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The Role of Indonesian Constitutional Court in Strengthening Welfare State and the Rule of Law *

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Abstract. The conception of the rule of law adopted by the 1945 Constitution is obtained from both the *rechtsstaat* and the rule of law. It is even obtained from other integrative legal systems, and their implementation is adjusted to the demands of needs and developments. The Amendment of the 1945 Constitution that occurred in Indonesia in 1999–2002, which gave birth to the Constitutional Court, was the right momentum to build Indonesian civilization and state administration towards a constitutional state of law. As the state's supreme law, the Constitution must be the basis and guideline for all state elements in running the wheels of state organization. The role of the Constitutional Court is important to keep the values contained in the Constitution implemented in accordance with its rules. The dynamics of the development of the Indonesian nation have created challenges and demands for handling various unresolved problems. One of them is the implementation of social security for all Indonesian people as mandated by the 1945 Constitution and the state foundation, Pancasila. The development of a legal culture or culture is unavoidable if the law is expected to be the commander in chief in a country based on the principle of the rule of law (*rechtsstaat*/the rule of law). As the basic law (*groundwet*) for the Indonesian state, the 1945 Constitution must be guided and implemented by all elements, both state administrators and citizens, in carrying out their respective duties. Because the establishment of a constitution in a country basically it really depends on the commitment of every citizen.

Keywords: Constitutional Court, Constitution, State Administration, Welfare State, The Rule of Law, Indonesia

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Abstrak. *Konsepsi negara hukum yang dianut oleh UUD 1945 diperoleh baik dari rechtsstaats maupun rule of law. Bahkan diperoleh dari sistem hukum lain yang bersifat integratif dan pelaksanaannya disesuaikan dengan tuntutan kebutuhan dan perkembangan. Perubahan UUD 1945 yang terjadi di Indonesia pada tahun 1999–2002 yang melahirkan Mahkamah Konstitusi merupakan momentum yang tepat untuk membangun peradaban dan ketatanegaraan Indonesia menuju negara hukum yang konstitusional. Konstitusi sebagai hukum dasar negara (the Supreme law of the land) harus menjadi dasar dan pedoman bagi seluruh elemen negara, dalam menjalankan roda penyelenggaraan negara. Peran MK penting untuk menjaga agar nilai-nilai yang terkandung dalam konstitusi dilaksanakan sesuai dengan aturannya. Dinamika pembangunan bangsa Indonesia telah menimbulkan tantangan dan tuntutan untuk penanganan berbagai permasalahan yang belum terselesaikan. Salah satunya adalah penyelenggaraan jaminan sosial bagi seluruh rakyat Indonesia sebagaimana diamanatkan oleh UUD 1945 dan dasar negara Pancasila. Perkembangan budaya atau budaya hukum tidak dapat dihindarkan jika hukum diharapkan menjadi panglima tertinggi dalam suatu negara berdasarkan prinsip negara hukum (rechstaat/rule of law). Sebagai hukum dasar (groundwet) bagi negara Indonesia, UUD 1945 harus dipedomani dan dilaksanakan oleh semua elemen, baik penyelenggara negara maupun warga negara dalam menjalankan tugasnya masing-masing. Karena pembentukan konstitusi di suatu negara, pada dasarnya sangat tergantung pada komitmen setiap warga negara.*

Kata kunci: *Mahkamah Konstitusi, Konstitusi, Ketatanegaraan, Negara Kesejahteraan, Negara Hukum, Indonesia*

1. Introduction

Prior to the Amendment of the 1945 Constitution in 1999–2002, the Elucidation of the 1945 Constitution mentioned the term *rechtsstaat*s explicitly. This is what makes Indonesia seem to adhere to the concept of a *rechtsstaat* legal state as in civil law countries. However, after the Amendment to the 1945 Constitution, Article 1 paragraph (3) of the 1945 Constitution stated that "the State of Indonesia is a state of law." With the formulation of this provision, the conception of the rule of law, which used to be synonymous with *rechtsstaat*, is neutralized to become a state of law only. The conception of the rule of law adopted by the 1945 Constitution is obtained from both the *rechtsstaat*s and the rule of law. In fact, it is also obtained from other integrative legal systems, and their implementation is adjusted to the demands of needs and developments.[1]

