

Progressive Law and Substantive Democracy in the Constitutional System

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ABSTRACT

Substantive democracy is a democratic concept that not only emphasizes the formal implementation of electoral procedures but also prioritizes the protection of constitutional rights, social justice, and public participation in state administration. This study aims to analyze the effectiveness of regulations governing the role of the Constitutional Court in realizing substantive democracy through progressive law enforcement and to examine the urgency of implementing progressive law within the Indonesian constitutional system. This study employs a normative juridical method using statutory, conceptual, and case approaches. The legal materials consist of primary legal sources in the form of legislation and Constitutional Court decisions, as well as secondary legal sources derived from scientific journals and relevant legal literature. The findings indicate that regulations concerning democracy and the authority of the Constitutional Court have provided a sufficiently strong normative foundation for maintaining constitutional democracy and protecting citizens' rights. However, the effectiveness of these regulations is strongly influenced by the quality of law enforcement and the ability of judges to apply a progressive legal approach in achieving substantive justice. Therefore, the implementation of progressive law is essential to ensure that democracy operates not merely procedurally but also substantively in promoting justice and protecting constitutional rights within a democratic rule-of-law state.

Keywords: *Constitution, Constitutional Court, Progressive Law, Substantive Democracy, Substantive Justice.*

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1. | INTRODUCTION

Democracy is one of the fundamental principles in the modern legal state that places the people as the highest sovereign holders in the administration of government. In constitutional practice, democracy is not only understood procedurally through the implementation of general elections alone, but must also be realized substantively through the protection of citizens' constitutional rights, the enforcement of justice, and the guarantee of equality before the law. Substantive democracy is important because procedural democracy often only places the law as a formal administrative tool without paying attention to the true value of justice in society. Therefore, a democratic state of law requires a legal system that is not only oriented to legal certainty, but also to substantive justice and the protection of people's constitutional rights. In this context, the existence of the Constitutional Court has a strategic position as the guardian of the constitution and democracy in the Indonesian constitutional system. According to Nabitatus Sa'adah, the Constitutional Court has an important function as the guardian of the constitution and the guardian of democracy in maintaining the constitutionality of the law and protecting the rights of citizens through the constitutional review mechanism (Sa'adah, 2019).

The role of the Constitutional Court in the Indonesian legal system is juridically regulated in Article 24C of the Constitution of the Republic of Indonesia in 1945 and clarified through Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020. Based on these provisions, the Constitutional Court has the authority to test laws against the Constitution, decide disputes over the authority of state institutions, decide disputes over election results, and maintain constitutional principles in democratic life. In addition, Law Number 7 of 2017 concerning General Elections also emphasizes that the implementation of elections must be carried out directly, publicly, freely, secretly, honestly, and fairly in order to ensure the creation of democracy with integrity. Achmad Edi Subiyanto explained that it is not enough for democratic elections to be carried out procedurally, but must also be able to produce political integrity, protection of constitutional rights, and strong government legitimacy in a democratic system (Subiyanto, 2020).

On the other hand, the development of constitutional practice shows that positive law is often not able to fully present substantive justice in society. Law enforcement that is too legalistic and formalistic causes the law to tend to be understood textually without paying attention to human values and social justice. This condition gives birth to the need for a progressive legal approach that places law as a means to achieve substantive justice. According to Satjipto Rahardjo in Aulia (2018), law is essentially created for humans so that the law must be able to adjust to the needs of society's justice, not the other way around, humans are forced to submit to the rigidity of formal legal norms. This view then developed into a progressive legal concept that rejected legal positivism that was too rigid and emphasized more on the value of utility, justice, and

morality in law enforcement. M. Yasin Al Arif stated that progressive law provides space for law enforcement officials to make legal discoveries for the creation of substantive justice in society (Al Arif, 2019).

