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The Constitutional Law System in Indonesia and Its Comparison with Other Legal Systems*

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Abstract:
Constitutional law is characterized in a broad sense as the legal laws controlling state structures, the interaction between vertical and horizontal state instruments, and the position of citizens and their human rights. Nevertheless, there are variations in the techniques and methods of applying the state system, in addition to the standard regulations that serve as the state's fundamental standards. This study employed a qualitative research strategy with a comparative study design. According to the findings of the study, the aims of the constitutional law systems of many nations are comparable. In contrast, Indonesia's legal system is founded on Pancasila and the Constitution of 1945 and seeks fairness for all its citizens. In Indonesia, the constitutional legal system recognizes legal plurality, Islamic law, and customary law. This is not found in other countries legal systems.
Keywords: Legal System; State Administration; Legal Comparison

Abstract:
Hukum Tata Negara dalam pengertian umum diartikan sebagai sekumpulan peraturan hukum yang mengatur organisasi dari negara, hubungan antar alat perlengkapan negara dalam garis vertikal dan horizontal, serta kedudukan warga negara dan hak-hak asasinya. Namum dalam aplikasinya, terdapat perbedaan cara dan metode pelaksanaan sistem bernegara, selain terikat pada aturan baku yang menjadi landasan utama sebagai norma dasar suatu negara. Metode penelitian yang digunakan pada penelitian ini adalah metode penelitian kualitatif dengan pendekatan comparative studies. Hasil penelitian menyatakan bahwa ada kesamaan tujuan pada sistem hukum tata negara pada beberapa negara. Namun pada negara Indonesia, sistem hukumnya berdasarkan Pancasila dan UUD 1945 serta mencita-citakan keadilan bagi seluruh rakyatnya. Sistem hukum tata negara di Indonesia mengakui adanya pluralisme hukum, hukum Islam, dan hukum adat. Hal inilah yang tidak terdapat pada sistem hukum negara lain.
Kata Kunci: Sistem Hukum; Tata Negara; Perbandingan Hukum

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A. INTRODUCTION

In the process of conveying a boundary or defining an understanding, it is rarely broken down into its component parts as a whole. As long as the developing science continues to develop in accordance with the scientific nature of science, it will always be a very interesting material to study. This is because science develops in accordance with the scientific character of science. In an analogous way, research on the meaning of constitutional law continues to be a very interesting thing to study.

Constitutional Law, according to Van Vollenhoven, is a law that regulates all superior legal communities and subordinate legal communities according to their levels, and from each of them determines the area of its people's environment and, finally, determines the bodies and functions of each ruling within the legal community, as well as the composition and authority of these legal entities.[4]

According to Scholten and Logemann, Constitutional Law controls organizations rather than states. In the meantime, Van der Pot defines Constitutional Law as the rules that establish the essential entities and their respective authority, as well as their relationships with one another and with persons in their activities. In addition, Van Apeldorn has a restrictive perspective of Constitutional Law, which reveals the persons who possess government authority and the boundaries of that power.[5] Wade and Phillips in their book "Constitutional Law" formulate that Constitutionnel Law is then that body of rules which prescribes the structure the function of the organs of central and local government. Also stated, In the generally accepted of terms it means the rules which regulated the structure of the principal organs of government and their relationship to each other, and determine their principal function.[6]

Paton, in his book "*Textbook of Jurisprudence,*" said that: *Constitutional law deals with the ultimate question of distribution of legal power and the functions of the organs of the state. In a Wide sense, it includes administrative law, but it is convenient to consider as a unit for many purposes the rules which determine to organization, power, and duties of administrative authorities.*[7]

A.V. Dicey, called Constitutional Law as Constitutional Law. In his book, "an introduction to the study of the law of the constitution", he put forward the definition of constitutional law as follows: "as the term is used in England, appears to in clued all rules which directly or affect the distribution or exercise of the sovereign power in the state". The emphasis of this definition lies in the distribution of power within the state and the highest exercise within a state. "All rules" in this definition are intended as all

[4] Kusnardi Muhammad dan Harmaily Ibrahim, Hukum Tata Negara Indonesia, (Jakarta: Pusat Studi HTN Univ. Indonesia), p.24.

[5] Kusnardi Muhammad dan Harmaily Ibrahim, Hukum Tata Negara Indonesia, (Jakarta: Pusat Studi HTN Univ. Indonesia).

[6] Constitutional Law. By E. C. S. Wade and G. Godfrey Phillips. Fifth edition, by E. C. S Wade. [London: Longmans. 1955. xxxi and 588 pp. 85s.

[7] George Whitecross Paton. 1951. A Textbook of Jurisprudence. Fourth Edition, Indian Edition. Clarendon Press.

provisions governing the relationship between members who hold the highest power with one another, determine the highest power, and how to exercise that power.[8] Like A.V. Dicey, Maurice Duverger argues that Constitutional Law is a branch of public law that regulates the organization and political functions of a state institution.[9]

In the book "Guidelines for Indonesian Legal Order Lessons" by Kusumadi Pudjosewojo, it is stated that constitutional law is the law that regulates the form of the state (unity or federal) and the form of government (kingdom or republic), which shows the legal community which is superior or subordinate, along with their levels (hierarchies), which further confirms the territory and the people's environment of the legal communities, and which finally shows the equipment for the legal communities.[10]

The final definition resembles Van Vollenhoven's formulation in many ways, with the exception of the amendments relating to the form of state and form of governance. The definition, however, discusses the legal community, the state apparatus, its power, organization, and relationships, as well as the degree of equilibrium.

From these many definitions, it is clear that disparities in the focus placed on formulating constitutional law, environmental variances, and probably also the perspectives on life held by constitutional law experts are responsible for these variations. However, it may be inferred that the vast majority of definitions discuss government institutions and government equipment. As a result of the vast scope of Constitutional Law, the definitions that have been proposed reveal clear individual weaknesses, leading some scholars to believe that it is not necessary to provide a definition, as a concise formulation of words is difficult to provide a clear understanding of what constitutional law entails..

