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Recht finding of the Constitutional Court In the perspective of the rule of law and democracy (Study of the Decision of the Constitutional Court of the Republic of Indonesia, Number: 90/PUU-XXI/2023)

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Abstract
Purpose: As a state of law, the demand to produce quality laws in Indonesia is very necessary and must not contradict the Constitution (1945 Constitution). All regulations formed must be subject to the 1945 Constitution. The formation of laws and regulations under it often contradicts the constitution and is challenged in the Constitutional Court. One of them is a lawsuit against Law Number 7 of 2017 concerning Special General Elections article 169 letter q which later issued decision Number: 90 / PUU-XXI / 2023. This paper aims to describe the act of legal discovery through Constitutional Court rulings as a pillar of the State of Law and Democracy.
Method: The method used in this writing is normative legal research which is basically doctrinal or theoretical legal research, with the approach method used, namely (1) statutory approach, (2) case approach, (3) historical approach, and (4) conceptual approach.
Results: The results of the study concluded that the Constitutional Court was right in its decision to amend Article 169 letter q of Law Number 7 of 2017 concerning General Elections, in order to uphold the concept of the rule of law and democracy in Indonesia.
Limitations: The limitation of this research is only on the aspect of legal discovery authority by the Constitutional Court.
Contribution: For this reason, this writing may contribute to strengthening the authority of the Constitutional Court in the future along with the times.
Keywords: *Constitutional Court Ruling, Authority, State of Law, and Democracy*
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1. Introduction

Indonesia is a state of law, not a state of power, so all matters of state actions and activities must certainly be governed by the laws and norms that apply and are appropriate in people's lives to create a peaceful and peaceful society free from acts or practices of injustice and to achieve the great goal of national development, namely a just and prosperous society based on Pancasila.

As a state based on law (rechtstaat) and not on the basis of power (machtstaat), Indonesia expresses the ideals or goals of the state through law as its means; in other words, law is a means used to achieve state goals that have been aspired to by the founding fathers. For this reason, the formation of law must pay

attention to two things: the public good, which must be the goal of legislators and aspects of public benefits, which must also be the basis for reasoning for these legislators (Bentham, 2016). In the life of mankind, of course, nature has placed mankind under the control of pleasure and suffering. On the other hand, benefit, as the basis of reasoning, is an abstract term. It expresses the nature or tendency of something to prevent evil or obtain good. Where evil is suffering or the cause of suffering, good is pleasure or the cause of pleasure. All things that best suit the benefit or interest of an individual are likely to increase the amount of happiness itself. Whereas the thing that best suits the benefits or interests of society is the tendency to increase the number of happiness. Furthermore, in the context of happiness, it is very dependent on the law, which has the purpose of the law itself, where there are four goals of the law, namely sources of livelihood, prosperity, equality, and security. As one of the objectives of the law, equality must be a reference in the formation of the law itself. Therefore, in a regulation that is designed to provide the greatest good for all people, there is no reason for the law to favor one individual over another.

The state, as a community entity, certainly expects good legal order in the life of the community itself. Therefore, the demand to produce quality law is very necessary in the order of the Indonesian rule of law, and the matter of law formation itself is inseparable from the democratic process that continues to develop along with the times. Mahfud, MD, said that the relationship between law and democracy can be likened to two sides of a coin that depend on each other. It can be interpreted that the quality of a country's law will determine the quality of its democracy. Thus, democratic countries will also give birth to laws that have a democratic character, while authoritarian or non-democratic countries will give birth to non-democratic laws (Iswari, 2020).

The Constitution is the basic law, or the highest law, and is a reference in the formation of law in a country. The Constitution can be in written form called the Constitution (UUD) or in unwritten form called the Convention. All regulations under the Constitution must be subject to the Constitution (Sari, 2018). One of the serious problems often faced today, both at the level of legal theory and practice, in every state of law and democracy is how to get out of the old habits that confine the way of thinking in the orthodoxy of legal formation, both in the formation of laws and the formation of regulations under the law (Asshiddiqie, 2020).