In a constitutional democratic system, a progressive legal approach becomes relevant because the development of society often gives birth to legal problems that cannot be fully answered through written norms. The Constitutional Court as a constitutional judicial institution has an important role in interpreting the constitution progressively in order to maintain a balance between legal certainty and substantive justice. Adhitya Widya Kartika explained that the Constitutional Court has a strategic function in maintaining the principles of the rule of law and democracy through final and binding constitutional rulings (Kartika, 2021). In addition, Muh Ridha Hakim also emphasized that the *rechtsvinding* approach in progressive law allows judges to explore legal values and a sense of justice that lives in society so that law does not stop only as a normative text (Lestari 2021).

The urgency of discussing the effectiveness of democratic regulation and the role of the Constitutional Court is increasingly important because the development of modern democracy faces various challenges in the form of weakening public trust in legal institutions, increasing political pragmatism, and the tendency to implement democracy that only focuses on administrative procedures. Substantive democracy requires a legal system that is able to protect people's political rights fairly and constitutionally. Therefore, Law Number 48 of 2009 concerning Judicial Power is relevant because it emphasizes that judicial power is exercised to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Sudyana and Suswoto explained that the search for substantive justice cannot be done only through the legal positivism approach, but requires an interpretation of law that is oriented towards the values of social justice and humanity (Sudyana & Suswoto, 2018). Thus, the discussion of the effectiveness of democratic regulation and the urgency of implementing progressive law in the Constitutional Court's decision is important to strengthen the quality of constitutional democracy in the Indonesian legal state.

Based on this description, this study proposes two problem formulations as research questions. First, how effective is the regulation that regulates the role of the Constitutional Court in realizing substantive democracy through progressive law enforcement? Second, why is the discussion of substantive democratic regulation and the application of progressive law in the constitutional system important in strengthening a democratic legal state?

2. | RESEARCH METHOD

This research uses a normative juridical method, which is legal research that places law as a norm or rule that applies in the system of laws and regulations. The normative juridical approach was chosen because this study focuses on the study of legal norms, legal principles, legal theory, and constitutional rulings related to substantive democracy and the application of progressive law in the constitutional system.

Normative legal research is carried out by examining primary legal materials, secondary legal materials, and tertiary legal materials that are relevant to the research object. According to Ali (2021), normative legal research is research conducted on legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law through literature studies as the main source of legal research.

The approaches used in this study include the statute approach, the conceptual approach, and the case approach. The legislative approach is carried out by examining various regulations related to democracy, general elections, judicial power, and the authority of the Constitutional Court, including the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020, Law Number 7 of 2017 concerning General Elections, and Law Number 48 of 2009 concerning Judicial Power. A conceptual approach is used to analyze the concepts of substantive democracy, progressive law, constitutional review, and substantive justice that develop in legal doctrine. Meanwhile, the case approach is carried out through an analysis of various Constitutional Court decisions related to democracy and the constitutional rights of citizens.

The primary legal material in this study consists of laws and regulations and decisions of the Constitutional Court that are relevant to the object of the research. The secondary legal materials were obtained from law books, scientific journals, academic articles, and the results of previous research that discussed progressive law, substantive democracy, and the role of the Constitutional Court in the constitutional system. In addition, this research also uses tertiary legal materials in the form of legal dictionaries, legal encyclopedias, and other scientific sources that support the research analysis. The technique of collecting legal materials is carried out through literature study by identifying, inventorying, and reviewing various legal sources relevant to the research topic.

The analysis of legal materials in this study was carried out in a descriptive-analytical manner using the legal interpretation method to understand the relationship between legal norms, progressive legal theory, and the implementation of substantive democracy in the constitutional system. The analysis is carried out systematically through the interpretation of the provisions of laws and regulations and the decisions of the Constitutional Court in order to obtain a comprehensive understanding of the effectiveness of regulations and the urgency of implementing progressive laws in realizing substantive democracy. As explained by Kristiawanto (2022), normative legal research aims to find arguments, theories, and legal concepts as the basis for answering legal issues that are the object of research so that the results of the research can provide prescriptions for the legal problems being studied.

