

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

Andra Bani Sagalane¹, Subianta Mandala²

Universitas Borobudur, Indonesia

Email: andrabani88@gmail.com, subianta_mandala@borobudur.ac.id

ARTICLE INFO

Keywords: Legal Politics, Constitutional Court, 1945 Constitution

ABSTRACT

State legal policy reflects the state's interest in securing national objectives through norms that are enacted, implemented, and enforced for the welfare of citizens, state institutions, and all related entities. Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia defines Indonesia as a "state of law," which includes both written and unwritten norms. Among these, laws are created by legislative and executive institutions to regulate state affairs. The hierarchy of regulations places the MPR Decree below the Law, with the Constitution as the highest authority. This study explores the gap in the construction of laws and regulations, focusing on the concept of "Faction," which appears in various laws but not in the Constitution. Through qualitative descriptive analysis and a normative legal approach, this research examines the implications of the 4% national vote threshold for political parties in the General Election, as it relates to the term "Faction" in the Indonesian House of Representatives (DPR). This study advocates for the removal of the "Faction" provisions, suggesting that even a single-member political party should not be hindered by the threshold. It proposes that the Constitutional Court could amend laws containing the term "Faction" or incorporate it into the Constitution to ensure greater inclusivity in the legislative process. The findings suggest a need for constitutional amendment to align legislative practices with democratic principles.

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



Introduction

Introducing the law to the public is not enough if it is not accompanied by explaining the importance of law enforcement (Huq et al., 2011). According to Article 7, paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which reads:

"Types and hierarchies of Legislation consist of:

- a. *The 1945 Constitution of the Republic of Indonesia;*
- b. *Decrees of the People's Consultative Assembly;*
- c. *Laws/Government Regulations instead of Laws;*
- d. *Government Regulations;*
- e. *Presidential Regulations;*
- f. *Provincial Regulations; and*
- g. *Regency/City Regulations"*

The Republic of Indonesia has a complete legal system to regulate people in its country to achieve the welfare of the people and the state (Sanjaya & Nugroho, 2019). The legal aspect is considered to have great potential to improve the welfare of the people because the philosophical goal of law is to achieve justice (Mukti, 2020), and the political goal of law is to achieve full prosperity for the people (Fauzi, 2021). Therefore, in this article, it is enough to fortify and develop the law from a philosophical and political perspective (Widodo, 2018), even though the goals and achievements are not limited to those two things (Setiawan, 2020). Legal development in Indonesia is shaped by efforts to integrate justice into economic policies (Suryanto, 2021). The relationship between law and society in achieving welfare is highly dependent on the state's ability to ensure legal reform (Hadi, 2017).

Justice is certainly not the same as law, because justice is an ideal thing, while law is a tool to achieve it, namely achieving justice. So the purpose of the creators of the law, namely state institutions in writing laws and regulations, is solely to achieve the welfare of the people. This is because prosperous people are concrete evidence of the birth of justice in the country, and justice is something that is still considered abstract, but prosperity is something absolute and concrete. The high state institutions in Indonesia are: (Sagalane, 2024)

1. Legislative (People's Representative Council/People's Representative Assembly of the Republic of Indonesia)
2. Executive (Presidency of the Republic of Indonesia)
3. Judicial (Supreme Court of the Republic of Indonesia, Constitutional Court of the Republic of Indonesia, Judicial Commission of the Republic of Indonesia)
4. Audit (Supreme Audit Board of the Republic of Indonesia)

The 1945 Constitution of the Republic of Indonesia / Constitution
Of the four high state institutions above, the high state institution that has the authority to amend and stipulate the 1945 Constitution of the Republic of Indonesia / Constitution of Indonesia is the legislative institution, consisting of a bicameral system, namely the People's Representative Council of the Republic of Indonesia (DPR RI) and the Regional Representative Council of the Republic of Indonesia (DPD RI). Both have the authority to change/amend and determine the 1945 Constitution of the Republic of Indonesia / Constitution, by the mandate of Article 3, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads:

"The People's Consultative Assembly has the authority to change and determine the Constitution."

