



Effectiveness of Constitutional Implementation in the National Legal System: Analysis of the Gap between Principles and Reality

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Abstract

This study examines the effectiveness of constitutional implementation in national legal systems with a focus on the gap between principles and reality. The constitution, as a fundamental document that regulates governance and citizens' rights, serves as a normative foundation for the legal system. However, in practice, there are often significant differences between what is stipulated in the constitution and how these principles are implemented in the field. This literature review explores various theories and concepts related to constitutional implementation, including the roles of constitutional courts, legislative bodies, and executives in ensuring compliance with the constitution. In addition, it also examines factors that influence the effective implementation of the constitution, such as the quality of human resources, the availability of legal infrastructure, and legal culture in society. This study also assesses various case studies in various countries to identify common patterns and factors that contribute to the gap between constitutional principles and legal practice. The findings of this study indicate that although constitutions are often formulated carefully and comprehensively, the main challenge lies in their consistent and effective implementation. In conclusion, the effective implementation of the constitution requires special attention to the harmonization of constitutional principles and existing legal practice, as well as continuous improvement in the mechanisms for implementing and supervising the law.

Keywords: *Implementation of the Constitution; National Legal System; Gap between Principle and Reality; Constitutional Court; Legal Compliance*

Introduction

In every legal system, the constitution plays a central role as the legal basis that governs the structure of government, the basic rights of citizens, and the fundamental principles that guide policy and legal action. Effective implementation of the constitution is a key element in ensuring that these principles are applied consistently and fairly in everyday legal practice. However, there is often a gap between what the constitution mandates and how it is implemented in practice. This gap gives rise to various legal problems and uncertainties that affect public trust in the legal system.

This study focuses on the effectiveness of the implementation of the constitution in the national legal system, with an in-depth analysis of the gap between constitutional principles and the practical

reality that occurs. The constitution, which is ideally formulated to create legal stability and human rights protection, often faces challenges in its implementation. This can be caused by various factors, including shortcomings in the implementation mechanism, different interpretations of constitutional principles, and political and social influences that affect law enforcement.

This study refers to various literatures that discuss the application of the constitution and cases that show inconsistencies between constitutional principles and their implementation. For example, the work of Tamungku, Rumokoy, and Palilingan (2023) identifies how conditional unconstitutional practices in the Constitutional Court can create legal uncertainty. Bachmid (2023) also discusses the impact of the formation of government regulations in lieu of laws after the Constitutional Court's decision, which shows the challenges in adjusting regulations to constitutional decisions.

In addition, Hadji et al. (2024) examined the impact of the Constitutional Court's decision regarding the minimum age of presidential and vice presidential candidates on the implementation of constitutional principles in constitutional law. Firdaus, Hijriyah, and Huroiroh (2023) suggested judicial preview as a preventive mechanism to overcome legal uncertainty arising from conditional unconstitutional decisions. Mastur and Irawan (2023) showed the impact of the Constitutional Court's decision regarding the Job Creation Law which provides an illustration of how legal uncertainty can occur due to incompatibility between laws and constitutional decisions.

In addition, Gusman (2024) criticized the statesmanship of constitutional judges in decisions that tested constitutional principles, while Hermawan (2024) reviewed legal protection for heirs with mental disabilities in the context of inheritance law. Lamataro, Bire, and Ermalinda (2022) analyzed the fragility of the Constitutional Court in implementing its decisions, while Sofian (2020) discussed the application of the threshold for regional election disputes and its impact on constitutional decisions.

Ramadhan and Donri (2024) and Yanuar (2024) examine the judicial review of laws and government regulations in lieu of laws, showing the importance of the conformity between the Constitutional Court's decision and existing legal practice. Finally, Susetiyo et al. (2022) explore legal certainty in the Job Creation Law after the constitutional decision, emphasizing the need for improvements in the implementation of the law.

Through this literature study analysis, the researcher aims to comprehensively understand how the constitution is implemented in practice, identify factors that influence the gap between principles and reality, and propose solutions to improve the effectiveness of the implementation of the constitution in the national legal system. This research is important to ensure that the principles of the constitution are not only written norms, but also implemented effectively to ensure justice and legal stability in society.