3. | RESULTS

The Effectiveness of Regulation in Realizing Substantive Democracy through Progressive Law Enforcement

Substantive democracy basically emphasizes not only the procedural implementation of democracy through elections, but also places the protection of constitutional rights, social justice, and public participation as the main part of the implementation of a democratic state of law. In the Indonesian constitutional system, the effectiveness of regulations that govern democracy and the authority of the Constitutional Court are important factors in maintaining the quality of constitutional democracy. The existence of Law Number 7 of 2017 concerning General Elections, Law Number 24 of 2003 concerning the Constitutional Court as amended last by Law Number 7 of 2020, and Law Number 48 of 2009 concerning Judicial Power shows that the state has established a fairly comprehensive legal framework in regulating the implementation of democracy and the protection of people's constitutional rights. However, the effectiveness of these regulations is not only measured by the existence of formal legal norms, but also by the ability of regulations to provide substantive justice in constitutional practice.

Law Number 7 of 2017 concerning General Elections emphasizes that elections must be held based on the principles of direct, public, free, confidential, honest, and fair. These provisions show that election regulations not only aim to create procedural certainty, but also ensure the integrity of democracy and the protection of citizens' political rights. Achmad Edi Subiyanto explained that elections with integrity are an important part of democratic reform because a healthy democracy must be able to produce strong political legitimacy and protection of people's sovereignty (Subiyanto, 2020). In this context, the effectiveness of election regulations is highly dependent on the ability of state institutions, especially the Constitutional Court, to uphold constitutional principles and uphold substantive justice through their decisions.

The role of the Constitutional Court in Indonesia's democratic system has a strategic position as the guardian of the constitution and democracy. Based on Law Number 24 of 2003 concerning the Constitutional Court, the Constitutional Court has the authority to test laws against the 1945 Constitution of the Republic of Indonesia and resolve disputes over the results of general elections. This authority is an important instrument in ensuring that applicable regulations remain in line with the principles of democracy and the protection of citizens' constitutional rights. Nabitatus Sa'adah stated that the Constitutional Court functions as the guardian of the constitution and the guardian of democracy which has the responsibility of maintaining the constitutionality of law and democracy in the modern legal state (Sa'adah, 2019). Thus, the effectiveness of democratic regulations is also influenced by the quality of the Constitutional Court's decisions in applying the principle of substantive justice.

In practice, the effectiveness of democratic regulation cannot always be realized only through a formalistic positive legal approach. Many democratic issues that develop in society require a more progressive interpretation of the law so that the goal of substantive justice can be achieved. Therefore, the concept of progressive law has become relevant in the exercise of judicial power, especially in the decisions of the Constitutional Court. According to M. Yasin Al Arif, progressive law views the law as an instrument to achieve the welfare and justice of the community so that law enforcement officials are required to not only adhere to the text of the law, but also pay attention to human values and a sense of justice in society (Al Arif, 2019). This approach allows judges to make legal discoveries when written norms are not able to answer the development of dynamic democratic problems.

The effectiveness of regulations can also be seen from the ability of the legal system to provide protection for citizens' constitutional rights. In a substantive democracy, the right to vote and be elected is part of the human rights that must be guaranteed by the state. Sun Fatayati explained that the principles of democratic elections must be realized through the protection of people's political rights and the implementation of elections with integrity and justice (Fatayati, 2018). Therefore, democratic regulations are not enough to regulate the administrative mechanism of elections, but must also provide guarantees for justice and equal public participation.

In addition, the effectiveness of democratic regulations is also related to the independence of judicial power as regulated in Law Number 48 of 2009 concerning Judicial Power. The law emphasizes that judicial power is exercised to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Muh Ridha Hakim explained that the application of *rechtsvinding* with progressive legal characteristics allows judges to explore legal values and a sense of justice that lives in society so that the law does not stop only as rigid normative rules (Lestari, 2021). In this context, constitutional judges have an important role in ensuring that democratic regulations are still able to respond to the needs of justice in a substantive manner.