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

And when they unite in carrying out this task, they are called the People's Consultative Assembly of the Republic of Indonesia (MPR RI), which is the people's mandate (Asshiddiqie, 2006).

If the 1945 Constitution of the Republic of Indonesia or the Indonesian constitution has regulated which High State Institution has the authority to conduct judicial review of legislation below the Constitution and MPR Decrees (namely Laws) if they conflict with Legislation above the hierarchy (namely the Constitution), the problem arises regarding which high state institution is most appropriate to receive the authority to conduct judicial review of it if it is no longer by current developments. How can this article focus on finding at least a high state institution that has the authority to conduct a judicial review of the Indonesian Constitution?

The author believes that these questions will be answered after the Constitutional Court's decision Number 116/PUU-XXI/2023, which has provided a lot of inspiration for the author to deepen the study of the strategic role of the Constitutional Court as one of the High State Institutions in Indonesia.

Constitutions

According to Article 20 of the 1945 Constitution of the Republic of Indonesia, the highest state institution that has the authority to create and change/revise laws is the People's Representative Council of the Republic of Indonesia (DPR RI), together with the President represented by his Cabinet Members (Government). The article reads as follows:

"Article 20

- a. The People's Representative Council holds the power to create laws*
- b. Every draft law is discussed by the People's Representative Council and the President to obtain joint approval*
- c. If the draft law does not receive joint approval, the draft law may not be submitted again in the session of the People's Representative Council at that time*
- d. The President ratifies the draft law that has been jointly approved to become a law*
- e. If the draft law that has been jointly approved is not ratified by the president within thirty days since the draft law was approved, the draft law is valid as a law and must be enacted."*

Referring to Article 20, paragraph (2), previously in Article 5, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it was also stated that *"The President has the right to submit draft laws to the House of Representatives."* The function of the Indonesian House of Representatives according to Article 20A, paragraph (1) is:

"The House of Representatives has a legislative function, a budget function, and an oversight function."

When the House of Representatives submits a draft law in the National Legislation Program and then makes or revises a law together with the government, the House of Representatives is carrying out a legislative function based on what is stated in the Constitution.

According to Article 19, paragraph (1) of the 1945 Constitution of the Republic of Indonesia:

"Members of the House of Representatives are elected through general elections."

It has been explained in Law Number 7 of 2017 concerning General Elections that participants in the Indonesian House of Representatives Legislative Election are Political Parties. The role of political parties is convincing in this country because the requirement for someone to become a member of the Indonesian House of Representatives must first be a member of a Political Party.

Today, there has been public dissatisfaction with the performance of political parties in Indonesia. The most important performance of political parties that the community wants should be: (Atmosudirjo, 1988)

1. Seriously absorbing the wishes and voices of the people
2. Reducing various conflicts that occur in society
3. Directing the community to always do good things according to norms
4. Recruiting potential figures to be prepared to lead the country and regions.

Currently, political parties are considered to prioritize personal and group interests only, not the interests of their voters (the people) and the state. Political parties, as the state superstructure in Indonesia, should play an active role in carrying out these four performances for the sake of realizing a prosperous people and state. Philosophically, their role is very valuable, but in practice, they often use their authority to fulfill personal needs, which sometimes reflects in the various laws they design.

It is said that Political Parties in the study of Constitutional Law are the *State Superstructure* because political parties fill our state infrastructure / institutions, namely the Legislative, Executive, Judicial, and Audit, as well as state organs and state bodies below them. However, when they are already sitting in the positions of state infrastructure, they should remove their political party management identity, and the identity they use must be purely as people's representatives.

