tentang otonomi daerah dan hubungan pusat dan daerah, termasuk pemerintahan daerah, pemilihan kepala daerah, serta pembagian kewenangan. Kategori kelima adalah undang-undang yang secara langsung mengatur hak asasi manusia fundamental, seperti hak atas kebebasan beragama, hak atas kebebasan berpendapat, hak atas pendidikan, hak atas kesehatan, dan hak-hak fundamental lainnya yang dijamin dalam Pasal 28 UUD 1945. Kategori keenam adalah undang-undang tentang anggaran negara dan keuangan negara, mengingat pengelolaan keuangan negara merupakan eleman sentral dalam penyelenggaraan negara yang harus sesuai dengan prinsip-prinsip konstitusional. Selanjutnya mengenai penentuan apakah suatu rancangan undang-undang termasuk dalam kategori organik atau bukan dilakukan pada tahap awal pembahasan oleh DPR dan Presiden. Jika terdapat perbedaan pendapat tentang kategorisasi ini, dapat diajukan kepada MK untuk dimintakan pendapat. Mekanisme ini memberikan kepastian sejak dini mengenai objek yang wajib diuji secara preventif dan mana yang tetap mengikuti mekanisme pengujian *ex post*.

3. Prosedur Operasional dan Jangka Waktu Pengujian

Aspek teknis dan prosedural merupakan unsur krusial yang kerap luput daro perhatian dalam pembahasan akademik tentang perluasan wewenang MK.[57] Tanpa perancangan tata cara operasional yang jelas dan realistis, mekanisme *pre-legislative scrutiny* hanya akan menjadi wacana normatif yang sulit diimplementasikan. Penelitian ini karena itu mengajukan suatu prosedur yang dirancang secara menyeluruh namun tetap efisien, dengan mempertimbangkan keseimbangan antara kebutuhan pengujian yang mendalam dengan urgensi proses legislasi. Prosedur diawali dengan pengajuan permohonan pengujian atau permintaan *advisory opinion* oleh DPR atau Presiden. Permohonan diajukan secara tertulis dalam Bahasa Indonesia dengan melampirkan naskah lengkap rancangan undang-undang, naskah akademik, dan risalah pembahasan yang relevan. Untuk kategori Undang-Undang Organik, pengajuan bersifat wajib dan dilakukan segera setelah rancangan disetujui oleh DPR dan Presiden, sedangkan bagi undang-undang lainnya pengajuan bersifat opsional dan dapat dilakukan pada tahap manapun dalam proses pembahasan.

Setelah permohonan diterima, MK melakukan pemeriksaan administrasi dalam waktu maksimal 7 hari kerja untuk memastikan kelengkapan dokumen dan kesesuaian dengan persyaratan formal. Jika permohonan

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[56] Fahri Hamzah, *Etika Parlemen Modern dan Sinergi Penegakan Etika Kelembagaan DPR RI dengan Partai Politik*, online: <https://berkas.dpr.go.id/akd/dokumen/MKD-53-3b6bcdcf20e2490a551168c48fc02571.pdf>.

[57] Pradana et al, *supra* note 28.

dinyatakan lengkap, MK melakukan pemeriksaan pendahuluan untuk menilai apakah permohonan memenuhi kriteria *exceptionalitas* dan tidak termasuk dalam kategori *political question*.[58] Pemeriksaan pendahuluan ini penting sebagai filter awal agar MK tidak terlibat dalam isu-isu yang murni bersifat kebijakan politik. Apabila permohonan tidak memenuhi kriteria, MK dapat menolak permohonan tanpa pemeriksaan substansi, sementara apabila permohonan diterima maka akan dilanjutkan ke tahap persidangan yang sifatnya terbuka untuk umum, kecuali untuk bagian tertentu yang melibatkan informasi yang bersifat rahasia. Dalam persidangan ini, MK mendengar keterangan dari pemohon (DPR atau Presiden), ahli hukum tata negara, praktisi, dan pihak-pihak yang berkepentingan. MK juga membuka kesempatan bagi *amicus curiae* atau "sahabat pengadilan" untuk memberikan pandangan akademis atau perspektif masyarakat sipil. Keterlibatan pihak-pihak tersebut dimaksudkan untuk memperkaya analisis konstitusional, sehingga pengujian tidak semata-mata bersifat yuridis, tetapi juga sensitive terhadap implikasi sosial yang lebih luas.

Jangka waktu pengujian ditetapkan secara tegas agar tidak menghambat dinamika legislasi, yakni maksimal 30 hari kerja sejak permohonan dinyatakan lengkap. Dalam kondisi tertentu yang sangat mendesak, jangka waktu dapat dipersingkat menjadi 15 hari kerja atas permintaan pemohon. Sebaliknya, jika diperlukan kajian yang lebih mendalam, jangka waktu dapat diperpanjang maksimal 15 hari kerja tambahan. Penetapan jangka waktu yang terukur mencerminkan upaya menyeimbangkan efisiensi dan kualitas pengujian, sehingga dapat menjamin ketepatan dan kedalaman pertimbangan MK.

4. Implementasi Bertahap dan Evaluasi Berkelanjutan

Mempertimbangkan tingginya kompleksitas dan sensitivitas perluasan wewenang MK, implementasinya perlu dilakukan secara bertahap dengan disertai evaluasi secara berkala. Implementasi bertahap ini penting untuk beberapa alasan. Dari sisi internal, untuk memberikan waktu bagi MK dalam memperkuat kapasitas kelembagaanya, baik melalui penambahan sumber daya manusia, pengembangan sistem informasi, dan penyusunan pedoman teknis. Dari sisi eksternal, DPR dan Pemerintah juga perlu untuk menyesuaikan proses legislasi mereka dengan mekanisme baru ini agar selaras. Selain itu, implementasi secara bertahap memungkinkan proses belajar institusional sehingga berbagai kekurangan dapat diperbaiki berdasarkan praktik nyata sebelum kewenangan tersebut di implementasikan secara menyeluruh.

Fase pertama yang dapat dilakukan dalam rentang waktu 1-2 tahun adalah persiapan dan sosialisasi. Pada periode ini, gagasan mengenai konsep pengujian rancangan undang-undang disosialisasikan kepada seluruh stakeholder, termasuk anggota DPR, pejabat pemerintah, hakim konstitusi, akademisi, dan masyarakat sipil. Bersamaan dengan itu, pembentukan Tim Perumus Amandemen UUD 1945 dan penyusunan Naskah Akademik juga dilakukan pada fase ini. Studi banding ke negara-negara yang telah

[58] Curtis Bradley & Eric A Posner, "The Real Political Question Doctrine" (2022) SSRN Journal, online: <https://www.ssrn.com/abstract=4172365>.

menerapkan sistem ex ante review seperti Perancis, Jerman, dan Austria juga diperlukan untuk memperkaya pengalam praktis. Diskusi melalui seminar nasional maupun regional juga berfungsi untuk menjaring pandangan yang beragam dari berbagai kalangan.

Fase kedua adalah fase legislasi yang berlangsung pada tahun ke-2 sampai ke-3. Pada fase ini, dilakukan proses amandemen UUD 1945 sesuai dengan prosedur konstitusional yang diatur dalam Pasal 37 UUD 1945, termasuk persyaratan persetujuan minimal 2/3 anggota MPR. Sejalan dengan itu, dilakukan penyusunan dan pembahasan RUU Perubahan UU Mahkamah Konstitusi yang mengatur secara rinci mekanisme *pre-legislative scrutiny*. *Public hearing* dan konsultasi publik perlu dilakukan secara intensif untuk memastikan bahwa desain yang dihasilkan mendapat dukungan luas dan mempertimbangkan berbagai perspektif. Fase ketiga adalah fase persiapan kelembagaan pada tahun ke-3 sampai ke-4. Setelah amandemen konstitusi dan revisi UU MK disahkan, MK perlu melakukan serangkaian persiapan kelembagaan. Langkah-langkah tersebut meliputi perumusan Peraturan MK mengenai tata cara pengujian rancangan undang-undang, pelatihan bagi hakim konstitusi dan staf MK tentang mekanisme baru ini, pembentukan unit kerja khusus yang menangani pre-legislative scrutiny, pengembangan sistem informasi dan database yang mendukung, serta sosialisasi kepada DPR dan Pemerintah tentang prosedur pengajuan permohonan.

Fase keempat pada tahun ke-4 sampai ke-5 dilaksanakan dalam bentuk *pilot project*. Pada periode ini, mekanisme *pre-legislative scrutiny* diimplementasikan secara terbatas pada kategori Undang-Undang Organik tertentu yang dipilih sebagai proyek percontohan, misalnya undang-undang tentang pemilu atau undang-undang tentang lembaga negara. Pembatasan ini bertujuan untuk mengidentifikasi berbagai kendala praktis yang mungkin tidak terantisipasi dalam pada tahap awal. Setelah sejumlah perkara selesai ditangani, maka dilakukan evaluasi menyeluruh dengan mengumpulkan masukan dari semua pihak yang terlibat.

Fase kelima adalah fase terakhir dimana implementasi penuh dimulai pada tahun ke-5 dan seterusnya. Apabila evaluasi proyek percontohan menunjukkan hasil yang positif dan capaian yang memadai dengan berbagai perbaikan yang telah dilakukan, mekanisme *pre-legislative scrutiny* dapat diimplementasikan secara penuh untuk semua kategori Undang-Undang Organik. Kendati demikian, evaluasi berkelanjutan tetap dilakukan secara berkala, misalnya dalam interval 2 tahunan, untuk menilai efektivitas pelaksanaan mekanisme ini dan mengidentifkasi penyempurnaan yang diperlukan. MK juga berkewajiban menyusun laporan tahunan khusus tentang pelaksanaan kewenangan *pre-legislative scrutiny* yang disampaikan kepada DPR dan dipublikasikan kepada masyarakat sebagai bentuk penerapan akuntabilitas.

Kesimpulan

Perluasan wewenang Mahkamah Konstitusi dalam melakukan *pra legislative scrutiny* menunjukkan urgensi yang kuat, apabila dikaitkan dengan berbagai persoalan yang muncul dari mekanisme pengujian secara *ex post facto* yang

tidak jarang menimbulkan ketidakpastian hukum dan kerugian sosial-ekonomi bagi masyarakat. Model *loi organique Perancis* dengan mekanisme *Conseil Constitutionnel* menawarkan pembelajaran berharga tentang sistem *ex ante review* yang telah terbukti efektif selama lebih dari enam dekade. Mengadopsi model ini di Indonesia sangat memungkinkan melalui penciptaan kategori Undang-Undang Organik yang wajib diuji konstitusionalitasnya sebelum diundangkan, dilengkapi dengan mekanisme *advisory opinion* untuk undang-undang di luar kategori tersebut. Dari sisi hukum, landasan konstitusional yang paling kokoh adalah melalui amandemen terbatas terhadap Pasal 24C UUD 1945 yang dilengkapi dengan revisi Undang-Undang Mahkamah Konstitusi, meskipun opsi-opsi alternatif juga perlu dipertimbangkan dengan cermat memperhatikan aspek konstitusionalitas dan kelayakan politik.

Tantangan utama dalam perluasan wewenang ini terletak pada potensi pelanggaran prinsip *separation of powers* dan kekhawatiran aktivisme yudisial berlebihan, yang dapat mengancam legitimasi demokratis proses legislasi apabila tidak dirancang dengan cermat. Untuk merespon tantangan tersebut, maka dirumuskan desain mekanisme hybrid berupa "advisory opinion dengan bobot konstitusional" yang disertai dengan pengamanan prosedural yang ketat. Pengaman tersebut diwujudkan melalui penerapan kriteria *exceptionalitas*, *political question doctrine*, dan prinsip proporsionalitas. Diferensiasi tegas antara Undang-Undang Organik yang wajib diuji secara preventif dengan undang-undang biasa yang tetap mengikuti mekanisme *ex post* menjadi kunci untuk menghindari beban kerja MK yang berlebihan. Selain itu, prosedur operasional yang efisien dengan jangka waktu maksimal 30 hari kerja, transparansi proses, dan mekanisme partisipasi publik melalui *amicus curiae* dan *public hearing* menjadi elemen penting untuk menjaga legitimasi dan akuntabilitas. Seluruh rancangan tersebut perlu diimplementasi secara bertahap melalui lima fase yang mencakup persiapan, legislasi, persiapan kelembagaan, pilot project, dan implementasi penuh, dengan evaluasi berkelanjutan untuk memastikan efektivitas dan melakukan penyempurnaan yang diperlukan. Dengan desain yang tepat dan implementasi yang hati-hati, perluasan wewenang MK dalam *pra legislative scrutiny* dapat menjadi instrumen penting untuk meningkatkan kualitas legislasi, memperkuat supremasi konstitusi, dan meminimalisir konflik konstitusional di masa mendatang.

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Defining the Boundaries of Morality, Rationality, and Justice in Constitutional Court Review of Open Legal Policy

Menentukan Batasan Moralitas, Rasionalitas, dan Keadilan dalam Tinjauan Mahkamah Konstitusional terhadap Kebijakan Hukum Terbuka

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Abstract
The Constitutional Court serves as the final interpreter of the 1945 Constitution of the Republic of Indonesia through its authority in judicial review. This authority has evolved to encompass the legislative domain, specifically regarding "open legal policy." In reviewing such policies, fundamental limits exist: morality, rationality, and intolerable injustice—standards that continue to undergo development. This study employs a normative-juridical research method with a case approach to analyze these limits within Constitutional Court decisions, and a conceptual approach to examine their underlying concepts. The findings reveal that morality, rationality, and intolerable injustice are not always applied collectively; they also function independently as limits, principles, and values. Furthermore, these standards are not only applied to open legal policy review but also serve as a mechanism of checks and balances and an instrument to control the distribution of power among state branches.

Keywords: Constitutional Court; Intolerable Limits; Open Legal Policy.

Abstrak
Mahkamah Konstitusi merupakan lembaga terakhir penafsir UUD NRI 1945 dalam kewenangannya menguji undang-undang. Dalam perkembangannya, pengujian ini tidak terbatas pada ranah yudikatif melainkan hingga legislatif, khususnya dalam bentuk open legal policy. Mengkaji tentang open legal policy, terdapat batasan fundamental yaitu moralitas, rasionalitas, dan ketidakadilan yang intolerable yang terus berkembang. Untuk menganalisis perkembangan tersebut, peneliti menggunakan metode penelitian yuridis-normatif dengan pendekatan kasus guna menganalisis batasan moralitas, rasionalitas, dan ketidakadilan yang intolerable pada putusan Mahkamah Konstitusi, serta pendekatan konseptual guna menganalisis konsep batasan tersebut. Peneliti menemukan bahwa moralitas, rasionalitas, dan ketidakadilan yang intolerable tidak selalu digunakan secara senafas, tetapi dapat pula digunakan secara terpisah, tidak hanya sebagai batasan tetapi juga sebagai prinsip dan nilai. Kegunaan moralitas, rasionalitas, dan ketidakadilan yang intolerable tidak hanya digunakan dalam praktik pengujian terhadap kebijakan hukum terbuka, melainkan juga dapat digunakan sebagai mekanisme check and balances antar cabang kekuasaan negara sebagai instrument yang mengontrol antar cabang kekuasaan.

Kata Kunci: Batasan yang Intolerable; Mahkamah Konstitusi; Open Legal Policy.

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Introduction

The Constitutional Court as the final institution that interprets the Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945) is the place where problematic laws are resolved.[1] In exercising its authority, the MK adheres to general principles of judicial process. This means that, in general, the MK also adheres to the principle of ius curia novit, which requires it to examine, adjudicate, and decide on any case brought before it. The principle of ius curia novit is a principle stipulated in Article 16 of the Judicial Authority Law, which means that courts are prohibited from refusing to examine, adjudicate, and decide on a case that has been submitted on the grounds that the law does not exist or is unclear.[2] This creates a polemic because sometimes the Constitutional Court, in adjudicating cases, must exercise judicial restraint for fear of acting as if it were a positive legislature and entering the domain of the legislative body. This controversy arises from petitions whose object is an article or law that contains an open legal policy.[3] As a result, the Constitutional Court generally rejects petitions because they are considered to be open legal policy on the grounds that the article or law is within the authority of the lawmaker to amend.[4]

Open Legal Policy constitutes a formulation of statutory norms for which the 1945 Constitution of the Republic of Indonesia does not provide clear limitations regarding "what" and "how" the substance of regulation must be stipulated in a statute. This means that the substance of such a norm is not regulated within the 1945 Constitution of the Republic of Indonesia, or that the Constitution merely grants a mandate to the legislature to further regulate a certain subject matter without providing limitations on the substance of the regulation to be enacted.[5] Through this definition, there is a consequence that the constitutionality of such statutory provisions represents the embodiment of the legislature's response to societal needs as expressed in legislation and may be amended at any time by the legislature. The concept of open legal policy first emerged in Constitutional Court Decision Number 10/PUU-III/2005, which examined the constitutionality of Article 59 paragraph (2) of

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1 Ousu Mendy & Ebrima Sarr, "The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia" (2025) 2:1 J Indones Const Law 1–22 at 2.

2 Muchammad Ali Safa'at, *Hukum Acara Mahkamah Konstitusi* (Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2019).

3 Iwan Satriawan & Tanto Lailam, "Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang" (2019) 16:3 J Konstitusi 559 at 561.

4 Syafa'at Anugrah Pradana et al, "Komodifikasi Kewenangan Mahkamah Konstitusi Republik Indonesia melalui Ikhtiar Aktivisme Yudisial" (2024) 5:2 Amsir Law J 106–116 at 103.

5 Gardha Galang Mantara Sukma, "Open Legal Policy Peraturan Perundang-undangan Bidang Politik Dalam Putusan Mahkamah Konstitusi (Studi terhadap Putusan MK Bidang Politik Tahun 2015-2017)" (2020) 5:1 J Lex Renaiss, online: <https://journal.uii.ac.id/Lex-Renaissance/article/view/16804/pdf> at 6.

Law Number 32 of 2004 on Regional Government concerning the nomination threshold for regional heads.[6]

Furthermore, this concept was reiterated in Constitutional Court Decision Number 51-52-59/PUU-VI/2008 by establishing a principle that the provision under review, in this case the presidential threshold in the Election Law, constitutes an open legal policy and represents a policy choice adopted by the legislature that must be deemed constitutional. [7] The principle emphasized in the decision can be found in the ratio decidendi point [3.17], which affirms that the content of a statute, even if considered poor, such as the presidential threshold[8] at that time, constitutes an open legal policy, and the Constitutional Court does not have the authority to declare such a statute unconstitutional, unless the legal policy clearly violates morality, rationality, and intolerable injustice.[9]

Based on the principles enshrined in the ratio decidendi of Constitutional Court Decision Number 51-52-59/PUU-VI/2008, in adjudicating cases involving provisions or statutes that contain open legal policy, the Constitutional Court must first consider whether such provisions clearly violate morality, rationality, and intolerable injustice. This can be observed in Constitutional Court decisions subsequent to the a quo decision, such as Case Number 3/PUU-VII/2009 concerning the judicial review of the Legislative Election Law, Case Number 4/PUU-VII/2009 concerning the judicial review of the Legislative Election Law and the Regional Government Law, Case Number 104/PUU-VII/2009 concerning the judicial review of the Presidential Election Law, Case Number 114/PUU-VII/2009 concerning the judicial review of the Constitutional Court Law and the Legislative Election Law, and Case Number 130/PUU-VII/2009 concerning Legislative Elections. The Constitutional Court's reasoning for rejecting these petitions was grounded in the position that policy choices made by the legislature are inherently constitutional and in the necessity of judicial restraint, as excessive intervention could result in overlapping authority encroaching upon the legislative domain as a positive legislator.[10] Furthermore, statutes or provisions containing open legal policy constitute detailed manifestations of constitutional mandates or societal

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6 *Putusan Mahkamah Konstitusi Nomor 10/PUU-III/2005*, Mahkamah Konstitusi.

7 *Putusan Mahkamah Konstitusi No 51-52-59/PUU-VI/2008*, Mahkamah Konstitusi.

8 *Presidential threshold, according to Lutfil Ansori, in his journal article entitled "A Review of the Presidential Threshold in the 2019 Simultaneous Elections" (2017) 4:1 Jurnal Yuridis 15 at p. 18, is a rule that determines the minimum percentage of votes that must be obtained by political parties in legislative elections in order to nominate candidates for President and Vice President in presidential elections to be held at a time different from the legislative elections.*

9 Mahkamah Konstitusi, *Putusan Mahkamah Konstitusi No. 51-52-59/PUU-VI/2008.*, *supra* note 8 at 187.

10 Bisariyadi Bisariyadi, "Yudisialisasi Politik dan Sikap Menahan Diri: Peran Mahkamah Konstitusi dalam Menguji Undang-Undang" (2016) 12:3 J Konstitusi 473 at 476.

needs, and if annulled by the Constitutional Court, could result in a legal vacuum in strategically important areas. [11]

In general, the limitations applied by the Constitutional Court in reviewing open legal policy are those articulated in ratio decidendi point [3.17] of Constitutional Court Decision Number 51-52-59/PUU-VI/2008. The most commonly applied limitation in the Court's review of statutes and or norms containing open legal policy is whether they violate morality, rationality, and intolerable injustice. However, in its subsequent development, the limitations of violating morality, rationality, and intolerable injustice have not always been applied verbatim. Frequently, the Constitutional Court employs different phrases to assess whether a provision violates morality, rationality, and intolerable injustice. In addition, in the development of its decisions, the Court has not consistently applied these limitations cumulatively in its legal reasoning.

The use of limitations that are not applied cumulatively reveals a discrepancy with the original formulation of open legal policy in Constitutional Court Decision Number 51-52-59/PUU-VI/2008. In Decision Number 51-52-59/PUU-VI/2008, the Court considered that *"...in the a quo case, the Court nevertheless cannot annul it, because what is considered poor does not necessarily mean unconstitutional, unless the legal policy clearly violates morality, rationality, and intolerable injustice."* However, in other decisions reviewing statutes containing or reflecting open legal policy, the Constitutional Court often does not apply these limitations in their entirety. This can be seen in several decisions, such as Decision Number 112/PUU-XX/2022, which reviewed the age limit for the Chairperson of the Corruption Eradication Commission, where the Court only applied the limitations of rationality and intolerable injustice, along with another limitation, namely exceeding the authority of the legislature, as the benchmark of review, without applying the limitation of morality.[12] The implications of such inconsistency create legal uncertainty regarding the benchmarks or limitations used in statutory review by the Constitutional Court. This legal uncertainty constitutes a paradox that may give rise to the absolutization of judicial power over the concept of freedom within the rule of law in the framework of representative democracy.[13]

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[11] Sholahuddin Al-Fatih, "Interpretation of Open Legal Policy By The Constitutional Judges In Judicial Review Of Parliamentary Thresholds" (2021) 6:2 Diponegoro Law Rev 231–246 at 240–241.