Nevertheless, the effectiveness of democratic regulation still faces various challenges, especially related to the tendency of democracy to focus more on procedural aspects than on substance. Sudyana and Suswoto explained that the dominance of legal positivism in law enforcement practice often causes the law to lose its orientation towards substantive justice because it focuses too much on formal legal certainty (Sudyana & Suswoto, 2018). This condition can cause regulations that are normatively good to be less effective in presenting social justice in society. Therefore, the application of progressive law in the Constitutional Court's decision is important as an effort to maintain a balance between legal certainty and substantive justice.

Thus, the effectiveness of democratic regulation in realizing substantive democracy is greatly influenced by the quality of legal norms, the independence of judicial institutions, and the ability of judges to apply progressive legal approaches. Good regulations must be able to provide protection for people's constitutional rights, ensure

democratic integrity, and provide substantive justice through law enforcement that is responsive to the development of society. In the context of a democratic state of law, the Constitutional Court has a central role in ensuring that all democratic regulations and practices continue to run in accordance with the principles of the constitution, justice, and people's sovereignty.

The Urgency of Discussing Substantive Democratic Regulations and the Application of Progressive Law in the Constitutional System

The discussion of substantive democratic regulation and the application of progressive law in the constitutional system has a very important urgency in the development of the modern legal state. Democracy is not only related to the implementation of election procedures, but also related to the guarantee of human rights, the protection of citizens' constitutional rights, and the creation of social justice in state life. In practice, procedural democracy is often not able to fully present substantive justice because the implementation of the law tends to be oriented to the formal administrative aspect alone. This condition causes the law to sometimes lose its main function as a means to realize the welfare and justice of the community. Therefore, a discussion about the effectiveness of democratic regulation and the application of progressive law is important so that the legal system not only emphasizes legal certainty, but is also able to present substantive justice in real terms.

The urgency of the discussion is increasingly relevant because the development of modern society has given birth to various constitutional issues that are increasingly complex and dynamic. Social change, technological developments, and increasing public awareness of constitutional rights require a legal system that is adaptive and responsive to the needs of the community. In this context, the Constitutional Court has a strategic position as an institution authorized to maintain the constitution and democracy through a constitutional review mechanism. Adhitya Widya Kartika explained that the Constitutional Court has an important function in maintaining the principles of the rule of law and democracy through decisions that ensure the protection of people's constitutional rights (Kartika, 2021). Therefore, the regulations governing the authority of the Constitutional Court need to be continuously reviewed in order to remain able to respond to the challenges of modern democracy and maintain a balance between legal certainty and substantive justice.

The urgency of discussing substantive democracy is also related to the need to strengthen the quality of the implementation of elections as the main instrument of democracy. Law Number 7 of 2017 concerning General Elections emphasizes that elections must be held directly, publicly, freely, secretly, honestly, and fairly. However, in practice, the implementation of democracy often faces various challenges in the form of political pragmatism, declining public trust in state institutions, and the tendency to implement democracy that only focuses on formal procedures. Achmad Edi Subiyanto explained that a democracy with integrity requires a legal system that is able to protect the sovereignty of the people and ensure the quality of people's political participation

in a fair manner (Subiyanto, 2020). Thus, the discussion of substantive democratic regulation is important as an effort to strengthen the legitimacy of democracy and maintain the quality of a democratic legal state.

In addition, the urgency of implementing progressive law in the constitutional system arises because the approach of legal positivism is often considered to be incapable of providing substantive justice to the community. Law enforcement that is too legalistic causes the law to be understood narrowly as a written rule without paying attention to human values and a sense of justice that lives in society. According to Sudiyana and Suswoto, the dominance of legal positivism can cause the law to lose its orientation towards substantive justice because law enforcement officials emphasize normative certainty more than the value of social justice (Sudiyana & Suswoto, 2018). Therefore, progressive law exists as an approach that places law for human beings and makes justice the main goal of law enforcement.