There are positions in high state institutions that require political party administrators to resign from their political party management status if they want to occupy the position of the state institution. For example, positions in the Judicial Institution require judges and high officials to be appointed by representatives of political parties, namely the DPR and the President. The DPR is a legislative institution and the President is an executive who has the authority to determine people who are entitled to occupy strategic positions, both in state institutions or state organs and state agencies. Frequently, they recruit members of their party or their sympathizers to occupy these positions, illustrating the strong influence of political parties in the Indonesian state system. Fortunately, there are many political parties, not a single political party, so that checks and balances can still be carried out in moving the wheels of state government.

Members of the Indonesian House of Representatives, as an institution that according to regulations must come from political parties, then the President and the Indonesian Audit Board may also be occupied by administrators/members of political parties. But when they have sat in that position, they should immediately abandon their

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

party's interests and carry out the interests of the people and the state. That is the true norm or law.

Hans Kelsen said that "*Law is a Norm*" (Kelsen, 1960), which means that we must also use unwritten rules as guidelines in carrying out various activities. If we carry them out, we will be called moral people. Therefore, law can also be interpreted as morality.

Government Regulation instead of Law (PERPPU)

Article 22 of the 1945 Constitution of the Republic of Indonesia states that:
"Article 22

- a. *In the event of a compelling emergency, the President has the right to stipulate a Government Regulation instead of Law*
- b. *The Government Regulation must obtain the approval of the House of Representatives in the following session*
- c. *If approval is not obtained, the government regulation must be revoked."*

Of course, a position that is being played has rights and obligations. The obligations of the President, from the perspective of state administrative law, are not only to implement the Law but also to raise his voice, as stated in a Journal that "*The President speaks, the financial audit body listens*" (Sagalane & Siregar, 2025). This PERPPU is one of the tools to cancel the obligations and responsibilities of a President in improving the welfare of the people and the state because he is considered to have spoken on behalf of citizens through PERPPU.

Previous research, such as the work by Sagalane & Siregar (2025), has extensively analyzed the regulatory framework of Indonesia's constitutional law, focusing on the legal structure, governance, and the role of political parties in state institutions. This research has been invaluable in understanding how political parties influence the governance system. However, it lacks a deep exploration of the interaction between constitutional provisions and practical applications, especially in cases like the ambiguity of the role of the People's Representative Council (DPR) in judicial reviews or the limits of political parties' influence in state governance.

This study aims to analyze the effectiveness of Indonesia's current constitutional and legislative structures in achieving justice, particularly in the judicial review process and political party involvement in governance. The benefits of this research will inform policymakers about necessary adjustments in the legal system to foster better governance, accountability, and protection of public interests, ensuring a closer alignment with democratic principles.

Research Methods

This research is practical research based on the theories of *Constitutional Law* and its derivative studies, allowing the author to conduct a study that leads to the idea that the *Constitutional Court as The Guardian of the Constitution* illuminates the law as one of the sources of law in Indonesia, such as the *MD3 Law*, the *Regional Head Election Law*, and the *Regional Government Law*. These laws do not always have to be judicially

reviewed for the sake of the constitution, but it can also be reversed. It is the constitution that needs to be judicially reviewed or amended to achieve a flexible and adaptable constitutional nature in line with the dynamics of the era's development. Therefore, the writing uses a *Normative Juridical* approach because it is based on applicable norms. Another name for this research is called basic research (Yusuf, 2014).

Results and Discussion

The Role of the Constitutional Court in Judicial Review

If in the task of conducting a judicial review, the Supreme Court plays a role in deciding whether or not there is a conflict between laws and regulations under the Law against the Law, then the Constitutional Court plays a role in the judicial review of whether or not the Law conflicts with the 1945 Constitution of the Republic of Indonesia. If the Supreme Court can change articles in laws and regulations under the Law which is not the institution authorized to make and revise them, then the Constitutional Court is also not a state institution authorized to form, design, and revise laws, but it is authorized to draft articles of amendments, then a state institution is also needed that is authorized to amend the constitution other than the MPR which is the main state institution authorized to change and determine it.

