

Political Form and Sovereignty of the Republic of Indonesia : State of Law or State of Power

Muhammmad Kamran¹, Mutya Audya Putri²

¹ *Megarezky University, Indonesia*

² *Moslem University of Indonesia, Indonesia*

 muhkamran@unimerz.ac.id

Abstract

This research is normative legal research using a statutory approach (statute approach), conceptual, analytical (analytical approach), and theory (theoretical approach) and literature research. The results of this study indicate that Article 1 paragraph (3) of the 1945 Constitution explicitly states that the state of Indonesia is a state of law, not a state of power. So that the law is used as a fortress and commander in chief to provide certainty of legal protection to the people. The government system should be run on a legal basis, abuse of authority by the government must be accounted for in accordance with applicable legal provisions. Thus, because Indonesia is a rule of law with a democratic government system, both the government system, law enforcement, and the entire nation and state must always carry out their life activities based on good law based on the 1945 Constitution, laws and regulations, and Pancasila. So the recommendations put forward by the researcher: based on the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2-3) Indonesia is a rule of law, with a democratic government system not a sovereign state, it should have a good system of government, law enforcement, and the whole nation and The state must carry out its life activities which are always based on good law based on the 1945 Law, laws and regulations, and Pancasila values. The mandate of the 1945 Constitution should be Article 1 paragraph (2-3) to provide problem solving, both problems in the wheels of the government system, law enforcement, the nation and the country itself, are always governed by law. n abstract of maximum 250 words was required for any submitted manuscript. Abstract was written using Book Antiqua-10. It was written narratively containing at least background of study, aims and scope of paper, method, and summary of result or finding. It was written in 1 paragraph. Each manuscripts should have 3 to 6 Keyword written under the abstract. The keywords should help audience search the relevant literature to their interest

Keywords: Political Form, Sovereignty of the Republic of Indonesia, State of Power

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INTRODUCTION

At the beginning of its formation, Indonesia was asked to be a just and humane country as stated in Pancasila and the Preamble to the 1945 Constitution. It can be said that from the beginning Indonesia was a country that was formed to become a rule of law. However, in its development, this is not the case. There are many deviations related to the law (Mohammad Sigid Gunawan, 2018: 58).

The Indonesian Law State At the beginning of the founding of the Indonesian state, the Founding Fathers of the Nation were well aware that in order to oversee the running of a country, it was necessary to make a constitution, namely the 1945 Constitution (UUD 1945). If it is said that the existence of a constitution is a consequence of accepting the

concept of a rule of law state, then the founders of this republic have chosen the concept of a rule of law state. Why? Because the function of the constitution is to legally limit government power so that its use does not violate human rights and does not exceed the limits of the authority granted in the constitution (Mahfud, M.D, 1999). This is in line with the constitutional definition according to JF. Strong (CF. Strong et al., 2001) as follows: (Suhartini, 2019:73).

A constitution is a collection of principles to which the powers of the government, the right of the governed, and the relations between the two are adjusted.

Therefore, even though the rule of law concept adheres to a universal concept, (Francis G. Jacob, 2007:7) at the level of implementation, it turns out to be influenced by the various characteristics of the state and its people. On that basis, historically and practically the concept of a rule of law state is based on the Al-Quran, Pancasila, and the 1945 Constitution in Indonesia, where Article 1 paragraph (3) of the 1945 Constitution explicitly states that Indonesia is a state based on law, (Indonesian Constitutional Court, 2008:4) as understood by rechtsstaat (Bahder Johan Nasution, 2012:18) according to Continental Europe and rule of law (Albert Venn Dicey, 1979) according to Anglo Saxon. (Zahermann Armandz Muabezi, 2017:423).

Discussion about matters of state, law and power, will not be timeless only with the passage of time, from that, scientific knowledge about the rule of law and state power is very actual, because humans exist under the auspices of state construction. (Nurul Qamar et al., 2018:99). State of law (state of law) or state of power (state of power) which is also commonly called Rechtsstaat and Rule of law, rechtsstaat or machtstaat is commonly questioned in conversations or discussions about politics (politics), law (law) and power (power) (Nurul Qamar et al., 2018: 1). Why such conversations and discussions occur is none other than human instincts or sensitivities as part of the construction of living together under the auspices of the state attached to them as zoon politicon and zoon recht humans as political beings and also as legal subjects (Nurul Qamar et al. , 2018: 1).