The Amendment to the 1945 Constitution that occurred in Indonesia in 1999–2002, which gave birth to the Constitutional Court, was the right momentum to build Indonesian civilization and state administration towards a constitutional state of law. The Constitution as the state's basic law (the supreme law of the land) must be the basis and guideline for all state elements in running the wheels of state organization. There can be no excuse or reason whatsoever to obey the Constitution. If the Constitution is not obeyed, then the foundation of the state will be fragile, given that the Constitution is the state's basic law. On the other hand, if the Constitution becomes a firm grip in the state's administration, then the state's foundation will be solid.[2] A constitutional expert named Otto Kirchheimer from Germany said that the success of a revolution or change in society could not be separated from the Constitution. The revolution or change in society is, of course, related to the effort to build civilization and state administration of a country. Without a constitution, a civilization, civility, and orderliness of state

[1] Mahkamah Konstitusi. "Modul Pendidikan Negara Hukum dan Demokrasi." *Jakarta: Pusat Pendidikan Pancasila dan Konstitusi Mahkamah Konstitusi Republik Indonesia* (2016).; Arief Hidayat. "Negara hukum berwatak Pancasila." In *Materi Seminar Yang Disampaikan Dalam Rangka Pekan Fakultas Hukum*. 2017.

[2] Martin S. Flaherty. "History Right: Historical Scholarship, Original Understanding, and Treaties as Supreme Law of the Land." *Colum. L. Rev.* 99 (1999): 2095.; Albert Venn Dicey. *The law of the constitution*. Vol. 1. Oxford University Press, 2013.

governance can't be implemented because the Constitution is the rule of the game for the administration of the state.[3]

In a context like this, the role of the Constitutional Court becomes important to keep the values contained in the Constitution carried out in accordance with its rules. Both by all state institutions, as well as by all citizens. This article attempts to describe the role of the Indonesian Constitutional Court in building Indonesian civilization and state administration as a constitutional state of law. The theoretical review used in this study is about the conception of the rule of law (*rechtsstaat*) and the welfare state. This theoretical conception is used to investigate the role of the Constitutional Court in ensuring the achievement of state goals as contained in the Preamble to the 1945 Constitution, which basically aims to realize people's welfare for all Indonesian people. There are several main aspects that are used to investigate this issue, namely the first aspect of human resources that must be improved through education, secondly aspects of public health insurance, third aspects of social welfare development of the people. These three things are considered to have the greatest influence in building Indonesian civilization and state administration in the future.

2. Discussion

Since Indonesia's independence, the founding fathers have been committed to establishing a state using the principles of a democratic state and realizing the concept of a rule of law. The manifestation of the commitment to the establishment of a state based on law is stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia which reads, "...then the independence of Indonesia was drawn up in a Constitution of the State of Indonesia... ." The formulation shows that the Indonesian state must be run based on the Constitution as the basic law of the state.

From a theoretical perspective, the term rule of law is a translation of *rechtsstaat* or rule of law. However, although *rechtsstaat* or the rule of law is defined as a state of law, the two terms have different legal backgrounds and traditions, as well as different institutionalizations. However, both of them also have something in

[3] Otto Kirchheimer. "Decree Powers and Constitutional Law in France Under the Third Republic." *American Political Science Review* 34, no. 6 (1940): 1104-1123.

common, namely they both recognize the principle of protecting human rights through the institution of an independent and impartial judiciary.[4]

As is commonly known, *rechtsstaat* is embraced by many Continental European countries that adhere to a civil law system. Meanwhile, the rule of law is more widely adopted by countries with Anglo Saxon legal traditions based on the common law system. In its operation, civil law focuses more on administration and the system of norms, while common law focuses more on judicial activities. Furthermore, the concept of *rechtsstaat* prioritizes the principle of *wetmatigheid* (written law) which later becomes *rechtmatigheid (*action based on law). Meanwhile, the rule of law prioritizes the principle of equality before the law which gives freedom to judges to create laws for justice.[5]