[12] Romi Galih Prabowo & Wahyu Donri Tinambunan, "Constitutional Implications of KPK Leadership Term Changes: Analysis of MK Decision No. 112/PUU-XX/2022 and Ruling Inconsistencies" (2023) 8:1 J Huk Volkgeist 108–116 at 110.

[13] Muhammad Addi Fauzani & Fandi Nur Rohman, "Urgensi Rekonstruksi Mahkamah Konstitusi Dalam Memberikan Pertimbangan Kebijakan Hukum Terbuka (Open Legal Policy)" (2020) 35:2 Justitia Pax, online: <https://ojs.uajy.ac.id/index.php/justitiaetpax/article/view/2501> at 148.

On the other hand, Mardian Wibowo explains that interpreting open legal policy as absolute freedom of the legislature constitutes a paradox that may eliminate the freedom of legal subjects governed by law.[14] Therefore, in order to establish checks and balances among state institutions, the researcher argues that these limitations must remain in place to safeguard the constitutional rights of citizens while still respecting the boundaries of authority so as to prevent overlapping powers among state institutions. Accordingly, tracing the development of the application of these limitations is crucial, not only for the development of judicial review of open legal policy, particularly for petitioners seeking judicial review of statutes containing or reflecting open legal policy, but also for the constitutional structure in maintaining continuity and checks and balances among state institutions. For this reason, this study examines the development of Constitutional Court decisions concerning the limitations of violating morality, rationality, and intolerable injustice used by the Court in adjudicating cases involving open legal policy.

In this study, the author employs a normative juridical research method, focusing on the development of limitations in Constitutional Court decisions in reviewing open legal policy, particularly the limitations of violating morality, rationality, and intolerable injustice.[15] This study also applies a case approach by examining Constitutional Court decisions that utilize the limitations of violating morality, rationality, and intolerable injustice, both explicitly and through alternative formulations, as well as a conceptual approach to examine the concept of the a quo limitations. Furthermore, the author analyzes legal materials using the method of systematic interpretation of primary legal materials in the form of Constitutional Court decisions that employ the limitations of violating morality, rationality, and intolerable injustice as benchmarks for open legal policy, supported by secondary and tertiary legal materials as conceptual reinforcement in determining these limitations. The collection of legal materials is conducted through library research by gathering Constitutional Court decisions reviewing open legal policy and applying the limitations of violating morality, rationality, and intolerable injustice, as well as books, journals, and literature that assist the author in identifying the significance of developments in the concept of these limitations. These findings are then elaborated using a descriptive evaluative method to assess the development of these limitations.

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[14] Mardian Wibowo, I Nyoman Nurjaya & Muchammad Ali Safaat, "The Criticism on the Meaning of "Open Legal Policy" in Verdicts of Judicial Review at the Constitutional Court Mardian Wibowo" (2018) 3:2 Const Rev 262 at 275.

[15] I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif" (2013) 1:1, Online: <https://ejournal.unipas.ac.id/index.php/KW/article/view/419/344>.

The Development of Open Legal Policy Decisions with Morality, Rationality, and Intolerable Injustice as Limiting Factors

1. Open Legal Policy Decisions with Morality, Rationality, and Intolerable Injustice as Limitations

In this study, the author examines ten decisions of the Constitutional Court that apply the limitations of morality, rationality, and intolerable injustice as parameters for assessing the constitutionality of legal norms within the realm of open legal policy. These ten decisions demonstrate the consistency of the Court in developing a doctrine that, although the legislature possesses policy making power, such discretion is not absolute and may be restricted when it violates the principles of morality, rationality, or gives rise to intolerable injustice.[16]

As a starting point, the author refers to Constitutional Court Decision Number 51-52-59/PUU-VI/2008 as the initial reference in examining the limitations of violating morality, rationality, and intolerable injustice. This reference leads the author to the understanding that the a quo limitations are intended to be applied in a unified manner, as reflected in ratio decidendi point [3.17], where the Court reasoned that "...the Court nevertheless cannot annul it, because what is considered bad does not necessarily mean unconstitutional, unless the legal policy clearly violates morality, rationality, and intolerable injustice." This legal reasoning is consistent with Constitutional Court Decision Number 010/PUU-III/2005. [17] In that decision, the Court emphasized that judicial review of norms must always consider constitutional dimensions related to substantive justice. Through grammatical interpretation, the a quo limitations constitute an inseparable unity and must be applied coherently.

In the second decision, the author examines Constitutional Court Decision Number 15/PUU-XV/2017, which reviewed the electoral threshold and parliamentary threshold under Law Number 8 of 2012. In the a quo case, the Court found that the electoral threshold[18] constituted a rule or norm that failed to satisfy the principle of justice. In consideration point [3.20], the Court examined the threshold requirement in Article 8 paragraph (2) by comparing it with the same provision in the previous Legislative Election Law. Through

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[16] Rahmat Muhajir Nugroho, Sobirin Sobirin & Reyhan Gymnastiar, "Judicial Activism vs. Electoral Justice: The Overlooked Purcell Principle in Indonesia" (2025) 32:2 J Huk IUS QUIA IUSTUM 361–386 at 367–377.

[17] Mahkamah Konstitusi, *Putusan Mahkamah Konstitusi No. 51-52-59/PUU-VI/2008.*, *supra* note 8.

[18] Electoral threshold, according to Sholahuddin Al-Fatih, in his journal article entitled "Legal Consequences of Threshold Regulation in Legislative Elections and Presidential Elections" (2019) 12:1 Jurnal Yudisial 17 at p. 18, is a legal provision defined as the minimum threshold for political parties to be eligible to participate in elections in the subsequent period.

this comparison, the Court found a legal fact that the requirements to participate in the 2014 election were more burdensome than those of the previous election period due to the imposition of a threshold, resulting in political parties that failed to meet the threshold being required to undergo a more stringent verification process. This constituted a form of injustice toward political parties that were required to undergo re verification after failing to qualify as participants in the previous election. Furthermore, in consideration point [3.21], the Court highlighted that the legislative objective of simplifying the number of political parties was implemented in a partial manner. The requirements should have been applied equally to all political parties. Finally, in consideration points [3.22] and [3.23], the Court affirmed that the phrase contained in the a quo article violated rationality, equality before the law, and constituted injustice. Accordingly, the Court provided a solution by reformulating Article 8 paragraph (2) to ensure compliance with rationality, equality, and justice. Subsequently, in addressing the constitutional argument concerning Article 208 of the Legislative Election Law, the Court examined the issue in consideration points [3.24] to [3.26]. In these considerations, the Court opined that the application of the parliamentary threshold[19] to regional legislative councils eliminated diversity, resulting in a closed regional political system that was inconsistent with the Constitution. Therefore, the Court partially granted the petition and declared the a quo provision conditionally unconstitutional. In the a quo decision, it can be observed that the Court annulled Article 8 paragraphs (1) and (2) on the grounds that the provisions violated rationality.[20]

In the third decision, the author examines Decision Number 15/PUU-XV/2017, which reviewed Law Number 28 of 2009 concerning double taxation in the imposition of taxes on heavy equipment. In its legal considerations, the Court cited decisions with final and binding force, namely Decision Number 1/PUU-X/2012 and Decision Number 3/PUU-XIII/2015, as the basis for adjudicating the a quo case. In the a quo case, the Court aligned Decision Number 1/PUU-X/2012 and Decision Number 3/PUU-XIII/2015 concerning the classification of heavy equipment as motor vehicles. Through these two decisions, it was established that heavy equipment does not fall within the category of motor vehicles. Furthermore, in consideration point [3.12], the Court affirmed that taxation of heavy equipment is permissible but must not

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[19] Parliamentary threshold, according to Nur'Ayni Itasari, in her journal article entitled "The Implementation of the Parliamentary Threshold in the 2009 General Election" (2013) 3:2 Al-Daulah Journal of Law and Islamic Legislation 356–374 at p. 361, constitutes a threshold mechanism for political parties participating in general elections to be included in the calculation of votes for the central House of Representatives, based on the total number of valid votes nationally multiplied by a certain percentage threshold, with the objective of simplifying the party system through limiting the participation of political parties based on the number of votes obtained in order to be able to send their representatives to parliament.

[20] *Putusan Mahkamah Konstitusi No 52/PUU-X/2012*, Mahkamah Konstitusi.

be interpreted to mean that heavy equipment constitutes a motor vehicle subject to vehicle tax. In consideration point [3.13], the Court emphasized the need to amend the a quo law in order to revise the conceptual basis for taxing heavy equipment under the motor vehicle tax regime. This was intended to ensure certainty, justice, and utility of taxation. Accordingly, the Court concluded that the a quo petition was legally grounded and declared the challenged article unconstitutional. In the a quo case, the challenged provision constituted a clear instance of injustice.[21]

In the fourth decision, the author examines Decision Number 22/PUU-XV/2017, which reviewed the minimum marriage age under Article 7 paragraph (1) of Law Number 1 of 1974 on Marriage. In the a quo case, the Court granted the petition on the grounds that the age differentiation created legal uncertainty and resulted in discrimination within the challenged provision. Such discrimination served as the basis for the Court to establish that the a quo norm violated morality, rationality, and intolerable injustice. Accordingly, the Court held that harmonization between the challenged provision and the Child Protection Law was necessary by equalizing the minimum marriage age for men and women in order to ensure legal certainty and eliminate gender discrimination. In the a quo case, the Court applied the limitations of morality, rationality, and intolerable injustice by partially granting the petition and ordering the legislature to amend the provision in accordance with the Court's ruling.[22]

In the fifth decision, the author examines Decision Number 53/PUU-XV/2017, which reviewed issues concerning political party verification and the presidential threshold under Article 173 paragraphs (1) and (3) and Article 222 of the Election Law. In its considerations, the Court held that the political party verification provisions violated rationality and constituted intolerable injustice, as well as infringed political rights and hindered regional diversity in a manner that threatened pluralism. According to the Court, the verification requirements for political parties participating in elections must consider fairness for all election contestants, regional expansion and demographic development, the dynamic nature of political parties, and the fulfillment of all requirements for election participation in a comprehensive manner. Where discrepancies exist with respect to these aspects, the provisions regulating political party verification are deemed to violate the aforementioned limitations. In contrast, the presidential threshold was not considered by the Court to constitute a discriminatory norm that reduced the constitutional rights of political parties. The Court reasoned that discrimination cannot be established solely on the basis of differential treatment but must extend to harm affecting all political parties. Accordingly, the Court partially granted the

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21 *Putusan Mahkamah Konstitusi No 15/PUU-XV/2017*, Mahkamah Konstitusi.
22 *Putusan Mahkamah Konstitusi No 22/PUU-XV/2017*, Mahkamah Konstitusi.

petition and declared Article 173 paragraph (3) unconstitutional. In the a quo case, the Court applied the limitations of morality, rationality, and intolerable injustice by partially granting the petition and declaring the phrase contained in Article 173 paragraph (3) unconstitutional.[23]

In the sixth decision, the author examines Decision Number 93/PUU-XVI/2018, which reviewed Article 92 paragraph (2) letter (c) of the Election Law. In its considerations, the Court examined the constitutional issue by comparing the a quo case with Decision Number 31/PUU-XVI/2018. After conducting this comparison, the Court held in consideration point [3.14] that there was no strong legal basis for determining the number of members of the Regency or Municipal Election Supervisory Committee. According to the Court, the a quo provision constituted an open legal policy and did not violate any applicable limitations. Furthermore, in consideration points [3.16] and [3.17], the Court considered factual circumstances indicating that the number of members did not disrupt the technical implementation of election stages, as election administration primarily depends on the professionalism of election organizers. Accordingly, the Court concluded that the petitioner's arguments were unfounded both because the provision did not violate the limits of open legal policy and because it did not create technical issues in practice. In the a quo case, the Court declared the petition inadmissible. Nevertheless, the Court articulated guiding principles to determine the parameters of morality, rationality, and intolerable injustice.[24]

In the seventh decision, the author examines Decision Number 112/PUU-XX/2022, which reviewed the constitutionality of Article 29 letter (e) and Article 34 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 on the Corruption Eradication Commission. In that case, a constitutional issue arose concerning the term of office of the Chairperson of the Commission, which the petitioner argued was discriminatory and lacked legal certainty. Based on this issue, the Court considered that Article 29 letter (e) of the Law explicitly did not contradict the Constitution. However, implicitly, the provision gave rise to issues of injustice and discrimination. The provision should also have been consistent with Article 34 of the same Law, which affected the exercise of the petitioner's constitutional rights. In Decision Number 5/PUU-IX/2011, the Court had previously reviewed Article 34 of the Law and limited its examination to the interpretation of interim replacement before the end of the term of office. Therefore, the current review was not barred by nebis in idem. Based on these considerations, in consideration point [3.19], the Court concluded that Article 29 letter (e) and Article 34 clearly resulted in legal uncertainty, injustice, and discrimination due to differences in terms of office between the Commission

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23 *Putusan Mahkamah Konstitusi No 53/PUU-XV/2017*, Mahkamah Konstitusi.
24 *Putusan Mahkamah Konstitusi No 93/PUU-XVI/2018*, Mahkamah Konstitusi.

and other independent institutions of constitutional importance. Accordingly, the Court granted the petition in its entirety. In the a quo case, the Court applied the limitations of violating rationality and intolerable injustice.[25]

In the eighth decision, the author examines Decision Number 90/PUU-XXI/2023, which reviewed Article 169 letter (q) of the Election Law. The constitutional issue concerned the age requirement for candidates for President and Vice President. Based on this issue, the Court first argued that the determination of eligibility requirements for presidential candidates falls within the authority of the legislature, but remains bound by guiding principles in law making, including rationality, non-discrimination, morality, justice, and conformity with Pancasila, the Constitution, and human rights. Second, the Court directly examined the age requirement under Article 169 letter (q) by referring to original intent, related Court decisions, and general principles. It was found that the minimum age requirement has been a subject of ongoing discourse since the amendment of the Constitution, as neither original intent, relevant decisions, nor principles explicitly stipulate such a requirement. Third, the Court interpreted the phrase "previously elected through a general election" as referring to positions such as provincial and regency or municipal heads. Fourth, the Court considered comparative constitutional practice, noting that many countries in Asia, Africa, and the Americas have heads of state or government under the age of forty. Fifth, the Court interpreted the petitioner's request to add the phrase "provided that the candidate has experience as a state official elected through elections" as referring to regional elections as part of the electoral regime. Based on these considerations, the Court identified injustice and insufficient rationality in consideration point [3.14] and partially granted the petition. In the a quo case, the Court applied limitations relating to insufficient rationality and intolerable injustice.[26]

In the ninth decision, the author examines Decision Number 116/PUU-XXI/2023, which reviewed the constitutionality of Article 414 paragraph (1) of the Election Law concerning the parliamentary threshold. In consideration point [3.13], the Court noted that parliamentary threshold provisions had been reviewed at least six times previously, four times under Law Number 8 of 2012 and twice under Law Number 7 of 2017. In consideration point [3.15], the Court cited pre Law Number 7 of 2017 decisions which unanimously held that determining the level of the parliamentary threshold falls within the authority of the legislature and does not violate political rights, popular sovereignty, electoral justice, or rationality. This position was reaffirmed in subsequent decisions reviewing the parliamentary threshold under Law Number 7 of 2017, as stated in consideration point [3.16]. However, in

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25 *Putusan Mahkamah Konstitusi No 112/PUU-XX/2022*, Mahkamah Konstitusi.
26 *Putusan Mahkamah Konstitusi No 90/PUU-XXI/2023*, Mahkamah Konstitusi.

consideration point [3.17], the Court emphasized the petitioner's arguments regarding the lack of theoretical and academic foundations for determining the parliamentary threshold. It was found that the absence of methodological and argumentative bases rendered the existing threshold irrational. Furthermore, this deficiency resulted in wasted votes and disproportionate elections, contradicting popular sovereignty and creating injustice, as considered in points [3.18] and [3.19]. Based on these considerations, the Court declared Article 414 paragraph (1) conditionally unconstitutional and partially granted the petition. In the a quo case, the Court applied the limitation of rationality, while not explicitly articulating limitations relating to morality or intolerable injustice.[27]

In the final decision, the author examines Decision Number 62/PUU-XXII/2024, which reviewed the constitutionality of Article 222 of the Election Law concerning the presidential threshold. The Court noted that at least thirty three previous petitions had challenged the same provision. In prior decisions, the Court consistently held that the presidential threshold constituted an open legal policy and remained constitutional unless it violated morality, rationality, or intolerable injustice. Accordingly, the Court revisited the boundaries of these limitations and examined the original intent underlying the presidential threshold. In consideration point [3.24], the Court found that the amendments to Articles 6 and 6A of the Constitution were intended to strengthen and purify the presidential system.

De facto, the presidential threshold did not strengthen the presidential system but instead blurred it by intersecting it with parliamentary logic. In practice, countries with established presidential systems and multiparty legislatures do not impose a presidential threshold for nominating presidential candidates.[28] Thus, Article 222 of the Election Law lacked alignment with the constitutional spirit of purifying the presidential system. Furthermore, in consideration point [3.25], the Court found that the presidential threshold lacked a clear academic basis and therefore violated rationality. The infringement of voters' constitutional rights due to the loss of rational choice, as well as the unequal treatment of political parties in nominating presidential candidates, constituted intolerable injustice. These issues were compounded by the inapplicability of the presidential threshold in simultaneous elections and the existence of conflicts of interest between the legislature and the legal product, which constituted a violation of morality as a limitation of open legal policy. Based on these considerations, the Court granted the petition in its entirety. In the a quo case, the Court applied the limitations of rationality and

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[27] *Putusan Mahkamah Konstitusi Nomor 116/PUU-XXI/2023*, Mahkamah Konstitusi.

[28] Riyadi Eko Prasetyo & Dr Sodikin Dr Sodikin, "Analysis presidential Threshold Perspective of Law Number 7 of 2017" (2025) 7:2 Int J Adv Eng Manag 269–275 at 273–274..

intolerable injustice, while moral considerations were inferred through indicators of conflicting interests rather than explicitly stated.[29]

Through these ten decisions, the author identifies the functional application of the limitations of morality, rationality, and intolerable injustice. Not all decisions applied these limitations cumulatively. At least two decisions applied only rationality, one decision applied only intolerable injustice, two decisions applied rationality and intolerable injustice, and five decisions applied all three limitations. These limitations function as benchmarks for assessing the constitutionality of open legal policy. Inconsistencies in their application create uncertainty regarding constitutional standards, as evidenced in Decision Number 90/PUU-XXI/2023. Therefore, the author considers it necessary to trace the development of the application of these limitations through the ten decisions discussed above in order to identify their significance, clarify their use and placement, and examine their development in Constitutional Court jurisprudence, which will be further analyzed in the subsequent chapter.

2. Analysis of the Use of the Limitations of Morality, Rationality, and Intolerable Injustice in the Significance of the Emergence of the Development of Limitations

In its development, the use of the limitations of "morality, rationality, and intolerable injustice" is not only applied in a single breath (cumulatively) as limitations, but may also be applied separately, as discussed in the previous chapter. In addition to such application, there are also developments in the use and placement of these limitations. Therefore, the researcher employs [Table 1] to elaborate the use and placement of the limitations in the ten Constitutional Court decisions mentioned above.

Table 1. The Limits of Morality, Rationality, and Justice in Constitutional Court Decisions

No.	Decision	Phrase of Limitation Used	Findings in the Court's Legal Considerations	Other Combined Limitations
1.	Decision Number 51-52-59/PUU-VI/2008	"...the Court nevertheless cannot annul it, because something considered to be poor does not necessarily mean unconstitutional, unless the legal policy product clearly violates morality,	In legal consideration [3.17] as a limitation.	1. The policy does not exceed the authority to enact statutes. 2. It does not constitute an abuse

[29] *Putusan Mahkamah Konstitusi No 62/PUU-XXII/2024*, Mahkamah Konstitusi.

		rationality, and intolerable injustice".		of power. It is not manifestly contrary to the 1945 Constitution.
2.	Decision Number 52/PUU-X/2012	• "…according to the Court, it does not fulfill the principle of justice because it imposes different requirements on the parties…" • "…fulfills the rationality of equality and justice …" • "…, in fact, is contrary to popular sovereignty, political rights, and rationality, therefore…"	In legal considerations [3.18], [3.23], and [3.25.1]. ● [3.18]: as a principle. ● [3.23] and [3.25.1]: as limitations in general.	1. Equality 2. Popular Sovereignty 3. Political Rights
3.	Decision Number 15/PUU-XV/2017	• "Based on the considerations set out in points 1) to 4), the Court is of the opinion that the petitioner has legal standing." • Point 3 letter e, "… the reason for the existence of injustice due to the imposition of PKB and BBNKB resulting in double taxation …"	In the consideration of legal standing [3.5] as a limitation.	-
4.	Decision Number 22/PUU-XV/2017	"… discriminatory policies make it difficult for the Court not to declare such policies as violating morality, rationality, not conflicting with political rights, and constituting	In legal consideration [3.10.5] as a limitation.	Political Right

		intolerable injustice …"		
5.	Decision Number 53/PUU-XV/2017	• "….. differential treatment is the cause of electoral injustice. Referring to one of the indicators of electoral justice is equal treatment …" • "… is something that can be justified insofar as it does not violate morality, rationality, and intolerable injustice. Interpreting morality in the formulation ……"	In legal consideration [3.13.7] as a limitation. And in the dissenting opinion as a limitation.	Differential treatment
6.	Decision Number 93/PUU-XVI/2018	"… is its conformity with morality, rationality, and the absence of intolerable injustice. Therefore, insofar as the intended open legal policy does not conflict with morality, rationality, and does not contain intolerable injustice, such legal policy cannot be declared contrary to the 1945 Constitution …"	In consideration [3.14] and its derivative points as values contained within the norm a quo.	Manifestly contrary to the 1945 Constitution.
7.	Decision Number 112/PUU-XX/2022	• "…….. may be set aside if it is contrary to morality, rationality, and results in intolerable injustice [vide Constitutional Court Decision Number 93/PUU-XVI/2018], constitutes an abuse of authority	In legal consideration point [3.17.2] and in the concurring opinion point [6.2] of Constitutional Justice Saldi Isra as a limitation.	1. Abuse of authority. 2. Arbitrary action. 3. Exceeding the authority of the lawmaker.