In the context of democracy and the principle of the rule of law (nomocracy), the people are the most sovereign, and only the people have the right to govern themselves. Therefore, if the state wants to take action by making rules that reduce the rights of the people and burden the people with obligations, then such arrangements must take the form of laws agreed upon by all representatives of the sovereign people while still being controlled by the sovereign people. If the agreed law turns out to violate the highest and highest agreement of the people, then the people have the right to demand rectification through the mechanism of constitutional justice, namely the constitutional court.

Furthermore, it should be highlighted that the basic values of the law are equality, freedom, and solidarity. Therefore, the treatment of the equal position of every human being as a human being and every citizen as a citizen in society is a necessity. It is also the case that all members of society are needed according to objective criteria that apply to all without any distinctions that allow exclusivity for certain groups. A direct corollary of equality is the demand that the fabric of society ensure justice (Magnis-Suseno, 2016).

The form of demands to guarantee a sense of public justice as a result of the enactment of a law in Indonesia is carried out by a judicial mechanism to test the law against the 1945 Constitution through the Constitutional Court of the Republic of Indonesia (MKRI). One of the legal cases of conflict between the law and the 1945 Constitution that occurred and was tested was a lawsuit against Law Number 7 of 2017 concerning general elections, specifically Article 169 letter q, which regulates the age limit requirements for presidential and vice presidential candidates of the Republic of Indonesia at least 40 (forty) years old, which was subsequently decided by the Constitutional Court of the Republic of Indonesia through decision number 90/PUU-XXI/2023 with the verdict:

1. Grant the Applicant's petition in part;

2. Stating that Article 169 letter q of Law Number 7 Year 2017 on General Elections (State Gazette of the Republic of Indonesia Year 2017 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 6109) which states, "at least 40 (forty) years old" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, insofar as it is not interpreted as "at least 40 (forty) years old or has / is currently occupying an office elected through general elections including regional head elections". So that Article 169 letter q of Law Number 7 Year 2017 concerning General Elections reads "at least 40 (forty) years old or has or is currently occupying an office elected through general elections, including regional head elections";
3. Ordering the publication of this decision in the State Gazette of the Republic of Indonesia.

The decision on the case of judicial review of Law Number 7 Year 2017 carried out by adding a phrase to Article 169 letter q is a new legal step taken by MKRI, which, by the provisions of Article 24 C paragraph (1) of the 1945 Constitution, regulates the authority of MKRI only limited to: (1) to adjudicate at the first and last level, whose decision is final, to test the law against the 1945 Constitution; (2) to decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution; (3) to decide on the dissolution of political parties; and (4) to decide disputes over the results of general elections. Based on this, the author is interested in conducting research and examining more deeply by conducting a normative juridical analysis of the suitability of MKRI's authority with the concept of the rule of law and democracy for the act of changing articles in the law that are considered contrary to the 1945 Constitution.

2. Methodology

The research method used in this writing is normative legal research, which is basically doctrinal or theoretical legal research (Irwansyah, 2020). The research approach used in this study, namely (1) Statute Approach; (2) Case Approach, (3) Historical Approach, and (4) Conceptual Approach. The Statute approach uses the 1945 Constitution, Law Number 7 of 2020 concerning the Constitutional Court, and Law Number 7 of 2017 concerning general elections. The case approach uses the MKRI Decision case related to the addition of phrases in Article 169 letter q of Law Number 7 of 2017 concerning general elections. Historical approach by looking at the historical aspects of the rule of law, democracy, and the constitutional court. Conceptual approach using the concepts of the rule of law, democracy, and nomocracy.

The data sources used in this research consist of primary legal materials and secondary legal materials. Primary legal materials used are in the form of laws and regulations, while secondary legal materials in this study use library sources. The data collection method is carried out using documentation studies, where the documentation method is carried out by documenting data sources in the form of primary legal materials and secondary legal materials. Furthermore, the analysis method uses a qualitative method. The qualitative method in this research consists of: (1) data collection of primary legal materials and secondary legal materials through data inventory; (2) data reduction through systematization of primary legal materials and secondary legal materials; (3) data presentation of primary legal materials and secondary legal materials; and (4) drawing conclusions from the data presented to answer problem formulations (Diniyanto, 2022).