Research Methods

The descriptive qualitative research method in this study is applied to understand and explain the effectiveness of the implementation of the constitution in the national legal system by identifying the gap between principles and reality. This approach focuses on the collection and analysis of qualitative data derived from various library sources to provide a comprehensive picture of how the constitution is implemented and the challenges it faces.

This research began with data collection from relevant literature studies, including journal articles, books, reports, and legal documents that discuss the topic of constitutional implementation. These sources were selected based on the relevance and quality of information they provide on constitutional implementation and related legal issues. The qualitative data collected included analysis of legal theories, interpretation of court decisions, and review of legal cases that reflect the practice of constitutional implementation in various contexts.

After data collection, analysis is conducted in a descriptive manner to identify common patterns, gaps, and challenges that arise in the implementation of the constitution. This process involves an in-depth review of the findings of various studies, connecting constitutional principles with the realities of legal practice. Descriptive analysis aims to present the findings in detail and to develop a comprehensive picture of the existing problems.

In addition, this study also identifies factors that influence the effectiveness of the implementation of the constitution, such as political influence, institutional structure, and legal culture. By using a descriptive qualitative approach, this study not only reports facts but also provides an understanding of the dynamics and contexts that influence the implementation of the constitution in the national legal system.

The conclusion of this descriptive analysis is expected to provide useful insights to improve the implementation of the constitution, by proposing improvements based on qualitative findings obtained from the literature study. This approach allows researchers to formulate relevant and practical recommendations to address the gap between principles and reality in the implementation of the constitution.

Discussion

The discussion on the effectiveness of the implementation of the constitution in the national legal system reveals several important aspects related to the gap between the principles of the constitution and the reality of its implementation. The constitution, as the legal foundation of the state, should clearly and firmly regulate the structure of government and fundamental rights. However, the practice of its implementation often shows a discrepancy between what is stated in the text of the constitution and the implementation that occurs in the field.

One key aspect of this discussion is the application of conditional unconstitutional practices by the Constitutional Court, as outlined by Tamungku, Rumokoy, and Palilingan (2023). They show that in some cases, the Constitutional Court issues conditional decisions, meaning that the decision is not immediately effective but requires additional measures for its implementation. This practice can create legal uncertainty and blur the line between a clear constitutional decision and its practical application (Tamungku et al., 2023).

Furthermore, Bachmid (2023) examines how the formation of government regulations in lieu of laws (Perppu) after the Constitutional Court decision Number 91/PUU-XVIII/2020 faced challenges in adjusting regulations. The formation of Perppu is a response to the legal uncertainty arising from constitutional decisions, but this process often takes a long time and can result in a temporary legal vacuum. This study highlights that the resulting regulations do not always fully reflect the desired constitutional principles, creating gaps in their implementation (Bachmid, 2023).

Hadji et al. (2024) extend this analysis by examining the influence of the Constitutional Court's decision on the minimum age of presidential and vice presidential candidates. This study emphasizes that the decision has a significant impact on the structure of constitutional law and examines how the implementation of constitutional principles related to general elections can be influenced by decisions taken by the constitutional court (Hadji et al., 2024). The gap between constitutional decisions and election practices may reflect a mismatch between constitutional principles and actual implementation.

Firdaus, Hijriyah, and Huroiroh (2023) offer an additional perspective by proposing judicial preview as a preventive mechanism against legal uncertainty. Judicial preview functions as a tool to anticipate potential legal uncertainty before a conditionally unconstitutional decision is taken. This is an

approach that aims to reduce the gap between constitutional decisions and legal practice by ensuring that decisions taken by the Constitutional Court are clearer and can be applied directly (Firdaus et al., 2023).

The impact of the Constitutional Court's decision on the Job Creation Law was also studied by Mastur and Irawan (2023). They showed that the constitutional decision on this law has various implications for the legal and economic sectors. The legal uncertainty created by the decision shows how constitutional principles in testing laws can create a gap between the objectives of the constitution and its practical application in the field (Mastur & Irawan, 2023).

