

Strengthening the Rule of Law in Constitutional Democracy

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ABSTRACT

This study aims to analyze the effectiveness of regulations in supporting the realization of the rule of law and constitutional democracy, as well as to examine the urgency of strengthening regulations in achieving legal certainty, justice, and good governance. The study employs a normative juridical method using statutory and conceptual approaches. Primary legal materials consist of Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 2014 concerning Government Administration, and Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning the Formulation of Laws and Regulations. Secondary legal materials were obtained from relevant academic literature and scientific journals. The findings indicate that these regulations normatively provide a strong foundation for implementing the principles of a state governed by law through strengthening judicial independence, enhancing governmental accountability, and promoting participatory law-making processes. Furthermore, strengthening regulations is highly significant because it contributes to legal certainty, protects citizens' constitutional rights, prevents abuse of authority, and supports the implementation of good governance principles. Therefore, improving the quality of regulations and ensuring their consistent implementation are essential factors in realizing the rule of law and constitutional democracy that are just, transparent, and responsive to societal developments.

Keywords: *Constitutional Democracy, Good Governance, Government Accountability, Government Governance, Rule of Law.*

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1. | INTRODUCTION

The state of law is a fundamental concept that places law as the main instrument in the implementation of the life of the nation and state. In the system of the state of law, every action of state administrators and citizens must be based on the applicable legal provisions so as to create certainty, justice, and legal benefits for all levels of society. This principle is also the foundation for the implementation of constitutional democracy which requires the limitation of power through the law, the protection of citizens' rights, and the implementation of an accountable and transparent government. Therefore, the relationship between the rule of law and democracy is an interrelated relationship that cannot be separated in realizing good governance (Idayanti et al., 2020).

The development of the modern legal state shows that the success of a democratic system is not only determined by the existence of state institutions that work based on democratic principles, but also by the effectiveness of regulations that are the basis for the implementation of the authority of these institutions. Good regulation must not only be able to provide legal certainty, but must also ensure the protection of citizens' constitutional rights and create a monitoring mechanism for the use of state power. In this context, the existence of Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 2014 concerning Government Administration, and Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning the Establishment of Laws and Regulations into normative instruments that have a strategic role in supporting the realization of the rule of law and constitutional democracy (Basuki, 2021).

The existence of these regulations is basically designed to ensure that every action of state administrators is carried out in accordance with the principles of legality, accountability, and protection of citizens' rights. The Judicial Power Act affirms the importance of the independence of the judiciary as the main pillar of law enforcement. Meanwhile, the Government Administration Law regulates the use of authority by government agencies and officials so that there is no abuse of authority that can harm the community. On the other hand, the Law on the Formation of Laws and Regulations provides guidelines for the process of forming regulations that are democratic, participatory, and oriented towards legal certainty. Thus, the three regulations form a normative framework that complements each other in supporting the implementation of the principle of the rule of law (Setiadi, 2012).

However, the existence of regulations is not always directly proportional to the effectiveness of their implementation. Various studies show that the main challenge in realizing the rule of law lies not only in the quality of the substance of the law, but also in the aspects of the legal structure and legal culture that develops in society. The effectiveness of a regulation is greatly influenced by the ability of the implementing institution to translate legal norms into fair practices of government administration and law enforcement. In addition, public participation in the process of forming and supervising the implementation of regulations is also an important factor that

determines the success of the implementation of the principle of the rule of law (Indriyani, 2018).

In the perspective of constitutional democracy, the law not only functions as an instrument of power control, but also as a means of protection for the constitutional rights of citizens. Therefore, the effectiveness of regulations needs to be understood more broadly as the ability of law to create a balance between the interests of the state and the interests of the community. Effective regulations must be able to provide legal certainty, ensure substantive justice, and encourage the creation of transparent and accountable governance. This condition is an important prerequisite in building public trust in the legal system and state institutions (Akmal & Arlianti, 2022).

In addition to the effectiveness aspect, the discussion of regulations related to the rule of law also has high urgency because the law is the main instrument in maintaining social stability and democracy. In a modern legal state, regulations that are unable to respond to the development of community needs have the potential to cause legal uncertainty and hinder the realization of the goals of the state of law itself. Therefore, evaluation of the effectiveness of regulations is an important part of efforts to strengthen a national legal system that is adaptive to social, political, and governmental dynamics (Basuki & Subiyakto, 2022).