3. Results and discussions

3.1 Indonesia's conception of the rule of law and democracy

3.1.1 The conception of the rule of law

The idea of the rule of law emerged long before the Revolution that occurred in England in 1688, reappeared in the XVIIth century, and then became popular in the XIXth century. The emergence of the concept of the rule of law is a reaction to the existence of a state of arbitrariness that occurred in the past (Sarip & Wahid, 2018).

The notion of the rule of law is based on a belief that emphasizes that state power must be exercised on the basis of a good and just law. Thus, there are two elements in the understanding of the rule of law that become the benchmark, namely: (1) that the relationship between the ruler and the ruled is not

based on power but on an objective norm that also binds the ruling party, in which case every act of power must be based on the law as a benchmark; and (2) that the objective norm (law) is not limited to qualifying only formally but can also be defended against legal ideas, in which case the objective norm must be based on ideological values and in accordance with the demands of the times. In a state of law, of course, the law must be the basis of all state actions. Therefore, the law itself must be good and just. The law will be said to be good if it is in accordance with what the community expects from the presence of the law itself, while a just law is the embodiment of the basic purpose of all laws, which is justice (Magnis-Suseno, 2016). Meanwhile, in terms of political morals, there are four main reasons that are used as a measure to demand that the state be organized and carry out its duties based on law, including: (1) legal certainty; (2) demands for equal treatment; (3) democratic legitimacy; and (4) demands of reason.

The term "state of law" in English is known as the Rule of Law; in German it is known as Rechtsstaat; and in French it is known as Etat de droit, which, although different in designation, contains an identical essence, although in some cases there are differences, namely sovereignty or supremacy of law over people and government bound by law. For this reason, the term state of law needs to be emphasized because there are other terms that can also be translated as "state of law" in Indonesian. The terms in question are gesetzesstaat and socialist legaly, where this term was used by communist countries in ancient times, which emphasized more on the understanding that regulations are binding (regardless of good-bad or fair and unfair), because regulations are made by those who have the authority to make them. Meanwhile, the concept of rule of law (or rechtsstaat or etat de droit) contains a deeper understanding that includes that everyone is bound by the law and everyone is equal before the law, as well as the government as the one who makes the rules included in it. Thus, the law is also not just because it was made by those authorized to make it and has been promulgated; the law itself must be good and fair (Palguna, 2018).

The concept of the rule of law, in the sense of the rule of law, can also be understood as a political philosophy or theory that specifies a number of fundamental requirements for the law or as a procedural device required by those who rule by law. The rule of law emphasizes that everyone, regardless of their rank and status in society, must be subject to the law. For citizens, the concept of the rule of law is both prescriptive and protective. In this case, it is said to be prescriptive because the concept of the rule of law stipulates the actions required by law. Meanwhile, it is said to be protective because the concept of the rule of law determines that the government must act in accordance with the law. Therefore, both of these are central themes of the rule of law, which can also be rediscovered both when the rule of law is studied from the perspective of philosophy or political theory and when viewed from a more pragmatic perspective, namely as a procedural tool.

According to Jimly Asshiddiqie, in the development of the current era, at least twelve main principles of the rule of law have been reformulated. The twelve main principles are the main pillars that support the standing of a modern state so that it can be called a state of law (the Rule of Law or Rechtsstaat) in the true sense. These principles include:

1. Supremacy of law;
2. Equality in law
3. The principle of legality
4. Limitation of power
5. Independent executive organs
6. A free and impartial judiciary
7. State Administrative Court;
8. Constitutional Court;
9. Protection of human rights;
10. Democratic in nature
11. serves as a means of realizing the goals of the state;
12. Transparency and social control (Zaini, 2020).

