

Constitutional Convention in the National Legal System in Indonesia

Lorenzo K.E de Fretes¹ Lydia Anindira² Michelle Sharon Anastasia³
Universitas Tarumanagara, West Jakarta, Province DKI Jakarta, Indonesia^{1,2,3}
Email: lydia.205220229@stu.untar.ac.id²

Abstract

The Constitutional Convention is defined as an unwritten rule that arises or arises as a result of a State custom with the aim of achieving statutory indications. The State of Indonesia is a country that adheres to Civil Law rules which of course this rarely happens, but the Convention itself is important for the State of Indonesia and should not disappear from life in this country. This article attempts to explore the need for Conventions within countries and how to prevent them from disappearing quickly. This article carries out normative research methods that prioritize legal theory and systematics.

Keywords: Habits, Conventions



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).

INTRODUCTION

Indonesia is a constitutional state that adheres to the Civil Law principle where this legal system has legal sources originating from the codification of written law or laws. Civil Law by definition is a legal system adopted by countries in the world through a process of dissemination originating from the continent of Western Europe or the Mainland. This legal system is inquisitorial in nature or judges have a major role in directing and deciding a case. In particular, constitutional law in Indonesia is sourced from the constitution. In its tradition, the Civil Law principle makes law a constitutional source, which also does not often occur in countries that adhere to this civil law legal system. Basically a constitutional convention is a constitutional process that is not regulated in law, but is only regulated by constitutional conventions or customs. Bagir Manan stated that in his writings on a book entitled "Conventions on constitutionalism", constitutional conventions or customary laws are laws that grow in the practice of administering the state which are to complement, perfect, animate, dynamic, and indications of legislation or customary law. state administration.

However, even though Indonesia is a country that adheres to the Civil Law principle, constitutional conventions have existed since the independence era until the New Order era. This happened because at that time there was no tradition to include everything in laws and regulations. Or in other words the constitutional convention aims as a temporary rule to run the government when there is no constitution that accommodates it. However, since the reform era, the number of constitutional conventions has decreased because all political traditions that have been running for many years have been normalized in written regulations, such as the reading of the President's speech every August 16 before the plenary session of the DPR.

Constitutionally, this is not regulated in the 1945 Constitution because the president is directly responsible to the people and not to the DPR as the embodiment of a purely presidential system of government. However, because this has become a constitutional custom in Indonesia, this is done every year and has become a tradition that must be carried out by the president every August 16th. In the distribution of law in Indonesia itself, it has also been classified into two types which based on the form of law consist of written/unwritten law. Unwritten law is defined as a law that is still alive and growing in certain community beliefs or customary law. The practice of unwritten constitutional law is called a convention (Hartono: 1991).

RESEARCH METHODS

The research method used in this article is the normative research method, in which this article emphasizes the study of legal theory and systematics. Normative legal research is conducted to generate theoretical arguments or new concepts as prescriptive in solving problems. The author is trying to find a clear problem related to the convention by reviewing the theories of this research.

RESEARCH RESULTS AND DISCUSSION

It cannot be denied that the existence of this constitutional convention has existed since the New Order era and until the current government, the existence of this constitutional convention has even been recognized by the state. The constitutional convention is a constitutional custom, whose role is to care for constitutional law for the benefit of administering the state. In addition, constitutional conventions can also serve as a means to realize sovereignty and prosperity in society. The function of conventions in constitutional administration can be in the form of completing some legal voids or adding to the deficiencies of constitutional law, as well as dynamically implementing the values of the 1945 Constitution. obliges state institutions and officials to always comply with the constitutional conventions. Even though this law is regulatory, it is very unfortunate that violators of this constitutional convention cannot be forced or tried through courts, therefore this constitutional convention is often called *lex imperfecta*, namely law that has no sanctions.

Discussion

Discussing the development of constitutional law in Indonesia means entering a zone that is quite difficult to define boundaries and difficult to identify. Although it is difficult to identify, currently there are several opinions that can be accepted so far that Indonesian Constitutional Law has had positive changes both conceptually and in state practice. Until now there are still many observers and scholars who are trying to find boundaries on the scope of constitutional law, this is done so that it will be easier for everyone to understand or define the meaning and zones of the state law itself. However, due to the breadth and depth of constitutional law, in any way limiting the scope of state law, the result will still have a void or deficiency in defining or describing it.

The term convention was originally put forward by A Van Dicey which is defined as constitutional provisions that cannot be prosecuted, enforced or enforced by the court by providing the formula: rules for determining the mode in which the discretionary powers of the crown (or of the ministers as servants of the crown) ought to be exercised. (Dicey: 1967) Conventions are provisions governing how the crown or minister should exercise discretionary powers. If detailed, the constitutional conventions according to Dicey are the following: Conventions are part of the constitutional rules (constitution) which grow to be followed and adhered to in the practice of state administrators. Conventions are part of the constitution and cannot be enforced by courts. Conventions are adhered to solely driven by ethical, moral, or political demands in the administration of the state. Provisions regarding how (otherwise) discretionary powers should be exercised.

