



## The Evolution Of Constitutional Theory: A Historical Study And Its Relevance In Indonesia

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**Abstract.** This article discusses the challenges and opportunities in adapting constitutional theory in the context of Indonesia's law and government. It was found that the main challenges include widespread corruption, political instability, plurality and multiculturalism, inconsistencies between national and local laws, and suboptimal enforcement of human rights. On the other hand, there are significant opportunities to overcome these challenges, such as through constitutional reform, the important role of the Constitutional Court, increasing legal education and awareness, the use of information technology for transparency, and international cooperation. This article emphasizes the importance of taking advantage of these opportunities and addressing existing challenges to develop a stronger, fairer, and more democratic constitutional system in Indonesia. Thus, the adaptation of constitutional theory can run more effectively and in accordance with the needs and aspirations of the people of Indonesia.

**Keywords:** Constitutional theory, challenges, opportunities, law, government, Indonesia

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### INTRODUCTION

Constitutional theory is fundamental to every country's legal system and government, including Indonesia. As the highest legal norm, the Constitution regulates the government structure, defines the relationship between the state and its citizens, and guarantees fundamental rights. With its dynamic constitutional history, Indonesia has undergone significant changes since independence, primarily through the amendment of the 1945 Constitution (Constitution) after the 1998 Reform.

The constitutional amendments made after the Reform aim to strengthen the principles of democracy, transparency, and accountability in government. However, although these constitutional reforms provide a solid legal foundation, implementing constitutional theory on the ground often faces various challenges. Rampant corruption, political instability, incompatibility between national and regional laws, and the

enforcement of human rights, are still significant issues, reflecting that the adaptation of constitutional theory in Indonesia has not been entirely successful.

These challenges impact the effectiveness of implementing constitutional principles that are expected to create a fair and well-functioning system of government. For example, law enforcement against corrupt actors is often considered insufficient to provide a deterrent effect, and legal uncertainty still often occurs due to differences between central and regional regulations. The community also feels that constitutional justice has not been fully realized, and the legal reforms have not fully overcome the existing problems.

Amid these challenges, various opportunities can be used to strengthen the adaptation of constitutional theory in Indonesia. The reform era provides an opportunity to carry out further reforms, while the role of the Constitutional Court as the guardian of the Constitution is very crucial. Increasing legal education and public awareness, the use of technology for government transparency, and international cooperation in law are all opportunities that can support the implementation of constitutional theory more effectively.

This article explores the challenges and opportunities in adapting constitutional theory in Indonesia. By identifying and analyzing key aspects of these challenges and opportunities, it is hoped that relevant solutions can be found to strengthen the implementation of the constitution, ensure justice, and improve the quality of governance in Indonesia.

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## **LITERATURE**

### **Basic Definition and Concept of the State Constitution**

The term in English "constitution" or in Dutch "constitutie" is often literally translated into the Indonesian constitution. The problem with the use of the term constitution is that we immediately imagine a written text. In fact, the term constitution for many political science scholars is something broader, namely a whole of regulations, both written and unwritten, that bind the ways in which a government is organized in a society. The custom of translating the term constitution into a constitution is in accordance with the custom of the Dutch and Germans, who in everyday conversation use the words "Grondwet" (Grond = basis; wet = law) and grundgesetz (Grund = basis; gesetz = law) both of which denote the written text.

The meaning of the constitution in constitutional practice can generally have two meanings: a) it is broader than the constitution; and b) the same as the meaning of the Constitution. The word constitution can have a broader meaning than the meaning of the constitution, because the meaning of the constitution only includes the written text and in addition there is still an unwritten constitution, which is not covered by the constitution. The drafters of the 1945 Constitution adhere to the meaning of the constitution more broadly than the constitution, because in the Explanation of the 1945 Constitution it is said: "The Constitution of a country is only part of the basic law of the country. The Constitution is a written law, while besides the Constitution also applies the unwritten Basic Law, which is the basic rules that arise and are maintained in the practice of state administration, even though they are not written". However, during the period of the United Republic of Indonesia from December 27, 1949 to August 17, 1950, the drafters of the RIS Constitution narrowly translated the term constitution as the same as the constitution. This is evidenced by the term Constitution of the Republic of Indonesia for the Constitution of the Republic of Indonesia (Totopandoyo, 1981: 25-26). According to E.C.S Wade in his book "Constitutional Law" (Miriam Budiardjo, 2007, 96), the constitution is a text that describes the framework and main tasks of the governing bodies of a country and determines the main ways of working of these bodies. In terms of power, the constitution can be seen as an institution or a set of principles that stipulates how power is divided between several state institutions. Referring to the concept of Trias politika, power is divided between the executive, legislative, and judicial bodies. The constitution determines how the centers of power cooperate and adapt to each other; The constitution records the power relations in a State. In a country that adheres to the principle of constitutional democracy, the constitution has a distinctive function, namely limiting the power of government in such a way that the organizer of power is not arbitrary. These restrictions are reflected in the constitution. So in this assumption, the constitution has a special function and is the embodiment or manifestation of the supreme law that must be obeyed, not only by the people, but also by the government and the ruler. The 1945 Constitution contains the spirit and is the embodiment of the main points of thought contained in the Preamble to the 1945 Constitution, which is a series of unanimous and integrated articles. In it, according to Noor MS. Bakry (1994: 120), it contains material that can basically be distinguished between four things, namely: 1) Regulation of the function of the state government system; 2) Provisions on the functions and positions of state institutions; 3)