Based on several definitions that have been stated above, Kusnardi Muhammad and Harmaily Ibrahim formulate that Constitutional Law is a set of legal regulations that regulate the organization of the state, the relationship between state equipment in vertical and horizontal lines as well as the position of citizens and their human rights.[11]

B. METHODS

Comparative law is an activity that is commonly carried out in every country, including Indonesia. This is done for the sake of the law itself, either by compiling the system, updating it or adapting it and responding to legal problems in the midst of the times. Therefore, before discussing the comparison of the Indonesian constitutional law

[8] A.V. Dicey. 2013. The Law of the Constitution. OUP Oxford. p. 23.

[9] Maurice Duverger. 1964. Political Parties: Their Organization and Activity in the Modern State. Barbara North. p. 28.

[10] Kusumadi Pudjosewojo. 2001. Pedoman Pelajaran Tata Hukum Indonesia. Cetakan/Edisi: Kesembilan. Jakarta. Sinar Grafika. P.28.

[11] Kusumadi Pudjosewojo. 2001. Pedoman Pelajaran Tata Hukum Indonesia. Cetakan/Edisi: Kesembilan. Jakarta. Sinar Grafika.

system with the constitutional law system of other countries, it is better to first mention the meaning of comparative law.

Comparative law is an effort or method that can be used in all branches of law, for example, constitutional law. Such as the comparison of constitutional law in Indonesia with Malaysia, constitutional law in the United States, England, the Philippines, and so on.[12]

According to Satjipto Rahardjo, comparative law is the process of comparing the positive legal systems of different nations. In addition, legal comparisons can be made against the legal systems of other nations as well as within a single country, particularly in states like Indonesia that have plural laws or adhere to legal pluralism. Among the things that can be done is comparing state criminal law with customary criminal law. In addition, a legal comparison can be made between the law controlled by the government and the private sector's legal system.[13]

Efforts in the field of comparative law have persisted and grown since the end of the 19th century. Currently, comparative law initiatives are required since countries interact and depend on each other globally and are interconnected. As a result of the fact that one of the aims of comparative law from the perspective of natural law theory is to examine the similarities and differences between legal systems in order to develop the natural law itself, comparative law is an essential component of natural law theory. In the meanwhile, the pragmatic objective is to identify differences and similarities in order to implement legislative reform. Comparative law can also be used to find solutions to legal difficulties in a country or community.

Comparative law, especially constitutional law, is very necessary, especially to know the laws and views of life of other nations. By knowing each other's laws, it will be able to avoid forms of disputes and forms of misunderstandings with each other, so that peace is achieved. Comparison of criminal law is very important in developing criminal law, both nationally and internationally. For example, the Indonesian state can learn and understand the criminal law of the United States of America, the United Kingdom, Malaysia, the Philippines, and other countries, and vice versa. These countries can also learn Indonesian constitutional law by comparing and conducting research on which parts of the law are different and which parts of the law have similarities, and then it can be applied.

Therefore, whether comparative law is a method or a branch of legal research, comparative law helps to the growth of legal knowledge and legal scholars. In addition to understanding the variations and similarities between the legal systems of various nations, this course will aid in the development of the legal system. To be able to assist with legislative revisions, preparation, and formation, for example. Additionally, it can aid in the establishment of a judiciary that upholds the ideas of justice. Then, comparative law can aid national and international treaty relations by, for instance, doing research and translating the rule of law together.

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[12] Romli Atmasasmita, *Asas-Asas Perbandingan Hukum Pidana*. YLBHI, Jakarta. 1989. p. 20

[13] Satjipto Rahardjo, *Ilmu Hukum*, Alumni, Bandung. 1986. p. 330.

In examining the practice of the constitutional system, the author attempts to draw comparisons with the countries mentioned above, such as the legal systems of the United States of America and the United Kingdom, which represent Western countries; the Philippines, which represents neighboring countries; and Indonesia, which is also a former European colony, namely the Netherlands.

C. RESULTS AND DISCUSSION

1. The Position of Constitutional Law in Legal Studies

To determine the placement of constitutional law in legal science, one must first comprehend the legal limits. As stated by Wirjono Prodjodikoro, the law is a set of rules that regulates the behavior of people as members of society, not limited to regulating the relationship between two or more individuals, but also between an individual, on the one hand, and a group of individuals or an entity law, on the other.

In this regard, Ulpianus describes the difference between public law and private law as follows: *"Publicum ius est, quad ad statum rei romanoe spectat, privatum quad ad singularum ubitilatem; sunt enim quaedom publica utilitia, quaedom privatim* (public law is something that relates to the interests of the Roman state; private law is something that relates to people because there are things that are public and have individual interests).[14] Against this classification, it is agreed that Constitutional Law is located in the field of public law because Constitutional Law regulates the relationship between rulers and citizens, or more clearly Constitutional Law relates to the interests of a country.

2. Object of Investigation of Constitutional Law

As well as State Science, Political Science, State Administrative Law and Comparative Constitutional Law which make the "State" the target or subject of discussion (object of investigation). Constitutional Law also makes the "State" the object of its investigation. This is evident from the various materials on Constitutional Law which are always related to the state's space for movement.

The country which in English is called "State", Dutch "Staat", and French "Etat" is often identified with "Government" and "Nation" or "Community". This can be seen from the two definitions of the state which are formulated as follows:

a. The state in the formal sense is the state in terms of power (Staatoverheid). The state as an organization of power with a central government. The characteristic of the state in a formal sense is the government's authority to carry out legal physical implementation.
b. The state in the material sense is the state as a society *(Staatgamenschap)* or the state as a legal alliance of government administration.

[14] Abu Daud Busroh dan Abu Bakar Busroh, Asas-Asas Hukum Tata Negara, (Jakarta: Ghalia Indonesia, 1991), p. 14.

3. The Relationship of Constitutional Law with Other Sciences in the Field of State

Constitutional law has a relationship with other sciences in the field of state. Such as its relationship with state science, its relationship with political science, its relationship with state administrative law, and its relationship with comparative constitutional law.

First; The Relationship between Constitutional Law and State Science

State Science is a science that investigates the basic meanings (grondbegrippen) and the main joints (grondbeginselen) of the state and the legal system of a country, and is the basic science for Positive Constitutional Law, for example, Indonesian Constitutional Law.[15] State Science in its position as science as an introduction to Constitutional Law does not have a practical value like Constitutional Law. The results of studying State Science cannot be directly used in practice. Thus, it can be concluded that State Science is an introductory science that provides a theoretical basis for the practice of Constitutional Law.