Furthermore, strengthening the rule of law is also closely related to efforts to realize a government oriented to the principles of good governance. Regulations that are drafted in a participatory manner and implemented consistently will contribute to improving the quality of democracy, protecting citizens' rights, and the effectiveness of public services. Thus, studies on the effectiveness of regulations and the urgency of strengthening regulations within the framework of the rule of law are relevant to be carried out as part of efforts to strengthen constitutional democracy and realize fair governance (Asshiddiqie, 2021).

Based on this description, this research is focused on two research questions. First, how effective are the regulations in Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 2014 concerning Government Administration, and Law Number 12 of 2011 as amended by Law Number 13 of 2022 in supporting the realization of the rule of law and constitutional democracy? Second, why is strengthening and discussing these regulations important in an effort to realize legal certainty, justice, and good governance in the modern legal state?

2. | RESEARCH METHOD

This research uses normative juridical law research methods that focus on the study of positive legal norms that govern the administration of the rule of law, the rule of law, constitutional democracy, and good governance. Normative legal research was chosen because the main object of study of this research is the provisions of laws and regulations, legal principles, legal doctrine, and various scientific literature related to the effectiveness of regulations in supporting the realization of the rule of law. This approach allows researchers to analyze law as a system of norms that functions to

regulate the behavior of society and state administrators in order to achieve legal goals in the form of certainty, justice, and utility. In normative law research, law is seen as a norm or rule that becomes a guideline in the life of society and the state so that an analysis is carried out on the synchronization, consistency, and effectiveness of applicable legal norms (Jayantiari et al., 2020).

The approaches used in this study include a statutory *approach* and a *conceptual approach*. The legislative approach is carried out through a study of various regulations that are the focus of the research, namely Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 2014 concerning Government Administration, and Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning the Formation of Laws and Regulations. The three regulations were analyzed to assess the extent to which the norms contained in them were able to support the implementation of the principle of the rule of law, the protection of citizens' constitutional rights, and the implementation of democracy based on law. Meanwhile, a conceptual approach is used to examine various theories and concepts related to the rule of law, constitutional democracy, the rule of law, the effectiveness of the law, and *good governance* that have developed in contemporary legal literature (Basuki, 2021).

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations relevant to the object of research. Secondary legal materials consist of books, scientific journal articles, results of previous research, as well as various academic works published in the last five-year period and have relevance to the research theme. The tertiary legal materials are in the form of legal dictionaries, legal encyclopedias, and various other supporting sources that help explain legal terms and concepts used in research.

The technique of collecting legal materials is carried out through library *research* by examining various legal sources and relevant scientific literature. Furthermore, all legal materials were analyzed using a qualitative analysis method with a descriptive-analytical approach. The analysis is carried out through the process of inventory, classification, interpretation, and evaluation of applicable legal norms so that a comprehensive understanding of the effectiveness of regulations in supporting the rule of law and the urgency of strengthening regulations in realizing constitutional democracy and good governance can be obtained (Akmal & Arlianti, 2022).

3. | RESULTS

The effectiveness of regulations is one of the important indicators in assessing the success of a legal system in achieving the goals set by lawmakers. From the perspective of the state of law, regulation not only functions as an instrument of regulation, but also as a means to ensure the implementation of the principles of justice, legal certainty, and the benefits of the law in a balanced manner. Therefore, the existence of Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 2014 concerning Government Administration, and Law Number 12 of 2011 as amended by Law Number

13 of 2022 concerning the Establishment of Laws and Regulations needs to be analyzed from the aspect of its normative effectiveness in supporting the realization of the rule of law and constitutional democracy. The effectiveness of law is basically determined by the ability of a norm to be implemented consistently by all legal subjects bound by it and able to have a real impact on the achievement of the expected legal goals (Setiadi, 2012).

Law Number 48 of 2009 places the judiciary as an independent power to administer the judiciary to uphold law and justice. This provision shows that the lawmakers have tried to provide a strong normative basis for the creation of the independence of the judiciary as one of the main requirements for the rule of law. In a democratic country of law, judicial independence is an important instrument to ensure that any dispute resolution is carried out based on the law and not on the basis of certain interests. With this normative guarantee, this regulation has conceptually fulfilled the element of effectiveness because it provides clear direction regarding the position and function of judicial institutions in maintaining a balance between state power and the rights of citizens (Asshiddiqie, 2021).