A rule of law is an idealized state that is able to ward off personal and group ambitions that can harm the representation of the majority of the people (volk) or citizens in carrying out state government policies (Nurul Qamar et al., 2018: 1). On the other hand, a state of power (machtstaat) is a country whose government policies are carried out based on the will of individuals or groups that are included in the circle of power or the ruling class (Nurul Qamar et al., 2018: 1).

The rule of law is run by a government based on the principles of law and democracy, the principle of legality, equality before the law. On the other hand, state power is run by the will of personal or groups that claim to be the holders of power. (Scope of power and domain of power). (Nurul Qamar et al., 2018: 1-2). The gap that occurs between the principles of rule of law and the reality of its implementation is the background to the emergence of a question about whether it is really a rule of law or just a state of law or maybe a state of power (Nurul Qamar et al., 2018: 44).

Based on the problems mentioned above, several views have emerged from several legal thinkers regarding the need to pay close attention to the differences between a rule of law, a constitutional state or a state of power with different backgrounds and orientations.

METHOD

The type of research used is Normative legal research using statutory approaches (Statute Approach), conceptual, Analytical Approach, and Theoretical Approach with a combination of object library research methods (Library Research), namely a method of gathering legal material by way of reading, analyzing and tracing the literature related to research titles which are mostly found in the library and then taking things that are needed both directly and in adaptations. For example: library books, articles/journals, laws and regulations, jurisprudence, and scientific works related to the object of research.

RESULT AND DISCUSSION

A. Indonesia Is a Rule of Law

Indonesia is a constitutional state so that all powers of governmental instruments are based on law. (Efatha FFilomeno, 2023:4). The people should not act independently at will which is contrary to the law. (Jeddah Dawi Pramatta, 2020:72) A rule of law is a state ruled not by people but by law. (Indra Rahmatullah, 2020: 40). A rule of law (rechtsstaat) or state of law is seen as the best choice in managing state life based on democracy with a constitution that regulates relations between the state and the people, the rights of citizens and limitations on the powers of the rulers as well as guarantees of justice and equality before the law. and welfare for society.

The idea or concept of rule of law is generally meant to prevent the state or government from arbitrary acts. Because after all, that a government that is not controlled by firm and concrete legal instruments will be very vulnerable to various forms of irregularities and abuse of power. (Dachran Busthami, 2017: 336). A rule of law is essentially a state whose activities are always based on law to ensure and realize justice for its citizens. (Rokilah, 2020:13). Jimly Asshiddiqie emphasized the principle of the rule of law and/or rechtsstaat, as an idea that has been adopted in Indonesia since before independence. At first this idea was only associated with the conceptual building of the country to be founded, namely INDONESIA. (Jimly Asshiddiqie, 2011: 134). Law is made a stronghold and commander in chief for the noble goals of just humanity. Government is run on the basis of law, abuse of authority by the government must be accounted for in accordance with applicable legal provisions. The problem is whether by expressly including in a constitution the principles of a rule of law, protection of human rights, guarantee of justice, equality before the law, an independent judiciary free from interference and the influence of other powers, and welfare for the people, it can really be ensured that the state authorities carry it out according to the mandate of the constitution or just a textual formulation of the basic law of the state as a sacred document that is stored neatly. (Nurul Qamar et al., 2018:43).

The concept of a rule of law, which was originally pioneered by Albert Venn Dicey (from England) as the rule of law, developed in Anglo-Saxon countries. This concept emphasizes three main elemental aspects, namely: a. Supremacy of law or supremacy of law, b. Equality before the law or equality before the law, and c. The constitution based on individual rights (Nurul Qamar et al., 2018: 58). According to Fredrich Julius Stahl, there are four elements in a rule of law: (Nurul Qamar et al., 2018:64) (a) Protection of human rights, (b) Separation or division of powers to guarantee those rights, (c) Government based on statutory regulations; And, (d) Administrative justice in dispute.