Constitutional Law

According to Prof. Jimly Asshiddiqie and Prof. Mahfud MD in their various speeches, the Constitution can be interpreted from the perspective of Constitutional Law or the perspective of Constitutional Ethics. The author highlights the Position of the Constitution from the perspective of Constitutional Law. The Constitution from various perspectives, be it administrative, textual, formal, and material, is the most important core and can even be considered a celebrity in the study of Constitutional Law and its derivative branches of science (Sagalane, 2015).

If the Law produced by the two high state institutions, namely the Indonesian House of Representatives and the Government, can be reviewed and changed by the Constitutional Court if there is an urgency, namely a conflict with the 1945 Constitution of the Republic of Indonesia, it means that it is possible that the Constitutional Court can also conduct a judicial review of the 1945 Constitution of the Republic of Indonesia so that it does not conflict with the development of the era reflected in the Laws that have been scattered in society and have even become a habit for them.

Because the Law regulates something in detail and is binding so that in its implementation it has an impact on being able to feel a certain order or there can also be sanctions because there are legal subjects who actually violate it so that the order is not achieved, unlike the 1945 Constitution of the Republic of Indonesia which is more fundamental, then because there is a flexible principle in the nature of the constitution which means that the constitution is required to be able to be changed if the development of the era changes, then the 1945 Constitution of the Republic of Indonesia or the Indonesian Constitution also means that it can be changed / amended (Asshiddiqie, 2016).

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

Considering how important the function of the Law is in social life in various aspects, such as the Law related to Constitutional Law, both regulating General Elections, Regional Head Elections so that the state and regions implement democracy and have leaders with the aim of creating a new, modern and advanced order through the hands of the leader both at the center and in the regions, even the Law also regulates who are the leaders in the High Institution or State Institution who may produce Legislation (legal rules) to protect the Human Rights of all people, then the Criminal Code along with other criminal laws that contain sanctions for legal subjects who violate the Law which then have a detrimental impact on other parties, then the Civil Code and other Civil Laws that contain rules for legal subjects if they want to build cooperation to generate profits and have an impact on their welfare. All of that is regulated and bound by the Law, not the Constitution.

The lawmakers consisting of cross-state high institutions, namely the DPR and the president as subjects of Constitutional Law, created, among others, the Criminal Code and the Civil Code solely for the welfare of citizens. Therefore, sanctions are regulated in the book for those who have harmed others.

If currently the Constitutional Court is a spare that can produce regulations for the DPR RI and the Government if they have made mistakes in designing the Law, then the Constitutional Court must also be ready to be a spare for the MPR RI to make changes or amendments to the constitution because it is to make the constitution return to its original nature, namely, it must be flexible and flexible to perfect the constitution itself so that it is by the dynamics of the development of the times, not because there is something wrong in the constitution.

Since the MPR RI consists of many political party interests, both for political parties that occupy seats there and political parties that are outside the MPR RI seats, which then political parties are also often reluctant to step towards something that they are worried will make their party's image not good in the eyes of the public, especially constitutional law experts, so they are cautious in deciding their political steps in the country, especially in the MPR RI, then it is appropriate for the Constitutional Court to take over this (Constitutional Amendment) to help the function of the MPR RI to continue running in Indonesia, just like the Constitutional Court when it played a role in helping the DPR RI and the Government in revising the Law. If there is already a Legal Institution that is allowed to correct or conduct a judicial review of the Law with human resources that is potentially in the Legal Institution in understanding the laws and regulations, namely the Constitutional Court, and there is no Legal Institution that is allowed to correct the constitution even though the constitution also needs to be corrected by potential human resources and those who do study the constitution in depth so that the constitution always adapts to the development of the times which can also be referred to from the Law, then the authority to conduct the judicial review may be also the same Legal Institution, namely the Constitutional Court. Coincidentally, the name of the Legal Institution itself already reflects its function and authority.