The characteristics that can be used as indicators that a country applies the notion of the rule of law, which in recent developments has become a democratic state based on law (constitutional democratic state) The latest view shows that there are at least nine characteristics of the rule of law, namely (Palguna, 2018):

1. *Constitutionalism*. Constitutionalism has been widely accepted as a pre-requisite for both democracy and the rule of law. In this regard, the constitution is understood as the fundamental statement of the citizens of a nation that is considered the basic provisions and values to which they share and to which they also agree to be bound. Therefore, according to John N. Moore, the constitution must work as the supreme law, and all laws (legislation), as well as government actions, must conform to it. This view became known as the principle of legal constitutionality in the doctrine of the rule of law. The constitution is not merely considered a ceremonial and aspirational document. In modern understanding (since the 20th century), constitutionalism is a necessary foundation in the context of the rule of law. This is based on three elements of agreement, namely: 1) The general goals of society or general acceptance of the philosophy of government*)*; 2) Agreement on the rule of law as the basis of government (the basis of government); 3) Agreement on the form of constitutional institutions and procedures.
2. *Law Governs the Government.* The notion that the constitution oversees government action is further elaborated in the doctrine of the rule of law. In making laws, lawmakers are bound by the limitations imposed by or in the constitution. Furthermore, the law itself must bind all branches of government. This has the logical consequence of demanding a specific way of assessing whether a particular government action is in accordance with the law or not.
3. *An Independent Judiciary.* In my understanding of the rule of law, the holder of independent judicial power authorized to conduct judicial review of legislative and executive actions is very important because the holder of judicial power is an institution that implements two key mechanisms to ensure the establishment of the rule of law, namely the separation of powers and checks and balances between the branches of power.
4. *Law Must Be Fairly and Consistently Applied.* Laws must be applied fairly and consistently regardless of race, color, ethnicity, religion, sex, political beliefs, or other unreasonable distinctions..
5. *Law is Transparent and Accessible to All.* The law is transparent and accessible to everyone. Transparency here has two components. First, the law must be sufficiently well understood and widely publicized so that people are adequately warned of what actions may result in government sanctions and also so that they can assert their legal rights in a timely manner and be respected by others who have similar access to the meaning and existence of the applicable law. Secondly, the process by which laws are made must also be transparent. Therefore, it is very important for lawmakers, in particular, to be open to public opinion in the discussion of a draft law. Every proposed bill must be announced, publicized, and debated in sufficient time to give interested and potentially implicated citizens the opportunity to express their opinions or views. Meanwhile, accessibility is simply defined as "capable of being understood". However difficult it may be to achieve this goal, both the legislature and the executive must work towards it. More importantly, accessibility means giving people a genuine opportunity to participate in the law-making and judicial process and to defend their rights, whether personal or economic. These are complex procedural safeguards that take various forms to ensure that individuals have the right to be heard, the right to challenge charges brought against them by the prosecution, or the right to utilize procedures within the legislative, executive, or judicial branches of power to defend or protect their civil rights or financial interests.
6. *Application of Law is Efficient and Timely.* The law is applied efficiently and in a timely manner. In this regard, it is important to note the views of Ibrahim F. I. Shihata, who states that corruption is often the result of inefficient administration of justice.
7. *Property and Economic Rights Are Protected, including contracts.* Since the early post-colonial years in developing countries, a number of conferences sponsored by the International Commission of Jurists were held in Athens, Delhi, Rio de Janeiro, Lagos, and Bangkok between 1955 and 1965, which came to the conclusion that the rule of law is not only an important component of political and democratic development but also of economic development. The specific elements of the rule of law that are considered essential for economic development are the protection of intellectual property rights; the recognition of the right of individuals and businesses to freely contract and the formal enforcement of contractual commitments; the legal regulation of market transactions; the

equal status in law of all persons and the equal protection of individual rights and property; and the generally fair and efficient resolution through the courts of economic disputes.

8. *Human and intellectual rights are protected.* As is known, one of the foundations of the development of legal theory regarding the rule of law is the conception of the existence of individual rights and various principles that the government must respect these rights, as stated in a number of documents, which include not only civil and political rights but also economic rights.
9. *Law can be Changed by An Established Process Which Itself is Transparent and Accessible to All.* When the law, as a result of the development of society, no longer meets the need to provide guarantees and protection of individual rights, it is necessary to have a procedure to make changes to the legal provisions in question in order to meet human needs, including the provisions in the constitution. However, such amendments must be transparent and accessible to all.