Justice in law is to achieve the goals of the nation and state. The birth of a country certainly has a goal that is aspired to as an achievement. Indonesia as a country has set its goals in the Preamble of the 1945 Constitution, especially the fourth paragraph which reads: "...promoting public welfare, educating the nation's life, and participating in carrying out world order based on independence, eternal peace, and social justice...". The purpose of the state as stated in the Preamble to the 1945 Constitution is intended to achieve people's welfare for all Indonesians, including providing proper education and guaranteeing health services to the community.[6]

In the terminology of constitutional law, the term welfare state is known. This terminology is basically intended as a concept that shows the willingness of the founding fathers to fulfill the basic needs of their citizens. The Encyclopedia

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[4] Otto Kirchheimer. "The Rechtsstaat as magic wall." In Herbert Marcuse, Kurt H. Wolff & Barrington Moore (eds.), *The Critical Spirit*. (Boston: Beacon Press, 1967.; Aidul Fitriciada Azhari. "Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi." *Jurnal Hukum Ius Quia Iustum* 19, no. 4 (2012): 489-505.

[5] Frank Merry Stenton. *Anglo-Saxon England*. Oxford University Press, 1971.; Bambang Panji Gunawan, Abdul Majid Tahir Mohamed, Mahbub Dhofir, and Amrizal Hamsa. "Constitutional Structure of Indonesia Based on 1945 Constitution before and after Amendments." *International Journal of Academic Research in Business and Social Sciences. https://doi. org/10.6007/ijarbss/v8-i9/4543* (2018).

[6] Maleha Soemarsono. "Negara Hukum Indonesia Ditinjau Dari Sudut Teori Tujuan Negara." *Jurnal Hukum & Pembangunan* 37, no. 2 (2007): 300-322.; Liani Sari. "Hakekat Keadilan dalam Hukum." *Legal Pluralism: Journal of Law Science* 2, no. 2 (2012).; Atang Hermawan Usman. "Kesadaran hukum masyarakat dan pemerintah sebagai faktor tegaknya negara hukum di Indonesia." *Jurnal Wawasan Yuridika* 30, no. 1 (2015): 26-53

Britannica describes the welfare state as a concept of government in which the state plays a key role in maintaining and promoting the economic and social welfare of its citizens. In general, the welfare state is defined as a system in which the government claims to be responsible for providing social and economic security to the population through pensions, social security benefits, free health services and the like.[7] The welfare state is associated with the fulfillment of basic needs. Therefore, it is considered as an equalization mechanism against the gap created by the market economy.[8]

In the context of the 1945 Constitution, the desire of the founding fathers to create a welfare state is reflected in the Preamble to the 1945 Constitution, in particular the phrase "...to form an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote general welfare,... .". From the excerpt of the opening sentence of the 1945 Constitution above, it is clear that the efforts of the founders of the state to form an Indonesian State Government aimed at providing welfare for all Indonesian citizens.

Although it is not explicitly stated that Indonesia is a welfare state in the formulation of the norms of the 1945 Constitution (compared to Article 1 paragraph (3) which states "Indonesia is a state of law), the spirit to realize the concept of a welfare state is evident from the arrangement of norms. -norms in the 1945 Constitution. At least, in the 1945 Constitution there is a Special Chapter, Chapter XIV, which regulates the National Economy and Social Welfare, which consists of two norms and can be categorized as an effort to provide welfare guarantees to the people, namely Article 33 and Article 34 of the 1945 Constitution.

The concept of the welfare state, although often perceived differently. However, according to the historical aspect and the formulation contained in the Preamble of the 1945 Constitution to its torso, there are several elements that are outlined as a common thread to build prosperity in Indonesia. Some of these elements are: first, the development of an economic system that is in accordance with the Indonesian culture [Article 33 paragraphs (1) and (4)]; the second element

[7] Neil J. Smelser, and Paul B. Baltes, eds. *International encyclopedia of the social & behavioral sciences*. Vol. 11. Amsterdam: Elsevier, 2001.

