

## Budaya konstitusi (CONSTITUTIONAL CULTURE) di Indonesia pasca keberadaan Mahkamah Konstitusi

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### Abstrak

[Indonesia adalah negara yang berdasar atas hukum, kehadiran pengadilan menjadi syarat penting bagi tegaknya negara hukum. Pasca perubahan UUD 1945 Indonesia telah memilih membagi kekuasaan kehakiman dilaksanakan oleh Mahkamah Agung dan Mahkamah Konstitusi dengan salah satu kewenangannya menguji undang-undang terhadap UUD, Mahkamah Konstitusi sebagai The Guardian of The Constitution mempunyai peran tersendiri dalam pembentukan budaya konstitusi di Indonesia. Komitmen terhadap konstitusionalisme merupakan suatu budaya konstitusi yang juga akan mendinamisasi konstitusi itu sendiri. Komitmen terhadap UUD 1945 sebagai pembatasan terhadap kekuasaan- kekuasaan yang ada dalam negara dan jaminan perlindungan terhadap hak-hak konstitusional yang harus dilindungi oleh Mahkamah Konstitusi dalam melaksanakan kewenangannya menguji undang-undang akan memperjelas konstitusionalisme di Indonesia. Pembahasan budaya konstitusi dalam tulisan ini difokuskan pada pengertian budaya konstitusi yang akan mempengaruhi pelaksanaan suatu konstitusi dalam praktek oleh "institusi formal negara" terutama dalam hubungannya dengan warga negara. Metode penelitian yang penulis gunakan dalam penulisan ini adalah metode penelitian yuridis normatif, yakni penelitian hukum yang dilakukan dengan cara meneliti bahan pustaka atau data sekunder belaka, disamping itu penelitian ini dilengkapi dengan studi historis dan studi perbandingan. Berdasarkan penelitian yang telah dilakukan, diketahui bahwa Mahkamah Konstitusi dalam melaksanakan tugasnya menguji undang- undang terhadap UUD 1945 telah menggunakan berbagai metode penafsiran konstitusi, yang ditujukan untuk menegakan hukum dan keadilan sebagaimana diamanatkan UUD 1945, keadilan dimaksud diterjemahkan oleh Mahkamah Konstitusi sebagai keadilan substantif. Berdasarkan beberapa putusannya nampak bahwa penafsiran konstitusi yang dilakukan oleh Mahkamah Konstitusi telah memperluas beberapa pengertian yang ada dalam UUD 1945, budaya konstitusi yang nampak berdasarkan beberapa putusan pengujian undang-undang terhadap UUD 1945 mengarah pada dilakukannya judicial activism oleh Mahkamah Konstitusi. Kehadiran Mahkamah Konstitusi diharapkan melengkapi sistem ketatanegaraan Indonesia, sesuai dengan fungsi dan kedudukannya dan dapat memotivasi kineja lembaga negara lain, dalam hal ini pembentuk undang-undang agar dapat menghasilkan produk hukum yang lebih baik dan tidak bertentangan dengan UUD 1945.;The existence of court in Indonesia as the modern rule of law state, becomes important as requisite for the rule of law principle. After the amendment of the Constitution Indonesia has chosen to share judicial power held by the Supreme Court and Constitutional Court with the authority to judicial review of legislation act against the Constitution, the Constitutional Court as Guardian of the Constitution has its own role in establishing constitutional culture in Indonesia. Commitment to constitutionalism is a distinctive constitutional culture which will also develop the constitution itself Commitment to UUD 1945 as the limitation to the powers that exist in the country and guarantee the protection of constitutional rights that must be protected by the Constitutional Court with the authority to review as the implementation of Indonesia constitutionalism. Constitutional culture discuss in this paper is focused on understanding

constitutional culture which will affect the implementation of the constitution in practice by the "the formal institutions of the state ", especially in relation to the citizenry. The method used in this research is a juridical-normative research methods, i.e., legal research are done by secondary data Legal materials used in this study. It consisted of primary legal materials, secondary and tertiary legal materials, with completed with a study of historical and comparative study. Based on the research, it is known that the Constitutional Court in judicial review the legislation to the constitution has used various methods of Constitutional interpretation to uphold the law and substantive justice. From some of the decision appears that the constitutional interpretation made by the Constitutional Court is expanding the existing notions of UUD 1945, the Constitutional Court leads to judicial activism. The presence of the Constitutional Court is expected to complement the government system of Indonesia, in accordance with the function can motivate the performance of other state institutions, in this case is the legislator in order to establish better legislation and not contradict with UUD 1945.;The existence of court in Indonesia as the modern rule of law state, becomes important as requisite for the rule of law principle. After the amendment of the Constitution Indonesia has chosen to share judicial power held by the Supreme Court and Constitutional Court with the authority to judicial review of legislation act against the Constitution, the Constitutional Court as Guardian of the Constitution has its own role in establishing constitutional culture in Indonesia. Commitment to constitutionalism is a distinctive constitutional culture which will also develop the constitution itself Commitment to UUD 1945 as the limitation to the powers that exist in the country and guarantee the protection of constitutional rights that must be protected by the Constitutional Court with the authority to review as the implementation of Indonesia constitutionalism. Constitutional culture discuss in this paper is focused on understanding constitutional culture which will affect the implementation of the constitution in practice by the "the formal institutions of the state ", especially in relation to the citizenry. The method used in this research is a juridical-normative research methods, i.e., legal research are done by secondary data Legal materials used in this study. It consisted of primary legal materials, secondary and tertiary legal materials, with completed with a study of historical and comparative study. Based on the research, it is known that the Constitutional Court in judicial review the legislation to the constitution has used various methods of Constitutional interpretation to uphold the law and substantive justice. From some of the decision appears that the constitutional interpretation made by the Constitutional Court is expanding the existing notions of UUD 1945, the Constitutional Court leads to judicial activism. The presence of the Constitutional Court is expected to complement the government system of Indonesia, in accordance with the function can motivate the performance of other state institutions, in this case is the legislator in order to establish better legislation and not contradict with UUD 1945., The existence of court in Indonesia as the modern rule of law state, becomes important as requisite for the rule of law principle. After the amendment of the Constitution Indonesia has chosen to share judicial power held by the Supreme Court and Constitutional Court with the authority to judicial review of legislation act against the Constitution, the Constitutional Court as Guardian of the Constitution has its own role in establishing constitutional culture in Indonesia. Commitment to constitutionalism is a distinctive constitutional culture which will also develop the constitution itself Commitment to UUD 1945 as the limitation to the powers that exist in the country and guarantee the protection of constitutional rights that must be protected by the Constitutional Court with the authority to review as the implementation of Indonesia constitutionalism. Constitutional culture discuss in this paper is focused on understanding constitutional culture which will affect the implementation of the constitution in practice by the "the formal institutions of the state ", especially in relation to the citizenry.

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