Second; The Relationship between Constitutional Law and Political Science

Constitutional Law and political science can be compared using the metaphor of Constitutional Law as the skeleton and Political Science as the skin.[16] Political Science is frequently used to investigate the origins of laws and regulations that can influence Constitutional Law. Political Science is a science that impacts the operation of constitutional law because political decisions have a significant impact on constitutional law, and political decisions that are accepted by the people can become habits that contribute to the development of constitutional law.

Third; The Relationship between Constitutional Law and State Administrative Law

State Administrative Law is part of Constitutional Law in a broad sense or it can also be said that Constitutional Law in a broad sense includes Constitutional Law in a narrow sense *(staatsrecht/vervassungsrecht)* and Constitutional Law/Governmental Law/State Administration Law *(administratief Recht/verwaltungrecht)*.[17] According to Van Vollen Hoven Constitutional Law is a law concerning the composition and authority of state organs. In other words, Constitutional Law is the granting of authority, while State Administrative Law is the law that regulates the legal relationship between those who govern and those who are governed, namely providing restrictions on state organs in exercising their authority as determined by Constitutional Law. [18]

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[15] Syahron, dalam Sumbodo Tikok, Hukum Tata Negara, (Bandung: Eresco, 1988), p. 38.

[16] Kusnardi Muhammad dan Harmaily Ibrahim, Hukum Tata Negara Indonesia, (Jakarta: Pusat Studi HTN Univ. Indonesia), p.38.

[17] Abu Bakar Busroh, dan Abu Daud Busroh, Asas-Asas Hukum Tata Negara, (Jakarta: Ghalia Indonesia, 1991), p.20.

[18] Abu Bakar Busroh, dan Abu Daud Busroh, Asas-Asas Hukum Tata Negara, (Jakarta: Ghalia Indonesia, 1991, p. 21.

Fourth; The Relationship between Constitutional Law and Comparative Constitutional Law

The relationship between constitutional law and comparative constitutional law can be explained by Sri Soemantri's opinion that comparative constitutional law is a branch of science that attempts to compare one legal system across multiple aspects of constitutional law from two or more countries. He asserts that comparative constitutional law is a subfield of legal study.[19]

4. Sources of Indonesian Constitutional Law

Sources of the law might be interpreted as locations where positive legal rules are discovered. To discover or study the origin of positive law in a country, it is necessary to consult legal sources. Thus, the source of legislation can also be viewed as the source of the law's implementation. According to Usep Ranawijaya, the source of law can be regarded as the source of the reason for the existence of law, which is the legal belief of the people who play a vital part in determining what a country's laws should be. In order to determine what the law is, legal sources can also be viewed as a method of constructing the community's principles of constitutional law.[20]

In general, the origins of law can be seen from two perspectives:[21]

First: The source of law in a material sense is a source of law that determines the content of the law. In this case, legal sources are defined as things that should be taken into consideration by authorized officials in determining the content of the law, which includes sociological factors, philosophical factors, historical factors, and others.

Second: Sources of law in a formal sense, are sources of law whose regulations have been formulated in a form, which causes these regulations to become generally applicable, binding, and obeyed. Sources of law in this formal sense have two characteristics, as follows:

- Formulated in a form. The formulation of legal norms is important to distinguish it from other norms. The form of formulation of legal norms appears in the form of an authorized decision.
- Generally relevant, enforceable, and followed. With the creation of legal norms, the values therein become commonly accepted and enforceable standards or rules that must be followed.

Formal legal sources that serve as guidelines for Indonesian Constitutional Law include:

First; Legislation, namely:

[19] Sri Soemantri Martosoewignyo, Pengantar Perbandingan Antar Hukum Tata Negara, (Jakrta: CV. Rajawali, 1981), p. 13.

[20] Usep Ranawijaya, Sumber-Sumber Hukum Tata Negara, (Jakarta: Ghalia Indonesia, 1998), p.22.

[21] Abu Bakar Busroh, dan Abu Daud Busroh, Asas-Asas Hukum Tata Negara, (Jakarta: Ghalia Indonesia, 1991, p. 40.

a. Based on TAP MPRS No. XX/MPRS/1996 concerning the Memorandum of the DPR GR. Regarding the Sources of Orderly Law and the Order of the Legislation of the Republic of Indonesia which consists of: the 1945 Constitution; TAP MPR RI; Laws/Government Regulations in Lieu of Laws (Perppu); Government regulations; Presidential decree; Other Implementing Regulations: Ministerial Regulations, Ministerial Instructions, Regional Regulations, and others.
b. Based on TAP MPR No. III/MPR/2000 concerning Sources of Law and Order of Legislation, consisting of: the 1945 Constitution; TAP MPR; Constitution; Government Regulation in Lieu of Law (Perppu); Government regulations; Presidential decree; Local regulation.
c. Based on Law Number 10 of 2004 concerning the Establishment of Legislations, consisting of: the 1945 Constitution of the Republic of Indonesia; Laws/Government Regulations in Lieu of Laws (perppu); Government regulations; Presidential decree; Regional Regulations, including Provincial Regulations, Regency Regional Regulations, and Village Regulations/Regulations of the same level.
d. Based on Law Number 12 of 2011 concerning the Establishment of Legislations, including: the 1945 Constitution of the Republic of Indonesia; TAP MPR; Law/Perppu; Government regulations; Presidential decree; Provincial Regulations; District Regulations.

Second; Convention. The term Convention was first coined by A.V. Dicey who called the convention The Convention of the Constitution. Conventions can also be termed Unwritten Maxims of the constitution, or can also be referred to as the custom of the constitution.[22] Conventions, according to A.K. Pringgodigdo, are the customs that emerge from the practice of life. In the meantime, according to Bagir Manan, conventions or constitutional law are laws that develop through the practice of state administration in order to complete, perfect and invigorate (dynamize) the principles of statutory law or constitutional customary law. Convention or constitutional habit, as defined by Moh. Kusnardi and Harmaily Ibrahim, is a recurrent action in constitutional life that is accepted and followed in constitutional practice while not being a law.[23]

Third; International Treaties or Traktat. A treaty is an agreement or agreement entered into between countries that is binding and applies as a legal regulation to citizens of each country that entered into an agreement. A treaty is an agreement that is bound in a certain form, the mechanism is carried out through the following stages:[24]

a. Determination (Sluiting). At this stage, negotiations or discussions are held on issues concerning the interests of each country. The result is a concept

[22] Sri Soemantri Martosoewignyo, Undang-Undang Dasar, Kedudukan dan Artinya Dalam Kehidupan Bernegara, (Bandung : Univ. Padjajaran, 2001), p. 19.