[8] Oman Sukmana. "Konsep dan Desain Negara Kesejahteraan (Welfare State)." *Jurnal Sospol* 2, no. 1 (2016): 103-122.; Oman Sukmana, Luthfi J. Kurniawan, Masduki Masduki, and Abdussalam Abdussalam. *Negara kesejahteraan dan pelayanan sosial*. Intrans Publishing, 2015.

is the active role of the state in the management of natural resources aimed at the prosperity of the people [Article 33 paragraphs (2) and (3)]; the third element is eliminating the economic gap by providing guarantees to citizens who cannot afford the state's responsibility [Article 34 paragraph (1)], the fourth element, the development of a social security system, especially in terms of health service facilities and public service facilities [Article 34 paragraphs (2) and (3)].

In the aspect of education, as we all know, prior to the Amendment to the 1945 Constitution, the constitutional guarantee of the right to education which must be carried out by the state was minimally regulated. The mandate of the Preamble of the 1945 Constitution, as stated in the fourth paragraph which reads, "...to form an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and so on.. " has very clearly stipulates that the state has an obligation to educate the nation's life. Because without intelligence, it is impossible for the state's aspirations as stated in the Preamble to the 1945 Constitution to be realized. In this regard, there is no doubt that efforts to educate the nation's life can only be done through efforts to develop an education system for the nation's children without exception.

When compared in quantity, the regulation of the right to education security before and after the Amendment to the 1945 Constitution, we will find a significant difference. In the 1945 Constitution before the Amendment, we will only find one article with two paragraphs of provisions governing education, namely in Chapter XIII Article 31. However, after the amendments are made, the regulation on education and science can be found in four articles and nine paragraphs. provisions [Article 22D paragraph (2), (3), Article 28C paragraph (1), Article 28E paragraph (1), Article 31 paragraph (1-5)].

Likewise in terms of quality. If the 1945 Constitution before the Amendment only stipulates that citizens have the right to receive teaching, and the government is only obliged to seek and organize a teaching system. However, after the change, citizens became obligated to attend basic education and the government had an obligation to pay for it. The difference between the two is of course very substantial, considering that in the previous arrangement, education for citizens was facultative, as was the role of the state in its implementation.

After the Amendment to the 1945 Constitution, education became imperative, both for citizens and for the government as the provider of education. This is also followed by the minimum standards that have been set. In addition, in order to

support the implementation of this imperative education, the Constitution has also determined the percentage of the budget that must be allocated for education, which is 20% both at the central government level and for the regional government level in the State Budget (*Anggaran Pendapatan dan Belanja Negara/APBN*) and Regional Budget (*Anggaran Pendapatan dan Belanja Daerah/APBD*).

The education budget allocated in the *APBN* according to the amendments to the 1945 Constitution can be said to be quite large. Compared to neighboring countries that both pay considerable attention to the world of education, such as the Philippines allocating its education budget of 14% and Bangladesh which budgets 15.5%, as well as several other countries, Indonesia's education budget is still far above it.

If we look at the amendments to the 1945 Constitution, particularly regarding the allocation of the education budget, which amounts to one-fifth of the total state budget, it implies that the formulators of the amendments to the 1945 Constitution as well as student activists who voiced changes in the reform era are well aware of the changes and improvements to the nation that will be built after the reform rolls around. may be separated from quality human development. On the other hand, it is impossible for quality development to be carried out with a minimal education budget. With this framework in mind, the education budget allocation of 20% becomes relevant and in line with the development goals to be carried out.

Although normatively the amendments to the 1945 Constitution in 2002 stipulated that the state had an obligation to allocate 20% of the education budget to the total budget of the central government and local governments, it did not mean that the problem could be implemented immediately. In fact, Law No. 20 of 2003 concerning the National Education System, especially in the elucidation of Article 49, actually opens a reservation space that the fulfillment of education funding can be carried out in stages. In the end, the explanation of the article was declared contrary to the 1945 Constitution through the Judicial Review of the Law at the Constitutional Court in Case No. 011/PUU-III/2005.