According to Fredrich Julius Stahl, there are four elements in a rule of law: a. Protection of human rights, b. Separation or division of powers to guarantee those rights, c. Government based on statutory regulations, and d. Administrative justice in dispute. (Nurul Qamar et al., 2018:64). Jimly Asshiddiqie said that there are twelve main elements contained in a legal state so that it can be said to be a rechtsstaat legal state or rule of law in the true sense (The rule of just) as follows (Nurul Qamar et al., 2018: 66): 1. Supremacy of law, 2. Equality before the law, 3. The principle of legality (due process of law), 4. Limitation of Power, 5. Independent Executive Organs, 6. An impartial and independent judiciary, 7. State administrative court, 8. Administrative court, 9. Human rights court, 10. Is democratic in nature, 11. Serves as a means of realizing the goals of the state (welfare rechtsstaat), 12. Transparency and social control.

The rule of law rests on basic law (constitution), constitution or basic law (grondrecht) and the implementation of its government is carried out based on legal principles (funthamentale recht) or principle of law), equality before the law, and upholding human values (human rights).).(Nurul Qamar et al., 2018:2). The rule of law is a state that has been idealized since entering the 20th century XIX, but along the way the question

always arises of a difference between a rule of law versus a state of power. (Nurul Qamar et al., 2018: 99). A rule of law (*rechtsstaat*) is a country that makes law supreme (supremacy), which is built on the foundation of human values (human rights), democratic values (volckdemocratic) and social moral values (social mores). (Nurul Qamar et al., 2018:99).

The rule of law state is to carry out or carry out services to the people (public service) as a basic obligation for the state. Meanwhile, the state's governmental power exercises control over the people in order to accommodate the interests of the authorities in a broad sense. (Nurul Qamar et al., 2018: 99-100). Law for a rule of law is responsive and even progressive. Meanwhile, in a state of power, law is repressive because law is nothing but the will of the authorities (Nurul Qamar et al., 2018: 100). Satjipto Rahardjo, said that: (Nurul Qamar et al., 2018: 55-56) "In a *rechtsstaat* law state, a very large role emerged from man-made law (enacted law) which gave birth to a pile of statutory regulations called written law, so consequently the role of the jury is to find and formulate rules through the interpretation of legislative works. The expression *summum ius summa iniuria* (the more laws, the more injustice) is not the ideal of this legal system. Frederich J. Stahl, argued about the concept of a rule of law which is characterized by four main elements, namely (1) Recognition and protection of human rights (2) The state is based on the trias political theory, (3) Government is organized based on law (*Wetmatig bestuur*); And (4) There is a state administrative court tasked with handling cases of unlawful acts by the government (*onrechtmatige overheidsdaad*). (Nurul Qamar et al., 2018: 100).

The Islamic nomocracy (Islamic law state) in question has the following characteristics (Suhartini, 2019:69-70): (1) The principle of power as a mandate, (2) The principle of deliberation, (3) Principle of Justice, (4) The principle of equality, (5) The principle of recognition and protection of human rights, (5) The principle of an independent judiciary, (6) The principle of peace, (7) The principle of welfare, (8) The principle of obedience to the people.

B. Rule of Law Type

Theoretically in administrative law science with an academic approach, a rule of law state can be viewed from three types, namely a classical/liberal rule of law state, a formal or constitutional state and a material or substantive rule of law state. (Nurul Qamar et al., 2018: 73). Jimly Asshiddiqie, stated that according to Professor Utrecht, a rule of law state is distinguished between a formal rule of law or a state of classical law, and a state of material law or a state of modern law. (Nurul Qamar et al., 2018: 74). In this regard, Munir Fuady argued that the concept of rule of law can be divided into three types. Likewise, Astim Riyanto said that the rule of law state consists of: a. Liberal law state type, b. Type of formal legal state, c. Material or substantial legal state type. (Nurul Qamar et al., 2018: 74).

A liberal rule of law is a rule of law in the narrow sense of the word (*rechtsstaat* in *engere zin*), whose duties are in accordance with the spirit of the liberal era, which is nothing but maintaining and protecting social and economic order based on the principles of *laissez faire, laissez aller*. (Nurul Qamar et al., 2018:74). In the type of liberal rule of law, any interference by the state in the economy and other aspects of social life in society is expressly prohibited. This type of state maintains a full state of mind, namely a separation between the state and society. This type of state government is only tasked with making and maintaining laws, or in other words only maintaining security in the narrow sense of the word (only weapons security). (Nurul Qamar et al., 2018: 75).