[23] Kusnardi Muhammad dan Harmaily Ibrahim, Hukum Tata Negara Indonesia, (Jakarta: Pusat Studi HTN Univ. Indonesia), p. 51.

[24] Abu Bakar Busroh, dan Abu Daud Busroh, Asas-Asas Hukum Tata Negara, (Jakarta: Ghalia Indonesia, 1991, p. 62.

verification, namely the determination of the contents of the agreement by the envoy or delegation of the parties concerned.

b. Agreement. The main stipulations resulting from the negotiations are initialed as a sign of temporary approval because the text still requires further approval from the House of Representatives of each country. There may still be changes to the agreement text.

c. Strengthening *(bekrachting).* After obtaining approval from the two countries, it is followed by strengthening (bekrachtiging) or also called ratification (ratification) by each Head of State. After ratification, it is no longer possible for both parties to make changes and the agreement is binding on both parties..

d. Announcement *(afconding).* The agreement has been agreed upon and signed by the parties, then announced. Usually done in a ceremony by exchanging the charter of the agreement.

Fourth; Jurisprudence. Jurisprudence is a collection of court decisions on constitutional issues which after being compiled regularly provide conclusions about the existence of certain legal provisions found or developed by judicial bodies.

Fifth; constitutional doctrine. Constitutional doctrines are teachings on constitutional law that are found and developed in the world of science as a result of careful investigation and thought based on applicable formal logic.

5. Differences between Constitutional Law, Criminal Law, and Civil Law

Constitutional law is a component of the overall legal norms controlling state organizations, the makeup of state organs, the relationship between state equipment and their human rights, and the link between state equipment and their human rights. In contrast to criminal law, administrative law provides the grounds for: a) determining which actions may be carried out and which actions are prohibited, accompanied by threats or certain criminal sanctions for violators of the prohibition; b) determining when and under what circumstances those who have violated the prohibitions can be imposed or sentenced to the punishment as threatened; and c) determining how the imposition of the punishment will occur. Civil Law is the law that regulates the legal relationship between a person and a person or a legal entity and a legal entity, which includes: a). The law about a person contains regulations about humans as subjects in law; b). Family law includes the law of marriage, the relationship between parents and children, guardianship, and curatele; c). Property law regulates legal relations that can be valued in terms of money; d). Inheritance law regulates a person's property or estate

The position of Constitutional Law is seen from the categorization of scientific fields including being in the scientific field that stands on two legs. That is between the science of state politics and the science of law. Judging from the division of legal knowledge, it is categorized as Public Law (state law). Law which is the object of state regulation is known as state law (staatcreecht). The scope and fields of Constitutional

Law include: 1). Constitutional Law includes the law regarding the general structure of the state as regulated in the Constitution and the Organic Law; 2). Constitutional Law regulates the structure and special authority of the equipment of state agencies such as the composition of the Civil Service law.

The categorization of the division of law can be separated into two categories, namely private law (civil law) and public law (state law). Private law controls the interaction between individuals by focusing on their own interests. Private law encompasses civil law and business law in a wide sense. In contrast, in a restricted sense, private law comprises solely of civil law. In the meanwhile, public law controls the state's connection with its equipment and its relationship with its inhabitants. Included in this are State Constitutional Law, State Administrative Law, International Law, and Criminal Law.[25]

It is clear that the position of constitutional law is categorized as public law (state law) which manages the relationship between the state and its citizens. Because Constitutional Law basically regulates the organization of state power and all its aspects related to state organizations. Where Constitutional Law focuses more on the constitution or constitutional law. At the same time, this category distinguishes it from other public laws such as criminal law or civil law.

The division of law is a manifestation of Indonesia as a state of law, as explained in the 1945 Constitution in Article 1 paragraph (3): "Indonesia is a state based on law". This means that every aspect of action in a legal state, both in the field of legal regulation and in the field of service must be based on statutory regulations or based on the principle of legality.[26]

6. Comparison of Indonesian Constitutional Law with other Constitutional Laws

a. Indonesian Constitutional Law System

The State of Indonesia is a legal state that must be able to provide fair rules for all citizens as expected by all people and the mandate of the 1945 Constitution**.**

The discussion of the legal system in Indonesia, especially the discussion of constitutional law, it has been going on since the Dutch East Indies era, during the Japanese occupation, and only turned into the hands of the Indonesian government after Indonesia became an independent and sovereign state. The principle of constitutional law in Indonesia is in the form of positive law and becomes a legal reference in regulating state power organizations and all aspects related to state organizations in Indonesia. The function of constitutional law is also divided into two, namely as the legal basis for the formation of the Indonesian national legal system and

[25] C.S.T. Kansil. *Pengantar Ilmu Hukum.* Jakarta. Balai Pustaka. p. 46

[26] Jazim Hamidi, *Teori dan Politik Hukum Tata Negara*. Yogyakarta. Total Media. 2009. p. 153

as the legal basis for establishing the structure and working relationship of the unitary state of the Republic of Indonesia (NKRI).[27]

In the Indonesian government, the assembly authorized to enforce constitutional law is the Constitutional Court (MK). This is as stated and based on Article 24 C of the 1945 Constitution, Law Number 48 of 2009 concerning Judicial Power, and Law Number 24 of 2003 concerning the Constitutional Court and amended by Law of 2011 concerning the Constitutional Court.