The Constitutional Court, in its consideration, stated that the 1945 Constitution expressis verbis has set a minimum education budget of 20% in the APBN and APBD so that the laws and regulations below it cannot reduce it. In addition, the position of the Elucidation of Article 49 does not act as an explanation, but rather forms a new norm, so that it has obscured the main norm. For this reason, the explanation of the norm of Article 49 must be cancelled. After the decision of the Constitutional Court was issued, the government finally

budgeted 20% of the education budget, as has been clearly stipulated in Article 31 paragraph (4) of the 1945 Constitution.

The issue of education is not only about the budget alone. As we know, the issue of coordination between state institutions is also an important part of the success of education management. Therefore, the problem of education is not only the domain of the ministry of education and the central government, but also the domain of several other ministries. Even local governments also play a role, apart from the role of the Regional Representatives Council (*Dewan Perwakilan Daerah*/DPD), as mandated in Article 22D of the 1945 Constitution. From this review, there are at least two main problems in education management, in addition to issues that can later be explored in separate discourses.

The first issue concerns the mechanism and work system among state/government institutions related to the management of the education budget and the output to be achieved, so that synergy and sustainable work can be achieved. Second, it concerns the development of a national education system. The development of this system is not only concerned with increasing the intelligence and intellectuality of the nation's children, but also for increasing faith and piety as well as noble character as a characteristic of the nation, as mandated by Article 31 paragraph (3) of the 1945 Constitution. These two main issues must honestly be acknowledged. still not reached its ideal format. So that it becomes a challenge for all of us to continue to improve and improve existing deficiencies.

The development of the education system that is carried out must also refer to the norms of the Constitution as a rule. If this is not done, it is possible that in the future the education system will be tested by the public at the Constitutional Court. An example is the testing of International Standard Schools (*Sekolah Berbasis Internasional*/SBI) and International Standard School Pilots (*Rintisan Sekolah Berbasis Internasional*/RSBI). The system was tested by several citizens who were escorted by activists of legal aid and anti-corruption institutions through judicial review of the law at the Constitutional Court. They considered this system to be contrary to the 1945 Constitution. The Constitutional Court in the end declared that the norm was contrary to the 1945 Constitution.

There are at least two main considerations in the Constitutional Court Decision. The first concerns the use of the language of instruction that does not use Indonesian. It is feared that this can eliminate national identity because in language there are cultural roots and the soul of the nation that can be lost if it is not used in the education system to be built. Second, it concerns discriminatory

treatment of non-SBI/RSBI schools, including their students. As stated earlier, education as regulated in the 1945 Constitution is imperative. This means that the state has an obligation to provide education for the benefit of the nation's children without exception. With this SBI/RSBI system, it is inevitable that there will be unequal treatment with schools that do not have SBI/RSBI status. Even SBI/RSBI schools can charge a higher additional fee than non-SBI/RSBI schools because there are additional facilities used. This condition is a form of unequal treatment and violates the rules of the 1945 Constitution in the development of the education system. Thus, in order to uphold constitutional values, the Constitutional Court must declare that the system and norms cannot be applied and are contrary to the 1945 Constitution.

The next aspect as the embodiment of the Constitution and the conception of the welfare state is the guarantee of health services. Health insurance is a right and investment of a country because human resources are the government's important capital in building and prospering the nation. A scientist from Harvard University, Torben Iversen stated that human capital rivals physical capital as a source of personal and national wealth, and it is the single most important determinant of personal income in advanced industrialized countries.[9]

In Indonesia, health insurance is mandated in the 1945 Constitution, especially Article 28H paragraph (1), paragraph (2), and paragraph (3), as well as Article 34 paragraph (1), paragraph (2), and paragraph (3). Efforts to realize public health insurance in the formulation of the 1945 Constitution can be examined through the minutes of the formation of the 1945 Constitution. In a large meeting organized by the Indonesian Independence Preparatory Agency for Research (*Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan*/BPUPKI) on 15 July 1949, a member of the BPUPKI meeting named Boentaran Martoatmodjo had proposed that The formulation of Article 32 of the Constitution should not read "The poor and neglected children are cared for by the State" but instead replaced with "the health of the people is wholly maintained by the State". If people's health is maintained as well as possible, then automatically there will be no poor and neglected children who are the legacy of the colonial government.