In addition to judicial independence, the effectiveness of regulations can also be seen from their ability to create a mechanism to supervise the use of government authority. In this case, Law Number 30 of 2014 concerning Government Administration provides comprehensive regulations regarding the general principles of good governance, the use of authority by government officials, and the prohibition of abuse of authority. The existence of these regulations shows that there are normative efforts to strengthen the principle of legality in the administration of government. With clear regulations on the limits of the use of authority, this regulation is able to create legal certainty while providing protection for the rights of the community from government actions that are contrary to the law. Therefore, the effectiveness of this regulation lies not only in the substance of the norm, but also in its ability to build an accountable and transparent government system (Meijer et al., 2018).

Furthermore, the effectiveness of the rule of law is also greatly influenced by the quality of the regulations formed. Law Number 12 of 2011 as amended by Law Number 13 of 2022 provides a legal framework regarding procedures for the formation of good, systematic, and participatory laws and regulations. This regulation emphasizes that the formation of regulations must be based on the principle of clarity of purpose, suitability between the type and material of content, and openness. The principle of openness is an important element in constitutional democracy because it allows people to participate in the law-making process. Thus, the effectiveness of this regulation is reflected in its ability to encourage the formation of legal products that are more responsive to the needs of the community while strengthening the legitimacy of the resulting law (Basuki & Subiyakto, 2022).

From the perspective of the theory of the state of law, the effectiveness of the three regulations can be seen through their contribution to the protection of citizens'

constitutional rights. The rule of law not only requires rules that bind all citizens and state administrators, but also requires a mechanism to protect the rights guaranteed by the constitution. The regulation of judicial independence, administrative accountability, and participatory regulation formation show that the three laws have the same orientation, namely ensuring the implementation of constitutional principles in the practice of state administration. This condition shows that the effectiveness of regulations is not only measured by the level of compliance with legal norms, but also by its ability to protect the interests of the community in a fair manner (Akmal & Arlianti, 2022).

On the other hand, the effectiveness of regulation is also closely related to its ability to create a balance between state power and public control. Constitutional democracy places the law as an instrument limiting power so that the administration of government continues to run in accordance with constitutional principles. In this context, the three regulations that are the object of research have provided normative mechanisms that allow the creation of supervision over the actions of the government and other state institutions. The existence of this mechanism strengthens the function of law as a tool of social control as well as an instrument of protection for the rights of citizens in a democratic system (Sukardi & Purnama, 2022).

Furthermore, the effectiveness of regulations can also be seen from their conformity with the principles of good governance. Good regulation must be able to encourage transparency, participation, accountability, effectiveness, and legal certainty. The provisions contained in the Government Administration Law and the Law on the Establishment of Laws and Regulations have substantively accommodated these principles. This shows that the applicable regulations have been designed to support the creation of democratic and service-oriented governance. Thus, the effectiveness of regulations can be understood as the ability of legal norms to shape the behavior of state administrators so that they always act in accordance with the principles of the modern state of law (Indriyani, 2018).

Based on this description, it can be understood that Law Number 48 of 2009, Law Number 30 of 2014, and Law Number 12 of 2011 as amended by Law Number 13 of 2022 have normatively shown a high level of effectiveness in supporting the realization of the rule of law and constitutional democracy. The three regulations complement each other in building a legal system that guarantees judicial independence, government accountability, and the formation of democratic regulations. Therefore, the existence of these regulations can be seen as an important normative foundation in strengthening the rule of law and realizing governance that is fair, transparent, and oriented towards the protection of citizens' constitutional rights (Basuki, 2021; Idayanti et al., 2020).

The Urgency of Strengthening Regulations in Realizing Legal Certainty, Justice, and Good Governance

Strengthening regulations is one of the aspects that has a strategic position in the development of national law. In the modern legal state, regulations not only function as a regulatory instrument, but also as a means to ensure the realization of legal certainty, justice, and legal benefits in a sustainable manner. Therefore, the discussion of regulations related to judicial power, government administration, and the formation of laws and regulations is important because these three areas are the main foundations in the implementation of the rule of law and constitutional democracy. Without strong and responsive regulations to the development of society, the legal goal of creating order and protection of citizens' rights will be difficult to achieve optimally (Idayanti et al., 2020).

The first urgency of strengthening regulations relates to the need to ensure legal certainty. Legal certainty is one of the fundamental principles in the state of law that guarantees that every action of the government and society is carried out based on clear, consistent, and predictable norms. The existence of Law Number 12 of 2011 as amended by Law Number 13 of 2022 shows that lawmakers are aware of the importance of creating a systematic and structured regulatory formation mechanism. Regulations formed through clear procedures will result in legal norms that are easier for the public to understand and apply. Thus, strengthening regulations is important to ensure that the law is able to carry out its function as a code of conduct as well as an instrument for resolving conflicts fairly (Basuki & Subiyakto, 2022).