The Constitutional Court became one of the new state institutions by the constitution and was given an equal position with other institutions, without considering any qualifications as the highest or high state institution. As a result of adopting a separation of power system, these state institutions gain power and are limited based on the 1945 Constitution. The Constitutional Court has the mandate to oversee the constitution, which means that the Constitutional Court upholds the constitution, which means "enforcing law and justice". Because the 1945 Constitution is the basic law that underlies the legal system in force in Indonesia. In another sense, the function of the Constitutional Court has the authority and constitutional obligation to maintain or guarantee the implementation of legal constitutionality. In addition, the role of the Constitutional Court is also to provide a judicial review or test if a law is contrary to or inconsistent with the constitution and stipulates that the legal product will be annulled. So that all legal products must be in accordance with and in line with the constitution and must not conflict.

Another function of the Constitutional Court, apart from conducting a judicial review, is to decide disputes between state institutions, to decide on the dissolution of political parties, and to decide disputes over election results. This function of the Constitutional Court has been institutionalized in Article 24C paragraph (1) of the 1945 Constitution which stipulates that the Constitutional Court has four constitutional powers (constitutional entrusted power) and one constitutional obligation. As mentioned earlier, that provision is confirmed in Article 10 paragraph (1) letters a to d of Law Number 24 of 2003 concerning the Constitutional Court, namely:

(1) Testing legislation products against the 1945 Constitution.

(2) Deciding on disputes over authority between state institutions whose authority is granted by the 1945 Constitution.

(3) Deciding on the disbandment of the party.

(4) Deciding disputes about election results

Meanwhile, based on Article 7 paragraphs (1) to (5) and Article 24 paragraph (2) of the 1945 Constitution which is affirmed in Article 10 paragraph (2) of Law Number 24 of 2003 concerning the obligation of the Constitutional Court to give a decision on the opinion of the DPR that the President and Deputy The President has

[27] H.F.F. Busroh, F. Khairo, H.D. Djufri, H.B. Sugianto, E. V. I. Oktarina, & A. Chandra. *Hukum Tata Negara.* Inara Publisher. 2022. p. 72.

violated the law, or has committed a disgraceful act, or has fulfilled the requirements as President or Vice President as referred to in the 1945 Constitution.[28]

b. Singapore Constitutional Law System

After becoming a state and separating from the Federation of Malaysia, Singapore immediately wrote a constitution based on the Westminster model of constitutional democracy. Specifically on the basis of an elected legislature, fundamental human rights, and protection based on the certainty of judicial independence.[29]

In Singapore's constitutional practice, the Constitution is the highest law of the state, similar to the Indonesian government, and has been in effect since Singapore became a state on 22 December 1965. The Constitution's provisions are derived from three laws: the Republic of Singapore's Independence Act (1965), the State Constitution of Singapore (1963), and the Federal Constitution of Malaysia. All other Singaporean legislation is governed by the constitution. By majority vote, the National Assembly has the authority to change the bulk of the constitution's provisions. Nevertheless, certain significant rules can only be altered through a nationwide referendum.

In the constitution of Singapore, there are several institutions that hold power, including the judiciary, the executive, and the legislature. In Singapore's constitutional law, the President is the head of state, while the cabinet is under the authority of the Prime Minister. Namely, the cabinet as the executor of government administration.

c. Brunei Darussalam Constitutional Law System

After Brunei Darussalam fully became an independent country in 1984, Brunei was led by Sultan Hasanatul Bolkiyah Mu'izaddin Wadaullah, the 19th sultan. Since 1991 the Sultan has implemented Malay Islam Beraja or the Malay Islamic Kingdom (MIB) as the state ideology. The goal is for the people to be loyal to their king, carry out Islamic teachings and laws and make a way of life that is related to the characteristics and characteristics of the Malay nation, including making Malay the main language.[30]

In Brunei Darussalam, Islamic law greatly influences the country's national legal system. Brunei's form of absolute monarchy enforces Sharia Law as part of its national law. Since 2014, the country of Brunei has become the first Southeast Asian

[28] Jenedjri M. Gaffar, *Kedudukan, Fungsi dan Peran Mahkamah Konstitusi dalam Sistem Ketatanegaraan Republik Indonesia*. MKRI. 2009. pp. 12-13

[29] S.H. M. Al Arifin, *Pembatasan Masa Jabatan Presiden Studi Perbandingan Hukum Ketatanegaraan Republik Indonesia dan Singapura.* FSH UIN Syarif Hidayatullah. Jakarta. 2022.

[30] Abd. Ghofur. *Islam dan Politik di Brunei Darussalam: Suatu Tinjauan Sosio-Historis,* Jurnal: Toleransi Media Komunikasi Umat Beragama. Vol, 7. No. 1 (Januari-Juni 2015). p. 55.

country to adopt Sharia criminal law to apply to all its citizens, both Muslim and non-Muslim citizens.[31]

The Islamic Sultanate of Brunei Darussalam has been a British protectorate since 1886 (WWII) when Japan occupied Brunei. After Japan lost, Brunei was again occupied by the British. And in 1959 Brunei became a self-governing state and had self-government which was limited by the British constitution, and Britain remained responsible for its defense and foreign policy. In 1984, Brunei became a fully independent country based on the 1979 Treaty of Friendship and Cooperation between the UK and Brunei Darussalam. Since then, Brunei has become a constitutional monarchy with a ministerial government. Brunei is a constitutional monarchy and the ideology of the Malay Islam Beraja (MIB) or Malay Islamic Monarchy is based on Malay cultural norms, the Islamic religion, and political milestones under the rule of the monarchy. Brunei is the only country in Asia where the head of government is held by a Sultan or Sultan of Brunei. The Sultan of Brunei is the King, as well as the Prime Minister, Minister of Defence, Minister of Finance, Minister of Foreign Affairs, and Minister of Trade. The Sultan of Brunei is also, the "custodian" and "protector" of Islam and traditions in Brunei. While the legal system is based on the common law system.

In the Brunei constitutional system, the position of the King in the country of Brunei has absolute authority so it is called an absolute authority in the hands of the King.[32] The king has absolute authority in regulating the government and has full power to govern the country and has high authority in every policy issued by the state, even though the king is accompanied by an advisor. The State of Brunei stipulates that a country based on Islam or in other words, Brunei Darussalam is an Islamic state and Islamic law is the subject of the country's legal rules.

d. Malaysian Constitutional Law System

Malaysia is a country that adheres to a federal system with a democratic monarchy government system. The federal state of Malaysia was established on August 31, 1963 and consists of 13 states, namely: eleven states and two federal states, including Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Panang, Perak, Perlis, Selangor, and Terengganu. While the two federal states, namely Kuala Lumpur and Putrajaya, are located in the Malay Peninsula (in West Malaysia). Meanwhile, Sabah, Sarawak, and the federal territory of Labuan are located in the northern part of the island of Borneo (East Malaysia).