[9] Alexander M. Hicks, and Alexander Hicks. *Social democracy & welfare capitalism: a century of income security politics*. Cornell University Press, 1999.; Torben Iversen. *Capitalism, democracy, and welfare*. Cambridge University Press, New York, 2005.

Although there is no objection that health protection is an obligation of a state, another member of the BPUPKI meeting stated that the phrase "the state must maintain people's health" does not need to be explicitly stated in the Constitution. This is already contained in a shared understanding and awareness of the importance of affirming the state's obligation to protect public health rights in the Constitution.

Awareness of the realization of social welfare development and the realization of public health insurance in accordance with the goals of the founding fathers stated in the preamble to the 1945 Constitution began to grow again after the reform took place. The emergence of a common awareness that the norms of the old 1945 Constitution are no longer sufficient to guarantee protection for the improvement of people's welfare. So that when the reform took place, demands for amendments to the 1945 Constitution were unavoidable. One of the amendments to the 1945 Constitution referred to in order to provide guarantees for protection of health insurance in particular and social security in general, is the birth of Article 28H after the second Amendment to the 1945 Constitution.

The dynamics of the development of the Indonesian nation has created challenges and demands for handling various unresolved problems. One of them is the implementation of social security for all the people, as mandated by Article 28H paragraph (3) regarding the right to social security and Article 34 paragraph (2) of the 1945 Constitution, and the Decree of the People's Consultative Assembly contained in TAP No. X/MPR/2001, which assigns the President to establish a National Social Security System (N3S/*SJSN*) in order to provide comprehensive and integrated social protection. With the enactment of Law No. 40 of 2004 concerning the National Social Security System, the Indonesian people actually have a social security system for all Indonesian people.

The establishment of the Law on Social Security Administering Body (*Badan Penyelenggara Jaminan Sosial*/BPJS) is the implementation of the *SJSN* Law after the Constitutional Court's decision on case No. 007/PUU-III/2005, as well as to provide legal certainty for *BPJS* in implementing social security programs throughout Indonesia. The establishment of a social security administration agency provides opportunities for all people, wherever they are, whatever their activities and occupations, regardless of their social status, rich or poor, except for those who are serving time in a correctional facility, will receive health care insurance, old age insurance and social security guarantees. pension, work accident insurance, and death insurance, wherever and whenever in all corners of the country.

Thus, every Indonesian citizen will later feel the benefits of health insurance, the benefits of health services for illnesses suffered, mild or severe, requiring a long or short treatment time according to the Indonesian diagnostic related group (Ina DRG) health service standards which group the types of diseases according to the standard. fees set by the government.

The establishment of *BPJS*, especially in the health sector, is an effort to improve health insurance services to the public by the state. Historically, the Indonesian government has actually begun to introduce the principle of health insurance for the community since 1947, but due to the unstable post-independence security situation, efforts to develop health insurance in Indonesia have not been realized properly. In 1960, the government attempted to reintroduce the concept of health insurance through Law no. 9 of 1960 concerning the Principles of Health.

The government at that time was of the view that public health was one of the main capitals for realizing the growth and life of the nation, and providing guarantees of health services to the community was the implementation of the nation's ideals in the field of general welfare, as contained in the Preamble to the 1945 Constitution. 9 of 1960 has been effective since its promulgation on October 15, 1960, but in the implementation of this Law it cannot be realized immediately. The provisions of Article 15 which orders the establishment of implementing regulations to implement Law no. 9 of 1960 for a maximum of 1 year, did not immediately materialize due to various factors in the social, economic, and political fields at that time.