In addition to ensuring legal certainty, strengthening regulations also has urgency in realizing justice. In the theory of the state of law, justice is not only understood as the formal application of the law, but also includes the protection of people's rights and the provision of equal treatment before the law. Law Number 48 of 2009 concerning Judicial Power places the judiciary as the front line in upholding law and justice. Therefore, strengthening regulations that regulate judicial independence is important to ensure that the law enforcement process takes place objectively and free from various forms of intervention. In the context of constitutional democracy, the existence of an independent judiciary is one of the main indicators of the state's success in protecting the constitutional rights of its citizens (Asshiddiqie, 2021).

The next urgency has to do with the need to strengthen the accountability of government administration. Law Number 30 of 2014 concerning Government Administration provides a legal basis for the use of authority by government agencies and officials in accordance with the principles of legality and general principles of good governance. Strengthening regulations in the field of government administration is important because accountable government is one of the main prerequisites for the realization of quality democracy. Clear regulations on the use of authority and oversight mechanisms will help prevent abuse of authority while increasing public trust in government institutions. Thus, strengthening regulations not only contributes to

improving the quality of public services, but also to strengthening the legitimacy of government as a whole (Torfing et al., 2019).

From the perspective of legal development, the urgency of strengthening regulations is also related to efforts to adapt the legal system to the development of community needs. Social, economic, and technological dynamics that continue to evolve demand adaptive and responsive regulations. Regulations that are unable to keep up with these developments have the potential to create legal uncertainty and reduce the effectiveness of the legal system in regulating people's lives. Therefore, the discussion on strengthening regulations is relevant to ensure that the law is still able to carry out its function as an instrument of social engineering that supports the creation of order and community welfare (Setiadi, 2012).

In addition, strengthening regulations has urgency in supporting the protection of citizens' constitutional rights. The modern state of law requires that all government policies and actions are always oriented towards the protection of human rights and the constitutional rights of citizens. In this context, regulation functions as an instrument that ensures a balance between the interests of the state and the interests of the community. The stronger the quality of regulations that a country has, the greater the opportunity to create effective legal protection for the community. Therefore, strengthening regulations should be seen as part of efforts to strengthen the position of citizens in the constitutional democratic system (Jamaluddin, 2020).

Another urgency is to support the realization of the principles of good governance. Good governance requires transparency, accountability, community participation, effectiveness, and legal certainty. The three regulations that are the object of research have basically accommodated these principles. However, the development of public needs and increasing demands on the quality of public services require the strengthening and improvement of regulations in a sustainable manner. Strengthening regulations will provide a stronger legal foundation for state administrators in carrying out their duties and authorities professionally and responsibly (Indriyani, 2018).

In the context of constitutional democracy, strong regulations also function as a power limiting instrument. Democracy that is not accompanied by the rule of law has the potential to cause abuse of power that can ultimately threaten the protection of citizens' rights. Therefore, strengthening regulations is a need that cannot be ignored because the law functions as a control mechanism for the use of state authority. Regulations that are prepared based on democratic principles and implemented consistently will strengthen the system of checks and balances that are the main characteristics of the modern legal state (Andiraharja, 2021).

Based on this description, it can be understood that the urgency of strengthening regulations is not only related to the need to maintain legal certainty, but also includes efforts to realize justice, increase government accountability, protect the constitutional rights of citizens, and strengthen the principles of good governance. The existence of Law Number 48 of 2009, Law Number 30 of 2014, and Law Number 12 of 2011 as

amended by Law Number 13 of 2022 shows that the national legal system already has an adequate normative foundation to support these goals. However, strengthening regulations is still needed so that the law is able to adapt to the development of society while maintaining its function as the main instrument in realizing a democratic, just, and community-oriented state of law (Basuki, 2021; Akmal & Arlianti, 2022).

4. | CONCLUSION

This study shows that the effectiveness of regulations in supporting the realization of the rule of law and constitutional democracy is greatly influenced by the quality of legal substance, the integration between regulations, and its ability to provide legal certainty, protection of citizens' rights, and supervision of the use of state power. Law Number 48 of 2009 concerning Judicial Power provides a normative basis for the realization of the independence of the judiciary as the main pillar of law enforcement. Law Number 30 of 2014 concerning Government Administration plays a role in strengthening the principles of legality, accountability, and prevention of abuse of authority in the administration of government. Meanwhile, Law Number 12 of 2011 as amended by Law Number 13 of 2022 provides a framework for the formation of laws and regulations that are systematic, participatory, and oriented towards legal certainty. These three regulations have normatively formed a strong foundation for the implementation of the principles of the state of law and constitutional democracy.