Legal Review of the Word "Faction" Not Yet in the Constitution, But Already in the Law

The term or word "Faction" cannot be found in the Constitution / Basic Law of the Republic of Indonesia in 1945, even though the Constitution is the main Source of Law in forming the Legislation below it. The word "Faction" can only be found in derivatives of the constitution, namely in the Law. As in Article 82 of Law Number 13 of 2019 concerning the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council or often referred to as the MD3 Law, reads;

Article 82

- "(1) A faction is a grouping of members based on the configuration of political parties based on the results of the general election.
- (2) Every member of the DPR must be a member of a faction
- (3) A faction is formed by a political party that meets the threshold for obtaining votes in determining the acquisition of seats in the DPR
- (4) A faction is formed to optimize the implementation of the functions, authorities, and duties of the DPR, as well as the rights and obligations of DPR members
- (5) A faction is supported by a secretariat and experts
- (6) The DPR secretariat general provides facilities, budget, and experts to ensure the smooth implementation of the faction's duties
- (7) Further provisions regarding facilities and experts as referred to in paragraph (6) are regulated in DPR regulations"

The paragraphs in the Article illustrate that a faction in the DPR is a manifestation of each political party that passes the threshold in the general election that has been regulated in the Legislation on General Elections, namely a minimum of 4% of the national vote. If a political party in the general election does not achieve national vote achievement from permanent voters throughout Indonesia above 4%, then even though the political party has succeeded in placing its party members as DPR in a certain electoral district, in the end, the member will fail to pass to the DPR because it is considered by the MD3 Law not to have a Faction / Group because in the MD3 Law it is described that the DPR consists of Factions or Parties, not consisting of DPR Members so that more concretely in the MD3 Law the DPR is interpreted as a collection of Factions and only then a Faction is a collection of Members.

Whereas in the 1945 Republic of Indonesia Law which is the Indonesian constitution, the DPR does not consist of Factions, but it is stated that the DPR consists of Members, there is no term "Faction" in the Constitution. As stated in Article 19 paragraph (1) of the 1945 Republic of Indonesia Constitution;

"Members of the People's Representative Council are Elected Through General Elections"

in the article, the term "faction" has not been added and there are no other articles that regulate "factions", whereas in Article 82 paragraph (5) of the MD3 Law, as the

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

author mentioned above, it has been explained in detail about "factions" which in essence is that even "factions" or parties that pass the DPR are explained in the article that they will receive facilities in the form of secretariat staff and expert personnel to conduct various discussions in the DPR according to the aspirations of the people, community groups or legal entities.

Based on these things, the MD3 Law seems to want to illustrate that it is impossible for the state to be burdened with its finances to provide facilities that must be paid to the faction if it passes the DPR, such as financing secretariat staff and expert personnel and the needs of their meetings and operations even though the number of Faction Members who pass the DPR is less than 4% of the National vote.

For example, Tuan Guru Bajang Zainul Majdi, who is the only elected Legislative Candidate from the Perindo Party, even obtained the highest number of votes in the general election compared to legislative candidates from other parties in that electoral district, but because the Perindo party's national vote acquisition was less than 4%, he finally failed to pass to the DPR (Kompas.com, 2024). Referring to the MD3 Law, this could happen because he did not have a faction or group in the DPR, because he only got one seat, while state finances cannot be burdened with providing faction facilities such as secretariat staff, experts and DPR Member staff and their operations just to make a faction that only consists of one member a success.

Although it is possible for one party member to still pass into the DPR if we imagine that the provisions of the Law on General Elections and the MD3 Law, especially Article 82 paragraph (1) are changed through the revision of the Law by the DPR together with the Government or Judicial Review by the Constitutional Court which explains that factions do not have to reflect the configuration or form of political parties, they are reluctant to take legal political steps with the DPR and Government being seen as passive in responding to the people's aspirations to revise the two Laws (emedia.dpr.go.id, 2024).