		(detournement de pouvoir), or is carried out arbitrarily (willekeur) and exceeds the authority of the lawmaker [vide Constitutional Court Decision Number 51/PUU-XIII/2015 and previous Constitutional Court decisions] and or is contrary to the 1945 Constitution." • "except where such policy choices clearly violate morality, rationality, and intolerable injustice"		
8.	Decision Number 90/PUU-XXI/2023	"… in several decisions related to legal policy, the Court has often taken the position that legal policy may be set aside if it violates the principles of morality, rationality, and intolerable injustice …"	In legal consideration point [3.13.2] as a principle.	-
9.	Decision Number 116/PUU-XXI/2023	"… Likewise, the determination of the threshold percentage falls within the authority of the lawmaker insofar as it does not conflict with political rights, popular sovereignty, and rationality."	In legal consideration points [3.15.2] and [3.18] as limitations.	1. Political rights. 2. Popular sovereignty.
10.	Decision Number	"… as stipulated in Article 222 of Law Number 7 of 2017, it not only conflicts with	In legal consideration	1. Political rights.

	62/PUU-XXII/2024	political rights and popular sovereignty but also violates morality, rationality, and intolerable injustice, and is manifestly contrary to the 1945 Constitution of the Republic of Indonesia, thus providing strong and fundamental reasons for the Court to depart from its position in previous decisions …"	point [3.26] as a limitation.	2. Popular sovereignty . 3. Manifestly contrary to the 1945 Constitution of the Republic of Indonesia.

Through the ten decisions presented in [Table 1], the development of Constitutional Court decisions concerning open legal policy demonstrates that morality, rationality, and intolerable injustice do not always function as limitations in the review of open legal policy. There are eight decisions that position "morality, rationality, and intolerable injustice" as limitations in examining open legal policy. Furthermore, two of these decisions also employ the phrase "principles" of "morality, rationality, and intolerable injustice" in reviewing open legal policy, and one decision outlines that "morality, rationality, and intolerable injustice" in the review of open legal policy constitute "values" that must be contained within the norm a quo.

In the development of the decisions above, it can also be observed that "morality, rationality, and intolerable injustice" as limitations, principles, and values do not always form a single unified set. In several decisions, other limitations are also included or used simultaneously, either as characteristics, complements, or independent standards of review. The other limitations included alongside morality, rationality, and intolerable injustice include "discriminatory nature, political rights, the principle of popular sovereignty, the principle of the rule of law, the principle of equal treatment, the principle of guarantees of fair legal certainty, not exceeding the authority to enact laws, not constituting an abuse of power, and not being manifestly contrary to the 1945 Constitution".

These developing limitations may serve as evidence of violations of morality, rationality, and intolerable injustice, such as, for example, discriminatory characteristics and the principle of equal treatment. In addition, some limitations replace one of the elements of morality, rationality, and intolerable injustice, as illustrated in Decision Number 116/PUU-XXI/2023, which employs the limitations of political rights, popular sovereignty, and rationality. Thus, in the development of the use of the limitations of morality, rationality,

and intolerable injustice, the Court does not rely solely on these three limitations but may also substitute them with other limitations.

Such development constitutes a form of expansion of the authority of the Constitutional Court in reviewing open legal policy while still referring to the initial limitations formulated, namely the limitations of morality, rationality, and intolerable injustice. For example, the limitation of morality is not interpreted solely as morality within the 1945 Constitution. Beyond that, such morality also refers to the life of the nation and the state, which may be manifested through other principles such as the principle of popular sovereignty and the principle of political rights.[30] The same applies to other limitations such as rationality and intolerable injustice. This is also in line with the view of Constitutional Justice Saldi Isra, who states that in understanding the constitution, the Court cannot always think textually but must also adopt a progressive contextual approach while still adhering to the lines of demarcation within the constitution and the values contained therein.[31]

In addition, the Court may also employ standards of review and limitations other than morality, rationality, and intolerable injustice, where the use of such alternative standards and limitations may directly demonstrate violations of the limitations, principles, or values of morality, rationality, and intolerable injustice within an open legal policy norm. This is closely related to the doctrine of the living constitution[32] as it develops in Indonesia, in which the Court does not assess cases merely in a textual manner but expands the assessment into a contextual one while still referring to the lines of demarcation of the limitations and values within the constitution, in this case the limitations of morality, rationality, and intolerable injustice.[33]

This development is a logical consequence of constitutional flexibility following the amendments in the reform era, such that it affects not only the formal

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[30] Annisa Salsabila, Tria Noviantika, & Ahmad Yani, "Initiating Constitutional Morality: Political Intervention, Ethical Reinforcement, and Constitutional Court Decisions in Indonesia" (2024) 10:2 Const Rev 505–537 at 520.

[31] Nurrahman Aji Utomo, "Dinamika Hubungan Antara Pengujian Undang-Undang dengan Pembentukan Undang-Undang" (2016) 12:4 J Konstitusi 825 at 833.

[32] Living Constitution, according to Fakhris Lutfianto Hapsoro and Ismail, in "Interpretation of the Constitution in Constitutional Review to Realize the Living Constitution" (2021) 50:4 Jurnal Hukum Pembangunan 992 at 998, is a concept that developed in the United States in which the Constitution is not only understood textually but also needs to be elaborated in light of developments occurring in society, so that the Constitution is not merely understood literally but also contextually.

[33] Muhammad Addi Fauzani et al, "Living Constitution in Indonesia: The Study of Constitutional Changes Without A Formal Amendment" (2020) 7:1 Lentera Huk 69 at 71–72.

aspects[34] of the constitution but also the material aspects[35] in its interpretation and implementation, including open legal policy and its limitations. After examining the development of formal usage, the researcher needs to explore the material utility of morality, rationality, and intolerable injustice through Constitutional Court decisions within constitutional practice in Indonesia.

Analysis of the Utility Value of Limitations in Constitutional Practice

Normatively, the limitations, principles, and values of "morality, rationality, and intolerable injustice" have utility as standards of review in the judicial review of statutes in the practice of the Mahkamah Konstitusi. However, beyond this utility, a deeper understanding is required regarding the essential elements contained within these limitations, principles, and values. With respect to morality, its utility may be elaborated more broadly through the dialectic between Friedrich Nietzsche and Immanuel Kant. In his work entitled Groundwork of the Metaphysics of Morals, Kant presents a moral foundation based on values of good and evil that are universal, measurable by all individuals using the same method and yielding the same results.[36] Therefore, through Kant's work, the standard of morality may be tested through uniform assessments by all individuals without distinguishing situations and conditions, such as helping an elderly person without considering status and without expecting any reward as a truly moral act.

In contrast to Kant's view, Friedrich Nietzsche emerges as the antithesis of Kant's moral theory. According to Nietzsche, morality is not a value that can be assessed universally, but rather a value that has different standards in each action, which also refer to who the subject is, what the object is, and how the conditions are. Nietzsche argues that morality is a value that arises from a particular condition derived from experience, customs, and or the condition of an individual or a group.[37] As an example, Nietzsche compares the morality of workers or laborers with that of capital owners. In the same act, namely rebellion carried out by workers or laborers, the workers or laborers will state

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[34] The formal component of the 1945 Constitution of the Republic of Indonesia, according to Manfred Nowak, Djumantoro Purbo, and Sri Sulastini, in the book Pengantar Pada Rezim HAM Internasional (Jakarta: Raoul Wallenberg Institute, 2003) at 15, refers to the part of the constitution that contains matters concerning power as well as the limitations on the powers of state institutions and governing bodies.

[35] The material component of the 1945 Constitution of the Republic of Indonesia, according to ibid., consists of values, objectives, and goals to be achieved by the state, democracy, social justice, good governance, environmental protection, and fundamental human or citizens' rights.

[36] Immanuel Kant, *Dasar-Dasar Metafisika Moral* (Sleman: Insight Reference, 2022) Cetakan Kedua at 10.

[37] Friedrich Nietzsche, *The birth of tragedy and The genealogy of morals* (Garden City, N.Y., Doubleday, 1956) at 22–23.

that the act of rebellion is patriotic and moral. Meanwhile, capital owners will state that such an act is unpatriotic and immoral. Through this example, Nietzsche seeks to demonstrate that moral values are not universal values, but rather sectoral values originating from customs or from the a priori perspectives of each subject.

These two types of morality are analogous to ius cogens and ius dispositivum in international law. This indicates that in their application within proceedings before the Constitutional Court, such limitations, principles, or values must also be distinguished in their use. For instance, in cases reviewing provisions in the Criminal Code or provisions containing the constitutional rights of every person, the morality applied is universal morality as proposed by Kant. Meanwhile, with respect to technical rules, systematics, and matters that differ and are not possessed by every legal subject, such as the system of general elections, procedures for general elections, and the determination of membership numbers in an institution, the morality applied is sectoral morality, as there are distinguishing factors among subjects in assessing such determinations.

With regard to rationality, its use as a standard of review must at least be examined from two perspectives, namely the formal aspect as written in the statute, and the material aspect in terms of its utility, which must be able to exist not only today but also in the future. This is reflected in the dialectic between Georg Wilhelm Friedrich Hegel and Karl Marx. According to Hegel, rationality is not based on empirical reality but on something holistic in nature, referred to as the whole.[38] This whole is a manifestation of ideas expressed in the real world. This creates the conception that ideas constitute the primary whole, serving as the key to shaping the secondary real world into a better condition.[39] Such rationality forms the basis of the material aspect to produce norms capable of addressing future challenges, not merely existing problems of the present. This Hegelian thought becomes the thesis for Karl Marx's critique, which asserts that Hegel's rationality constitutes an inverted method.

According to Marx, rationality should originate from the real world and then be manifested into ideas. Thus, the real world is primary, while ideas are secondary, forming thought to address problems that exist today.[40] Through this dialectic, the use of rationality in statutory review may be applied as a standard of review when a norm contradicts existing conditions and when

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[38] Charles Barbour, "The Logic Question: Marx, Trendelenburg, and the Critique of Hegel" (2023) 32:3 Hist Mater 252–281 at 274.

[39] Andi Muawiyah Ramly, *Peta Pemikiran Karl Marx: (materialisme dialektis dan materialisme historis)*, cetakan iv edn (Yogyakarta: LKiS, 2004) at 68.

[40] Pham Thi Kien, "Marxist philosophy and its influence on today's world" (2025) 22:1 Kalagatos ek25008 at 8.

such a norm in the future has the potential to violate rationality and cause harm to all people.

With respect to intolerable injustice, it may be applied using the perspective of John Rawls. According to Rawls, justice consists of social values distributed equally, except where unequal distribution benefits everyone.[41] When a norm a quo contains values that cause harm to parties directly affected by the norm, it may be said that such a norm constitutes intolerable injustice. Based on the explanation above, it can be seen that morality, rationality, and intolerable injustice, whether as limitations, principles, or values in statutory review, may normatively be applied in accordance with the determinations described above.

Accordingly, these three limitations become the key of judicial legal policy that may be expanded into principles, doctrines, or norms. Such expansion must continue to observe the fundamental values, namely the limitations of morality, rationality, and intolerable injustice as standards of review in the judicial review of statutes containing or embodying open legal policy. This is useful in the practice of statutory review not only for the Constitutional Court, but also for petitioners in formulating petitions for judicial review of statutes containing or embodying open legal policy.

Furthermore, from a practical perspective, the utility of these limitations does not function solely within the practice of statutory review before the Constitutional Court. Beyond that, such limitations, principles, and values also hold significance in state governance practices. Within the concept of separation of powers, there exists a mechanism of checks and balances among branches of state power to prevent the absolutism of power within a single branch by reducing the role of other branches.[42] The limitations, principles, or values as described above function as forms of checks and balances that must be observed by branches of state power outside the judicial institution. In the context of lawmaking, the legislative branch, particularly in enacting statutes containing or embodying open legal policy, must align with and not contradict the limitations, values, or principles of “morality, rationality, and tolerable justice”. Similarly, the executive branch in carrying out governance is also required to comply with morality, rationality, and tolerable justice.

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41 Andra Triyudiana & Putri Neneng, “Penerapan Prinsip Keadilan Sebagai Fairness Menurut John Rawls Di Indonesia Sebagai Perwujudan Dari Pancasila” (2024) 2:01 Soll J Kaji Kontemporer Huk Dan Masy, online: <https://journal.forikami.com/index.php/dassollen/article/view/528> at 7–9.

42 Ria Casmi Arrsa, “Pemilu Serentak dan Masa Depan Konsolidasi Demokrasi” (2016) 11:3 J Konstitusi 515 at 533.

Conclusion

In conclusion, it can be observed that the limitations of "morality, rationality, and intolerable injustice" continue to develop. Such development remains within the lines of constitutional demarcation as well as the values contained in the constitution that serve as the limitations, namely morality, rationality, and intolerable injustice. Initially, these limitations emerged and were applied cumulatively. However, in their development, these limitations are not always applied cumulatively, but may also be applied in an alternative-substitutive manner alongside other limitations introduced by the Mahkamah Konstitusi. In addition, the positioning of "morality, rationality, and intolerable injustice" does not always function as limitations, but may also be applied as values or principles contained within norms embodying open legal policy and which may not be deviated from by either the legislature or the implementers of statutes. Accordingly, in state practice, such limitations, principles, and values constitute obligations that must be observed by all branches of power as a mechanism of checks and balances among state institutions in order to prevent overlapping of powers.

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Green Constitution: A Normative Basis for Protecting the Right to a Healthy Environment in Indonesia

Green Constitution: Landasan Normatif untuk Melindungi Hak atas Lingkungan Hidup yang Sehat di Indonesia

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Abstract
The intensifying environmental degradation in Indonesia reveals a gap between the constitutional guarantee of a healthy environment and actual state governance. This discrepancy underscores the urgent need to reinforce the Green Constitution as a normative basis for safeguarding citizens' ecological rights and ensuring sustainable development. This study analyzes the Green Constitution's position within the 1945 Constitution of the Republic of Indonesia and its implications for state responsibility and environmental policy. Employing a normative juridical approach, this research argues that the Green Constitution necessitates reinterpreting state control over natural resources as a constitutional obligation to uphold ecological sustainability and intergenerational justice. However, implementation faces obstacles, including lax law enforcement, the prioritization of economic interests in development policies, and constraints on regional governments' authority. Therefore, this study recommends policy reconstruction through ecological decentralization, enhanced corporate accountability, a proactive role for the Constitutional Court, and the integration of sustainability principles into legislation and national development policies.

Keywords: Eco-constitutionalism; Ecological Rights; Intergenerational Justice.

Abstrak
Kerusakan lingkungan yang terus meningkat menunjukkan adanya kesenjangan antara jaminan hak konstitusional atas lingkungan hidup yang sehat dan praktik penyelenggaraan negara di Indonesia. Kondisi tersebut menegaskan urgensi penguatan Green Constitution sebagai landasan normatif, untuk memastikan perlindungan hak ekologis warga negara dan keberlanjutan pembangunan. Penelitian ini bertujuan menganalisis kedudukan Green Constitution dalam UUD NRI 1945 serta implikasinya terhadap tanggung jawab negara dan arah kebijakan lingkungan. Menggunakan pendekatan yuridis normatif, penelitian ini menyatakan Green Constitution menuntut reinterpretasi penguasaan negara atas sumber daya alam sebagai kewajiban konstitusional, untuk menjaga keberlanjutan ekologis dan keadilan antargenerasi. Namun implementasinya terhambat oleh lemahnya penegakan hukum, dominasi kepentingan ekonomi, dan pembatasan peran daerah. Penelitian ini merekomendasikan rekonstruksi kebijakan melalui desentralisasi ekologis, penguatan pertanggungjawaban korporasi, peran progresif Mahkamah Konstitusi, serta integrasi prinsip keberlanjutan dalam seluruh legislasi dan kebijakan pembangunan nasional.

Kata Kunci: Eco-constitutionalism; Hak Ekologis; Keadilan Antargenerasi.

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Introduction

The protection of the environment has, in recent times, emerged as an increasingly significant constitutional issue within modern systems of governance. Numerous states have incorporated ecological values into their constitutions as an expression of the state's responsibility to ensure the sustainability of both human life and the natural world. This concept is known as the Green Constitution, a framework that positions environmental protection as an inherent component of the fundamental principles of the constitution and of human rights.[1] In the Indonesian context, recognition of the right to a good and healthy environment is expressly affirmed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The provision stipulates that every person has the right to live in physical and spiritual prosperity, to have a place of residence, and to obtain a good and healthy environment.[2]

Furthermore, Article 33 paragraphs (3) and (4) of the 1945 Constitution affirm that the land, waters, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people, in accordance with principles of sustainability and environmental stewardship. This formulation indicates that the state not only holds authority over natural resources but also bears a constitutional obligation to manage them in a just and sustainable manner.[3] In this context, the principle of the Green Constitution requires a balance between economic interests and environmental preservation. However, in constitutional practice, this constitutional idealism has not yet been fully implemented in state policies and administrative actions.

Empirical conditions indicate that Indonesia continues to face serious environmental degradation resulting from excessive exploitation of natural resources, particularly in the mining sector. Uncontrolled mining activities frequently lead to ecosystem degradation, water pollution, deforestation, and a decline in the quality of life of communities living in mining areas.[4] Kabaena Island in Bombana Regency, Southeast Sulawesi, for instance, constitutes a tangible example of how extensive nickel mining exploitation has generated

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both ecological and social damage. This phenomenon demonstrates a gap between constitutional principles guaranteeing the right to a healthy environment and the reality of their implementation in practice.[5]

One of the principal causes of the weak implementation of the Green Constitution lies in the ineffectiveness of environmental law enforcement. Many environmental violations are not addressed decisively, due to limited institutional capacity among enforcement bodies, a lack of transparency, and the presence of conflicts of interest between economic objectives and conservation.[6] In many cases, corporations proven to have caused environmental damage instead receive political or administrative protection. This condition eliminates deterrent effects and reinforces a culture of impunity in environmental law violations. Consequently, the state's responsibility to guarantee citizens' constitutional right to a good and healthy environment becomes neglected.

The problem has become more complex with the centralization of authority in the mining sector through Law Number 23 of 2014 on Regional Government and Law Number 3 of 2020 on Mineral and Coal Mining. This policy transfers a substantial portion of licensing and supervisory authority over mining activities from regional governments to the central government.[7] Although intended to strengthen oversight and prevent licensing abuses, the policy indirectly restricts the capacity of regional governments to protect the environment within their territories. In fact, regional authorities are the closest institutions to local communities and possess the most direct understanding of local ecological conditions. This centralization of authority creates a disparity between regional responsibility for environmental sustainability and the limited powers available to them.

From the perspective of the Green Constitution, this condition reflects a contradiction between constitutional ideals and the implementation of sectoral policies. The Constitution requires the state to act proactively in maintaining a balance between development interests and environmental protection. However, in practice, policies that are excessively oriented toward economic growth frequently disregard the principle of ecological sustainability.[8] As a consequence, citizens' constitutional right to a good and

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healthy environment becomes vulnerable to violation. The state appears to fail in carrying out its constitutional obligation as the guardian of the environment, namely the primary protector of environmental sustainability for the benefit of present and future generations.[9]

Several previous studies have highlighted the urgency of strengthening the right to a good and healthy environment within Indonesia's constitutional system. Butt and Murharjanti (2021), in their article The Constitutional Right to a Healthy Environment in Indonesia, demonstrate that although Article 28H paragraph (1) of the 1945 Constitution explicitly guarantees the right to a good and healthy environment, the right is still rarely articulated effectively in legal practice and in the decisions of the Constitutional Court. This is due to the weak normative construction linking environmental rights to concrete judicial and administrative instruments.[10] Similarly, Haryani (2025), in the study Green Constitution in the Indonesian Constitution and Its Interpretation by the Constitutional Court, asserts that the principle of sustainability is indeed reflected in several constitutional provisions, particularly Article 33 paragraphs (3) and (4). However, its implementation in national policies has not yet fully internalized the paradigm of eco-constitutionalism, resulting in a continuing gap between constitutional norms and sectoral policies.[11] Meanwhile, Daffa Ladro Kusworo (2024), in the study Green Constitutional Paradigm for Sustainable Environmental Development, explains that several countries have successfully embedded the principles of a green constitution within their legal systems. However, the research remains primarily comparative in nature and does not yet provide an applicable theoretical framework for the Indonesian context.[12] Thus, it can be observed that previous studies tend to remain at the conceptual level and have not comprehensively examined the normative foundations capable of realizing the green constitution within national constitutional practice.

This research offers novelty by proposing the green constitution as a normative foundation that systematically integrates the principles of sustainability and the right to a good and healthy environment into Indonesia's constitutional legal system. Unlike previous studies that merely emphasize implementation

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Development." *Jurnal Media Hukum* 10.2 (2022): 110-121. https://doi.org/10.59414/jmh.v10i2.525

9 Absori, et al. "Legal Policy on Eco-Partnerships To Achieve Sustainable Development." *Diponegoro Law Review* 7.2 (2022): 312-327. https://doi.org/10.14710/dilrev.7.2.2022.312-327

10 Simon Butt, and Prayekti Murharjanti. "The Constitutional Right to a Healthy Environment in Indonesia." *Journal of Environmental Law* 33.1 (2021): 33-56. https://doi.org/10.1093/jel/eqaa031.

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12 Daffa Ladro Kusworo, and Fitra Arsil. "Green Constitutional Paradigm for Sustainable Environmental Development in the Capital of Archipelago: A Comparative Study with France and Ecuadorian Constitution." *Unifikasi: Jurnal Ilmu Hukum* 11.02 (2024): 83-98. https://doi.org/10.25134/unifikasi.v11i02.769.

aspects or cross-country comparisons, this research focuses on a normative analysis of the 1945 Constitution of the Republic of Indonesia and the need for amendment or reinterpretation of provisions concerning environmental rights in order to align them with the paradigm of eco-constitutionalism. Accordingly, this study seeks to close the previously unresolved conceptual and normative gap while providing direction for strengthening the constitutional basis of environmental policy and law enforcement in Indonesia.