Another effort to implement Law no. 9 of 1960 was carried out in 1967 with the issuance of the Decree of the Minister of Manpower (*Kepmenaker*) concerning the Public Health Maintenance Insurance (PHMI/*JPKM*). This *Kepmenaker* stipulates a contribution of 6% of wages for employee health insurance with a composition of 5% borne by the company and 1% borne by the employees. However, efforts to implement Law no. 9 of 1960 through the Minister of Manpower Decree was also not effective because the Ministerial Decree was not strong enough to oblige entrepreneurs to pay the contribution.

Efforts to develop the concept of health insurance came to light in 1968. Presidential Decree No. 230/1968 on Health Care for members of the armed forces and civil servants, pension recipients and their family members, became the embryo for the birth of Health Insurance National (*Asuransi Kesehatan Nasional*/*AKN*). Initially, this insurance program was managed by an agency within

the Ministry of Health called the Health Maintenance Fund Organizing Agency (HMFOA/*BPDPK*). However, along with the development and the need for a more professional and independent management of insurance programs, this program was then managed by corporations by converting from BPDPK into a Public Company (*Perum*) through Government Regulation No. 22 of 1984 concerning Health Care for Civil Servants and Pensioners along with His Family Members. The *Perum* that is trusted to manage this program is *Perum Husada Bhakti*.

In subsequent developments, *Perum* Husada Bhakti underwent a transformation into a limited liability company through Government Regulation No. 6 of 1992 concerning the Transfer of the Husada Bahkti Public Company (*Perum*) to a Limited Liability Company (*Persero*). The hope from this transformation is that the development of health insurance can reach participants outside of civil servants. The Persero that has been trusted to continue the work of *Perum* Husada Bhakti is PT. Health Insurance (PT. Askes). With Persero status, PT. Askes has more flexibility in asset management than when it was still in the management of Perum Husada Bhakti, so it is hoped that expanding participation to the private sector will be easier. As of 2004, the number of participants for commercial insurance has reached 1.5 million, while the number of participants for health insurance from civil servants, the military, retirees and their families has reached 14 million.

In 1971, efforts to expand social health insurance to the private sector were also initiated with the establishment of the Manpower Social Insurance Company (Astek). PT. Astek initially only handled work accident insurance, then expanded its program to cover four social security programs in 1992 through the Labor Social Security Law (UU Jamsostek). The four social insurances are: 1) Health Care Insurance; 2) Work Accident Insurance; 3) Old Age Security; and 4) Death Insurance. Efforts to guarantee the protection of public health rights have in principle been carried out since before the formulation of the 1945 Constitution was formed. This can be seen from the minutes of the formation of the formulation of the 1945 Constitution carried out by *BPUPKI*.

Along with the passage of time and a common understanding of the importance of guaranteeing public health protection which is part of the social security of the community, as well as to provide legal certainty for its implementation, at the time of the Amendment to the 1945 Constitution in 1999 – 2002, health protection guarantees which are part of Social security for all people is explicitly stated in the 1945 Constitution, in particular Article 28H paragraph (3)

and Article 34 paragraph (3) and paragraph (4). Thus, the guarantee of protection of the right to public health becomes a constitutional right that must be fulfilled by the state for every citizen who needs it.

In practice, efforts to build prosperity are continuously carried out, although in reality it cannot be separated from many shortcomings and weaknesses. An example is the issuance of Law No. 11 of 2009 concerning Social Welfare, which is one of the efforts to explain the basic law as mentioned above. Likewise, in the management of Natural Resources (*SDA*), various laws governing this matter have also attempted to describe these basic legal norms. Among the laws in question are the Law on Mineral and Coal Mining, the Law on Oil and Gas, the Law on Water Resources, the Law on Forestry, and various other related laws. The preparation of the law related to the management of natural resources is an 'instrument of capital' originating from natural resources that must be managed by the state with the aim of prospering/prospering the people by taking into account the principle of environmental sustainability. In this context, the 1945 Constitution pays attention to the balance between the goals for the welfare of the people on the one hand, but at the same time on the other hand, taking preventive measures so that excessive exploitation of nature can be avoided. Because in addition to this can damage the environment which in the end also harms the community, the use of natural resources must also be used efficiently and effectively because they are limited in number, for the benefit of future generations.