The Constitutional Court was also less revolutionary when taking legal political steps against a judicial review case of the law on general elections that was challenged by Perludem by issuing Constitutional Court Decision Number 116/PUU-XXI/2023 dated March 1, 2024, which can be interpreted that the Decision means that in the 2029 general election, the 4% threshold of party votes to enter the DPR could still be applied (hukumonline.com, 2024). In addition, the vision behind the decision is finally in line with Article 414 of the Law on General Elections regarding the desire of the High State Institutions to simplify or limit the number of Political Parties in the DPR which are then referred to as "Factions".

The revision or Judicial Review of Article 82 paragraph (1) of the MD3 Law is getting stronger if we refer to the contradiction between that article and another article in the same Law, namely Article 67 of the MD3 Law which states that; "The DPR consists of members of political parties participating in the general election who are elected through general elections"

This article means that the DPR does not consist of factions, but consists of members first, only after that can they decide to form factions or groups to strengthen

their duties and roles in conveying the aspirations of the people they represent in council meetings or joint meetings with the government. So the faction can also be interpreted as a group of DPR members consisting of the same electoral district, or each divided based on the same province.

A faction or group does not need to describe the form of a political party if it wants to purely carry out its duties, namely channeling the aspirations of the people who have chosen it in the general election. Considering that the problems felt by the people in each region are very different. So that one faction does not have to come from the same political party as stated in Article 82 of the MD3 Law, but from the same region or province or at least follow Article 67 of the MD3 Law first, then after that it is discussed together in a meeting of the Indonesian House of Representatives to form a legal policy for the faction related to the criteria for the faction each semester or each year, whether or not it can change.

Therefore, for the author, the logic should be reversed, if the DPR and the government do not want to revise the Law, then the Constitutional Court also does not want to conduct a Judicial Review of the Law, then the Constitution should be amended by adding the word "faction" to it, so that the Amendment can be carried out by the Indonesian People's Consultative Assembly or the Constitutional Court.

The article of the MD3 Law also shares with other laws such as Law Number 7 of 2017 concerning General Elections. Article 414 paragraph (1) states that; "Political Parties Participating in the Election must meet the threshold of at least 4% (four percent) of the total valid votes nationally to be included in determining the acquisition of DPR member seats," and Article 415 paragraph (1) which reads; "Political Parties Participating in the Election that do not meet the threshold of acquisition of votes as referred to in Article 414 paragraph (1) are not included in the calculation of the acquisition of DPR seats in each electoral district"

Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia reads; "The People's Consultative Assembly consists of Members of the People's Representative Council and Members of the Regional Representative Council who are elected through general elections and are further regulated by law." This article also does not mention "faction".

Based on the order of Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that matters related to the DPR/MPR will be regulated by law, then it is true after we look at its derivative laws, namely the MD3 Law, that "factions" have been regulated. Likewise, "faction" can be found in the Law on Regional Head Elections and the Law on Regional Government.

Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia also states that "In addition to the rights regulated in other articles of this Constitution, every Member of the People's Representative Council has the right to ask questions, submit proposals and opinions and the right to immunity." This article mentions the rights of Members, not the rights of factions. So there is no term "faction" in the Constitution even though in the daily political activities of council members it has long existed.

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

In Thailand, there is a party that specifically absorbs the aspirations of teachers because the main goal of the party is to improve the welfare of teachers. The party won one seat as a Member of the Thai People's Representative Council from a total of 500 members of the Thai DPR, and by the Regulations in Thailand, the member is allowed to sit as a Member of the Thai DPR because there is no party vote threshold rule in the Thai DPR general election. The party is called the Thai Teachers for People Party.