Based on the foregoing discussion, an in-depth normative examination of the Green Constitution as the normative foundation for the protection of human rights to the environment within Indonesia's constitutional system is required. Such a study is essential to reaffirm the state's position as the primary subject responsible for fulfilling citizens' constitutional right to the environment, while simultaneously encouraging a reorientation of natural resource management policies in line with the principle of sustainability. By understanding the Green Constitution both conceptually and normatively, it is expected that an implementation model can be formulated that not only guarantees economic development but also preserves ecosystem integrity and the human dignity that depends upon it.

Therefore, the research method employed in this study is a normative juridical approach, emphasizing the analysis of legal norms governing the protection of human rights to the environment within the framework of the Green Constitution in Indonesia. This approach focuses on the examination of statutory regulations, Constitutional Court decisions, and relevant legal doctrines. The type of data used consists of secondary data, including primary, secondary, and tertiary legal materials. Data collection is conducted through library research on the constitution, environmental laws, and related academic literature. The data are analyzed using a qualitative-descriptive method by interpreting the constitutional meaning of the Green Constitution principle and relating it to the realities of environmental protection implementation. This research aims to identify the gap between norms and practice and to formulate recommendations for strengthening the role of the constitution in guaranteeing the right to a sustainable environment.

The Green Constitution as a Normative Basis for the Protection of Human Rights to the Environment

The concept of the Green Constitution originates from the awareness that a constitution is not merely an instrument of power, but also an ecological contract between the state and its citizens. Within this framework, the constitution is understood as the normative foundation for the exercise of

state authority oriented toward environmental sustainability.[13] In Indonesia, this concept finds its foundation in the 1945 Constitution of the Republic of Indonesia, which embodies the principle of natural resource sustainability and the right of every person to a good and healthy environment. Accordingly, the Green Constitution is oriented toward a constitutional paradigm that integrates ecological justice into the structure of law and public policy. This interpretation positions environmental protection as an inherent component of human rights and constitutional rights that must be guaranteed, respected, and protected by the state.

The concept of the Green Constitution emerged from the aspiration to overcome the limitations of sectoral and reactive approaches to environmental law. Thus far, environmental regulation in Indonesia has often focused primarily on administrative aspects without positioning ecology as the ethical foundation of state governance.[14] The concept of the Green Constitution corrects this by affirming that environmental protection is not merely a technical matter, but a constitutional obligation inherent in a state based on the rule of law *(rechtsstaat)*. In this context, the constitution is no longer understood statically, but rather as a living document (living constitution) that must respond to the challenges of the global ecological crisis.[15] Therefore, the incorporation of green principles into the constitution constitutes a manifestation of the state's commitment to present and future generations (intergenerational equity).

In the 1945 Constitution of the Republic of Indonesia, the principle of the Green Constitution is explicitly reflected in Article 28H paragraph (1), which states that every person has the right to a good and healthy environment. This provision affirms that the right to the environment constitutes an integral part of human rights. Moreover, Article 33 paragraph (3) provides a structural dimension by stipulating that the land, waters, and natural resources are controlled by the state and utilized for the greatest prosperity of the people.[16] These two norms demonstrate a balance between the rights and obligations of the state: the state is obliged to guarantee environmental quality, while the people have the right to enjoy and oversee its management. However, in practice, the meaning of "state control" is often misconstrued as "state

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[13] Zilda Khilmatus Shokhikhah. "Hak Konstitusional Generasi Mendatang Atas Lingkungan Hidup Layak : Kajian Hukum Tata Negara Terhadap Tanggung Jawab Negara Dalam Pembangunan Berkelanjutan". *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4.3 (2025): 175-86. https://doi.org/10.55606/jurrish.v4i3.5767

[14] Mochammad Kasman. "Integrasi Hukum Agraria dan Lingkungan: Pendekatan Baru untuk Pembaharuan Kebijakan Sumber Daya Alam." *Locus Journal of Academic Literature Review* 4.3 (2025): 186-196. https://doi.org/10.56128/ljoalr.v4i3.477

[15] Atika Thahira. "Penegakan Hukum Administrasi Lingkungan Hidup Ditinjau Dari Konsep Negara Hukum." *JCH (Jurnal Cendekia Hukum)* 5.2 (2020): 260-274. https://doi.org/10.33760/jch.v5i2.229

[16] Anggi Permatasari,. "Tanggung Jawab dan Perlindungan Negara Atas Hak-Hak Sosial Ekonomi Pengelolaan Sumber Daya Alam Menurut Undang-Undang Dasar 1945." *Jurnal Kewarganegaraan* 8.1 (2024): 272-289. https://doi.org/10.31316/jk.v8i1.6114

ownership," which in fact opens the door to excessive exploitation of natural resources.

The right to a good and healthy environment is not merely an individual right but also a collective right with an intergenerational character. This view is consistent with the theory of ecological constitutionalism, which positions the Earth and the environment as subjects of constitutional concern.[17] Within this framework, the Green Constitution expands the horizon of human rights by incorporating an ecological dimension into them. The state is not only obliged to respect civil and political rights, but also required to protect the ecological rights of its citizens. This reflects a paradigm shift from an anthropocentric constitution toward an ecocentric constitution, in which nature is no longer regarded merely as an object of exploitation, but as an entity possessing intrinsic value and deserving protection through constitutional instruments.[18]

Within the Indonesian constitutional framework, interpreting the right to the environment as an intergenerational collective right carries juridical consequences: the state must ensure that every natural resource management policy does not undermine the environmental carrying capacity for future generations. This is reflected in the state's obligation to prevent permanent ecological damage resulting from open-pit mining, deforestation, and long-term environmental pollution.[19] Failure by the state to fulfill this obligation constitutes a denial of the constitutional rights of future generations to a viable environment. Accordingly, the paradigm of an ecocentric constitution requires that every political and legal decision be evaluated not only on the basis of short-term economic benefits, but also on ecological sustainability and intergenerational justice as constitutional values.

The relevance of the Green Constitution becomes increasingly significant amid the threats of climate crisis, deforestation, and ecological degradation resulting from massive natural resource exploitation. Normatively, the 1945 Constitution of the Republic of Indonesia has provided an adequate foundation for environmental protection; however, weak implementation reveals a gap between text and context. In this regard, the Green Constitution functions as an interpretative guideline for legislators and law enforcers, ensuring that every development policy is subject to the principle of sustainability.[20] In other words, every legal instrument must be tested for its

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17 Dina Silvia Puteri. "Green Constitution dalam Konstitusi Indonesia dan Pemaknaannya oleh Mahkamah Konstitusi." *Jurnal Kajian Konstitusi* 5.1 (2025): 1-26. https://doi.org/10.19184/j.kk.v5i1.53699

18 Muhammad Pasha Nur Fauzan. "Meninjau Ulang Gagasan Green Constitution: Mengungkap Miskonsepsi Dan Kritik." *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 1.1 (2021): 1-21. https://doi.org/10.23920/litra.v1i1.573

19 Adhe Ismail Ananda, et al. "Strengthening Indigenous Peoples'rights: Integrating The Fpic Principle Into Indonesia's Mining Legal Framework." *Cepalo* 10.1 (2026): 1-12. https://doi.org/10.25041/cepalo.v10no1.4899

20 Aditya Prastian Supriyadi. "Reduksi hak partisipasi publik pada aturan analisis mengenai dampak lingkungan untuk perizinan berusaha di Indonesia: perspektif green constitution." *Jurnal HAM* 14.1 (2023): 15-37.

consistency with the principles of the green constitution. This approach affirms that economic development must not be pursued at the expense of the right to the environment, as both constitute an integrated component of the just purposes of the state.

The principle of the Green Constitution is closely intertwined with the internationally recognized concept of sustainable development. Within the national legal context, this principle has been adopted through various statutes, such as Law No. 32 of 2009 on Environmental Protection and Management. However, the normative strength of the Green Constitution lies in its capacity to transcend sectoral boundaries and to establish sustainability as both a moral and legal foundation in every public policy.[21] By positioning the constitution as a source of ecological values, all branches of state power become bound by an ecological responsibility of a constitutional nature. This represents the highest form of protection of human rights to the environment, wherein ecological rights are integrated into the supreme legal system of the state.

The placement of the Green Constitution within the framework of the Indonesian rule-of-law state carries strategic significance in affirming that environmental protection constitutes part of the enforcement of human rights. An ideal rule-of-law state guarantees not only civil and political rights but also economic, social, and cultural rights, including ecological rights. This underscores that economic development must not conflict with the protection of the right to the environment. In practice, however, many government policies remain exploitative and disregard the principle of sustainability. Open-pit mining, illegal logging, and industrial pollution serve as concrete examples of the imbalance between economic interests and the protection of ecological rights. Therefore, the Green Constitution should function as a controlling norm, ensuring that all development policies are oriented toward a balance between growth and sustainability.[22]

Environmental protection within the perspective of the Green Constitution is closely related to the state's responsibility to fulfill the rights of its citizens. The state is obliged to protect the environment as part of its positive obligation to guarantee the right to a decent life. Failure by the state to prevent pollution or environmental degradation constitutes a violation of human rights.[23] In this context, the government cannot shield itself behind arguments of economic

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[21] Desi Rela Bhakti, Niken Wahyuning Retno Mumpuni, and Ahmad Khairun Hamrany. "Perumusan dan Pengaruh Konsepsi Green Constitution dalam Peraturan Daerah sebagai Wujud Komitmen Negara untuk Menjaga Kelestarian Lingkungan Hidup." *Jurnal Global Ilmiah* 1.7 (2024): 505-511. https://doi.org/10.55324/jgi.v1i7.73

[22] Auzan Qasthary, et al. "Problematika Hukum Dalam Tata Kelola Sumber Daya Alam Berkelanjutan." *MIKHAYLA: Journal of Advanced Research* 2.2 (2025): 129-137. https://doi.org/10.61579/mikhayla.v2i2.591

[23] Ahmad Arif Fadilah, et al. "Konsepsi dan Hak Asasi Manusia Atas Lingkungan Hidup yang Sehat dan Baik." *DIAJAR: Jurnal Pendidikan dan Pembelajaran* 4.1 (2025): 68-75. https://doi.org/10.54259/diajar.v4i1.2381

growth or investment. Development without ecological balance will instead generate intergenerational injustice and deteriorate the quality of life of society. At this point, the implementation of the Green Constitution must be translated into public policies grounded in ecological justice, where economic welfare does not sacrifice environmental sustainability as a fundamental right of all citizens.

The involvement of state institutions in enforcing the Green Constitution constitutes an important aspect of this discussion. The executive branch bears responsibility for the formulation of environmental policies, the legislative branch for the enactment of laws oriented toward sustainability, and the judiciary for the effective enforcement of environmental law.[24] Empirically, however, environmentally oriented legislation is sometimes weakened by permissive implementation toward large business actors, while judicial institutions have not been fully consistent in enforcing the principle of environmental justice. This condition indicates that the Green Constitution has not yet been fully internalized as a paradigm of national law. The commitment of all three branches of power in performing their respective duties and functions can enable the Green Constitution to become an effective instrument for enforcing ecological justice and preventing excessive exploitation of natural resources.

The weak ecological awareness among policymakers further exacerbates the gap between the ideals of the Green Constitution and the reality of its implementation. Principles of sustainability are often reduced to mere rhetoric in planning documents without concrete follow-up measures. The spirit of the Green Constitution demands the integration of ecological values into all aspects of policy, from planning and implementation to supervision.[25] In this regard, legal and environmental political education becomes crucial so that every public official understands that environmental protection is not merely a technical duty, but a constitutional mandate. Ecological awareness grounded in constitutional principles will generate policy patterns that are more sustainable and oriented toward long-term welfare.

Comparatively, several countries have adopted the principle of the green constitution within their constitutions as an effort to strengthen the state's ecological responsibility. For example, the Constitution of Ecuador recognizes the rights of nature, allowing the environment to become a legal subject worthy of protection and serving as a basis for judicial action. A study by Oluwabusayo (2025) concludes that although such recognition is progressive,

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[24] D Suhanda, Huda, U. N., & Rosidin, U. (2024). Politik Legislasi: Studi Terhadap Kepentingan Politik Dalam Penetapan Regulasi Di Indonesia. *Qanuniya : Jurnal Ilmu Hukum*, *1*(2), 22–33. https://doi.org/10.15575/qanuniya.v1i2.880

[25] Tegar Arif Saputra, and Muhammad Muchsin Afriyadi. "Menumbuhkan Kesadaran Ekologis Siswa Sejak Dini: Menjadikan Lingkungan Sebagai Sekolah Kehidupan." *Muallimun: Jurnal Kajian Pendidikan dan Keguruan* 5.1 (2025): 1-21. https://doi.org/10.23971/muallimun.v5i1.10007

its operational mechanisms still exhibit shortcomings in representing ecosystems as legal entities.[26] On the other hand, the Constitution of South Africa, through Section 24, guarantees every person the right to live in an environment that is not harmful to health and well-being, and establishes the state's obligation to adopt legislative measures and policies to protect natural resources for present and future generations. Research by Murcott (2023) notes that although the environmental clause is explicitly written, constitutional court interpretation in practice remains limited in making this right consistently operational. These two examples affirm that the paradigm of the green constitution has become a global trend linking human rights with ecological sustainability and demanding a stronger normative construction for effective implementation.

Thus, the Green Constitution is not merely a normative concept but also a constitutional ideology that must be realized in state policy and conduct. It functions as a moral compass for every governmental action and as a basis of legitimacy for citizens to demand protection of their ecological rights. The implementation of green constitutional principles requires a paradigm shift: from exploitative to preservative approaches, and from quantitative growth to qualitative sustainability. Within the human rights framework, the Green Constitution serves as a bridge between social justice and ecological justice. It ensures that the right to a good and healthy environment is not merely a legal entitlement, but a right to life inherent in human dignity and in the interests of future generations that must be safeguarded by the state.

Problems of Implementation and Reconstruction of Green Constitution Principles in Environmental Policy

The implementation of the Green Constitution in Indonesia faces significant challenges, particularly at the level of environmental law enforcement. Although, normatively, the right to a good and healthy environment has been guaranteed by the constitution and statutory regulations, its execution is often weak. Many cases of pollution and environmental destruction are not addressed proportionately by law enforcement authorities. Environmental law enforcement remains selective and tends to prioritize economic interests over ecological protection. This condition reveals a disparity between the rule in the book and the rule in action.[27] The Green Constitution should serve as both a moral and legal foundation to ensure that every violation against the

[26] Oluwabusayo Wuraola. "Rights of Nature in Action: An Analysis of Laws in Ecuador." *Ecuadorian Science Journal* 9.2 (2025): 1-13. https://doi.org/10.46480/esj.9.2.218.

[27] Anggiat Pardamean Simamora. "Peran aparat penegak hukum (pidana) dalam melindungi lingkungan hidup: Suatu kajian perspektif keadilan ekologis." *MARAS: Jurnal Penelitian Multidisiplin* 2.3 (2024): 1353-1362. https://doi.org/10.60126/maras.v2i3.395

environment constitutes a violation of the constitution. Weak commitment among legal institutions reflects an ecological crisis rooted in a crisis of law enforcement.

One of the causes of weak environmental law enforcement is the absence of effective corporate accountability in cases of ecological damage. Many mining or large industrial companies involved in pollution and environmental destruction evade legal sanctions due to their economic and political influence. Mechanisms of corporate legal liability in environmental cases are often ineffective, whether in terms of evidentiary standards, enforcement, or the execution of sanctions.[28] Within the framework of the Green Constitution, corporations must be regarded as legal subjects that also bear constitutional responsibility in preserving environmental sustainability. The state's inability to enforce corporate ecological responsibility results in human rights violations against affected communities. From a constitutional perspective, failure to uphold ecological justice signifies the state's neglect of the mandate of Article 28H of the 1945 Constitution concerning the right to a good and healthy environment.[29]

The phenomenon of excessive natural resource exploitation constitutes clear evidence of the weak internalization of Green Constitution principles in national development policies. Mining activities, deforestation, and reclamation are carried out in the name of economic growth without considering environmental carrying capacity. Development that should be oriented toward sustainability instead produces ecological and social inequality. Uncontrolled exploitation leads to ecosystem degradation, loss of biodiversity, and a decline in the quality of life of communities surrounding industrial and mining areas.[30] The principle of the Green Constitution requires that natural resource management be not only economically beneficial but also intergenerationally just. In reality, however, development is still understood in materialistic and short-term terms.

One factor that exacerbates natural resource exploitation is the centralization of mining authority, which limits the role of regional governments in environmental supervision. Since the enactment of Law Number 3 of 2020 amending the Mineral and Coal Mining Law, mining licensing authority has been transferred to the central government. Normatively, this policy aims to create uniform governance; however, in practice, it reduces regional capacity

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[28] Novy Yandari Nurlaily,, and Agus Supriyo. "Pertanggungjawaban Korporasi dalam Kasus Pencemaran Lingkungan Hidup." *Media of Law and Sharia* 3.3 (2022): 255-269. https://doi.org/10.18196/mls.v3i3.14384

[29] Lusi Puspita Sari,. "Konstitusionalisasi dan Implementasi Konsep Hijau Dalam UUD 1945." *PROSIDING SERINA* 2.1 (2022): 815-824. https://doi.org/10.24912/pserina.v2i1.20075

[30] Nugraha Ramadhany. "Laju Deforestasi Hutan Akibat Aktivitas Pertambangan di Provinsi Kalimantan Timur." *Rekayasa Hijau: Jurnal Teknologi Ramah Lingkungan* 7.1 (2023): 10-19. https://doi.org/10.26760/jrh.v7i1.10-19

to control mining activities within their territories.[31] The case of ecological damage on Kabaena Island serves as an example illustrating the consequences of weakened regional supervisory functions. Local governments no longer possess the authority to act against mining violations that damage forests and coastal areas. This centralization of authority contradicts the spirit of the Green Constitution, which emphasizes the participation of regional authorities and communities in preserving environmental sustainability in accordance with the principle of ecological decentralization.

The disharmony between economic policy and ecological protection constitutes a central irony in the implementation of the Green Constitution. The government frequently prioritizes investment and economic growth under the pretext of increasing national revenue, while environmental policy becomes merely an administrative complement. Such a development approach reflects a developmentalist paradigm that contradicts the values of the green constitution. Within the logic of the Green Constitution, economy and ecology should not be in opposition but mutually reinforcing. Ecological sustainability is, in fact, a prerequisite for long-term economic growth. However, in Indonesia, environmental regulations are often weakened to facilitate investment.[32] Ultimately, ecological justice is neglected, and the human rights of communities to a healthy environment are sacrificed. Political courage and policy reconstruction are required so that the balance between the economy and ecology is genuinely reflected in governmental practice.

The involvement of state institutions in enforcing the Green Constitution constitutes an important aspect in this context. The Constitutional Court (MK) and the House of Representatives (DPR) hold strategic roles as agents of green constitutionalism. Through its function of judicial review of statutes against the 1945 Constitution, the Constitutional Court can progressively interpret Article 28H paragraph (1) and Article 33 paragraphs (3)–(4) as the basis for strengthening the constitutional right to a good and healthy environment. Through decisions such as Constitutional Court Decision No. 85/PUU-XI/2013 concerning Mineral and Coal Mining and Constitutional Court Decision No. 18/PUU-XVII/2019 concerning Environmental Protection, the Court has the potential to affirm that violations of environmental rights constitute violations of the constitution.[33] Meanwhile, the House of Representatives (DPR), as the legislative body, bears a constitutional responsibility to translate the principles of the Green Constitution into

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31 Adhe Ismail Ananda, and Yeni Haerani. "The State's Right to Control and Local Government Authority in the Mining Sector: A Legal-Policy Research." *Administrative and Environmental Law Review* 6.1 (2025): 33-34. https://doi.org/10.25041/aelr.v6i1.4079

32 Tumpal Martua H Purba. "Tantangan dalam Regulasi Hukum Investasi di Indonesia untuk Mendorong Pertumbuhan Ekonomi." *Innovative: Journal Of Social Science Research* 4.6 (2024): 5327-5333. https://doi.org/10.31004/innovative.v4i6.17118

33 Andika Putra, and Deka Oktaviana. "Quo Vadis Environmental Participation Rights: A Review of Indonesian Constitutional Court's Decision." *Jurnal Konstitusi* 22.2 (2025): 229-259. https://doi.org/10.31078/jk2222.

legislative products that are responsive to the ecological crisis.[34] Environmental legislation must incorporate a sustainability clause as a general norm in every sector of development. Accordingly, functional collaboration between the Constitutional Court and the House of Representatives will strengthen the constitutionalization of ecological values from the normative level to the practical level, ensuring that the principles of the Green Constitution truly operate within the national legal and policy system.

The reconstruction of environmental policy based on the Green Constitution must begin with the reformulation of authority between the central and regional governments. Ecological decentralization becomes a key concept to ensure that regional governments possess real capacity in environmental supervision and law enforcement. Regional authorities are more familiar with the geographical, social, and cultural conditions of their territories, making them more adaptive in formulating environmental protection policies. The delegation of authority does not weaken the central government; rather, it strengthens the synergy between both levels of government in maintaining ecosystem sustainability.[35] Accordingly, the implementation of the Green Constitution will become more contextual and responsive to the needs of local communities. This reconstruction affirms that environmental protection cannot be carried out solely through centralized mechanisms, but must involve actors at the local level as an integral part of the national environmental governance system.

In addition to decentralizing authority, strengthening environmental law enforcement is a primary prerequisite for realizing the effectiveness of the Green Constitution. Law enforcement must extend beyond administrative or civil measures to include criminal sanctions that produce deterrent effects. Law enforcement officials must be equipped with capacity, independence, and political courage in handling environmental cases, particularly those involving large corporations. Sanctions against perpetrators of environmental crimes should reflect the values of the green constitution by prioritizing ecological interests over economic interests. Furthermore, transparency in legal processes and protection for whistleblowers or environmental activists must be guaranteed by the state. Without firm enforcement, the Green Constitution will remain merely an ideal norm lacking transformative social force.[36]

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[34] Titis Thoriquttyas, and Nita Rohmawati. "Green Legislation, Green Financial Crime, And Indonesia Constitutional Law: A Perspective From Environmental Justice's Theory." *Domus Legalis Cogitatio* 2.2 (2025): 113-130. https://doi.org/10.24002/dlc.v2i2.9888.