The concept of progressive law developed by Satjipto Rahardjo in Aulia (2018) places law as an instrument to create social welfare and justice. In the progressive legal view, judges not only serve as a mouthpiece of the law, but also have a moral responsibility to explore the values of law and the sense of justice that live in society. M. Yasin Al Arif explained that progressive law provides space for law enforcement officials to make legal breakthroughs for the achievement of substantive justice in society (Al Arif, 2019). This approach is important in the modern democratic system because the development of society often gives birth to legal problems that cannot be fully answered through written norms.

The urgency of progressive legal discussion is also related to the protection of human rights and the constitutional rights of citizens in a democratic legal state. Amalia and Dewi (2018) explained that democracy and human rights are two interrelated concepts because democracy basically aims to ensure freedom and equal rights of every citizen in the life of the state. Therefore, democratic regulations must be able to provide protection for people's political rights and prevent the abuse of power in the government system. In this context, the Constitutional Court has an important role to play in ensuring that all state regulations and policies remain in line with constitutional principles and the protection of human rights.

The urgency of this discussion is also strengthened by the provisions of Law Number 48 of 2009 concerning Judicial Power which emphasizes that judicial power is exercised to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This provision shows that law enforcement not only aims to create legal certainty, but must also bring substantive justice in society. Muh Ridha Hakim explained that the application of *rechtsvinding* with progressive legal characteristics allows judges to interpret the law in a more responsive manner to the needs of community justice (Lestari, 2021). Thus, the application of progressive law in the constitutional system is important to ensure that the law is able to keep up with the development of society and remain oriented to the value of social justice.

Thus, the discussion of substantive democratic regulation and the application of progressive law has a very important urgency in strengthening the democratic legal state. Effective regulations must be able to ensure the protection of people's constitutional rights, maintain the integrity of democracy, and provide substantive justice through law enforcement that is responsive to the development of society. In this context, the Constitutional Court has a strategic role as the guardian of the constitution and democracy in ensuring that all constitutional regulations and practices continue to run in accordance with the principles of justice, constitutionality, and people's sovereignty.

4. | CONCLUSION

Substantive democracy is a form of democracy that not only emphasizes the implementation of legal procedures and formal elections, but also prioritizes the protection of constitutional rights, social justice, and public participation in state life. In Indonesia's constitutional system, the effectiveness of democratic regulations is greatly influenced by the ability of the law to present a balance between legal certainty and substantive justice. The existence of Law Number 7 of 2017 concerning General Elections, Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020, and Law Number 48 of 2009 concerning Judicial Power shows that the state already has a strong normative basis in maintaining constitutional democracy and the protection of citizens' rights. However, the effectiveness of these regulations is not only determined by the existence of legal norms, but also by the quality of law enforcement and the ability of judicial institutions to apply the principles of substantive justice.

The Constitutional Court has a strategic role as the guardian of the constitution and democracy through its authority in testing laws and resolving constitutional disputes. In its implementation, a progressive legal approach is important because it allows judges to interpret the law that is more responsive to the development of society and the needs of justice. Progressive law places law as a means to realize welfare and social justice so that law enforcement is not only oriented to formalistic aspects, but also pays attention to human values and a sense of justice in society.

The urgency of discussing substantive democratic regulation and the application of progressive law is increasingly relevant in the midst of the development of modern democracy that faces various challenges, such as political pragmatism, declining public trust in legal institutions, and the dominance of the legal positivism approach in law enforcement practice. Therefore, it is necessary to strengthen an adaptive, responsive, and substantive justice-oriented legal system so that democracy not only runs procedurally, but is also able to realize the protection of constitutional rights and people's welfare in a democratic legal state.

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Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

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