Relations between countries and their citizens; and 4) Provisions for other matters as a complement. (Sartono, 2009)

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## **METHOD**

The research used is a literature review with systematic mapping study analysis. This is a type of literature review method in which the writing is carried out systematically and using predetermined steps. With this literature review method, choosing a paper to be researched cannot be done subjectively; it must be done objectively.

*Systematic mapping studies* are more complex, and papers can be used more extensively compared to *traditional reviews*. In addition, researchers who want to do a literature review using this method usually already have certain standards. In this case, the standard in question is for choosing the title and type of written work to be used.

## **DISCUSSION**

Discussion on the Development of Constitutional Theory from a Historical Perspective, Both Globally and in Indonesia. The Development of Constitutional Theory Globally. Classical and Medieval Periods:

Constitutional theory has profound roots in political and legal thought history. In classical times, the idea of a constitution can be found in the works of Greek philosophers such as Plato and Aristotle. In his work *Politics*, Aristotle discusses various forms of government and the concept of justice and law as the foundation of a good constitution. This concept continued to develop into the Middle Ages, with the thought of Thomas Aquinas combining natural law with constitutional principles.

### **Age of Enlightenment:**

In the 17th and 18th centuries, constitutional theory underwent significant development thanks to the contributions of Enlightenment philosophers such as John Locke, Montesquieu, and Jean-Jacques Rousseau. In *Two Treatises of Government*, Locke put forward the concept of natural rights and government based on the people's consent. In *The Spirit of the Laws*, Montesquieu introduced the doctrine of separation of powers that became an essential basis for many modern constitutions. In *The Social Contract*, Rousseau emphasizes the importance of people's sovereignty and government based on common will.

### **American and French Revolution:**

The American Revolution (1776) and the French Revolution (1789) became important milestones in the history of constitutional theory. The American Declaration of Independence and the 1787 Constitution of the United States introduced the concept of democratic government based on human rights and the rule of law. The French Revolution gave birth to the Declaration of Human and Citizen Rights, which emphasized freedom, equality, and fraternity and inspired the creation of a constitution that guaranteed these rights.

### **19th and 20th centuries:**

In the 19th and 20th centuries, constitutional theory evolved along with the emergence of new countries and global challenges such as colonialism, world wars, and independence movements. Constitutional theory is also influenced by socialist and Marxist thought, emphasizing the state's role in ensuring social welfare. In the second half of the 20th century, decolonization and the human rights movement further cemented the importance of the Constitution as an instrument for protecting individual rights and freedoms.

## **Development of Constitutional Theory in Indonesia**

### **Colonial Period:**

During the Netherlands colonial period, Indonesia did not have a constitution that directly protected the rights of the indigenous people. The legal system applied was colonial law that was undemocratic and discriminatory. Nevertheless, some Indonesian intellectuals began to recognize and learn the concepts of the Constitution from the West, primarily through education and interaction with the thought of the Enlightenment.

### **Independence Period:**

After the Proclamation of Independence on August 17, 1945, Indonesia formulated the 1945 Constitution (1945 Constitution) as the first constitution. The 1945 Constitution was influenced by various constitutional ideas, including the concept of a unitary state, people's sovereignty, and the principles of democracy and social justice. This constitution is expected to reflect Indonesian values and the aspirations of the newly independent nation.

### **Old Order and New Order Period:**

During the Old Order period (1945-1966), Indonesia underwent several constitutional changes, including the 1950 Provisional Constitution, which was more liberal and democratic. However, political instability and President Soekarno's attempts to centralize power led to a return to the 1945 Constitution in 1959. During the New Order period (1966-1998) under President Suharto, the 1945 Constitution legitimized the authoritarian and centralistic government, although it still formally recognized the principles of democracy and human rights.