[35] Wirazilmustaan. "Dimensi Desentralisasi Analisa Pola Hubungan Kewenangan Dalam Pengelolaan Pertambangan." *PROGRESIF: Jurnal Hukum* 15.2 (2021): 197-212. https://doi.org/10.33019/progresif.v16i2.2713

[36] Ahmad Ainur Ridlo, and Imroatin Arsali. "Dinamika Penegakkan Hukum Lingkungan Di Indonesia Dalam Menghadapi Problematika Lingkungan Hidup: Dynamics Of Environmental Law Enforcement In Indonesia In Dealing With Environmental

The reconstruction of policies based on the Green Constitution must also position public participation as a constitutional element. The right of the public to be involved in decision-making concerning the environment is guaranteed by various international and national legal instruments, including Law Number 32 of 2009.[37] Within the framework of the green constitution, public participation constitutes a manifestation of ecological democracy, in which citizens are not merely recipients of policy but also supervisors and active participants in safeguarding environmental sustainability. Mechanisms for public consultation, access to environmental information, and the involvement of indigenous communities must be strengthened to ensure that resulting policies are more just and contextual. Meaningful public participation will create a system of social oversight that complements the role of the state in realizing genuine ecological justice.[38]

The Green Constitution approach requires a paradigm shift in public policy from an economic orientation toward ecological sustainability. This can be realized through the integration of environmental principles at every stage of development, from planning to evaluation.[39] Instruments such as the environmental impact assessment (AMDAL) must be positioned not merely as administrative requirements, but as constitutional tools to ensure that every policy aligns with the mandates of Articles 28H and 33 of the 1945 Constitution. In addition, indicators of development success should be expanded to include improvements in environmental quality and the ecological well-being of society. This approach will redirect national development toward greater justice, participation, and long-term orientation in accordance with the ideals of the Green Constitution.[40]

Institutional strengthening also constitutes an important component of reconstructing environmental policy based on the Green Constitution. Oversight bodies such as the Ministry of Environment and Forestry, the Ombudsman, and the National Human Rights Commission must establish strong coordination mechanisms to safeguard the right to the environment.[41]

Problems." *Journal Presumption of Law* 6.2 (2024): 140-157. https://doi.org/10.31949/jpl.v6i2.8788

37 Absori, et al. "Environmental health-based post-coal mine policy in east borneo." *Open Access Macedonian Journal of Medical Sciences* 9.E (2021): 740-744. https://doi.org/10.3889/oamjms.2021.6431

38 Febrian Chandra. "Pengelolaan Kehutanan Berbasis Masyarakat Hukum Adat dalam Kerangka Konstitusi Hijau di Indonesia." *Adagium: Jurnal Ilmiah Hukum* 3.1 (2025): 104-119. https://doi.org/10.70308/adagium.v3i1.67

39 Ilham Dwi Rafiqi. "Pembaruan Politik Hukum Pembentukan Perundang-Undangan di Bidang Pengelolaan Sumber Daya Alam Perspektif Hukum Progresif." *Bina Hukum Lingkungan* 5.2 (2021): 319-339.

40 Ahmad Royhan Bustomi, Derrel Azhar Sugianto, and Fardan Zidane Juniawan. "Politik Hukum dalam Pengelolaan Sumber Daya Alam: Antara Kepentingan Negara dan Hak Masyarakat Adat." *Hutanasyah: Jurnal Hukum Tata Negara* 4.1 (2025): 89-100. https://doi.org/10.37092/hutanasyah.v4i1.1191

41 Nailizza Weni Bhamatika, et al. "Dari Regulasi ke Implementasi: Problematika Pengawasan dalam Menghadapi Ancaman Lingkungan Hidup di Indonesia." *PESHUM: Jurnal*

In addition, a cross-sectoral institution focused on ecological justice is required to prevent overlapping authority. Technology-based monitoring, transparency of environmental data, and the integration of public complaint systems can enhance accountability. In this context, the government needs to establish a Green Governance System that positions the principles of the green constitution as the ethical foundation of bureaucracy and the direction of development. State institutions must act as protectors of citizens' ecological rights, rather than merely administrative implementers subordinate to economic interests.

Thus, policy reconstruction based on the Green Constitution does not concern merely legal reform, but also moral, political, and social transformation. The protection of human rights to the environment must become a concrete constitutional agenda through policies of ecological decentralization, strong law enforcement, and meaningful public participation. The central and regional governments must work synergistically to build an environmental governance system that is just and sustainable. The implementation of the green constitution requires the courage to reject exploitative development paradigms and to prioritize the principle of balance between humans and nature. If realized, the Green Constitution will no longer remain merely a normative concept, but will become a constitutional pillar that upholds human rights, preserves the Earth, and ensures the sustainability of life for future generations.

Conclusion

The Green Constitution essentially constitutes an important normative foundation for the protection of human rights to the environment in Indonesia. However, its implementation still faces serious challenges due to weak law enforcement, excessive exploitation of natural resources, and the centralization of mining authority that marginalizes regional roles. This condition demonstrates a gap between constitutional ideals and empirical reality in environmental governance. To realize the aspirations of the Green Constitution, policy reconstruction is required through the decentralization of environmental authority, the strengthening of an accountable ecological legal system, and the involvement of society in oversight based on constitutional rights. In this way, the green constitution will not merely remain a normative text, but will also serve as an ethical and political guide in achieving sustainable development that is just, civilized, and respectful of the human right to a healthy environment.

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Reorientation of Policy and Governance for Civil Society Organizations to Facilitate People's Political Participation

Reorientasi Kebijakan dan Tata Kelola Organisasi Kemasyarakatan sebagai Wadah Partisipasi Politik Rakyat

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Abstract
This article examines the legal policy governing civil society organizations (CSOs) in Indonesia, which has shifted from a repressive instrument to a facilitative model. Previously, laws and regulations governing CSOs served as a tool of state control, limiting civil society freedoms and undermining freedom of association, often justified by political stability and security. Recent developments point to a restructuring that positions CSOs as strategic development partners and avenues for public political participation. Applying a legal-normative approach and legal-political analysis, this study highlights regulatory disharmony, conflicts of interest, and problematic ongoing policy implications that create tensions between democratic imperatives and state interests. The study's findings underscore that transforming the role of CSOs requires a redesigned legal system focused on protecting constitutional rights, social justice, and strengthening civil society—the foundation of democracy. Therefore, future legal policy for CSOs must balance legal certainty, freedom of association, and the public interest.

Keywords: Democracy; Freedom of Association; Political Participation.

Abstrak
Artikel ini mengkaji dinamika kebijakan hukum bagi organisasi kemasyarakatan di Indonesia, yang telah mengalami pergeseran paradigma dari instrumen represif menjadi model fasilitatif. Peraturan perundang-undangan sebelumnya yang mengatur organisasi kemasyarakatan cenderung berfungsi sebagai alat kontrol negara untuk membatasi kebebasan masyarakat sipil dan melemahkan kebebasan berserikat, seringkali dengan alasan stabilitas politik dan keamanan. Perkembangan terkini menunjukkan adanya penataan ulang yang menempatkan organisasi kemasyarakatan sebagai mitra pembangunan strategis dan saluran partisipasi politik rakyat. Melalui pendekatan hukum-normatif dan analisis hukum-politik, studi ini menyoroti ketidakharmonisan regulasi, konflik kepentingan, dan implikasi kebijakan bermasalah yang berkelanjutan yang mengarah pada ketegangan antara keharusan demokrasi dan kepentingan negara. Temuan studi ini menggarisbawahi bahwa transformasi peran organisasi kemasyarakatan memerlukan perancangan ulang tatanan hukum yang berfokus pada perlindungan hak konstitusional, keadilan sosial, dan penguatan masyarakat sipil sebagai fondasi demokrasi. Oleh karena itu, kebijakan hukum organisasi kemasyarakatan ke depan harus menyeimbangkan antara kepastian hukum, kebebasan berserikat, dan kepentingan publik.

Kata Kunci: Demokrasi; Kebebasan Berserikat; Partisipasi Politik.

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Introduction

Every citizen has the right to freedom of assembly and association without violence as regulated in Article 20 of the Universal Declaration of Human Rights.[1] The right to peaceful assembly must also be recognized by the State, and no restrictions may be placed on its exercise except those provided by law and necessary in a democratic society. This right is also regulated in Article 21 of Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR).[2]

This means that citizens who join associations and unions, including civil society organizations (CSOs), are legally protected by the state. This protection is a concrete manifestation of human rights guaranteed by the constitution, particularly the rights to associate, assemble, and freedom of expression.[3] A CSOs is a voluntary organization formed by individuals who share common goals, duties, and interests in the social, religious, cultural, educational, or other fields, without the goal of seeking profit. The existence of CSOs plays a vital role in strengthening community participation in development, channeling community aspirations, and conducting critical and constructive oversight of government leadership.[4]

Therefore, the state not only guarantees the freedom to form and organize CSOs, but also regulates their implementation through laws in accordance with the principles of democracy, unity, and public order. CSOs are a forum for the community to exercise their freedom of association and assembly. CSOs are a form of social participation in the development of democracy.[5] CSOs can also play a role as a means of political education and socialization in the implementation of democracy through general elections, by providing political understanding and knowledge to the community.[6]

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1 International Law Making, "Dekiarasi Universal Hak-Hak Asasi Manusia," *Indonesian Journal of International Law*, no. 3 (2006): 1–6, https://doi.org/10.1017/CBO9781107415324.004.

2 Resolusi Majelis Umum 2200 A (XXI), "Kovenan Internasional Hak Hak Sipil Dan Politik," *Konvenan Internasional*, no. Xxi (1966): 1–17.

3 Irmanjaya Thaher, *Politik Hukum Pembubaran Organisasi Kemasyarakat Dalam Perspektif Hak Asasi Manusia* (Bandung: Penerbit Widina Media Utama, 2023).

4 Catur Wibowo and Herman Harefa, "Urgensi Pengawasan Organisasi Kemasyarakatan Oleh Pemerintah," *Jurnal Bina Praja* 07, no. 01 (2015): 01–19, https://doi.org/10.21787/jbp.07.2015.01-19.

5 Agus Riwanto Aditya Putra Setiawan, "Analisis Terhadap Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Asasi Manusia," *Res Publica* 4, no. 3 (2020): 273–88, https://digilib.uin-suka.ac.id/id/eprint/31708/.

6 Bambang Budi Utomo, "Partisipasi Politik Masyarakat Pada Pemilihan Umum Legislatis Tahun 2019," no. 0561 (2019): 1–8, https://r.search.yahoo.com/_ylt=Awr1TXzfC7BpMwIAjubLQwx.;_ylu=Y29sbwNzZzMEcG9zAzcEdnRpZAMEc2VjA3Ny/RV=2/RE=1774354656/RO=10/RU=https%3A%2F%2Fwww.bk3s.org%2Fojs%2Fjsb%2Farticle%2Fdownload%2FJSB%2F78%2F424/RK=2/RS=m_vkURN7jBxoqyQmu1sVnLrsW0o-.

CSOs is a form that symbolizes the involvement of public participation or civil society which is expected to become a balanced system, check and balance of the nation state.[7] In essence, CSOs occupy a strategic position in Indonesian political and democratic life. As part of civil society, CSOs function to represent interests, consolidate efforts, and provide space for public political participation outside of formal electoral channels.[8]

However, the relationship between the state and CSOs has never been entirely harmonious. Indonesian legal history shows that since the New Order, the state has tended to be repressive and use legal instruments that restrict freedom of association.[9] The legacy of state-dominated regulations, such as Law No. 8 of 1985 concerning CSOs, places them under the authority of the state and severely limits their role in strengthening democracy and social control.[10]

Under the New Order, strict suppression and oversight of CSOs deemed potential threats to security and political stability dominated. This was done to achieve political stability by controlling the dynamics of organizations, especially mass-based ones.[11] Critical and independent organizations tended to be marginalized or have their freedom of movement restricted.[12] The political environment during this period was based on a culture of hierarchy and patronage-client relationships, in which public political participation experienced a process of alienation and exclusion from public policy making.[13]

After the fall of the New Order, the door changed social life, especially regarding freedom of association and expression, thus opening up space for community movement, one of which is through CSOs. Post-reform, the urgency of policy reorientation towards CSOs became important to discuss in the formation of regulations for the sustainability of CSOs in Indonesia. Starting from Law No. 17 of 2013 which provides a breath of freedom and facilities to participate in efforts to achieve national development. This law was born as a response to the promise of reform in shifting the repressive paradigm

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7 L. Juniar Prayudi, W. Aryo and S. Debora Lindawaty, *Peran Organisasi Masyarakat Dalam Harmonisasi Sosial*, *Publica Indonesia Utama*, 2022.

8 Haidar Adam, "Kedudukan Hukum Organisasi Kemasyarakatan Dalam Perspektif Siyasah," *Islamic Law: Jurnal Siyasah* 9, no. 1 (2024): 59–73, https://doi.org/10.53429/iljs.v9i1.830.

9 DPR RI, "Pansus RUU ORMAS, RDPU (Rapat Dengar Pendapat Umum) DPR RI" (Jakarta: DPR RI, 2012).

10 Prayudi, "Politik Pengendalian Rezim Terhadap Organisasi Masyarakat," *Kajian* 3, no. 2 (2018): 75–94, https://jurnal.dpr.go.id/index.php/kajian/article/view/1875.

11 Jentera, "Sengkarut Hukum Pembubaran Ormas," Sekolah Tinggi Hukum Indonesia Jentera, 2013, https://www.jentera.ac.id/publikasi/sengkarut-hukum-pembubaran-ormas.

12 DPR RI, "Pansus RUU ORMAS, RDPU (Rapat Dengar Pendapat Umum) DPR RI."

13 Prayudi, "Politik Pengendalian Rezim Terhadap Organisasi Masyarakat."

to a facilitative one by not limiting the space for CSOs to empower and become strategic partners of the central and regional governments.

In the process, there was also a shift in the spirit of facilitation in the regulation of CSOs with the formation of Government in Lieu of Law No. 2 of 2017, which was ratified as Law No. 16 of 2017, seeking to address challenges in the relationship between the state and civil society. This regulation is an implicit manifestation that the state still wants to use legal instruments as a tool or effort to subtly dissolve CSOs on security and ideological grounds. The dualism of the government's face is apparent with continued efforts to promote and strengthen CSOs as development partners. This has led to ambivalence regarding selective demands in the implementation of the law, where the state is inconsistent in guaranteeing the constitutional right to associate, through legal regulations that limit the role of CSOs in expanding the space for public political participation.[14]

However, over time, critical questions have arisen about the authenticity of this "facilitation." Although the legal and governance frameworks have changed, the question remains whether this political restructuring represents a genuine transition toward equal partnership or an evolution from repression to more subtle forms of control such as structural co-optation. The key point of this analysis is whether state facilitation truly contains elements of control that could potentially undermine the independence and crucial role of CSOs as a counterweight to power in a democratic state.[15]

Although government policy has formally shifted from a repressive to a facilitative paradigm, the phenomenon of covert co-optation has emerged in the post-reform era. This mechanism, which often leverages economic incentives and bureaucratic regulations, can undermine the critical thinking of CSOs and undermine their essential role as independent and effective civil society. In other words, the relationship between the state and CSOs is no longer confrontational (repressive) but transformative (co-optation), as partnerships and access to resources are highly attractive. Therefore, concrete facilitative measures are needed through the strengthening of CSOs.

A study on the role of CSOs in political participation can be seen in the research entitled "Political Islam and Public Space: Relations between the State, Islamic CSOs, and Social Awareness."[16] Previous studies have only provided an ideological context but have not addressed institutional mechanisms. The novelty of this research lies in the shift in focus from the

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[14] Siti Ngainnur Rohmah, "Partisipasi Politik Organisasi Massa Dalam Pemilihan Kepala Daerah," *Buletin Hukum Dan Keadilan* 3 (2019): 7–18.

[15] A Fikri Ainurrizqi and Oman Sukmana, "Partisipasi Politik Masyarakat Di Negara Demokrasi : Studi Kasus Pemilihan Umum 2024 Di Indonesia," *Journal of Society Bridge* 3, no. 1995 (2025).

[16] ORMAS Islam and D A N Kesadaran Sosial, "ISLAM POLITIK DAN RUANG PUBLIK : RELASI NEGARA ," *IBTIKAR* 2, no. 1 (2025): 24–33.

simple question of "What is the ideological position of CSOs?" to the more complex question of "How can state policies and internal governance of CSOs be professionally restructured to optimize their effectiveness as forums for political participation?" This research complements ideological studies by offering prescriptive solutions at the regulatory and organizational management levels. This research has a fairly comprehensive scope because it examines social organizations in general, with a focus on aspects of institutional structure, policy framework, and administrative and legal governance in the context of restructuring organizational regulations and management.

The main objective of this study is to identify the forms of covert co-optation (through economic incentives and bureaucratic regulations) experienced by CSOs in post-reform Indonesia, in order to analyze the transformative impact of such co-optation on independence, critical effectiveness and, in particular, the weakening of the essential function of CSOs as agents of civic education that shape the critical consciousness of the community; and then to formulate a concrete internal and external strengthening framework and propose the necessary supporting measures to maintain an independent and strong civil society ecosystem.

The research method in this journal uses a juridical-normative approach with a qualitative and historical-analytical approach to examine in depth the reorientation of CSOs policies from a repressive model to a promotive approach. The qualitative approach is used to capture the socio-political dynamics of regulatory changes governing CSOs from the New Order era to post-Reformation. The juridical-normative approach focuses on a critical analysis of legal norms in Law Number 8 of 1985, Law Number 17 of 2013, Government Regulation in Lieu of Law (Perppu) Number 2 of 2017, and Law Number 16 of 2017, particularly regarding the legitimacy of the state in fostering, freezing, and disbanding CSOs.

A historical-analytical approach is used to map the political evolution of CSOs in the context of Indonesia's political transition, from tight state control during the New Order era to the paradoxical democratization efforts after the Reformation, which actually increased state intervention in the name of the stability of the sustainability of CSOs. Primary data for this study are drawn from legal texts and official regulations that are systematically analyzed, while secondary data are obtained from research reports, legal studies from credible institutions, and relevant newspaper articles to support the validity of the analysis and provide empirical context regarding the impact of regulations.

Legal Framework for the Management of Civil Society Organizations (CSOs) in Indonesia

In 1985, during the New Order regime, a policy was issued in which all CSOs and political parties had organizational principles inspired by Pancasila as an obligation. In this consideration[17] states that social organizations need to make Pancasila their sole foundation (Article 2) and even include it in their Articles of Association (Article 4). The aim is to strengthen the understanding and practice of Pancasila in social, national, and state life in order to ensure the sustainability of Pancasila.

In fact, many CSOs were formed as a representation of the political movements developing in Indonesia. Consequently, almost all of them attempted to adapt and change their organizational principles. However, some rejected the principles of Pancasila, such as the Indonesian Islamic Students (PII). Consequently, the New Order regime disbanded the organization, and PII was declared banned and even illegal.[18]

Law Number 8 of 1985 concerning Community Organizations was issued in the context of the New Order, which was strongly based on the philosophy of development and political stability. The state played a central role in regulating and directing all aspects of community life. The goal was to achieve equitable national development, understood as development for all Indonesians. In this context, community organizations were viewed as a means of community participation and efforts to achieve development success, rather than as an independent force that functioned as a counterbalance. [19]

Article 1 of Law Number 8 of 1985 states:

> *"A Community Organization is an organization voluntarily formed by members of the Republic of Indonesia, citizens of the Republic of Indonesia, based on shared activities, professions, functions, religion, and belief in God Almighty, to participate in development in order to achieve national goals within the framework of the Unitary State of the Republic of Indonesia, based on Pancasila."*

This means that the basic philosophy is to unify the principles of Pancasila as a principle used in social, national, and state life. Law Number 8 of 1985 is implicitly used as a basic instrument to standardize and regulate social movements, effectively eliminating ideological pluralism and monopolizing

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[17] DPR Presiden, "Undang-Undang Nomor 8 Tahun 1985 Tentang Organisasi Kemasyarakatan" 21, no. 4 (1985): 162.

[18] Indriana Ertanti, "Konfigurasi Politik Pada Undang-Undang Nomor 16 Tahun 2007 Tentang Organisasi Kemasyarakatan Sebagai Produk Hukum Di Indonesia," *Diversi Jurnal Hukum* 7, no. 2 (2021): 129–50, https://ejournal.uniska-kediri.ac.id/index.php/Diversi/article/download/433/473.

[19] Robert Samuels and Tentang Automodernity, "Peran Organisasi Masyarakat (ORMAS) Dan Lembaga Swadaya Masyarakat (LSM) Dalam Menopang Pembangunan Di Indonesia," *Jurnal Pemikiran Dan Penelitian Sosiologi* 1, no. 022 (2016): 49–67.

philosophical truth in the public sphere and eliminating heterogeneity in civil society. With the aim of mobilizing the consolidation of political power, eliminating potential ideological opposition, and becoming CSOs as an extension of the state to succeed in national development.

Control efforts can be seen in Article 12, CSOs receive guidance from the government which is regulated by government regulations. Regulations for freezing and dissolution are also regulated in Articles 13-15. There are 3 criteria for freezing CSOs administrators that can be carried out by the government: first, if they carry out activities that disrupt public security and order; second, if they receive assistance from foreign parties without government approval; and when, providing assistance to foreign parties that harm the interests of the nation and state. These criteria can be very subjective so that efforts to freeze and disband can be carried out at any time by the Government.

Law Number 8 of 1985 represents the existence of the New Order regime. Therefore, after the New Order regime collapsed in 1998, it opened up space for political liberalization and various freedoms (including association, assembly, and expression). This opened up the revival of a long-restricted civil society, resulting in the growth of various new CSOs that filled the void in political participation. CSOs became the driving force behind regime change after the fall of Suharto's regime in 1998, followed by various restructuring of parties, parliament, and the state security sector.

The demands for regulation of CSOs during the transition period from the New Order regime to the reform regime, which embraced democratic freedom and a human rights approach, were responded to by the Susilo Bambang Yudhoyono (SBY) government through new regulations. These demands gave birth to the legal framework of Law Number 17 of 2013 concerning CSOs as an answer. There was a shift in regulation that can be seen from the consideration that CSOs can "participate" in development to realize national goals within the framework of the Unitary State of the Republic of Indonesia based on Pancasila. The phrase participation is important to be used as a point in the representation of democracy and does not make Pancasila the only principle but only as a foundation.

The definition of community organizations has also undergone changes as regulated in Article 1:[20]

> *"Civil Society Organizations, hereinafter referred to as CSOs, are organizations that are founded and formed by the community voluntarily based on shared aspirations, desires, needs, interests, activities and*

[20] Undang-Undang Nomor 17, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 17 TAHUN 2013 TENTANG ORGANISASI KEMASYARAKATAN" 1, no. 1 (2013): 1–9.

goals to participate in development in order to achieve the goals of the Unitary State of the Republic of Indonesia based on Pancasila."