Malaysia's federal system consists of a central and state government. In this country, legislative and executive powers are divided between the central and state governments as stated in the 74th and 80th Constitution of Malaysia. Each state,

[31] Robin Gardner, MLS, *The University of Melbourne, Southeast Asean Legal Research Guide: Introduction to Brunei Darussalam & Its Legal System,* (https://unimelb.libguides.com/c.php?g=402982&p=4622754)

[32] Negara-negara yang menganut sistem pemerintahan monarki absolut seperti Brunei Darussalam, Arab Saudi, Buthan, dan negara Swaziland. Kewenangan Raja memiliki kewenangan mutlak. Haudi, *Pengantar Ilmu Pemerintahan,* Solok. ICM Publisher. 2021. p. 17

whether Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, and Terengganu has its own Head of State, both Ruler, and Yang di-Pertuan Negeri Sembilan. In unicameral, elected as the People's Representative Council as in Indonesia, the executive council is chaired by a Chief Minister called the Chief Minister or Chief Minister, similar to the Yang in Pertuan Agong, and each Ruler and Yang di-Pertuan Negeri is the Constitutional Head of the Executive Council. country. In their respective countries, Malay rulers are the heads of Islam, whereas the Yang Dipertuan Agong is the head of Islam in federal areas and countries without a leader.

The form of government in Malaysia that adheres to a democratic monarchy or constitutional monarchy is an absolute royal government system. The state of Malaysia is also called a parliamentary democracy, democracy means the people in power, namely the ruling kingdom is elected by the people and for the people and parliamentary democracy is representative where people's opinions can be channeled through people's representatives who are elected by the people directly through general elections.[33]

In the Malaysian state leadership system, the Head of State is called Yang di-Pertuan Agong and is the Main Head of State for the alliance. This is regulated in the Malaysian Constitution concerning the Institutionalization of the Fellowship, which states that: "So there should be a Main Head of State for the Alliance to be called Yang di-Pertuan Agong. Timbalan Yang di-Pertuan Agong is elected in turn by the Assembly of Kings consisting of nine Malay kings, with a term of office of five years. Elections are carried out by the Malay kings in a single assembly of kings by lot."

In the division of power in the Malaysian state, Pertuan Agong's position as Chairman of the State of Malaysia has powers in the executive, legislative and judicial fields, and is responsible for maintaining the establishment of Islam in Malaysia and responsible for maintaining state security. In addition, Yang di-Pertuan Agong also holds three powers at once, namely the Executive, Legislative, and Judicial powers.

In exercising executive authority, the Yang di-Peruan Agong runs the state government at the direction of the Head of the Kingdom, namely the Prime Minister with the assistance of the Congregational Ministers. Where the Yang di-Pertuan Agong has the right to receive information regarding the Federal government from the Cabinet. The Executive Board in Malaysia consists of the Cabinet and is assisted by the Public Service, Police, and Armed Forces. It is the Prime Minister who leads the cabinet, previously, the Prime Minister was appointed by the King who was believed to be able to lead the people's council.[34]

While the legislative power adheres to a democratic system of government. Parliament is an institution that has high power and symbolizes the country's democracy. Parliament in Malaysia has the authority to make laws and function to change laws. The parliamentary membership consists of the di-Pertuan Agong and two councils, namely the People's Council and the State Council. Within the authority of

[33] K. Ratman, *Sejarah Malaysia.* Logman. Selangor Darul Ihsan. 1996. p. 122

[34] Zainal Asikin, *Pengantar Tata Hukum Indonesia.* Jakarta. Rajawali Pers. 2012. p. 27

the Parliament, Yang di-Pertuan Agong has the right and authority to summon, suspend and dissolve Parliament, inaugurate the People's Council and the State Council, and approve draft laws that have been proposed by the People's Council and the State Council before becoming law.

The seat of Malaysian Parliament is the statutory body of the Malaysian state based on the Westminster Parliament system. The Malaysian Parliament consists of the People's Council and the State Council (senate). The People's Council is referred to as the Experts of Parliament and the Council of State is referred to as the Senators. Then to elect the members of the council, which is done every four or five years at the General Election event and is inaugurated by the di-Pertuan Agong.

The People's Council is comprised of 192 specialists who are elected by the people in the General Election (or General Election) via regional representatives from throughout the region. While the Council of State is the Supreme Assembly of Parliament or the Senate, which consists of 69 experts who are referred to as Senators, the Senate consists of 69 experts and is composed of Senators. Of this number, 40 individuals were appointed by Yang di-Pertuan Agong to represent various institutions and minority groups, while the remaining 26 were selected by 13 representatives of the State Invitation Council, two experts from the Kuala Lumpur Federal Territory, and one expert from the Labuan area. In the meantime, the State Council's term is three years, and only one term can be appointed.

In exercising Malaysia's judicial power, the Yang di-Pertuan Agong has the power to appoint the Supreme Court judges and the Supreme Court at the direction of the Prime Minister. The Yang di-Pertuan Agong also has the power to pardon any wrongdoing in the territory of the Kuala Lumpur and Labuan Guilds as well as all forms of sanctions decided by the Sharia Court in the lands of Melaka, Pulau Pinang, Sabah, Sarawak, and the Yang di-Pertuan Agong region itself. In addition, it is also responsible for maintaining the privileged position of the Malays and the indigenous people of Sabah and Sarawak as well as protecting the interests of other communities.