This study also found that the discussion and strengthening of these regulations has a high urgency in the context of modern legal development. Strengthening regulations is needed to maintain consistency in the application of the principles of the rule of law, improve the quality of governance, strengthen the protection of citizens' constitutional rights, and ensure that all actions of state administrators remain within the applicable legal corridor. Strong and adaptive regulation not only functions as an instrument of power control, but also as a means to realize justice, legal certainty, and the benefits of the law in a balanced manner.

Thus, the success of realizing the rule of law and constitutional democracy does not only depend on the existence of regulations alone, but also on the commitment of all elements of the state in implementing and enforcing these regulations consistently. Therefore, strengthening the quality of regulations must continue to be carried out as part of efforts to build a legal system that is responsive, democratic, and able to respond to the needs of the community and the development of the times.

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The authors declare that there is no conflict of interest.

Ethical Approval and Originality Statement

Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

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

REFERENCES

- Akmal, D. U., & Arlianti, D. L. (2022). Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang Di Mahkamah Konstitusi. *Mulawarman Law Review*, 7(1), 49-70.
- Andiraharja, D. G. (2021). Judicial review oleh mahkamah konstitusi sebagai fungsi ajudikasi konstitusional di Indonesia. *Khazanah Hukum*, 3(2), 70-79.
- Asshiddiqie, J. (2021). *Konstitusi dan konstitusionalisme Indonesia* (Ed. revisi). Jakarta: Sinar Grafika.
- Basuki, U. (2021). 76 Tahun Negara Hukum: Refleksi Atas Upaya Pembangunan Hukum Menuju Supremasi Hukum Di Indonesia. *Jurnal Pemikiran dan Penelitian Ilmu-ilmu Sosial, Hukum, & Pengajarannya*, 16(2), 157-175.
- Basuki, U., & Subiyakto, R. (2022). 77 Tahun Negara Hukum: Refleksi atas Dinamika Politik Hukum dalam Tata Hukum Menuju Masyarakat Hukum Indonesia yang Demokratis. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 11(2), 179-202.
- Idayanti, S., Haryadi, T., & Widyastuti, T. V. (2020). Penegakan supremasi hukum melalui implementasi nilai demokrasi. *Diktum: Jurnal Ilmu Hukum*, 8(1), 83-93.
- Indriyani, D. (2018). Penegakan Hukum Berkeadilan Sebagai Perwujudan Demokrasi Indonesia. *ADALAH: Buletin Hukum dan Keadilan*, 2(6), 89–96.
- Jayantiari, I. G. A. M. R., Sudiarawan, K. A., & Dewi, T. I. D. W. P. (2020). Pembangunan Hukum Berorientasi Keadilan Melalui Harmonisasi Hukum Negara dan Hukum Adat. *Jurnal Majelis*, 2(1), 151-174.
- Meijer, A., 't Hart, P., & Worthy, B. (2018). Assessing government transparency: An interpretive framework. *Administration & Society*, 50(4), 501-526.
- Republic of Indonesia. (2009). *Law Number 48 of 2009 concerning Judicial Power*. Statute Book of the Republic of Indonesia Number 157 of 2009.
- Republic of Indonesia. (2011). *Law Number 12 of 2011 concerning the Establishment of Laws and Regulations*. Statute Book of the Republic of Indonesia Year 2011 Number 82.
- Republic of Indonesia. (2014). *Law Number 30 of 2014 concerning Government Administration*. Statute Book of the Republic of Indonesia Number 292 of 2014.
- Republic of Indonesia. (2022). *Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations*. Statute Book of the Republic of Indonesia Year 2022 Number 143.
- Setiadi, W. (2012). Pembangunan hukum dalam rangka peningkatan supremasi hukum. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 1(1), 1-15.
- Sukardi, S., & Purnama, H. R. (2022). Restorative justice principles in law enforcement and democracy in Indonesia. *Journal of Indonesian Legal Studies*, 7(1), 155-190.
- Torfin, J., Sørensen, E., & Røiseland, A. (2019). Transforming the public sector into an arena for co-creation: Barriers, drivers, benefits, and ways forward. *Administration & society*, 51(5), 795-825.