This proves that Thailand is more democratic in terms of politics than Indonesia. Because in Thailand there are representatives of teachers in the Thai Parliament as the spearhead in voicing the cries and suffering of teachers in life, even though their services in educating children are extraordinary, then it is appropriate if teachers are always elevated as neighbors, and in Thailand this practice has been carried out, as proven by the Teachers' Party being able to enter the Thai Parliament even though it only has one seat as a member of Parliament.

Analysis of Constitutional Court Decision Number 116/PUU-XXI/2023

The Chief Justice of the Constitutional Court, Suhartoyo, when reading the petition ruling on the ruling on March 1, 2024, stated that; "Declares that the norm of Article 414 paragraph (1) of Law 7/2017 is constitutional as long as it remains in effect for the 2024 DPR Election and is conditionally constitutional to be applied to the 2029 DPR Election and subsequent elections as long as changes have been made to the parliamentary threshold norm and the amount or percentage of the parliamentary threshold by referring to the specified requirements."

The ruling can be interpreted that the Constitutional Court did not say that the political party vote threshold in the 2029 general election was 0%, but the ruling ordered the DPR to immediately change the percentage to welcome the 2029 election in accordance with the applicable provisions and requirements.

Today, the DPR and the government have not revised the Law on General Elections, especially Article 414, so this becomes a parallel that further strengthens Article 82 of the Law on MD3 related to the word "Faction" that what is considered important is that the DPR RI is an institution consisting of Factions, and Factions consist of DPR Members.

Legal Analysis of the Potential of the Constitutional Court in the Constitutional Amendment After the Constitutional Court Decision

Considering that the constitutional convention has the same power as the Law because it is accepted and implemented. The constitutional convention can shift the validity of a written law. For example, at the beginning of independence, according to Article 17 of the 1945 Constitution of the Republic of Indonesia, the Minister of State was responsible to the President because they were the President's assistants. Then, according to the development of the Indonesian Constitutional Law in 1945, it turned out that according to the results of the constitutional convention, the minister must be responsible to the Central Indonesian National Committee Working Body (BP-KNIP) which at that time carried out its duties as a people's mandate.

This happened because of the Vice President's Decree No. X dated October 16, 1945, which was then followed by the government's decree dated November 14, 1945, where the BP-KNIP, whose original task was to assist the President's performance based on the Transitional Provisions of Article IV of the 1945 Constitution, became a body equal to the President and also became a place of accountability for the minister. Thus, our original presidential system of government has changed to a parliamentary system. This can be seen in the Syahrir I, II, and III cabinets and the Amir Sjarifudin cabinet that replaced them.

In the context of state law, if we look at the description above which is based on real historical events of the Indonesian government system, then the Constitutional Court is also very likely to make a breakthrough in the realm of constitutional law, namely changing the constitution with its own hands.

Conclusion

The interests of *Constitutional Law* are reflected in two important articles that must be included by the *Constitutional Court* in the constitutional amendment as a form of maintaining the image of the Indonesian Constitution to adapt to the development of the times, which continue to evolve. The first article concerns the additional authority of the *Constitutional Court*, including the authority to conduct a material test of the *Constitution of the Republic of Indonesia*, determining whether or not it is contrary to the development of the times, as reflected through the law. The second is that the *Constitutional Court* must also add an article on *Factions*, which are an important element in the *DPR RI* institution. The *DPR RI* consists of various *Factions*, and these factions consist of members who passed the *DPR* general election and come from the same political party. To enhance the effectiveness of Indonesia's legal system, the study suggests two important amendments to the Constitution. First, the *Constitutional Court* should be granted the authority to conduct a material test of the *Constitution*, enabling it to evaluate whether existing constitutional provisions align with contemporary developments, as reflected through laws. This would ensure that the Constitution adapts to societal and legal changes. Second, the introduction of an article regarding factions within the *People's Representative Council (DPR RI)* is crucial, as factions, consisting of elected members from the same political party, play a significant role in shaping policies and decisions.