The concept of modern rule of law known and applicable in Continental Europe was developed using the German term "rechtsstaat", among others, by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others. Whereas in the Anglo-American system, the concept of the rule of law was developed, which became known as "The Rule of Law," pioneered by A.V. Dicey. On the other hand, the concept of the rule of law is also related to the term nomocracy (nomocratie), which means that the determinant in the exercise of state power is the law (Muhlashin, 2021). Furthermore, Friedrich Julius Stahl suggested four elements of rechtstaats in the classical sense, namely: 1) human rights; 2) Separation or division of powers to guarantee the rights of citizens (in Continental European countries usually called trias politica); 3). Government based on laws and regulations (wetmatigheid van bestuur); and 4). The existence of an administrative court to resolve disputes (Adnan, Ridwan, Siregar, & Mubarik, 2022).

According to Philipus M. Hadjon, the presence of the state in the concept of rechtsstaat is based on a continental legal system called "civil law" or "Modern Roman Law", while the concept of rule of law is based on a legal system called "common law" (Philipus M. Hadjon, 1987). Then the rule of law in its development is always linked to the state constitution, especially in terms of regulation and affirmation of the limitation of state power to ensure the independence and basic rights of citizens and their protection (Busthami, 2017).

The original, intense terminology of the rule of law is not found in the body of the 1945 Constitution before the amendment. However, the term state based on law is found in the explanation of the 1945 Constitution. Furthermore, when the constitutional amendment was carried out, the term state of law was clearly contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads "The state of Indonesia is a state of law" (Saleh, 2020). Of course, as a state of law, all actions of state administrators and citizens must be in accordance with the applicable laws. Law in this case is a hierarchical order of norms culminating in the constitution, namely the 1945 Constitution of the Republic of Indonesia (Aswandi & Roisah, 2019). As for its enforcement, the law is not made to ensure the interests of a few powerful people but to ensure the interests of all citizens. Then, in its development, the "new" concept of the Indonesian legal state contains the theory of legal prismatic in the concept of the Indonesian legal state. The use of prismatic theory implies an understanding that the concept of the Indonesian state of law is integrative, or by combining various concepts of the state of law such as rechsstaat, rule of law, and religious spiritual values (Muslih, 2017).

Thus, it can be said that the term state of law is not just to emphasize the difference between a machtstaat and a rechtstaat, but the most important thing is the concept of a state that is no longer run by using power but must be organized based on the law (Likadja, 2015).

3.1.2 The conception of Democracy

Democracy is a view that leads to a government of, by, and for the people. In simple terms, it can also be interpreted that democracy aims for and is oriented towards the interests of the people, not certain groups (Suhartini, 2019). The idea of democracy demands that every form of law and various decisions be approved by the people's representatives and take into account the aspirations of the people as constituents (Zaini, 2020). This is with the intention that community involvement is truly placed in its true position so that the aspirations conveyed through the people's representatives are the voice of the

people themselves. Then the question arises: why is it that in democracy there is a joint identity and in monarchy there is a joint representation? It can be seen that the democratic system, whether direct or indirect, is based on the people ruling themselves. Thus, those who rule and those who are ruled are identical, namely, both people. Whereas in a monarchy, the principle used is representation because both the king and the head of state in a democratic state are only representatives or mandataries of the people, because basically the power is in the people and comes from the people (Asshiddiqie, 2006).