The breath of freedom can also be seen in articles 2-4 concerning Principles, Characteristics, and Nature. There is no longer a requirement for a single principle, but most importantly, the principles of CSOs do not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia. CSOs are also given the freedom to include certain characteristics that reflect the will and ideals of CSOs, which are voluntary, social, independent, non-profit, and democratic. The goal is also clear in article 5, namely that CSOs increase community participation and empowerment.

Articles 40-42 also regulate the empowerment of CSOs. The government or regional government carries out empowerment to improve the performance and sustainability of CSOs. This empowerment is carried out while respecting and considering the history, track record, role, and integrity of CSOs in the life of society, the nation, and the state. This is done through policy facilitation, strengthening institutional capacity, and improving the quality of human resources.

While Law Number 17 is progressive, Article 59 remains unclear regarding the prohibition on activities that "disturb public order and tranquility." The government, regional governments, and communities may continue to implement oversight measures under Article 53. However, there are significant changes to the mechanism for disbanding CSOs. These organizations must undergo a disbandment process decided by the district court (judicial process) under Article 71.

The 2014 regime change, coupled with ideological tensions and political polarization in Indonesia, fueled tensions over the sustainability of Pancasila. Consequently, President Joko Widodo's administration enacted Law No. 16 of 2017 concerning the Ratification of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 concerning Amendments to Law No. 17 of 2013 concerning CSOs, as an urgent need.

The amendment through Law Number 16 of 2017 was made on the grounds of the urgent need to regulate the development of CSOs based on organizational principles that are contrary to Pancasila and/or the 1945 Constitution of the Republic of Indonesia. This Perppu is based on the view that Law Number 17 of 2013 concerning CSOs has not yet adopted the principle of cantrarius actus so that it is not effective in applying sanctions to CSOs that adhere to, develop, and spread teachings or understandings that are contrary to Pancasila and the 1945 Constitution of the Republic of Indonesia.[21]

[21] Undang-Undang RI, "Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2017 Tentang Perubahan Atas Undang-Undang Nomor 17 Tahun 2013 Tentang Organisasi

There are formal aspect problems in the formation of the Perppu, namely that it is not in line with the purpose of its formation *"in the event of urgent and compelling circumstances"* as stated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Where legal arrangements are needed quickly and urgently, the formation of the Perppu CSOs is not in line with this and is far from urgent and compelling circumstances.

In addition, materially, the Perppu is problematic because it eliminates the role of the court in dissolving a CSOs.[22] This can be seen in the mechanism for dissolving CSOs in articles 61 and 62. That the revocation of legal entity status is carried out by the minister who organizes government affairs in the field of law and human rights and can request consideration from the relevant agency (Article 61 paragraph (1) letter c and paragraph (3) letter b. Article 62 was also changed to read comply with the sanction of termination, and articles 63 to 80 were removed[23].

The shift in the Perppu which was ratified through this law is very clear regarding the elimination of the judicial process element in the dissolution of CSOs by eliminating the Supreme Court element as stated in the 2013 CSOs Law. This elimination gives dominance to the power to subjectively be able to disband CSOs that have tendencies that contradict Pancasila and the 1945 Constitution of the Republic of Indonesia. This regulatory change is a form of authoritarianism and repression against CSOs.

Law Number 16 of 2017 concerning Ratification of Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning CSOs. Law Number 16 of 2017 concerning Ratification of Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning CSOs.[24]

CSOs, which should strengthen civil society through empowerment and represent the aspirations of its members and the community as part of the elements of people's sovereignty, [25] Instead, they were repressed by the amendments to the 2017 Law on CSOs. In principle, CSOs should be able to

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Kemasyarakatan Terhadap Undang-Undang Dasar 1945," *Semarang Law Review …*, 1945, http://journals.usm.ac.id/index.php/slr/article/view/2351.

22 Muhammad Afif Zia Ul-Haq, "Problematika Penerbitan PERPPU Di Indonesia: Studi Kasus PERPPU No 1 Tahun 2017 Tentang Organisasi Kemasyarakatan," *Japhtn-Han* 2, no. 2 (2023): 291–304, https://doi.org/10.55292/japhtnhan.v2i2.39.

23 Undang-Undang No 16 Tahun 2017 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2017 Tentang Perubahan Atas Undang-Undang Nomor 17 Tahun 2013 Tentang Organisasi Kemsyarakatan Menjadi Undang-Undang, 2017, 25, http://setkab.go.id/wp-content/uploads/2017/07/Perpu_Nomor_2_Tahun_2017.pdf.

24 Victor Imanuel Nalle, "Asas Contarius Actus Pada Perpu ORMAS: Kritik Dalam Perspektif Hukum Administrasi Negara Dan Hak Asasi Manusia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 244–62, https://doi.org/10.22304/pjih.v4n2.a2.

25 Dzikri Ghufranillah, "Telaah Kedudukan Organisasi Kemasyarakatan Dalam Sistem Ketatanegaraan Ditinjau Dari Asas Kedaulatan Rakyat," *Res Publica* 6, no. 3 (2022): 346–55.

realize collective autonomy through empowerment. Instead, CSOs have been used as instruments for the interests of those in power and political elites through empowerment. In this regard, CSOs must be committed to strengthening participation and bridging the interests of the community.

From an international legal perspective, the existence of CSOs as instruments of political participation has been firmly enshrined in various human rights instruments. [26] One of the most important instruments is the 1948 Universal Declaration of Human Rights (UDHR) of the United Nations, which reaffirms the right to freedom of peaceful assembly and association in Article 20. This principle was further strengthened in the 1966 International Covenant on Civil and Political Rights (ICCPR), specifically in Article 22. This article guarantees the right of every individual to form and join organizations, including organizations that advocate for the political and social interests of the community. In the context of a democratic state, CSOs are considered an important component of public participation mechanisms and checks and balances on state power.

Compared to the national legal framework, regulations governing CSOs in Indonesia are reflected in Law Number 17 of 2013 concerning CSOs, which was later amended by Law Number 16 of 2017. This regulation provides the legal basis for the establishment and management of CSOs while also imposing several restrictions related to public order, state ideology, and the integrity of the unitary state of Indonesia. However, from an international human rights perspective, restrictions on freedom of association must comply with the principles of legality, necessity, and proportionality as stipulated in the International Covenant on Civil and Political Rights (ICCPR). Therefore, a reorientation of civil society organization policies and governance is crucial to ensure that national regulations not only maintain social and political stability but also guarantee space for democratic political participation in accordance with international human rights standards.

Civil Society Organizations as a Representation of People's Political Participation

CSOs are legal organizations that operate independently of the government, or at least without direct government influence. Article 28 of the 1945 Constitution guarantees all Indonesian citizens the right to associate and assemble, express their opinions verbally and in writing, and so on. [27] This is

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[26] Fakultas Hukum and Universitas Pamulang, "Tinjauan Yuridis Normatif Terhadap Fenomena Penolakan Organisasi Kemasyarakatan Terhadap Penerapan Undang-Undang No 16 Tahun 2017 Tentang Organisasi Kemasyarakatan," *Pamulang Law REevieweview* 1, no. 2 (2018).

[27] Nalle, "Asas Contarius Actus Pada Perpu Ormas: Kritik Dalam Perspektif Hukum Administrasi Negara Dan Hak Asasi Manusia."

stated in Article 24 of Law No. 39 of 1999 concerning Human Rights, which states that everyone has the right to assemble, express opinions and associate for peaceful purposes.

The role of CSOs is to connect the interests of the community with those of the state or government when the community wishes to convey those interests to the state or government. The function of CSOs is to represent the aspirations of their members within the organization.

The presence of CSOs is a manifestation of Indonesia's recognition as a constitutional state that upholds democracy where every individual and community has the freedom of association, assembly, and opinion guaranteed in the constitution. The formation of CSOs as a forum for the community to actualize their freedom of association and assembly. CSOs is one form of community participation in developing democracy in an effort to uphold freedom, equality, togetherness, and honesty.

In the process of implementing the Law on CSOs, especially Law No. 17 of 2013 and its amendments through Perppu No. 2 of 2017 (which was later ratified as Law No. 16 of 2017), it is often seen as failing to reflect people's participation. Due to the dissolution and alignment of the Single ideology in the formation of organizations, the space to form organizations in accordance with political beliefs and views is considered to threaten the sovereignty of the state and can be dissolved, while CSOs are formed as Checks and balances in the Indonesian state as one of the pillars of democracy.

To understand this, CSOs are a means of channeling opinions and thoughts for members of the Republic of Indonesia citizen community and are considered to have a very important role in increasing the active participation of all levels of society in realizing a Pancasila society based on the 1945 Constitution in order to ensure the strengthening of national unity and integrity, guarantee the success of national development as a practice of Pancasila, and at the same time guarantee the achievement of national goals.

Ideally, CSOs are strategic partners that must be empowered to oversee and collaborate with the government (including local government partners in carrying out development). CSOs can also play a role as a forum to provide opportunities for the community to gather and express opinions. As Aristotle stated that humans are political humans, meaning they unite in one polis, and form one city. Likewise, community organizations are individuals who are united into one with a mutual agreement in fighting for their rights. However, in the end, the formation of a CSOs as an organizational institution as a form of participation space and expressing attitudes towards the state, is now obscured by the many organizations that have grown in Indonesia with the aim of hindering the progress of democracy and development.

The growth of several CSOs, which can be categorized as hindering the progress of democracy and development, often leads to a "negative" connotation among the public. Because these organizations are formed solely for frivolous interests, some of these groups are also associated with violent behavior, territorial control, and involvement in violent business activities, such as national security, nightclub and office security, debt collection, and parking management. As a result, the public often labels these organizations as "thugs."

The report also discusses acts of thuggery perpetrated by a number of CSOs, which have resulted in losses for various groups, including businesspeople. The report states that individuals claiming to be CSOs frequently engage in extortion, thus hindering the entry of investors into Indonesia. This is inconsistent with the spirit of CSOs as organizations that provide a forum for association and foster community participation with the aim of addressing social issues. For example, the role of CSOss in addressing development disparities and poverty, which are closely related to the social conditions of the community.

In this context, the government must help convey to each CSOs the social and moral urgency of establishing an CSO to fill the gap. This will enable CSOs to support Indonesia's development and, as partners with the government, contribute to development and prosperity for the Indonesian people. It is hoped that CSOs can facilitate citizen participation in social, political, educational, cultural, and other activities.

The role of CSOs in supporting and participating in realizing national and regional development needs to be continuously strengthened. There is a crucial relationship between CSOs and the government in building social, cultural, and community structures in a region. The role of the community in building democratic life is becoming more open. This provides broad space for expression, the freedom to form community groups concerned with the continuity of national and state life, and the formation of a civil society that plays a more comprehensive role in managing government, development, and society.

1. **The Socio-Political Function of Civil Society Organizations in Democracy**

The existence of political parties should ideally be a space for articulating the aspirations and interests of the people targeted by reform, as should CSOs as a form of political participation. This new policy then gave rise to political euphoria in the form of a surging democratic spirit, where a very prominent response was the rise of a competitive spirit that gave birth to new parties with diverse ideological identities and goals. The emergence of new political parties is theoretically an important institution in the political empowerment of society after the era of authoritarian governments. However, the reality is that

political parties have not effectively carried out their function as a force that articulates the interests of society.

CSOs must be able to act as a balancing force in a democratic state. They institutionalize shared aspirations and interests within participatory organizations. They symbolize public participation or civil society and aim to create a balanced system of checks and balances within the nation-state. Civil society, through CSOs, must thrive within a democratic framework of freedom of expression, association, and assembly, thus preventing the state from descending into an authoritarian system.[28] CSOs can also participate in government programs by playing an important role in optimizing the potential for social functioning in society.[29]

As a political tool in a democratic country, CSOs can be utilized as a political tool. This utilization in a country's democratic life can foster associations that enable the public to convey their aspirations, opinions, needs, and interests to the government. However, it is worth noting that CSOs grow only as associations, forgetting the nature or primary purpose of their formation to serve as a forum for the community. This problem then sets a bad precedent for CSOs in social life.

Social and religious organizations occupy a privileged position compared to other organizations. This is evident in Indonesia, where religious organizations such as Nahdlatul Ulama (NU) and Muhammadiyah are active. First, religious organizations do not specifically seek profit, especially financial gain. Second, socio-religious organizations operate outside the framework of the state. Third, their activities are more focused on the interests of their members (the community). Fourth, their membership is very large.

Even in the post-independence era, religious organizations continued to play this strategic role. Political empowerment was one avenue for their da'wah movements. Religious organizations (such as Nahdlatul Ulama (NU) and Muhammadiyah), through their widespread socio-religious movements and influence, have assumed a far greater role than their individual physical counterparts. Both have been more successful in playing a political role than any other Islamic party. In the context of discourse, the public listens far more to the moral and intellectual appeals of Muhammadiyah and NU than to official political forces.

In the post-independence period, religious organizations (CSOs) continued to play a strategic role in social and political life. Beyond their missionary and community development functions, they also served as important channels for

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[28] Prayudi, W. Aryo and Lindawaty, *Peran Organisasi Masyarakat Dalam Harmonisasi Sosial*.

[29] Dyana Chusnulitta Jatnika et al., "Program Pemerintah Dan Dinamika Partisipasi Masyarakat Untuk Optimalisasi Keberfungsian Sosial," *Jurnal Pekerjaan Sosial* 7, no. 2 (2025): 237–49, https://doi.org/10.24198/focus.v7i2.60625.

political participation. Organizations such as Nahdlatul Ulama (NU) and Muhammadiyah, thanks to their extensive social, educational, and religious networks, were able to transcend their formal organizational roles and become significant players in shaping public opinion and socio-political direction.

In many ways, these two organizations are considered even more effective in their cultural and political roles than the Islamic parties that previously dominated Indonesia's political system. This is evident in the strong moral and intellectual legitimacy of NU and Muhammadiyah in the public sphere, which often gives their messages a wider audience than those of established political forces. Thus, religious organizations function not only as socio-political institutions but also as instruments for articulating the political interests of society through cultural, moral, and intellectual means.

2. Relations between The State and Civil Society Organizations

The emergence of various CSOs after the Reformation has had complex social impacts on their role in national development. Many CSOs have now been established, encompassing a wide spectrum of organizations and ideologies. This era is referred to as an era of plurality, a dynamic relationship between society and the state or government, compared to the New Order era.

The plurality of CSOs is feared to be a threat to the state, necessitating the creation of new legislation, on the grounds that the old regulations do not adhere to the principle of contarius actus. This principle is essentially interpreted as "the one who makes the decision, has the authority to cancel it." This means that the creation of the new CSOs Law, namely Law No. 16 of 2017 concerning CSOs, ratifies the Government Regulation in Lieu of Law (Perppu), replacing Law No. 17 of 2013, which is considered no longer suitable for current societal conditions and needs. Efforts can be made to cancel it at any time by the creator. Another reason for its creation is that this law aims to provide a more comprehensive legal basis for CSOs, so that they can increase the role of society in various activities and ensure unity and the sustainability of national goals.

In the history of Indonesian society, social movements have been manifested in the form of social organizations, one of which is socio-religious organizations. Historically, these organizations have played a strategic role, from the pre-independence era to the current reform era. Their role is not limited to the traditional role of religious empowerment through fostering religious life to strengthen the religious commitment of religious adherents, but has also played a strategic role in socio-political life and social movements.[30]

[30] Fajar Nur Sahid, "Membangun Organisasi Masyarakat Sipil Yang Sehat Dan Akuntabel," *JOURNAL OF POLITICS AND DEMOCRACY STUDIES* 3, no. 1 (2022): 1–18.

The function of socio-religious organizations can be described and imagined by borrowing the theory of functional analysis put forward by a sociologist named Robert K. Berton. According to Berton, functional analysis can be carried out by looking at what is intended to be achieved or its goals, as well as the indirect consequences[31]. By adhering to this theory, the function of an organization can also be seen in terms of the goals it seeks to achieve and the indirect consequences or impacts that arise from the existence of the organization's movements or activities. In general, the goal of a social organization is to "realize the welfare of its members, which is not only limited to financial well-being but also encompasses other aspects that are the focus of its activities."

The development efforts are based on the assumption that numerous problems will arise if development efforts are not regulated, such as conflicts of interest between organizations. This is inconsistent with the future political system, which seeks to implement a Pancasila democratic political system that is closer to the lives of the people, more educational in nature, sensitive to societal issues, capable of actualizing public aspirations, and demanding a higher quality of national life.

The empowerment paradigm provides opportunities for community groups to plan and then implement development programs of their own choosing (CSOs). In this paradigm, the state does not occupy a primary position, allowing public participation in its essential sense to grow significantly. The development paradigm emphasizes top-down change, while empowerment emphasizes bottom-up change. Social movements, often referred to as new social movements, are one manifestation of this bottom-up development paradigm.[32]

As CSOs began to develop and gain strength in the political economy and policy arena independently, the government began to worry about their existence. For example, before CSOs were accommodated within their power, they often criticized government policies, such as (in the past) the Nahdlatul Ulama (NU).

However, over time, NU has become more integrated into the ruling elite, so tensions between society and the state have eased. CSOs that remain independent, meaning they continue to promote their role as a vehicle for real participation and that create conflict with the state, can be subject to repressive action. For example, the HTI and FPI were ultimately disbanded through Government Regulation in Lieu of Law (Perpu) No. 2 of 2017, as they were deemed to violate state policy and security. One of the government's reasons for disbanding certain CSOs is that they violate Pancasila and the

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[31] Edy Wahyono, "Penerapan Teori Fungsi Untuk Menganalisa Kehidupan Masyarakat," *Gelar : Jurnal Seni BudayaJurnal Seni Dan Budaya*, 2006, https://jurnal.isi-ska.ac.id/index.php/gelar/article/view/1215.

[32] R Karsidi, "Paradigma Baru Penyuluhan Pembangunan," *Mediator* 2, no. 1 (2001): 115–25.

1945 Constitution of the Republic of Indonesia.[33] This demonstrates the government's selective approach to regulating CSOs in Indonesia. Reactionary organizations are nurtured as if they were enjoying a breath of fresh air, even though they frequently extort and silence democratic space for the public.

This selective enforcement of CSOs suggests that the government is not truly striving to protect and provide democratic space for CSOs with progressive political and economic perspectives to review national policy. The government views CSOs with progressive political and economic perspectives, and those that are not easily tamed like most CSOs, as threatening and likely to be disbanded. In fact, the government should be opening up democratic space for discussions to review policy and development in Indonesia together with CSOs.

The selective enforcement of CSOs in Indonesia has fostered public understanding that CSOs are not politically motivated, but merely gatherings for shared interests and ceremonial activities. Philosophically, the existence of CSOs can foster political awareness in a society currently experiencing fragmentation and a growing distrust of politics. Therefore, the purpose of CSOs is to provide political education and monitor the performance of central and regional governments.

3. Reorientation of Policy Facilitating the Role of Civil Society Organizations

The state has stifled the potential of CSOs as a balancing force (checks and balances). The monolithization of CSOs, which forces every similar organization to merge into one entity, destroys the autonomy of civil society, transforming it from an independent entity into an instrument of the government. This is a preemptive control strategy to prevent the emergence of ideological or political threats before they can become stronger. This system fundamentally contradicts the concept of civil society as a forum for criticism and advocacy, and is one of the most repressive legacies of the New Order regime, enduring into the post-Reformation era.

Although their rights are guaranteed and protected under Article 28 of the Fourth Amendment to the 1945 Constitution, the role of CSOs in associations and societies still has several limitations. There are four important limitations in carrying out this role. First, they must respect the human rights of others. Second, they must maintain public order. Third, they must respect ethics and morality. Fourth, in the context of the ICCPR (International Covenant on Civil and Political Rights), they must maintain "national security" and national unity.[34]

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[33] Syawaluddin Hanafi, "Problematika Hukum Organisasi Masyarakat Dalam Undang-Undang Nomor 16 Tahun 2017 Tentang Organisasi Masyarakat," *Jurisprudentie* 6, no. 2 (2019): 307–15.

[34] Prayudi, W. Aryo and Lindawaty, *Peran Organisasi Masyarakat Dalam Harmonisasi Sosial*.

It can be said that CSOs are a bridge between the interests of the community and the interests of the state or government regarding matters that the community wishes to convey to the state or government. Therefore, the government needs to conduct a critical and substantial review of Law Number 16 of 2017 concerning CSOs, specifically Articles 61 and 62. These articles regulate the mechanism for disbanding CSOs without trial. Changes to the legal framework must take into account the principles of democracy as well as the right to civil liberties in organizing as a form of the State fulfilling and guaranteeing the constitutional rights of the community. The dissolution of CSOs can be seen as an action that has the potential to violate human rights, considering that CSOs are one form of realization of citizens' constitutional rights to exercise freedom of assembly and association. [35]

Furthermore, the government needs to reinstate the due process of law mechanism for disbanding CSOs. This, as stipulated in the 2013 CSOs Law, is even more comprehensive and robust, incorporating the judicial process, namely registration in district courts. This is crucial to provide constitutional certainty and restore public confidence in the rights stipulated in the Civil and Political Covenant. This is to ensure a balance between national security and civil liberties.

Efforts to strengthen the facilitative role of central and regional governments in empowering CSOs are underway, with a focus on strengthening institutional capacity and improving the quality of human resources within these organizations. This strengthening is being expanded by making CSOs a forum for bottom-up articulation of aspirations. CSOs can articulate the interests of specific groups (e.g., farmers, women, laborers, youth, and indigenous communities).

CSOs as a balance of power must be able to encourage government transparency and accountability by monitoring various policies issued by the government.[36] CSOs can expose various abuses of power and violations of human rights. They can also be used for social integration efforts in communities divided by conflict.[37]

Constructive participation by CSOs is necessary to influence the process of public policy engagement. CSOs can convey empirical data (real-life experiences) to provide a realistic picture of social conditions in the community. Furthermore, CSOs can be involved in various policy formulation

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[35] Aditya Putra Setiawan, "Analisis Terhadap Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Asasi Manusia."

[36] Samsiah Nelly, "Partisipasi Masyarakat Dalam Proses Pembuatan Kebijakan Publik," *Jurnal Sociopolitico Jurnal Sociopolitico* 6, no. 1 (2024): 86–94.