The position of the court system in Malaysia is federal in nature, both federal and state laws are implemented in the Federal Court. Only the Sharia Courts, which exist only in states based on the Islamic legal system, along with the indigenous courts in Sabah and Sarawak, deal with customary law. In addition, the Courts in Malaysia also have Session Courts and Magistrates Courts, as well as the High Court and lower court levels which have jurisdiction and authority regulated by federal law.

e. Thai Constitutional Law System

The country of Thailand previously named Siam, changed its name to Thailand on May 11, 1949. Thailand is included in the Southeast Asian Region and is one of the countries that was never colonized. Thailand has an absolute monarchy system. In 1932 the sovereignty of the Ayuthaya Thai kingdom ended because it was influenced by the process of colonialization of the West in the countries of the Indochina Region around Thailand. Although Thailand was never colonized by Europeans, however, due to the

influence of colonialization in the area around Thailand, it affected the governance system and replaced it with a modern system of government by overthrowing the absolute monarchy and establishing a government based on a democratic constitution as a system of government.[35]

In the Thai system of government, constitutionally the King is the Head of State. His position as Head of State is not political, but as a symbol of culture and religion. After the collapse of the Chakri kingdom government, the Thai state continued to maintain a monarchical system by making the king as Head of State and functioning as a unifier of the nation, and maintaining Thai culture. In holding government affairs, a Prime Minister is appointed who is elected through General Elections. Until now, the monarchy system is maintained, but the power and authority of the king is still limited and not absolute.[36] The Prime Minister who is elected by General Election usually comes from the leader of Parliament from the majority party and is then appointed by the King. While the position of the Thai Parliament uses a two-chamber system, namely the National Assembly (Rathsapha) which consists of the House of Representatives *(Sapha Phuthaen Ratsadon)* with 480 members and the Senate (Wuthisapha) with 150 members. Members of the House of Representatives serve a term of four years and Senators serve a term of six years.

The field of Justice includes District Courts, Constitutional Courts, and State Administrative Courts, whose members are selected selectively. Currently, the Thai government is under the 2017 Constitution. Meanwhile, the Thai Public Administration system has three levels of government, namely the Central Administration consisting of Ministries and Bureaucracy, Provincial Administration consisting of 76 Provinces except for the Bangkok area, and local administration consisting of organizations Provincial administration, City administration organization, District administration organization, Bangkok area, and Pattaya Special Administrative Region. The city of Bangkok acts as the center of the country's public administration, as well as being the capital and largest city in Thailand.

f. South Korea's Constitutional Law System

South Korea (Republic of Korea) is a country located in the East Asia Region and directly adjacent to North Korea. Prior to 1945, South Korea and North Korea were one country. After World War II ended, and Japan surrendered to the allied forces, Korea was divided into two, South Korea and North Korea. South Korea adheres to democracy, and North Korea adheres to communism.

In the constitutional law system, South Korea is a unitary state, as is Indonesia. South Korea has a presidential system of government, with a mixed presidential system influenced by a parliamentary system. In other words, the Republic of Korea is led by a President who is directly elected by the people through general elections and

[35] R. Siti Zuhroh, *Kepemimpinan Politik Baru, Civil Society dan Demokrasi di Thailand.* Jakarta. CSIS. 1995. p. 234

[36] Neil Schlager dan Jayne Weisblatt. *Word Encyclopedia of Political System and Parties.* p. 1379

his term of office is valid for five years and holds the office of president once, and the Incumbent cannot re-apply for the next election. In carrying out his duties, the President of South Korea is assisted by the Prime Minister who is directly appointed by the President and the National Assembly. In addition, the position of President in South Korea serves as Head of State and at the same time Head of Government and also as Supreme Commander of the Armed Forces.[37]

In the implementation of government, the state of South Korea refers to the South Korean Constitution as amended in 1987. The South Korean Constitution includes 130 articles and six amended regulations. The whole consists of 10 chapters, namely, General Provisions, Rights and Duties of Citizens, National Assembly, Executive Board, Judiciary Institution, Constitutional Court, Election Management, Local Powers, Economic Institutions, and Constitutional Amendments. The South Korean Constitution also fully regulates the functions, positions, duties, and authorities of each state institution, including the presidential institution as Executive, Legislative, and Judiciary.[38]

The president's power as the Executive Board is to lead for five years and one term.[39] In his duties, the President is assisted by the Prime Minister who is elected based on the approval of the National Assembly. The Prime Minister is in charge of supervising the Ministers and managing the coordination of government policies under the direction of the President. Meanwhile, the President and Prime Minister are assisted by a state council appointed by the President based on a recommendation from the Prime Minister. The position of state council leads and supervises administrative ministers, negotiates important affairs in the country, represents the government in the National Assembly, and the state council reports directly to the President.[40]

In early period of the government of South Korea (1948) the leadership of the President was started by Syngman Rhee as the first President of South Korea. Syngman Rhee ruled for four terms, before the South Korean constitution was amended and there were no restrictions on the office of President (1952, 1956, 1960). At this President Syngman Rhee was accompanied by the Vice President and changed four times. President Syngman Rhee was ousted on April 27, 1960 due to the security chaos in the

[37] Linte Anna Marpaung," Analisis Yuridis Normatif Perbandingan Prosedur Pemberhentian Presiden Dalam Masa Jabatanya antara Indonesia dengan Amerika Serikat dan Korea Selatan", Pranata Hukum, Vol 10 No. 2, Juli 2015. p. 127

[38] *The Blue House, The Constitution of the Republic of Korea, Amanded bay October 29, 1987.*

[39] Pembatasan lima tahun jabatan Presiden Korea Selatan dan hanya boleh dipilih sekali dan tidak dapat dipilih Kembali dilakukan oleh Presiden Roh Tae-woo, seorang Jenderal militer (terpilih 1987) menggantikan Presiden Jenderal Chun Doo-hwan dan Roh Tae-woo dikenang sebagai Bapak Reformasi Korea Selatan. Grazyna Srnad, "The Sixt Republic Under Roh Tae Woo: The Genesis of Korean Democracy", Publish political Science, XXX, (2010). p. 208

[40] Ministry of Foreign Affairs, "Republic of Korea: Public Administration and Country Profile". Division for Public Administration and Development Management (DPADM) Departement of Economic and Social Affairs (DESA), Seoul. 2007.

country due to the war between South and North Korea, election fraud and a lot of corruption.[41]

In the South Korean presidential institution, the President does not have a vice president like in the Indonesian government but has a prime minister who is assisted by ministers in his cabinet. The position of the Prime Minister in South Korea is not the same as the position of the Prime Minister in Parliamentary countries which separates the functions of the Head of State and Head of Government. However, the position of the Prime Minister in South Korea is as "Vice President". Meanwhile, the position of all Ministers in his cabinet has equal position. Thus, making the number of Ministries in South Korea slimmer and not as many as in Indonesia.[42] Unlike in Indonesia, the position of the Minister is the Coordinating Cabinet Minister (Menko) and the Ministers who are under him.

g. United States Constitutional Law System

The United States of America has the same presidential position as Indonesia with a presidential system. The position of President is the head of state as well as the head of government who has broad authority. The position of President in the USA cannot be held more than two times as stated in the 22nd amendment to the USA constitution. Meanwhile, the Legislative body in the USA called the Congress is bicameral, consisting of two chambers, namely the Senate and the House of Representatives. The Senate is a smaller house, with two representatives from each state who are directly elected by the electorate. While the House of Representatives is determined by Congress which is divided among the states according to the number of inhabitants. The portion of its civilian power is more prominent than its military power, both in the Legislative, Executive, and Judiciary.