Looking at the preamble of the 1945 Constitution, which is then linked to Article 1 paragraphs (2) and (3) of the 1945 Constitution, it is explained that the Indonesia envisioned by the 1945 Constitution is Indonesia as a democratic state based on law (constitutional democratic state). It cannot be denied that the choice of democracy is acceptable, because although democracy is not the best, at least until now there has not been or there is no better option. In line with this, there are a number of theoretical arguments that can be referred to as reasons for choosing democracy. In line with this, Robert Dahl argues that there are at least 10 (ten) reasons why democracy remains the choice today:

1. Democracy helps prevent the growth of rule by ruthless and cunning autocrats.
2. Democracy guarantees its citizens a number of fundamental rights that undemocratic systems do not and cannot provide.
3. Democracy guarantees greater personal freedom to its citizens than other possible alternatives.
4. Democracy helps people protect their basic interests.
5. Only a democratic government can provide the greatest possible opportunity for people to exercise their freedom of self-determination, that is, to live under laws of their own choosing.
6. Only a democratic government can provide the greatest opportunity to exercise moral responsibility.
7. Democracy helps human development more than any other possible alternative.
8. Only democratic governments can foster a relatively high degree of political equality.
9. Modern representative democracies do not go to war with each other.
10. Countries with democratic governments tend to be more prosperous than countries with undemocratic governments (Palguna, 2018).

Although democracy provides a guarantee of community involvement to have a stake in state policy, it does not rule out the possibility that democracy itself can become dangerous, and in practice can even give birth to regimes that are contrary to the philosophy of democracy itself, which seeks to place the people as the holder of sovereignty or supreme power and protect their fundamental rights and freedoms as human beings. Therefore, democracy must be accompanied by the rule of law. In which case, democratic mechanisms must be subject to restrictions imposed by the law.

To stabilize democracy so that it does not deviate from its philosophy, democratic values should be applied in the rule-of-law system. The values of democracy, according to Henry B. Mayo (Budiardjo, 2007), must fulfill eight (eight) criteria, among others:

1. Resolve disputes peacefully and voluntarily;
2. Ensuring peaceful change in a changing society;
3. Orderly change of rulers;
4. Use of coercion to a minimum;
5. Recognition and respect for the values of diversity;
6. Upholding justice
7. Promotion of science; and
8. Recognition and respect for freedom (Iswari, 2020).

The democracy that is implemented and that applies in Indonesia today is the result of the amendment of the 1945 Constitution of the Republic of Indonesia, which contains the principles of democracy as stated in Article 1 paragraph (2), which emphasizes that "sovereignty is in the hands of the people and is exercised according to the Constitution". Of course, based on the constitution, it has been explicitly shown that the Indonesian state adheres to a democratic system where all community aspirations can be directed and constructed into joint decisions (Muslih, 2017).

3.2 Decisions of the Constitutional Court of the Republic of Indonesia as Recht Finding

Theoretically, the idea of institutionalizing constitutional review or judicial review emerged in Austria by George Jellinek in the late 19th century. The idea institutionalized the function of constitutional review into the body of the Austrian Supreme Court. In its development later by Hans Kelsen, the idea was developed so that the constitutional review institution developed into the domain of the Constitutional Court. The authority and existence of the Constitutional Court were first recognized in 1919 by Austrian legal expert Hans Kelsen (1881–1973). According to Hans Kelsen, the constitutional implementation of legislation can be effectively guaranteed only if an organ other than the legislature is given the task of testing whether a legal product is constitutional or not and not enacting it if, according to this organ, it is unconstitutional. For this reason, a special organ called the Constitutional Court needs to be established (Santoso & Budhiati, 2021).

Historically, the practice of judicial review began in the Supreme Court of the United States when it was led by William Paterson. The event of judicial review occurred in the case of Danil Lawrence Hylton against the United States Government in 1796. In this case, the Supreme Court rejected Hylton's application for judicial review of the 1794 Tax on Railroad Carriages Act and stated that the law was not unconstitutional, so congressional action was deemed constitutional. The practice of judicial review again occurred and was emphasized by the United States Supreme Court when it decided the case of Marburi v. Madison in 1083. In his decision, John Marshall, as Chief Justice, stated that the Judiciary Act of 1789, which was used as the basis for William Marbury's lawsuit against James Madison, was contrary to Article III, Section 2, of the United States Constitution. In examining the case, the Supreme Court used the door of authority interpreted from the constitution, which, by interpreting the oath of office, which requires the Supreme Court to always uphold the constitution, John Marshall considered the Supreme Court authorized to declare a law unconstitutional. This event was the background for the birth of the title of guardian of the constitution, which is attached to the Supreme Court. The position of the Supreme Court functions as a negative legislature, and judges have the position of judge-made law because they are authorized to find and interpret a rule of law based on the constitution (Santoso & Budhiati, 2021).