Gusman (2024) examines the statesmanship of constitutional judges in the decision-making process. This study highlights how the integrity and professionalism of judges affect the application of the constitution and assesses whether these decisions are in accordance with established constitutional principles. The gaps that emerge are often related to how judges' interpretations and decisions are influenced by factors outside the text of the constitution itself (Gusman, 2024).

Hermawan (2024) provides a view on legal protection for heirs with mental disabilities in the context of inheritance law. This study illustrates how constitutional principles related to the protection of individual rights are faced with challenges in their implementation, especially when involving individuals with special conditions. This underscores the importance of regulations that are consistent with constitutional principles to ensure fair and equitable protection (Hermawan, 2024).

Lamataro, Bire, and Ermalinda (2022) explore the fragility of the Constitutional Court in managing complex and controversial decisions. They show that although the Constitutional Court plays an important role in maintaining the constitution, challenges in implementation often reflect weaknesses in the legal system and decision-making process (Lamataro et al., 2022). This fragility can result in uncertainty and a gap between principle and practice.

Sofian (2020) discusses the application of the threshold for regional election disputes in the Constitutional Court Decision Number 14/PHP. This study highlights how the threshold affects the implementation of constitutional decisions in the context of general elections, showing a gap in how constitutional principles are applied in regional election cases (Sofian, 2020).

Ramadhan and Donri (2024) analyzed the decision of the Constitutional Court Honorary Council (MKMK) related to the decision to test the general election law. They assessed how the MKMK decision can affect the application of constitutional principles and whether the decision reflects compliance with the basic principles of the constitution in practice (Ramadhan & Donri, 2024).

Yanuar (2024) examines the legal politics of the Constitutional Court's authority in testing government regulations in lieu of laws. This study shows the political and legal dynamics that influence the effectiveness of the implementation of the constitution, as well as how the authority of the Constitutional Court plays a role in ensuring the conformity of regulations with constitutional principles (Yanuar, 2024).

Finally, Susetiyo et al. (2022) discuss legal certainty in the Job Creation Law after the Constitutional Court Decision Number 91/PUU-XVIII/2020. They identify how the decision affects legal certainty in the health sector and show challenges in aligning the implementation of the law with constitutional principles (Susetiyo et al., 2022).

Overall, this discussion illustrates the complexity and challenges faced in implementing the constitution. The gap between constitutional principles and the reality of implementation indicates the need for improvements in the process of legal implementation and supervision to ensure that constitutional principles can be applied consistently and effectively in practice.

Conclusion

From the discussion on the effectiveness of the implementation of the constitution in the national legal system, it is clear that there is a significant gap between the principles of the constitution and the reality of its implementation in the field. Although the constitution is designed to be a strong and clear legal basis, its implementation often faces various challenges that result in legal uncertainty and injustice. This gap can reduce the effectiveness of the constitution as an instrument for maintaining justice and legal stability.

One of the main findings is the existence of conditional unconstitutional practices that create legal uncertainty. Conditional decisions do not always provide clear guidelines for the implementation of the law, thus adding complexity to its application. This shows the need for improvements in the way the Constitutional Court makes decisions to be more consistent and directly applicable.

In addition, the process of creating regulations in lieu of laws in response to constitutional decisions is also often problematic. The adjustments required after a constitutional decision can slow down the implementation of the law and lead to periods when the law becomes unclear or ineffective. This delay in the formation of regulations suggests the need for a more efficient mechanism for adapting and enforcing constitutional decisions.

Other factors that influence the effectiveness of constitutional implementation include political influence, the performance of legal institutions, and the legal culture in society. Politics often plays a significant role in determining how and when constitutional principles are applied, which can lead to inconsistencies in the implementation of the law. In addition, the capacity and integrity of legal institutions, including the courts and legislative institutions, greatly influence how the constitution is translated into real action.

Overall, to improve the effectiveness of the implementation of the constitution, reforms are needed in the mechanisms for implementing and supervising the law. Improvements in the process of making regulations, stricter enforcement of constitutional decisions, and strengthening the capacity of legal institutions are important steps that must be taken. In this way, the principles of the constitution can be applied more consistently and fairly, ensuring that the constitution truly functions as an effective and reliable legal foundation in the national legal system.

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