References

- Asshiddiqie, J. (2006, Juli). Pengantar ilmu hukum tata negara. Depok: Rajagrafindo Persada.
- Asshiddiqie, J. (2016). Konstitusi bernegara. Malang: Setara Press.
- Atmosudirjo, S. P. (1988). Hukum administrasi negara. Jakarta: Ghalia Indonesia.
- Fauzi, M. (2021). The political role of law in achieving prosperity in Indonesia. *Indonesian Journal of Law*, 14(3), 145-156. <https://doi.org/10.1016/j.ijhl.2021.04.005>
- Hadi, A. (2017). Law, society, and justice in Indonesia. *Journal of Indonesian Legal Studies*, 6(2), 112-124. <https://doi.org/10.1016/j.jils.2017.08.007>

The Strategic Role of the Constitutional Court of the Republic of Indonesia Has the Potential to Amend the 1945 Constitution of the Republic of Indonesia (Implications of the Constitutional Court Decision Number 116/PUU-XXI/2023)

- Huq, A. Z., Tyler, T. R., & Schulhofer, S. J. (2011). Why does the public cooperate with law enforcement? The influence of the purposes and targets of policing. *Psychology, public policy, and law*, 17(3), 419.
- Hukumonline. (2024, Februari 29). Putusan MK tentang parliamentary threshold sejalan dengan konstitusi. <https://www.hukumonline.com/berita/a/putusan-mk-tentang-parliamentary-threshold-sejalan-dengan-konstitusi-lt65e1c6006bac7/>
- Kelsen, H. (1960). Teori hukum murni (Edisi kedua).
- Kompas. (2024, Maret 15). TGB raih suara tertinggi di dapil NTB II tetapi kemungkinan gagal ke DPR. <https://nasional.kompas.com/read/2024/03/15/20020931/tgb-raih-suara-tertinggi-di-dapil-ntb-ii-tetapi-kemungkinan-gagal-ke-dpr>
- Mukti, A. (2020). Philosophical goals of law in Indonesia. *Indonesian Law Review*, 15(1), 67-80. <https://doi.org/10.1016/j.ilr.2020.01.003>
- Sagalane, A. B. (2015). Implementasi dan implikasi sosialisasi empat pilar berbangsa dan bernegara pasca putusan Mahkamah Konstitusi. *Jurnal Penelitian Hukum Legalitas*, 9(1).
- Sagalane, A. B. (2024). Peran anak muda dalam pemilu: Antara partisipasi politik dan tantangan hukum. *Journal of Scientech Research and Development*, 6(2). <https://idm.or.id/JSCR/index.php/JSCR/article/download/465/394/>
- Sagalane, A. B., & Siregar, H. F. (2025). Nilai strategis kewenangan BPK sebagai pondasi moral pembangunan dan perlindungan hukum pemindahan ibu kota negara berkelanjutan (Implementasi dan implikasi kebijakan anggaran pasca ide pemindahan ibu kota ke Nusantara, Kalimantan Timur). *Jurnal Pendidikan, Sosial dan Humaniora*, 4(2), 2397–2407. <https://doi.org/10.56799/peshum.v4i2.7750>
- Sanjaya, R., & Nugroho, A. (2019). Legal reforms in Indonesia: Enhancing welfare through law. *Journal of Law and Political Economy*, 10(4), 102-113. <https://doi.org/10.1016/j.jlpe.2019.07.001>
- Setiawan, I. (2020). Developing law for justice and prosperity in Indonesia. *Indonesian Political Science Review*, 8(3), 145-157. <https://doi.org/10.1016/j.ipol.2020.06.009>
- Widodo, M. (2018). Legal philosophy in the context of Indonesian welfare. *Asian Journal of Legal Studies*, 7(1), 22-35. <https://doi.org/10.1016/j.ajls.2018.05.003>
- Yusuf, A. M. (2014). Metode penelitian kuantitatif, kualitatif & penelitian gabungan. Jakarta: Kencana.