Insofar as the courts have jurisdiction not only over the examination of administrative acts themselves but also over administrative regulations and administrative laws, these legislative functions in relation to regulatory changes are in fact under the supervision of the courts. In reality, such oversight is incompatible with the principle of separation of powers. However, judicial scrutiny of legislation as a prerogative of the courts is institutionalized by the constitution. This pattern of judicial oversight is a form of control over actions that is based on a sense of distrust of the legislative and executive organs as well as a shift away from the character of constitutional monarchy to limit the absolute power of the monarch. In the judiciary, this tendency has been very successful. As a result, the judiciary has gained the freedom that was originally the freedom of the monarch (Kelsen, 2011).

In terms of its authority, the constitutional court has authority that varies from one country to another. However, in general, if a compilation is made, the authority or jurisdiction of this court covers the following scope of issues (Palguna, 2018):

1. Constitutional review of laws, decrees and other provisions enacted by national and local authorities, particularly those affecting human rights;
2. Conformity or compatibility of legal norms with international treaties, in cases where such international treaties are deemed by the constitution to be superior to national law;
3. Disputes of authority or other disputes between national and lower institutions or among national institutions;
4. Elections or election-related matters, such as referendums;
5. Impeachment and matters relating to the removal of the president and other executive officers or the judiciary;
6. Party constitutionality.

On the other hand, the authority of the Constitutional Court is limited to adjudicating at the first and last levels whose decisions are final to test laws against the Constitution, deciding disputes over the

authority of state institutions whose authority is given by the Constitution, deciding the dissolution of political parties, and deciding disputes about the results of general elections.

Constitutional interpretation, as well as legal interpretation in general, is based on a number of basic or general rules. The words in any legal document or statute must have a legal meaning. Therefore, the next question arises: are the constitutional rights that must be protected limited to the rights expressly stated in the constitution? This is part of the issue of interpretation of the constitution. The rules of interpretation certainly also apply in the interpretation of the constitutional rights set out in the constitution. Otherwise, a constitutional right would be deemed non-existent simply because the right in question is not expressly stated in the constitution. Such an interpretation would ignore the context and would result in a narrow view of constitutional rights, as it would indirectly limit the notion of constitutional rights to those recognized by a group of people at a certain period or date in history. In turn, such a narrow view can actually undermine the nature of the constitution itself because the constitution, according to history and facts, is the history and facts about the statement of rights, so that constitutional rights are not merely related to the constitution but are part of (incorporated in) the constitution itself (Palguna, 2018).

The Constitutional Court, as a forum to accommodate the expectations of the community to obtain justice as a result of the existence of regulations that are contrary to the constitution, is certainly obliged to decide cases, and their decisions must be published in the State Gazette, as stipulated in Article 57 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court, which states that the decision of the Constitutional Court that grants the petition must be published in the State Gazette within a period of no later than thirty (thirty) working days after the decision is pronounced.

5. Conclusion

Normative juridical analysis of the suitability of the authority of the Constitutional Court with the concept of the rule of law and democracy for the act of changing article 169 letter q of Law Number 7 Year 2017 concerning General Elections based on the results of this study identified three main things as the final conclusion, namely: *First,* the notion of the rule of law is based on the belief that state power must be exercised on the basis of good and just laws where there is equality in law for every citizen; *second,* the notion of democracy has provided a foundation in assisting human development beyond other possible alternatives, especially in terms of equality and justice in various aspects of community life, including in government; *Third,* the Constitutional Court, in its historical development, is given the authority as a judicial institution that can interpret the constitution to find the law in order to solve the problem of laws that are contrary to the constitution, including in terms of the constitutional rights of citizens to get equal opportunities in government. Thus, the action of the Constitutional Court has been appropriate in conducting a judicial review and deciding to amend Article 169, Letter Q, of Law Number 7 Year 2017 concerning General Elections.