In the context of the development of the social security system, this effort has been realized with the enactment of Law No. 40 of 2004 concerning the National Social Security System. This law regulates two objects of social security, namely health social security and employment social security. The purpose of the establishment of this law is contained in the preamble which explains that everyone has the right to social security to be able to fulfill the basic needs of a decent life and increase his dignity towards the realization of a prosperous, just and prosperous Indonesian society. In developing the National Social Security System, this Law orders the establishment of a state organ that is responsible for the implementation of national social security. This agency was subsequently formed based on Law No. 24 of 2011 concerning the National Social Security Administering Body (NSSA/*BPJS*), which consists of *BPJS* in the health sector and *BPJS* in the field of employment.

The intention to realize a welfare state expected to meet its citizens' basic needs as guaranteed by the 1945 Constitution. In fact/implementation, it is far from

expectations. Thus, further steps should be taken by citizens to straighten this out. In the context of realizing the ideals of a welfare state as mandated by the 1945 Constitution, the Constitutional Court also contributes by guarding the constitutionality of a legal norm related to this matter. Several cases in the Judicial Review at the Constitutional Court are relevant to be described in this paper as a manifestation of the commitment and contribution of the Constitutional Court in realizing the ideals of a welfare state. An example is how the Constitutional Court interprets the meaning of the phrase "controlled by the state" for production branches that are important to the state and control the livelihood of many people [Article 33 paragraph (2) of the 1945 Constitution]. In Case No. 002/PUU-I/2003, which examined Law No. 22 of 2001 concerning Oil and Gas, the Constitutional Court gave an interpretation of the phrase "controlled by the state".

The interpretation of the Constitutional Court on the phrase "controlled by the state" places the burden of responsibility on the state, especially the government, so that the government, with all the efforts and authorities attached to it, manages natural resources aimed at providing prosperity to the people. The interpretation, in this case, is then used as jurisprudence for subsequent decisions of the Constitutional Court regarding the interpretation of the meaning of "control by the state" as stated in Article 33 of the 1945 Constitution.

The consistency of the Constitutional Court in maintaining the meaning of the interpretation of "control by the state" is reexamined in Case No. 36/PUU-X/2012. In this case, the Constitutional Court finally granted the petition of the petitioner, who reviewed Law No. 22 of 2001 concerning Oil and Gas and resulting in the dissolution of the Oil and Gas Implementing Body (*BPP Migas*). The Constitutional Court believes that *BP Migas* has the potential for inefficiency, and it is suspected that, in practice, it has opened up opportunities for abuse of power. According to the Constitutional Court, the existence of *BP Migas* is unconstitutional because it contradicts the state's objective of managing natural resources aimed at the greatest prosperity of the people.

3. Conclusion

The upholding of the Constitution in a country basically depends on the commitment of every citizen to the rules of the state that have been drawn up and stipulated, as well as public awareness to comply with them. Although theoretically,

the existence of legal structures (legal institutions), and legal substance/legal material (statutory regulations), have been fulfilled and adequate, this does not necessarily guarantee that the law and Constitution will be upright.

The development of a legal culture or culture is unavoidable if the law is expected to be the commander in chief in a country based on the principle of the rule of law (*rechtsstaat*/the rule of law). Legal awareness is not only related to awareness of the fulfillment of rights and obligations in accordance with existing provisions but also includes compliance and participation of all citizens of the nation in obeying existing legal norms and playing a role in supervising their implementation.

As the basic law (*groundwet*) for the Indonesian state, the 1945 Constitution must be guided and implemented by all elements, both state administrators and citizens, in carrying out their respective duties. The Constitution must be enforceable and functioned as a reference in such a position. It is to find a solution to solving state and national problems that come and go as if they never stop. In order for the Constitution to exist and be reflected in the administration of the state and the daily life of citizens, the Constitutional Court and all citizens must continue to strive to bring constitutional thoughts closer together in filling the pulses of the life of the nation and state.

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