A formal rule of law state is a rule of law country in the narrow sense of the word, or commonly referred to as a state of law, because the implementation of state governance is based only on written laws and regulations (written law). This type of country is heavily influenced by the notion of legism and legal positivism. (Nurul Qamar et al., 2018: 75). So in a formal law state it is only based on written legal principles that have been codified, so that the orientation of the purpose of law in administering its government is only for the

realization of legal certainty according to law, that is why it is called a constitutional state. (Nurul Qamar et al., 2018 :76).

The formal rule of law state, which is further referred to as the constitutional state, does not touch on aspects and values as well as a sense of justice in society. The truth according to this type of state is the truth according to law, not according to law, values and a sense of justice in society. (Nurul Qamar et al., 2018:76). If the constitutional state is only based on statutory regulations and is oriented towards enforcing laws with the aim of realizing legal certainty, then in a material rule of law type or also commonly called a substantial rule of law state, this is not the case, because in a rule of law type the material administration of state government is based on law and justice with the aim of realizing a government that reflects the values and sense of justice of society. Law is not interpreted only as limited to statutory regulations, however, law is interpreted both written (law in the sense of legislation) and as well as unwritten as principles, the fundamental values that have accumulated are believed to live in society. (Nurul Qamar et al. al., 2018:76). Among the three types of rule of law, what is considered ideal is the type of state based on material law, the reason being that this type of rule of law is the foundation of government and the orientation of the implementation of state government which is based on law in a broad sense in order to realize justice in all fields of life as a state, government and society. (Nurul Qamar et al., 2018: 80). It is to this rule of law that the principles of equality before the law, legal protection and human rights are attached, as well as the independence of the judiciary in carrying out its functions without intervention from other state and government agencies or from the influence of other forces within society. (Nurul Qamar et al., 2018:80).

Based on the explanation above, it can be concluded that theoretically with an academic approach, three types of rule of law countries are found, namely: a. A liberal law state which is also commonly referred to as a classical type of rule of law state or a police state/night guard state, b. A formal rule of law state which is also commonly referred to as a type of constitutional state or a rule of law state in a narrow and limited sense, c. A material rule of law state or commonly referred to as a substantive rule of law state or a modern law state (welfare state moderne). (Nurul Qamar et al., 2018: 78).

C. Power Country

Indicators of a country categorized as a ruling country are: a. The highest law from and within the state is the will of the ruler, b. Rulers are not bound by fixed procedures, but the goals and will of the rulers justify the procedures/formality, c. The government is the ruler who owns the state or those/persons appointed/entrusted/authorized by it, d. Government is according to the will of the ruler in the form of. (Nurul Qamar et al., 2018: 94-95). State of Power (machtsstaat), is a state that makes will, personal ambition, individuals or groups of individuals driven by personal interests, private groups to carry out forced conquests on the basis of strength and economic ability. (Nurul Qamar et al., 2018: 99) In the concept of science (science), power (power) or macht, is an aspect that is widely discussed. This according to Miriam Budiardjo stated: (Nurul Qamar et al., 2018: 81) "It is not surprising because the concept of politics is very crucial in social sciences in general and in political science in particular. Even in other circumstances politics is identified with power (power)

CONCLUSION

From the description of the results of the research and discussion above, then is Indonesia a state of law or a state of rule based on the 1945 Constitution, where in Article 1 paragraph (3) of the 1945 Constitution explicitly states that the state of Indonesia is a state of law and not a state of power. So that the Law is made a stronghold and commander for the noble goals of just humanity. Government is run on the basis of law, abuse of authority by the government must be accounted for in accordance with applicable legal provisions.

Thus, because Indonesia is a rule of law with a democratic government system, both the government system, law enforcement, and the entire nation and state must carry out their life activities always based on good law, the 1945 Constitution, laws and regulations, and Pancasila, as well as the wheels of the system. government. Thus Indonesia is a country of law, not a state of power.

So the recommendations put forward by the researcher: based on the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2-3) Indonesia is a rule of law, with a democratic government system not a sovereign state, it should have a good system of government, law enforcement, and the whole nation and The state must carry out its life activities always based on the good law of the 1945 Law, Legislation and Pancasila, as well as the wheels of the government system. Thus Indonesia is a country of law, not a state of power. The mandate of the 1945 Constitution should be Article 1 paragraph (2-3) to provide problem solving both in the wheels of the government system, law enforcement, the nation and the state itself.

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