[37] Apria Ivoni Suci, "Peran Organisasi Kemasyarakatan Islam Di Indonesia," Sekretariat Kabinet Republik Indonesia, 2022, https://setkab.go.id/peran-organisasi-kemasyarakatan-islam-di-indonesia/2.

processes (from public hearings and public consultations to drafting).[38] CSOs can serve as implementing partners in government policy programs and oversee their implementation to ensure they meet desired expectations. Furthermore, CSOs can also monitor and evaluate the process and provide input on policy implementation in the community. This can be achieved through objective evidence, including data from studies, surveys, field reports, etc.

Most importantly, CSOs play a role in strengthening public political participation in every political process that impacts their daily lives. This can be done by increasing public political literacy by holding discussions, outreach, and training on national issues. They also serve as a platform to open up space for citizen participation, encouraging community forums, village deliberations, and participatory budgeting. It is hoped that CSOs will produce a cadre of leaders who are militant, possess integrity, and stand on the side of the people.

CSOs need to mobilize public political participation to connect the people with those in power. This can strengthen the people's bargaining power within the political system. Therefore, it is hoped that CSOs can contribute to creating an inclusive, transparent, and accountable government. One way to determine the quality of leadership is through general elections. [39] It is also important for the process of formulating public policy that cannot be separated from public participation in conveying aspirations, ideas, and various perspectives that can enrich and influence the direction of the policy taken.[40]

First, CSOs serve as a social space for the community. This aligns with the organization's function of transforming people's lives. Examples of this benefit include religious outreach organizations, which foster a moral society aligned with religious values. Second, CSOs also serve as a platform for the interests of its members, specifically the public they advocate for. Third, CSOs serves as a platform for fostering a sense of responsibility. Fourth, CSOs is a pillar of democracy. Therefore, the more individuals who join an organization, the easier it will be for them to express their aspirations and interests. Fifth, CSOs also serves as a vehicle for developing leaders within the community, both formal and informal.

This is because those who join these organizations are accustomed to developing programs for the benefit of their members. Therefore, it's no surprise that political parties often recruit alumni of these organizations as their cadres. They are sought after because they generally have considerable

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[38] Fanila Kasmita Kusuma, "Peran Partisipasi Masyarakat Dalam Proses Perumusan Kebijakan Publik Di Era Desentralisasi," *Binapatria* 18, no. 1978 (2024): 2505–14.

[39] Hananda Avivah and Amelia Haryanti, "Peran Masyarakat Dalam Partisipasi Politik Menghadapi Pemilihan Umum Tahun 2024," *Jurnal Mahasiswa Karakter Bangsa (JMKB)* 3, no. 1 (2024).

[40] Nelly, "Partisipasi Masyarakat Dalam Proses Pembuatan Kebijakan Publik."

leadership experience. Thus, the organization also offers career opportunities, as knowledge and skills can be acquired within these CSOs.

Conclusion

This paper demonstrates that the development of regulations and policies on CSOs in Indonesia reflects the dynamics of legal policy, characterized by tensions between state interests and public participation. Initially, CSOs legal policy tended to be repressive, characterized by the use of regulations as a means of state control over civil society, often used as a legitimate excuse to silence criticism. This suggests a legal framework that prioritizes the stability of power over guaranteeing freedom of association as a constitutional right. However, legal policy has evolved toward a supportive model in which CSOs function as development partners and channels for popular political participation. This shift does not necessarily erase the traces of past repression, but rather requires a redesign of the legal system in accordance with the principles of democracy, social justice, and respect for human rights.

In this context, the transformation of the role of CSOs from objects of state control to subjects of political participation presents both significant opportunities and challenges. It is crucial to provide civil liberties within regulations without sacrificing the public interest. Therefore, the answer to the main research question lies in the urgent need to formulate legal policies for CSOs that are not only based on a security paradigm, but also guarantee freedom of association, strengthen the role of civil society in the democratic process, and promote social justice. The urgent harmonization of regulations and practices on the ground is crucial for the development of CSOs as a forum for healthy, critical, and constructive public political participation in national development.

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The Constitutional Paradox of State Policy: Antinomy and the Reconstruction of State Policy's Framework Post-Reformation

Paradoks Konstitusional Haluan Negara: Antinomi dan Rekonstruksi Garis-Garis Besar Haluan Negara Pasca-Reformasi

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Abstract
The idea of a State Policy Direction as a guiding framework for state administration has reemerged as a significant trend in contemporary governance, in line with efforts to realize national objectives enshrined in the Constitution. The Broad Outlines of State Policy (GBHN), as a product of the People's Consultative Assembly (MPR), ceased to be legally binding following the implementation of the National Development Planning System (SPPN), centralizing planning authority in the executive branch and risking unsustainable, short-term development policies. This study examines the philosophical and juridical problems of the GBHN model within Indonesia's post-SPPN constitutional system using a normative juridical method. The findings reveal a constitutional paradox: notwithstanding GBHN's abolition, the need for a comprehensive, integrated, and binding national development framework remains increasingly urgent. Therefore, reconstructing the Fundamentals of State Policy Direction (PPHN) consistent with constitutional democracy and the presidential system is imperative.

Keywords: Constitution; National Development Planning System; State Policy Direction.

Abstrak

Gagasan mengenai haluan negara sebagai pedoman dan arah penyelenggaraan negara telah menjadi tren di dunia kontemporer, sejalan dengan upaya mewujudkan tujuan bangsa yang termaktub dalam Konstitusi. Garis-Garis Besar Haluan Negara (GBHN), sebagai produk Majelis Permusyawaratan Rakyat (MPR), tidak lagi berlaku setelah penerapan Sistem Perencanaan Pembangunan Nasional (SPPN) yang berpusat pada kekuasaan eksekutif, sehingga berpotensi menyebabkan pembangunan tidak berkelanjutan dan bersifat jangka pendek. Penelitian ini mengkaji problematika filosofis dan yuridis dari model haluan negara dalam sistem ketatanegaraan Indonesia pasca-era SPPN menggunakan metode yuridis normatif. Hasil penelitian mengungkapkan bahwa eksistensi model haluan negara didasarkan pada Konstitusi secara historis-filosofis. Antinomi ini menunjukkan paradoks konstitusional: meskipun GBHN dihapus, kebutuhan akan pedoman pembangunan nasional yang komprehensif, terintegrasi, dan mengikat seluruh cabang kekuasaan negara justru semakin mendesak. Oleh karena itu, diperlukan rekonstruksi Pokok-Pokok Haluan Negara (PPHN) yang konsisten dengan prinsip demokrasi konstitusional dan sistem presidensial.

Kata Kunci: Konstitusi; Perencanaan Pembangunan Nasional; Pokok-Pokok Haluan Negara.

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Introduction

In the architecture of modern state administration, the idea of Directive Principles of State Policy or Principles of Direction for State Administration has become a fundamental need that is increasingly recognized in various jurisdictions, regardless of the differences in ideology or the system of government they adopt.[1] This concept arose from the awareness that a constitution, as the highest basic law, is not only tasked with forming an institutional structure (frame of government) and guaranteeing citizens' basic rights (bill of rights), but is also obliged to provide substantive guidance regarding the direction and long-term goals of all state administration.[2] This direction serves as an ideological and philosophical compass, ensuring that every public policy made by the branches of power (Executive, Legislative, and Judicial) is in line with the founding ideals of the state *(Staatsidee)* and the fundamental values embraced by the nation, as stated in the Preamble to the Constitution.[3]

Essentially, State Policy serves as a normative bridge connecting the ideal goals *(das sollen)* of the Constitution with the reality of everyday state practice *(das sein)*. In other words, it is an instrument that translates the fundamental values of Pancasila and the goals of the state (protecting the entire nation, advancing the general welfare, improving the nation's life, and contributing to maintaining world order) into measurable and binding policy guidelines.[4] Without clear, comprehensive, and legally binding guidance, the country risks policy deviation, development fragmentation, and program discontinuity between government periods.[5] This gap is what triggers the urgency of State Policy, making it an important topic in the discourse on constitutional law and national development planning.[6] In fact, the formulation of the state's direction clause, which embodies these constitutional values, is referred to as "constitutional direction." This direction encompasses the formulation of values and principles as the material content of the state's direction, which are fundamental and can be both instrumental and operational.[7]

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1 Lutfil Ansori, "Haluan Negara Sebagai Pedoman Kebijakan Dasar Negara Dalam Sistem Ketatanegaraan Indonesia: Sebuah Tinjauan Filsafat Kenegaraan" (2019) 16 Justicia Islamica 79–102.

2 Mohamad Roky Huzaeni, "Kedudukan Hukum Pancasila dan Konstitusi dalam Sistem Ketatanegaraan Indonesia" (2022) 2:1 Pancasila: Jurnal Keindonesiaan 114–125.

3 Ansori, "Haluan Negara Sebagai Pedoman Kebijakan Dasar Negara Dalam Sistem Ketatanegaraan Indonesia", *supra* note 1.

4 *Ibid.*

5 Anisa Rahma et al, "ARGUMENTASI PENGEMBALIAN GARIS-GARIS BESAR HALUAN NEGARA: ANALISIS KESINAMBUNGAN RENCANA PEMBANGUNAN JANGKA MENENGAH NASIONAL DALAM PERIODE 2005-2024" (2022) 15 Jurnal Politik Pemerintahan Dharma Praja 26–38.

6 Bambang Sadono & Lintang Ratri Rahmiaji, "REFORMULASI GARIS-GARIS BESAR HALUAN NEGARA (GBHN) DAN AMANDEMEN ULANG UNDANG-UNDANG DASAR" (2020) 49:2 Masalah-Masalah Hukum 213–221.

7 I Wayan Sudirta, "MAKNA, KEDUDUKAN, DAN IMPLIKASI HUKUM HALUAN NEGARA DALAM SISTEM KETATANEGARAAN INDONESIA" (2020) 7:2 Jurnal Yuridis 258–278.

Indonesia has a long history of practicing State Policy, which is embodied in the Broad Outlines of State Policy (GBHN).[8] The GBHN, which is determined by the People's Consultative Assembly (MPR), serves as the highest guideline in national development planning.[9] In the pre-Amendment system of the 1945 Constitution, the MPR was the highest state institution and holder of people's sovereignty, while the President was the mandatary who was obliged to implement the GBHN.[10] This model effectively ensures alignment between development planning and the ideals of the Constitution and the direction set by the MPR.[11]

However, the wave of reform in 1998 triggered a series of radical amendments to the 1945 Constitution (1999-2002).[12] One of the fundamental changes that occurred was the repositioning of the MPR, namely from the highest state institution to a high state institution that is equal to other state institutions, and the strengthening of the presidential system, which is marked by the direct election of the President by the people.[13] The constitutional consequence of this change is the removal of the MPR's authority to determine State Policy.[14] This abolition was based on the argument that the existence of the GBHN, a product of the MPR, would contradict the principles of a strengthened presidential system, where the President would no longer be a mandate holder and would be accountable only to the people who elected him. While this change was deemed to have brought about a better constitutional life and affirmed the supremacy of the constitution and the principles of constitutional democracy, it also eliminated the existence of State Policy in the Constitution.[15]

After the GBHN was abolished, the national development planning function was replaced by the National Development Planning System (SPPN), which is regulated by Law Number 25 of 2004 concerning the National Development Planning System. This SPPN is embodied in the National Long-Term Development Plan (RPJPN) and the National Medium-Term Development Plan

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8 Suanro, "KONSEKUENSI HUKUM DARI PERENCANAAN PEMBANGUNAN NASIONAL MODEL GARIS-GARIS BESAR HALUAN NEGARA (GBHN)" (2019) 4:1 Jurnal Ilmu Hukum Tambun Bungai 486–497.

9 Janpatar Simamora, "URGENSI KEBERADAAN GBHN DALAM SISTEM KETATANEGARAAN REPUBLIK INDONESIA" (2016) 17:2 LITIGASI 3427–3466.

10 Bilal Dewansyah & M Adnan Yazar Zulfikar, "Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi" (2016) 3:2 PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW) 285–309.

11 Sadono & Rahmiaji, *supra* note 6.

12 Firdaus Arifin, "Pembentukan Kabinet dalam Sistem Pemerintahan Presidensil di Indonesia: Studi Komparasi UUD 1945 Sebelum Dan Setelah Perubahan" (2024) 9 Jurnal Lex Renaissance 333–358.

13 Dewansyah & Zulfikar, "Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945", *supra* note 10.

14 Silvia Rosiana, Ahmad Reihan Thoriq & Farsya Dalila Alamsyah, "Tinjauan Yuridis Terhadap Reformulasi Garis-Garis Besar Haluan Negara Dalam Agenda Amandemen Ke-V Undang-Undang Dasar 1945" (2024) 1:02 Forschungsforum Law Journal 19–31.

15 *Ibid.*

(RPJMN).[16] Normatively, the National Development Planning Guidelines (SPPN) is an instrument expected to fill the void in development direction.

The philosophical and legal issues that emerged after the abolition of the GBHN (State Guidelines) created an antinomy or paradox in the contemporary Indonesian constitutional system. This antinomy can be formulated as follows: although the GBHN has been abolished through the implementation of the SPPN, which focuses on executive power, the need for comprehensive, integrated, and binding national development guidelines for all branches of government is even more pressing to realize the goals of the state as mandated by the Constitution. This situation gives rise to a constitutional paradox that requires in-depth study to find alternative models for state policy.

The main weakness of the SPPN lies in its executive-centric nature. Because the RPJPN/RPJMN are legal products rooted in the vision, mission, and programs of the elected President, these guidelines tend to bind only the executive branch and are partisan in nature. Consequently, national development policy is vulnerable to inconsistencies, discontinuities, and radical changes in direction every five years as leadership changes. This contrasts with the GBHN, which, despite its political weaknesses, is normatively binding on all state administrators. The consequence of this situation is that it is difficult to implement elements of national development in a gradual, sustainable, and consistent manner, as such planning depends solely on the will of the President, as the holder of executive power, and the ruling political group.

This paradox is further exacerbated by significant public demand for the revival of State Policy in a new form. Various groups, from academics to prominent figures (e.g., Jimly Asshiddiqie), have openly expressed support for the restoration of binding long-term development guidelines. The rationale is that the current RPJP (both national and regional) and central-regional relations are not functioning properly, resulting in divergent, incongruent, and unsustainable development directions.

From a constitutional law perspective, this situation reflects what is known as a normative vacuum in fundamental policy direction. The Indonesian Constitution provides a clear philosophical foundation (Constitutional Purpose), but does not provide sufficiently strong and binding legal instruments to ensure that these objectives are truly realized in an integrated manner by all state institutions. This gap between the Constitution's ideal goals and the implementation of short-term, sectoral policies is the core problem of this research.

Based on this background, this study formulates two main questions: first, how the antinomy of the State Policy Model (GBHN) exists within the

[16] Chaira Saidah Yusrie et al, "Kebijakan Publik dan Kinerja Birokrasi Pendidikan Dalam Kompleksitas Perkembangan": (2021) 3:1 Jurnal Dirosah Islamiyah 126–143.

Indonesian constitutional system after the SPPN era; and second, how the constitutional existence of a comprehensive, integrated, and binding model of state policy is achieved across all branches of state power.

This article is a normative juridical study using a legisprudence approach to analyze the problematic nature of state policy from the perspective of constitutional law and policy formation. The research typology is prescriptive, aiming to provide legal arguments based on the research findings as solutions to the problems encountered, while simultaneously formulating an ideal reconstruction of the State Policy Model that aligns with the Indonesian constitutional system.

The Antinomy of the Existence of the State Policy Model (GBHN) in the Indonesian Constitutional System after the SPPN Era

The idea of state policy has become a trend in the contemporary world as a guideline and direction for state administration, including for adherents of certain ideologies and systems of government.[17] This aligns with the nation's goals as outlined in the Constitution. In Indonesia, the dynamics of the post-reform state system demonstrate an antinomy regarding the existing model of state policy.[18] On the one hand, the GBHN, a product of the MPR, has been sidelined through the implementation of the SPPN, which focuses on executive power. However, on the other hand, the need for comprehensive, integrated, and binding national development guidelines for all branches of state power is increasingly pressing to realize the goals of the state as mandated by the constitution.[19] This paradoxical situation between the abolition of the GBHN and the demand for strong guidelines is the primary focus of this discussion, which aims to explain how this antinomy was created and influenced Indonesia's post-SPPN constitutional system.

Historically and philosophically, the existence of the model of state policy in Indonesia is rooted in the Constitution.[20] State policy is understood as national policy, or public policy in a broad sense. The reinstatement of the state policy model in the Indonesian constitutional system necessarily places the MPR as the highest authority holder in the GBHN (State Guidelines). In the history of Indonesian constitutional law, State Policy and its model are contained in the Constitution, where the Constitutional drafters positioned the MPR to establish the Constitution and the broad outlines of state policy.

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17 Mei Susanto, "Konstitusi dan Pembangunan" (2017) 5 Padjadjaran Law Review, online: <https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/464>.

18 Dhafin Zhafran, Taufiqurrohman Syahuri & Syamsul Hadi, "Reformulasi Sistem Perencanaan Pembangunan Nasional Dengan Konsep Garis Besar Haluan Negara" (2025) 8:1 Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang 59–77.

19 *Ibid.*

20 Sudirta, *supra* note 7.

The MPR's configuration as the highest authority holder in the form of GBHN, with MPR Decrees held by the President as the holder of the highest executive power, as well as the MPR's mandate. This model is inspired by the 1937 Irish Constitution, the first Constitution to contain Directive Principles of State Policy (DPSP). The existence of State Policy itself is a legal interpretation of Ideology and the Constitution:[21] assist in the formulation of general state policies for the branches of state power.

Table 1. GBHN Comparative Framework

Aspect	**Before the Constitutional Amendment (GBHN Era)**	**After the Constitutional Amendment (Post-GBHN Era)**
Constitutional Basis	Based on the 1945 Constitution (before the amendment) which explicitly gave the MPR a mandate to determine the General Guidelines of State Policy (GBHN)	There is no explicit constitutional mandate for "State Policy"; it is replaced by a legal framework under Law Number 25 of 2004 concerning the National Development Planning System.
Institutional Authority	The MPR holds the highest authority (as a manifestation of the people's sovereignty) to formulate the GBHN and supervise its implementation by the President.	The People's Consultative Assembly (MPR) no longer holds the power to determine the direction of the nation. National policies are formulated by the President and coordinated through Bappenas within the framework of the National Long-Term Development Plan (RPJPN) and the National Medium-Term Development Plan (RPJMN).
President's Position	The President is the executor (mandatary) of the MPR, responsible for implementing the GBHN and reporting to the MPR at the end of each term of office.	The President acts as head of government who is directly elected by the people, formulating and implementing development plans without a mandate from the MPR.

[21] Dewan Redaksi, "Rancang Bangun GBHN" (30 August 2016), online: *Aktual.com* <https://aktual.com/rancang-bangun-gbhn/>.

Development Planning Instruments	GBHN serves as the main national direction that guides the five-year development plan (REPELITA)	The long-term plan (RPJPN) and medium-term plan (RPJMN) replaced the GBHN as instruments for development direction and policy coherence.
Accountability Mechanism	Political accountability is implemented through MPR evaluation and potential dismissal if the President deviates from the GBHN.	Accountability is implemented through general elections and parliamentary oversight mechanisms, reflecting democratic legitimacy rather than hierarchical subordination.
Political-Administrative Orientation	Centralistic and directive, with a top-down policy structure that reflects a unitary and hierarchical conception of sovereignty.	Decentralization and pragmatics, emphasizing policy coherence, technocratic planning, and participatory governance.

Fundamental changes to the 1945 Constitution resulted in the elimination of State Policy from the Indonesian Constitution. Although these changes were seen as improving constitutional life and affirming constitutional supremacy and the principles of constitutional democracy,[22] it also raises a long-standing philosophical dilemma.[23] The elimination of the State Policy clause and its model in the 1945 Constitution occurred as a result of several weaknesses that emerged during the amendment process, such as the irregularity of the Constitution's systematics; the influence of political party identities and interests; the absurdity of the parliamentary chamber system; and the ambiguity of the government system.[24]

The primary rationale behind the amendments was an effort to refine and strengthen the presidential system of government. Direct presidential election by the people was the primary consequence, which automatically eliminated the President's role as the MPR's mandatary. This change also resulted in the

[22] Dudik Djaja Sidarta & Subekti, "KONSTRUKSI FILOSOFIS HALUAN NEGARA DIKAITKAN DENGAN HUBUNGAN ANTARA MPR DAN PRESIDEN SEBELUM DAN SESUDAH AMANDEMEN UUD 1945" (2021) 6:1 Jurnal Hukum dan Kenotariatan 311–322.

[23] Ilhamdi Putra, "KARAKTER HALUAN NEGARA DARI MASA KE MASA DAN IMPLIKASINYA DALAM SISTEM KETATANEGARAAN INDONESIA PASCAREFORMASI" (2023) 7:1 Unes Journal of Swara Justisia 112–132.

[24] Efriza Efriza, "POLEMIK: GARIS-GARIS BESAR HALUAN NEGARA (GBHN) DAN RENCANA PEMBANGUNAN JANGKA PANJANG (RPJP), DAN EKSISTENSI MPR" (2020) 1:1 PARAPOLITIKA: Journal of Politics and Democracy Studies 54–76.

MPR no longer being the supreme body of state, thus losing its authority to determine the direction of the nation. This shift was further emphasized through Law Number 25 of 2004 concerning the National Development Planning System (SPPN).[25]

The crux of the State Policy's antinomy lies in the inconsistencies that emerged from fundamental changes post-reform. The National Policy Guidelines (SPPN), established through Law No. 25 of 2004, marked a turning point. A comparison between the GBHN and post-GBHN eras reveals a fundamental shift:[26]

1. Institutional Authority: The People's Consultative Assembly (MPR) no longer has the authority to determine the direction of the nation; national policies are now formulated by the President and coordinated through Bappenas within the framework of the National Medium-Term Development Plan (RPJPN) and National Medium-Term Development Plan (RPJMN);
2. Position of the President: The President, who was previously the MPR's executive (mandatary), now acts as the head of government directly elected by the people, formulating and executing development plans without an MPR mandate; and
3. Accountability: Accountability is now carried out through general elections and parliamentary oversight, reflecting democratic legitimacy.