As for some constitutional practices that have become conventions, namely: Conventions formed based on the provisions of the DPR and DPD orderlies. Conventions in the act of international promises. Presidential speech every August 16 Election and appointment of certain positions chosen and carried out directly by the president. As for the constitutional practices that have been developed into conventions, namely: The participation of the DPR in the inauguration of ministers. The condition is never a convict to occupy a position. For the

convention itself can be interpreted as a rule that arises from the habits that live in society. Almost the same as constitutional conventions which are all constitutional customs/traditions that are fundamental in nature, and contain a constitution, which are carried out and adhered to in the administration of the state, whether they have been written or not.

Conventions in Indonesia have an important position, this can be seen. After being proclaimed on August 17, 1945, Indonesia was an independent country. After independence, precisely on August 18, 1945 the 1945 Constitution was also ratified as the written constitution of the Republic of Indonesia. The enactment of the 1945 Constitution as a Constitution in Indonesia was divided into two stages, namely the first stage from August 18, 1945 to December 27, 1949, then the second stage since the Presidential Decree dated July 5, 1959 until now. Since the stipulation of the 1945 Constitution as the highest basic legal norm, up to now, of course, there have been many constitutional conventions that have been implemented in the practice of administering Indonesia, both constitutional conventions which are constitutional customs (costum) and constitutional conventions which are agreements in nature. In the New Order period, since 1966 there have been several constitutional practices that can be viewed as conventions that are complementary in nature and do not conflict with the 1945 Constitution.

As for what is the basis or driving factor for the presence of conventions in the Indonesian state system, namely: conventions are a constitutional sub-system that always exist in every country, regardless of the country's constitutional system. The Republic of Indonesia is a country that upholds the sovereignty of the people, therefore through a convention is one way to guarantee people's sovereignty. There are many constitutional practices which are considered by some observers as conventions. In Indonesia itself, the convention began to develop over time. Conventions grow according to or in accordance with the needs and habits of the Indonesian state. Therefore, it is necessary to understand and understand that the conventions in Indonesia cannot be taken from outside the country of Indonesia, because each country has different needs, traditions, customs, and principles.

The existence of the convention itself cannot be separated from the views of the 1945 Constitution which includes both written and unwritten laws. Apart from that, the connection between the convention and the 1945 Law is due to the fact that the 1945 Law itself is "Short and Sociable". It is in this regard that the explanation of the 1945 Constitution explains that: "We must always remember the dynamics of the life of the Indonesian people and state. Indonesian society and state continue to grow, times change, especially during the current era of spiritual and physical revolution. Therefore, we must live dynamically and see every movement in the life of the people and the State of Indonesia."

From this explanation, it is hoped that the constitutional convention is predicted to be a rational solution or alternative that must be constitutionally acceptable in the practice of administering the Indonesian State. So in accordance with the mandate of the 1945 Law, it is hoped that through conventions it is hoped that the dynamics will continue to go hand in hand with the customs and traditions that live in society, in order to build the whole Indonesian State in a modern way. From the explanation above, it is known how important the presence of this convention is, from the explanation above it is also known what the role of the convention is in the constitutional and in society. Conventions serve as an alternative to enabling constitutional life. The role of the convention is also important in adjusting constitutional law (written priority) with views in the political sector. Democratization either in monitoring or in realizing a goal can be carried out using conventions without having to change the rules or laws that apply formally. The convention stipulates that a head of state cannot reject a law that has been passed by the House of Representatives, the purpose of the convention is to create strong sovereignty in society and oversight of the head of state.

It is possible that the problems and issues of constitutionalism in Indonesia will increase in the future, as time goes by it does not rule out the possibility that problems in constitutionalism will become more complex in accordance with the demands and needs of the times. The dynamics of social life will bring Indonesia's political and constitutional sectors. To what extent the 1945 law provides an answer to this matter, the 1945 law will become a benchmark in this matter itself. Therefore, it needs to be emphasized again that we need to live dynamically and need to see all movements and developments within society and the State. The drafters of our constitution deliberately made the 1945 Law "Short and Sociable", in order to have a broad and far-reaching reach as a solution or alternative answer to problems that arise in the context of regulating Indonesian constitutional life by looking at constitutional law with a broad scope.

CONCLUSION

The presence of a constitutional convention is essentially not to change or replace the 1945 Constitution, the convention itself basically may not conflict with the values contained in the 1945 Constitution. The convention is present as a reinforcement of constitutional life and helps so that constitutional life can run according to with the times. Because in fact the essence of the presence of this convention plays a role in protecting and maintaining the course of constitutional law.

BIBLIOGRAPHY

- Ahmad Gelora Mahardika, "Konvensi ketatanegaraan dalam sistem hukum nasional di Indonesia pasca era reformasi" (2019)
- Bagir Manan, "Konvensi Ketatanegaraan" (2006)
- Dadang Suprijatna, "Konvensi Ketatanegaraan Dalam Praktik Konstitusi Di Indonesia", *Justheid Fakultas Hukum Universitas Djuanda* Vol. X, No. X, 2009, hlm. 18-25.
- Dicey, A.V, *AN Introduction to the study of the Law of Constitution* (London, 1967)
- Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Weldy Aginwinata, "Konvensi ketatanegaraan sebagai batu uji dalam pengujian undang-undang di Mahkamah Konstitusi", *Yuridika* (2014)
- Weldy Aginwinata, *Konvensi Ketatanegaraan Sebagai Batu Uji Dalam Pengujian Undang-Undang di Mahkamah Konstitusi*, *Yuridika*, Volume 29 No 2, Mei-Agustus 2014, hal. 154