### **Reform Era:**

The 1998 reform brought significant changes in constitutional theory and practice in Indonesia. The 1945 Constitution was amended four times between 1999 and 2002, resulting in a more democratic constitution that guarantees human rights, strengthens the principle of separation of powers, and establishes independent institutions such as the Constitutional Court. The Reformasi era also emphasized the importance of transparency, accountability, and public participation in the constitutional process.

### **Contemporary Challenges:**

Constitutional theory in Indonesia continues to develop in the face of various challenges, such as corruption, human rights violations, and complex political dynamics. The Constitutional Court plays a vital role in interpreting and enforcing the Constitution and ensuring that laws and public policies are under constitutional principles. Technological developments and globalization also demand adaptation and innovation in constitutional theory and practice to answer new issues.

### **Challenges in Adapting Constitutional Theory in Indonesia**

**Corruption and Injustice:** One of the biggest challenges in adapting constitutional theory in Indonesia is the rampant corruption that undermines the legal system and Government. Corruption undermines public trust in state institutions and hinders the implementation of constitutional principles such as justice, transparency, and accountability. Efforts to eradicate corruption often face resistance from various vital political and economic interests.

- 1. Political Instability:** Political instability often affects the application of constitutional theory in Indonesia. Rapid changes in government and internal political conflicts can lead to legal uncertainty and inconsistent policies. This

hinders consolidating democracy and the consistent application of constitutional principles.

- 2. Plurality and Multiculturalism:** Indonesia has a substantial ethnic, religious, and cultural diversity. This plurality often poses challenges in applying constitutional theory, which must accommodate various interests and values. Conflicts between ethnic and religious groups can be an obstacle in creating legal unity and implementing a fair constitution for all citizens.
- 3. Inconsistency between National and Regional Laws:** The decentralization implemented after the Reform gave great authority to local governments. However, this also poses a challenge in the form of inconsistencies between national laws and regional regulations. These differences can lead to legal uncertainty and create conflicts of authority between the central and local governments, ultimately hindering the practical application of constitutional theory.
- 4. Human Rights Enforcement:** Although Indonesia's constitution guarantees human rights, its implementation is often far from ideal. Cases of human rights violations, both past and ongoing, show that the enforcement of these rights still faces various obstacles, including a lack of awareness and commitment from law enforcement officials and resistance from certain groups.

### **Opportunities in Adapting Constitutional Theory in Indonesia**

- 1. Constitutional Reform:** The Reform Era provided a great opportunity to make fundamental constitutional changes. The 1945 Constitutional Amendment has brought various reforms that strengthen democracy, human rights, and separation of powers. This reform paves the way for adapting constitutional theory more in line with Indonesia's needs and context.
- 2. Role of the Constitutional Court:** The Constitutional Court (MK) plays an important role in interpreting and enforcing the Constitution. As an independent institution, the Constitutional Court can ensure that laws and public policies are in accordance with constitutional principles. The Constitutional Court's decisions are often a reference for improving legal and government practices and adapting constitutional theory better.
- 3. Legal Education and Awareness:** Quality legal education and increased legal awareness among the public can be key factors in adapting constitutional theory. By

understanding constitutional rights and obligations, people can be more actively involved in the democratic process and supervise the implementation of the Constitution. It will also encourage law enforcers to carry out their duties under constitutional principles.

**4. Information Technology and Transparency:** The development of information technology provides opportunities to increase government transparency and accountability. Through e-government and easier access to information, the public can monitor the government's performance and demand the implementation of constitutional principles. Technology also allows for wider public participation in the legislative and policy-making process.

**5. International Cooperation:** International cooperation in the field of law and government can help Indonesia adapt constitutional theory. Exchanging experiences and best practices with other countries can provide new insights and innovative solutions to constitutional challenges. In addition, support from international and regional organizations can strengthen the capacity of legal and government institutions in Indonesia.

## CONCLUSION

1. The development of constitutional theory, both globally and in Indonesia, shows a complex and dynamic evolution. From classical to contemporary eras, constitutional theory has undergone various changes influenced by historical, social, political, and cultural contexts. In Indonesia, the long journey from the colonial period to the Reformasi era reflects continuous efforts to build a constitution that is democratic, fair, and upholds human rights. This study provides a deeper understanding of how constitutional theory has developed and its relevance in facing legal and governance challenges in Indonesia today
2. Adapting constitutional theory in the context of Indonesia's law and governance faces a range of challenges, from corruption and political instability to societal plurality and human rights enforcement. However, there are also great opportunities that can be utilized, such as constitutional reform, the role of the Constitutional Court, legal education and awareness, information technology developments, and international cooperation. By taking advantage of these opportunities and overcoming existing challenges, Indonesia can develop a more robust, fairer, and more democratic constitutional system under the needs and aspirations of its people.

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