The act of legal discovery through the decision of the Constitutional Court is a means of checks and balances as a form of control over laws and regulations that are contrary to the constitution and the concept of the rule of law and democracy. Therefore, policies in the context of strengthening the authority of the Constitutional Court in the future are needed in line with the times.

References

Adnan, I. M., Ridwan, R., Siregar, V. A., & Mubarik, M. (2022). Dinamika Negara Hukum dalam Sistem Demokrasi Pancasila di Indonesia. *Jurnal MultidisiplinMadani (MUDIMA), 2*(3), 1121-1138.

Asshiddiqie, J. (2006). Pengantar ilmu hukum tata negara.

Asshiddiqie, J. (2020). Omnibus law dan penerapannya di Indonesia. *(No Title)*.

Aswandi, B., & Roisah, K. (2019). Negara hukum dan demokrasi pancasila dalam kaitannya dengan hak asasi manusia (HAM). *Jurnal Pembangunan Hukum Indonesia, 1*(1), 128-145.

Bentham, J. (2016). *Teori perundang-undangan*: Nuansa Cendekia.

Busthami, D. (2017). Kekuasaan Kehakiman dalam Perspektif Negara Hukum di Indonesia. *Masalah-Masalah Hukum, 46*(4), 336-342.
Diniyanto, A. (2022). Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan, 13*(2), 227-245.
Irwansyah, I. (2020). Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel. *Yogyakarta: Mirra Buana Media, 8*.
Iswari, F. (2020). Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia. *JCH (Jurnal Cendekia Hukum), 6*(1), 127-140.
Kelsen, H. (2011). Teori umum tentang hukum dan negara.
Likadja, J. A. C. (2015). Memaknai "Hukum Negara (Law Through State)" dalam Bingkai "Negara Hukum (Rechtstaat)". *Hasanuddin Law Review, 1*(1), 75-86.
Magnis-Suseno, F. (2016). Etika Politik. Prinsip Moral Dasar Kenegaraan Modern: PT Gramedia Pustaka Utama.
Muhlashin, I. (2021). Negara Hukum, Demokrasi Dan Penegakan Hukum Di Indonesia. *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam, 8*(1), 87-100.
Muslih, M. (2017). Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum). *Legalitas: Jurnal Hukum, 4*(1), 130-152.
Palguna, I. D. G. (2018). *Mahkamah konstitusi : dasar pemikiran, kewenangan, dan perbandingan dengan negara lain*. Jakarta: Konstitusi Press (Konpress).
Pasal 24C ayat (1) UUD 1945.
Peraturan Mahkamah Konstitusi Republik Indonesia Nomor 09/PMK/2006 Tentang Pemberlakuan Deklarasi Kode Etik Dan Perilaku Hakim Konstitusi.
Saleh, K. (2020). *Catatan Negara Hukum Demokratis*: GUEPEDIA.
Santoso, T., & Budhiati, I. (2021). *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*: Sinar Grafika.
Sari, I. (2018). Konstitusi Sebagai Tolak Ukur Eksistensi Negara Hukum Modern. *Jurnal Ilmiah Hukum Dirgantara, 9*(1).
Sarip, S., & Wahid, A. (2018). Kemajemukan Visi Negara Hukum Pancasila Dalam Misi Hukum Negara Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum, 2*(2), 109-124.
Suhartini, S. (2019). DEMOKRASI DAN NEGARA HUKUM. *Jurnal de jure, 11*(1).
Undang-undang (UU) Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.
Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.
Undang-Undang Nomor 7 Tahun 2020 tentang Perubahan Ketiga Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.
Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah dengan Undang-Undang Nomor 8 Tahun 2011 tentang Perubahan atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.
Zaini, A. (2020). Negara hukum, demokrasi, dan ham. *Al Qisthas Jurnal Hukum Dan Politik, 11*(1), 13-48.