On the other hand, the authority of the Judicial Institution in the USA and in Indonesia has the same rights, especially in the Supreme Court which has the right to examine (judicial review). In Indonesia, the Supreme Court has the power to materially examine regulations under the law. However, in the USA, the Supreme Court can correct that law is considered invalid or invalid if it conflicts with the US constitution.

The United States and Indonesia are countries that both adhere to a presidential system of government. Although the presidential system of government in Indonesia is somewhat different as usual, it is a mixture or combination with the parliamentary system of government. It's just that in practice, the model used is similar to the presidential system of government. The presidential model of government is regulated in the constitutions of the two respective countries and it regulates the process of impeachment or impeachment against the President and Vice President.

Like Indonesia, the United States of America is a country that adheres to a presidential system of government. This is contained in its constitution in Article 2

[41] Gloria Lotha, "*Syngman Rhee Presiden of Sout Korea*" Chicago. Britannica. Inc. 1998. p. 1

[42] Lee jung-hwa, "A Study on the Party System in South Korea after Democratization". Ann Arbor; Disertasi University of Michigan. 2016. p. 99

paragraph (1) paragraph 1 which stipulates that: "executive power is in the hands of the President of the United States, the President serves for four years along with the Vice President who is elected for the same period." The above article, it contains provisions for a presidential government system, namely that the President holds executive power with a term of office for four years along with the Vice President with the same term of office and is elected directly by the people through general elections.

Article 1 paragraph (1) of the United States Constitution establishes a separation of powers between the Legislature and the Executive in order to implement a presidential system of government, which states: "All legislative powers in the US Constitution are vested in a US Congress consisting of the Senate and the House of Representatives."

The US presidential system is very close to the Trias Politica thought as the idea of Montesquieu, a French political thinker. There is a clear separation between the powers of the Executive Board and the Legislative Body. The two institutions will cooperate when appointing a Minister or Supreme Court Justice to the position of the Supreme Court.

The purpose of the separation of powers by the US government is to carry out checks and balances between state institutions. With the checks and balances, a balance will be obtained on the relatively greater power of the President.[43] In the US presidential system, the position of the president does not depend on the Legislature. So that the president cannot be vacuumed, let alone impeached, despite the reasons for the wrong policies being issued. The presidential system in the US is also strongly supported by an established party system in the US, which consists of two parties, the Democratic party, and the Republican party.[44] The US constitution that the President and Vice President stipulate that impeachment is contained in article II section 4 of the Constitution of the United States of America in 1789 and then amended in 1992 "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of Treason, Bribery, or other high Crimes and Misdemeanors." The indictment to fire the President and Vice President of the US is called the Article of Impeachment (article indictment).

As in the US constitution, the institutions that have the authority to impeach the President and Vice President as well as civil servants are the Senate and the House of Representatives. In the impeachment process, the House of Representatives makes demands with articles of impeachment or impeachment charges. Followed by a trial in the Senate, by examining the charges and deciding based on the evidence and proposals presented by the House of Representatives. Each article indicted will be examined one by one. Approval of two-thirds of the attendance of senators is the main

[43] A.S.S. Tambunan, *Hukum Tata Negara Perbandingan*. Jakarta. Puporis. 2001. p. 103

[44] Jimmly Asshiddqie, *Kemerdekaan Berserikat Perubahan Partai Politi.* Jakarta. Sekretarian Jenderal dan MKRI. 2005. p. 41

condition for removing the office (dismissal) of the President and Vice President from office.[45]

Among the US presidents who have experienced impeachment sanctions are Presidents Andrew Johnson, Richard Nixon, William Jefferson Clinton, and Donald John Trump. President Andrew Johnson was impeached in 1868 by the House of Representatives but was not dismissed because there were not enough Senate votes to remove him. President Richard Nixon resigned in 1974 before an impeachment verdict was passed by The Judiciary Committee of the House. While President William Jefferson Clinton in 1990, and the Senate votes were not enough votes to remove him. Donald John Trump was impeached on December 18, 2019, through the Article of Impeachment Against Donald Trump, and was approved by the House of Representatives on the grounds of abuse of power and obstruction of Congress. However, on February 5, 2020, the Senate acquitted Donald John Trump of impeachment sanctions which had the support of two-thirds of the Senator's majority vote.

D. CONCLUSION

Constitutional Law focuses on regulating state organizations, state organs and their relationship to state equipment and human rights. The State of Indonesia as a state based on law, and has been mandated in the 1945 Constitution that every action in the field of service and legal arrangements must be based on statutory regulations. In the Indonesian government, the institution authorized to enforce Constitutional Law is the Constitutional Court. The Constitutional Court as a high state institution has the authority and constitutional obligation to maintain and guarantee the implementation of legal constitutionality. The role of the Constitutional Court is to give a judicial review if legislation conflicts with the constitution or is not in accordance with it and to either stipulate or annul it. Similarly, other countries in the world have their own constitutional law systems to regulate their state organizations, including those with liberal democratic ideologies, such as Indonesia, the United States, and South Korea, those with constitutional democracy principles, such as Singapore, those with absolute monarchies, such as Brunei Darussalam, and those with constitutional monarchies, such as Malaysia and Thailand.

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[45] Hupron, *Pemberhentian Presiden di Indonesia antara Teori dan Praktik.* Surabaya. LaksBang PRESSindo, 2017. p. 277.

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