A fundamental inconsistency occurs between the model of state direction originally established by the MPR (Article 3 of the 1945 Constitution) and one of the reasons for the basic agreement on the amendment, namely to strengthen the presidential system.[27] Although the Explanation of the SPPN Law acknowledges the lack of continuity between direct elections and the existing State Policy model (GBHN), it still acknowledges the Constitutional mandate to implement development.[28]

The SPPN delegates this to the long-term and medium-term development plan model (RPJPN and/or RPJMN). This provision indicates that the affirmation of the presidential system does not align with the collective will in national development planning, but rather is based solely on the wishes and interests of candidate pairs and supporting political parties. Consequently, one element

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[25] Zennis Helen, Kiki Yulinda & Wira Okta Viana, "Perdebatan Payung Hukum Pokok-Pokok Haluan Negara Pasca Amendemen UUD 1945" (2022) 1:10 Jurnal Cakrawala Ilmiah 2625–2636.

[26] Sri Nur Hari Susanto, "PERGESERAN KEKUASAAN LEMBAGA NEGARA PASCA AMANDEMEN UUD 1945" (2014) 43:2 Masalah-Masalah Hukum 279–288.

[27] Dudik Djaja Sidarta & Subekti, "KONSTRUKSI FILOSOFIS HALUAN NEGARA DIKAITKAN DENGAN HUBUNGAN ANTARA MPR DAN PRESIDEN SEBELUM DAN SESUDAH AMANDEMEN UUD 1945" (2021) 6:1 Jurnal Hukum dan Kenotariatan 311–322.

[28] Septi Nur Wijayanti, "Studi Evaluasi Terhadap Amandemen UUD 1945 (Amandemen Sebagai Upaya Pemenuhan Kebutuhan Hukum Masyarakat Indonesia)" (2009) 3:5 Jurnal Media Hukum 35835.

of national development that is difficult to implement is gradual, sustainable, and continuous planning, which relies solely on the will of the President, as the holder of executive power, and the ruling political power group.[29]

The second antinomy is the normative vacuum at the highest level of fundamental policy planning, which ultimately triggered the re-emergence of the State Policy discourse. The abolition of the GBHN (State Policy Guidelines) eliminated the basic legal function of planning, which initially served as a moral guideline to ensure state policies were implemented within the Constitution. The discourse on reviving the state's direction is driven by several considerations:

1. The current state development system is unintegrated and unfocused, and tends to be fragile and short-term;
2. Changes in the head of government have also altered the vision, mission, and development programs;
3. The National Policy Guidelines (SPPN) are seen as binding only on executive power holders, not binding and regulating other branches of state power; and
4. The achievement of the goals of the nation and state as stipulated in the 1945 Constitution must be carried out by all branches of government and state institutions.

Reviewing the importance of the GBHN as a comprehensive and targeted development reference, as well as the need for a long-term, more sustainable national development vision framework integrated between the central and regional governments, Jimly Asshiddiqie assessed,[30] the current RPJP (both national and regional) is still not functioning optimally, resulting in misaligned and unsustainable development, particularly with the implementation of general and regional elections.

The resulting debate is inevitable: some argue that the State Policy in a presidential system based on constitutional democracy will not have absolute implications for executive, legislative, or judicial powers. However, others argue that reinstating the State Policy model will have significant impacts and changes on the state system, concerning the governance system, the relationships between state institutions, and the functions of each state institution. This antinomy, characterized by the State Policy being "sidelined and expected," demonstrates the widely recognized need for sustainable

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[29] Dymas Yulia Putri Kusumaningtyas, "PROBLEMATIKA MODEL PERENCANAAN PEMBANGUNAN NASIONAL PASCA-AMANDEMEN UNDANG-UNDANG DASAR NEGARA" (2018) 11:1 Ummul Qura Jurnal Institut Pesantren Sunan Drajat (INSUD) Lamongan 1–15.

[30] antaranewscom, "Jimly Asshiddiqie: Penting menghidupkan kembali GBHN" (24 October 2019), online: *Antara News* <https://www.antaranews.com/berita/1129848/jimly-asshiddiqie-penting-menghidupkan-kembali-gbhn>.

development guidelines, which must be embodied in legally binding, regulatory frameworks as constitutional norms.

The Existence of a Constitutional State Policy Model that is Comprehensive, Integrated, and Binding to All Branches of State Power

The previous discussion has identified an antinomy in the Indonesian constitutional system following the amendments to the 1945 Constitution: on the one hand, the GBHN (State Guidelines) were abolished along with the strengthening of the presidential system, but on the other hand, the need for comprehensive and sustainable national development guidelines is increasingly pressing. This normative vacuum, caused by the executive-centric nature of the National Development Planning System (SPPN), has created policy discontinuities and hampered the achievement of the nation's ideals. Therefore, the current pressing challenge is to formulate a new State Policy model that is not only present but also constitutionally comprehensive, integrated, sustainable, and binding on all branches of state power: the Executive, Legislative, and Judicial.

The existence of an ideal State Policy model must be able to resolve the post-reform paradox without damaging the core of the presidential system that has been strengthened.[31] This model must embody a strong constitutional direction, serve as a legal interpretation of Pancasila and the 1945 Constitution, and ensure long-term and sustainable public policy. The most rational solution is to reconstruct the Principles of State Policy (PPHN), strategically positioned within the legal hierarchy and supported by a strengthened system of checks and balances between institutions.

The idea of restoring state policy in Indonesia, which binds all branches of government, including the judiciary in its judicial review function, has important precedent in global constitutional practice. Three jurisdictions—India, Brazil, and South Africa—provide significant comparative models in which development guidelines or directive principles of the state serve as an interpretive benchmark for the judiciary in examining generally binding legislation, even though they cannot be directly tested.

1. India

The Indian Constitution contains Directive Principles of State Policy (DPSP) in Part IV which are explicitly declared as “non-justiciable” under Article 37. The DPSP encompass principles of development and social justice including

[31] Muhtadi Muhtadi & Zulkarnain Ridlwan, “Reinstating the National Guidelines of State Policy within Indonesia’s Presidential System: Exploring the Possibilities” (2023) 17:2 Fiat Justisia: Jurnal Ilmu Hukum 131–142.

equitable distribution of resources (Article 39), security of adequate livelihoods, and protection of workers and children which are not directly enforceable through the courts but are considered "fundamental in the governance of the country".[32]

India's constitutional design reflects a compromise between justiciable negative rights (civil and political rights) and programmatic positive rights (socio-economic rights). However, the Indian constitution-makers deliberately positioned the DPSP as a guideline for the legislature and executive in formulating policy.[33]

The DPSP has been used to enrich and broaden the interpretation of fundamental rights, particularly Article 21 (the right to life and personal liberty). In a series of decisions, the Supreme Court has interpreted the "right to life" broadly to encompass the right to livelihood, the right to health, the right to education, and the right to a clean environment, as informed by the relevant DPSP.

In Olga Tellis v. Bombay Municipal Corporation (1985), the court held that the DPSP "are fundamental in the governance of the country" and should be given equal weight with fundamental rights in assessing government policies. The court affirmed that the right to life includes the right to livelihood, referring to Article 39(a) of the DPSP.

The DPSP serves as a standard for assessing "reasonableness" and "public purpose" when legislation restricts fundamental rights. In State of Bihar v. Kameshwar Singh (1952), the Supreme Court held that an agrarian reform law implementing Articles 39(b) and (c) of the DPSP could be justified as a legitimate "public purpose" even though it restricted property rights.[34]

In Bijay Cotton Mills v. State of Ajmer (1955) and Pathumma v. State of Kerala (1978), the courts used the DPSP as a yardstick to determine the reasonableness of restrictions on fundamental rights. This approach allows the state to pursue a socio-economic justice agenda while still respecting fundamental rights.

The DPSP is used to validate laws designed to implement principles of social justice. Article 31C (introduced through the 25th Amendment, 1971) explicitly protects laws giving effect to Articles 39(b) and (c) of the DPSP from challenges under Articles 14 and 19 of the Constitution. Although the Supreme Court in Kesavananda Bharati and Minerva Mills (1980) limited the scope of Article 31C and affirmed the supremacy of the basic structure, the court nevertheless

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[32] Devdatta Mukherjee, "JUDICIAL IMPLEMENTATION OF DIRECTIVE PRINCIPLES OF STATE POLICY: CRITICAL PERSPECTIVES".

[33] B A Gebeye, *The Potential of Directive Principles of State Policy for the Judicial Enforcement of Socio-Economic Rights: A Comparative Study of Ethiopia and India* (2016).

[34] A. David Ambrose, "Directive Principles of State Policy and Distribution of Material Resources with Special Reference to Natural Resources – Recent Trends" (2013) 55:1 Journal of the Indian Law Institute 1–20.

recognized that the DPSP could justify legislative intervention for socio-economic justice.

The Kesavananda Bharati (1973) judgment affirmed that the DPSP is an integral part of India's constitutional identity. The Supreme Court stated that although the DPSPs are not directly enforceable, they constitute "the mandate to build a welfare state" and are part of the basic features of the Constitution. Therefore, any law aimed at implementing the DPSPs must be assessed not only on procedural compliance but also on substance, informed by the DPSP's transformative values.

2. Brazil

The 1988 Brazilian Constitution established a three-tier budget planning system in Article 165: Plano Plurianual (PPA or Multi-Year Plan), Lei de Diretrizes Orçamentárias (LDO or Budgetary Guidelines Law), and Lei Orçamentária Anual (LOA or Annual Budget Law).[35] The PPA, established for a four-year period, "must establish, regionally, guidelines, objectives, and targets for federal government spending." Although the PPA is a legislative instrument (not a constitutional norm), its mandate stems directly from Article 165 of the 1988 Constitution, granting its function constitutional legitimacy.

Brazil's Federal Constitutional Court (Supremo Tribunal Federal - STF) has developed jurisprudence recognizing the PPA as an interpretative instrument in disputes related to fiscal policy and the fulfillment of social rights. The STF has progressively recognized the justification of socioeconomic rights guaranteed by the 1988 Constitution. In several cases, the STF has used the PPA as a reference to assess whether the government has fulfilled its constitutional obligation to realize social rights such as health, education, and housing.

In ADPF 45 (2004), Minister Celso de Mello, as rapporteur, recognized that the ADPF is an appropriate instrument to ensure the implementation of constitutional health policies. The court held that the judiciary should not be passive in the face of neglect regarding second-generation rights, signaling that even budgetary measures are subject to judicial review. Although the ruling was issued in a monocratic manner and the case ultimately lost its object, it remains paradigmatic because it reveals a new understanding of the role of the judiciary in the realization of social rights.

The STF uses the PPA as a standard for assessing the reasonableness of government budget allocations. When the government diverts development funds from programs stipulated in the PPA to the payment of large salaries and allowances of public officials or unsustainable programs without

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[35] Robson Zuccolotto et al, "The primacy of management over planning in Brazilian states" (2022) 16 Revista de Contabilidade e Organizações, online: <https://www.redalyc.org/journal/2352/235272781004/html/>.

sufficient justification, the court can order the government to prioritize sustainable development programs in accordance with the PPA.

In cases involving the implementation of individual budget amendments (Constitutional Amendment 86/2015), the STF acknowledged that while the Executive has discretion in budget implementation, this discretion is limited by the constitutional and planning commitments set out in the PPA. Research shows that after EC 86/2015, the amount paid and the number of individual amendments executed increased, while the profile of legislators with executed amendments also changed: being part of a government coalition became less important.

The STF has adopted two key interpretive principles in social rights cases: proportionality and the reserve of the possible. These principles serve as interpretive standards for balancing budgetary constraints with the need to uphold social rights.

The STF states that "the implementation of each of these rights must result in a reduction of social and economic inequality." In Brazil's constitutional system, there can be no doubt that the goal of the system protecting social and economic rights is to reduce inequality. This is evident in the preamble to the 1988 Federal Constitution, which clearly establishes that one of the primary functions of the Brazilian government is equality, in the sense of the word defined in the third clause of Article 3, which establishes as one of the four fundamental goals of the Federative Republic of Brazil "to eradicate poverty and substandard living conditions and to reduce social and regional inequalities."

The STF has demonstrated judicial activism in upholding social rights, particularly in health cases where courts have ordered the state to provide medicines and medical care despite budgetary constraints. Courts use the PPA as a reference to determine whether the state has sufficient resources to fulfill its constitutional obligations.

In practice, the STF has stated that judicial decisions can function as "triggers" or "inputs" in the public policy cycle. When the judiciary determines the realization of positive benefits by the state, it directly influences the institutional and budgetary dynamics of the public administration in the so-called public policy formulation cycle.

3. South Africa

The South African Constitution includes directly justiciable socio-economic rights in the Bill of Rights. These rights include the right to housing (Article 26), health care, food, water, and social security (Article 27), and education (Article 29). Articles 26 and 27 stipulate that "the State shall take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right." This formulation reflects a balanced

approach between recognizing positive rights and realistically acknowledging resource limitations.

The National Development Plan (NDP), launched in 2012, is an action plan to secure South Africa's future as enshrined in the Constitution. The NDP aims to eradicate poverty and reduce inequality by 2030.[36] The National Planning Commission (NDP) is not a constitutional norm but a policy document developed by the National Planning Commission and adopted by the government. The NDP sets out six key pillars that represent the plan's broad objectives of eradicating poverty and reducing inequality.

Furthermore, the South African Constitutional Court has developed the reasonableness test as a standard of review for assessing the government's compliance with its constitutional obligations regarding socio-economic rights through several of its decisions.

In the Grootboom case, the Constitutional Court established a reasonableness framework for assessing the government's housing program. The court stated:

> *"The Constitution requires the State to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights."*

The court emphasized that government programs must be "reasonable" and must include measures for those in immediate need of assistance.

In Khosa v. Minister of Social Development (2004), the Constitutional Court ruled that the exclusion of permanent residents from social assistance was unconstitutional. The court rejected the government's argument that there were insufficient budgetary resources to extend social assistance to permanent residents, reviewing available information and noting the amount already spent on social assistance for citizens.

Although the NDP lacks constitutional status, the Constitutional Court has used it to:[37]

1. Assessing the socio-economic context: The NDP provides data and analysis on poverty, inequality, and development challenges in South Africa, which the court uses to understand the context in which socio-economic rights should be realized.
2. Determining the standard of reasonableness: The NDP sets national development targets and priorities, which serve as a benchmark for

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[36] Mandisi Matyana & Xolani Thusi, "Unemployment and poverty in South Africa: Assessing the National Development Plan 2030 predictions" (2023).

[37] David Francis & Edward Webster, "Poverty and inequality in South Africa: critical reflections" (2019) 36:6 Development Southern Africa 788–802.

assessing whether government policies are "reasonable" in the context of resource availability and the urgency of needs.

3. Linking rights to constitutional values: The NDP affirms the constitutional commitment to social transformation, equality, and human dignity, which the court uses to inform the interpretation of socio-economic rights.

Theoretically, adherence to State Policy is tested by the principles of the Rule of Law and legislative integrity. Legal philosophers such as Jeremy Waldron emphasize the importance of legal integrity, where all state policies must be coherent and consistent with higher fundamental values, namely the Constitution.[38] In this context, the State Policy is the embodiment of this principle of integrity. In the Indonesian context, the National Policy on Public Policy (PPHN) must serve as a bridge between fundamental norms (Pancasila and the 1945 Constitution) and implementing norms (laws and regulations thereunder).

The PPHN model must possess two key characteristics:

1. Non-Justiciable Nature: The PPHN should not be a norm directly enforceable by the courts, lest it interfere with the policy domains of the executive and legislative branches. This maintains the fundamental principle of India's DPSP, which ensures policy flexibility.
2. Regulative and Evaluative Nature: The PPHN serves as a regulatory basis for the formation of laws and as a criterion for evaluating the performance of the Executive by the Legislature.

The ideal reconstruction of the PPHN places the MPR as the authority that establishes the PPHN, but in its capacity as a high state institution, no longer the highest institution. This model is realized through an MPR Decree (TAP MPR).

The selection of the MPR as the deciding institution is based on historical and philosophical reasons: the MPR is the broadest collective representation of the people (the House of Representatives and the Regional Representatives Council) and ensures that the PPHN is the result of high-level political deliberation, not merely an executive agenda.[39] The PPHN must be stipulated in the form of a Decree of the People's Consultative Assembly (TAP MPR), which is subordinate to the 1945 Constitution but above the Law (UU). To

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[38] Jeremy Waldron, *The Rule of Law and the Measure of Property*, 1st edn (Cambridge University Press, 2012).

[39] D Nicky Fahrizal & Prajna Delfina Dwayne, "The People's Consultative Assembly (MPR) and the State Policy Outlines (PPHN) in the Post-Fourth Amendment Era of the 1945 Constitution" (2022) 50:3 Indonesian Quarterly, online: <https://journals.csis.or.id/index.php/iq/article/view/2006>.

ensure its comprehensive legal binding force, the following must be implemented:

1. Strengthening the Status of the TAP MPR: The Law on the Formation of Legislation must explicitly recognize that the TAP MPR regulating the PPHN is above the Law and below the 1945 Constitution.
2. Legislative Linkage: This position ensures that any law enacted by The House of Representatives (DPR) and the President must not substantially contradict the PPHN, thereby guaranteeing legislative integrity.

The PPHN must be the highest reference point that integrates all planning documents:

1. PPHN (MPR Decree): A very long-term vision and principles (25-50 years), fundamental in nature.
2. RPJPN (Law/Presidential Decree): A long-term plan (20 years) that must translate the PPHN into measurable programs.
3. RPJMN (Presidential Decree): A medium-term plan (5 years) that must implement the RPJPN.

With this model, the PPHN forces vertical coherence from fundamental to operational policies, thereby eliminating the executive-centric nature of the SPPN.

Furthermore, a comprehensive mechanism of engagement and checks and balances is needed. PPHN engagement must be realized by strengthening the role of the three branches of state power: the Executive, the Legislative, and the Judiciary.

First, the PPHN binds the Executive through regulatory and evaluative means. The President must use the PPHN as a philosophical and programmatic basis for formulating the vision and mission, the RPJPN, and the APBN.[40] Failure to comply with the PPHN is not grounds for impeachment, but rather grounds for political accountability. The MPR's function is to evaluate the President's annual report regarding the compliance of policy implementation with the PPHN.

Second, the Legislative Engagement is substantial.[41] The DPR and the President are obliged to ensure that every draft law (RUU) under discussion does not deviate from or contradict the principles of the PPHN. The PPHN

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[40] Bambang Soesatyo, "THE URGENCY OF THE STAPLES OF STATE POLICY AS A LEGAL UMBRELLA FOR THE SUSTAINABLE DEVELOPMENT IMPLEMENTATION TO FACE THE INDUSTRIAL REVOLUTION 5.0." (2022) 23:1 Central Asia & the Caucasus (14046091), online: <https://repository.ut.ac.id/10041/1/Jurnal%20Pak%20Bamsoet.pdf>.

[41] Tarunabh Khaitan, "Directive principles and the expressive accommodation of ideological dissenters" (2018) 16:2 Int J Const Law 389–420.

serves as an ideological filter and guideline in the legislative process. It ensures that the resulting legal product is nation-centric, not party-centric.

Third, the involvement of the judiciary (Constitutional Court), which is the most crucial mechanism. Although the PPHN is non-justiciable, the Constitutional Court (MK) must be given the authority to review laws against the PPHN. The MK can review the material of a law against the 1945 Constitution. However, with the PPHN, the MK needs to have the authority to annul laws that clearly contradict the PPHN (Jimly Asshiddiqie argues that the MK can interpret constitutional direction). This aligns with the constitutional review approach in many countries, which considers the principles of state direction as an interpretive guide.

Conversely, the MK must have the authority to review the MPR Decree on the PPHN against the 1945 Constitution, ensuring that the PPHN itself does not deviate from the Constitution. This checks and balances mechanism ensures that no MPR product falls outside the scope of Constitutional oversight.

This PPHN model provides a comprehensive and sustainable solution for Indonesia: First, long-term sustainability. With the PPHN as a very long-term master plan, national development becomes resistant to changes in the President's vision and mission every five years. This addresses the problem of policy discontinuity complained of by many parties.

Second, the PPHN, which binds the MPR (regional representation) and serves as the basis for the RPJPN/RPJMN, automatically forces regional governments to align their RPJPD/RPJMD with the mutually agreed-upon national development direction.

Third, the PPHN is stipulated through an MPR Decree (TAP MPR) which is regulative, not directive or mandatory. The President is not impeached for violating the PPHN; instead, his accountability is assessed by the MPR. This maintains the principle of sovereignty in the hands of the people and strengthens the system of checks and balances between state institutions. The PPHN acts as a "mirror of the Constitution," not "a leash" on the President by the MPR.

Regarding the possibility of implementing this PPHN model, several realistic considerations need to be put forward. From an institutional perspective, the reconstruction of the PPHN through a TAP MPR does not require a politically risky amendment to the 1945 Constitution, but rather simply through optimizing the MPR's existing authority under Article 3 of the 1945 Constitution. This possibility is wide open if there is sufficient political consensus among the DPR and DPD factions as members of the MPR. From a constitutional perspective, the PPHN model, which is regulative—not mandatory—is compatible with the strengthened presidential system post-reform. The main challenge lies in political resistance from parties that tend to maintain partisan primacy in formulating the president's vision and

mission. However, the comparative experiences of India (DPSP), Brazil (PPA), and South Africa (NDP) demonstrate that state policy instruments can function effectively even in strong constitutional democracies, provided they are designed with proportional and non-absolute binding mechanisms.

Conclusion

The dynamics of post-reform Indonesia have resulted in a constitutional antinomy in which the General Guidelines of State Policy (GBHN) were eliminated to strengthen the presidential system, yet at the same time, an urgent need arose for comprehensive national development guidelines. This antinomy manifested itself as a functional paradox of the National Development Planning System (SPPN), which is executive-centric and discontinuous, resulting in state planning tending to be fragile, short-term, and not binding on all branches of government. This condition created a normative vacuum in the fundamental policy direction that should function as a legal interpretation of the Constitution's ideals. Reconstruction of the General Guidelines of State Policy (PPHN) through a People's Consultative Assembly Decree (TAP MPR) is the most constitutionally realistic solution. The TAP MPR route does not require an amendment to the 1945 Constitution—which carries high political risks—and its implementation is quite likely if supported by cross-faction political consensus in the MPR. This reconstruction requires three strengthenings: (1) empowering the MPR's authority to formulate State Policy; (2) establishing the position of the TAP MPR in the hierarchy of laws and regulations above laws; and (3) strengthening the authority of the Constitutional Court to test the MPR Decree against the 1945 Constitution. In this way, the PPHN can become a comprehensive, regulatory and binding constitutional guideline for all branches of state power.

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