Law Development Journal
SINTA 3 Degree No. 225/E/KPT/2022 dated 07 December 2022
ISSN: 2747-2604
Volume 6 No.3, September 2024, (399-418)

Building a Strong Constitutional Court as Ideal State Institution

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Abstract. *This article discusses the Strengthening of the Constitutional Court, in the sense of what strengthening needs to be done to strengthen the Constitutional Court in carrying out its constitutional duties. The duties in question include: guardian and interpreter of the constitution, protector of human rights, protector of citizens' constitutional rights, and protector of constitutional democracy. The ideal Constitutional Court must have all the requirements needed to carry out all of these duties relatively perfectly. It must be fit in various aspects: substance, structure, and culture. The study of the problem was conducted using the flow and working methods of doctrinal legal research of the theoretical research type, namely: research which fosters a more complete understanding of the conceptual bases of legal principles and of the combined effect of a range of rules and procedures that touch on a particular area of activity. The results of the study found that there are 7 (seven) aspects that need strengthening: (1). Strengthening Lawyer Statesman, (2). Strengthening the pattern of judge recruitment, (3). Expanding Authority, (4). Strengthening Professionalism, (5). Strengthening Accountability, (6). Strengthening Burden of Proof, (7). Strengthening the Honeste Vivere Culture.*

Keywords: *Authority; Constitution; Court; Power.*

1. Introduction

Building a strong Constitutional Court (MK) cannot be separated from the recognition of the existence of the Constitution and Constitutionalism. The Constitution and Constitutionalism are two concepts that were born in the midst of human struggles facing power from time to time. In classical historical records, the idea of this has emerged in Ancient Greek culture through what is called politeia[1]. According to Charles H. McIllwain, the term constitution, which emerged during the Roman era, was used as a technical term to refer to the acts of legislation by the Emperor.[2]

[1]Jimly Asshiddiqie, 2004, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta: PSH-HTN UI, p. 1
[2]Charles H. McIlwain, 1966, *Constitutionalism: Ancient and Modern,* Ithaca, New York: Cornell University Press, p. 23

Theoretically, there are a number of motives that can be seen as the basis for the need for a constitution.[3]. One of the most prominent is the desire to guarantee the basic rights of the people and control state power. This motive actually stems from the understanding that the state, as Weber said, is an "institution" that (successfully) has a legal monopoly to use/impose its power on other parties in a certain area.[4]. The state can impose its will on citizens or groups in society. In fact, if necessary, the state has the legitimacy to use physical violence to enforce compliance with the orders it issues.[5].

The state not only has the right to issue laws that are binding on its citizens, but also has the right to use violence if citizens do not want to obey the regulations made by the state. The state even has the right to take the lives of its citizens through the execution of the death penalty, if the citizen is considered to have committed a serious violation against the state that is considered to represent the public interest. This enormous power is obtained because the state is an institutionalization of the public interest. As an institution that represents the public interest, the state can to impose his will against personal or group interests within his area of authority[6].

Constitutionalism, in essence, starts from this assumption. As a doctrine, constitutionalism is an ideology that limits state power on the one hand and guarantees people's rights on the other, through the rules in the constitution. In the logic of constitutionalism, a good constitution must therefore provide a mechanism for mutual control between and/or to existing state power institutions. Constitutionalism, which is the basis for national life and legal life in democratic countries, arises from social struggles about power. Authoritarian tendencies are inherent in power. To prevent the corruption of power, constitutionalism was born—an ideology that limits state power on the one hand and guarantees people's rights on the other, through the rules in the constitution.

Constitutionalism, is based on two demands. The first, the Rule of Law which teaches that legal authority universally overcomes political authority (and not vice versa). Second, the concept of democracy and human rights which teach freedom as a natural human right that cannot be taken over at any time by any

[3]These motives are: (1). The desire to guarantee the basic rights of the people and control state power, (2). The desire to clarify the rules of the game of state, nation and society, (3). The desire to create an emancipatory political system, (4). The desire to create a direction for a just, peaceful and prosperous life together (See A. Muktie Fadjar, Teori dan Hukum Konstitusi).
[4]HH Gerth & CW Mills (eds), 1958, *From Max Weber: Essays in Sociology,* New York: Oxford University Press, p. 78
[5]Arief Budiman, 1996, *Teori Negara: Negara, Kekuasaan, dan Ideologi*, Jakarta: Gramedia Pustaka Utama, p. 3
[6]Ibid

power in state life (inalienable), and must also be maintained and defended in order to remain intact, unblemished due to violations against it (inviolable).

The doctrine of the supremacy of law contained in constitutionalism has no other purpose than to guarantee the freedom of citizens from government actions that are misused. This is an idea of internal legitimacy that is only realized if there is the ability of the government to guarantee the rights of individual humans to their natural freedom. Because, the government is nothing other than a collection of activities carried out by and on behalf of the people. So that the power needed for government is not misused, various restrictions are imposed. The most effective way of limitation is by dividing power (executive, legislative, judiciary) through the constitution.[7]. Therefore, the basic form of the state's legitimacy as a regulator is the constitution.

In the context of the concept of the necessity of limiting state power, the constitution is essentially one of the media to realize what is called limited government. Furthermore, the constitutional system was developed. This system is implemented to realize constitutional justice, namely "...that condition in which zitizens may trust their government to uphold certain rights considered involable,..."[8]. With a constitutional system, the people have a guarantee that the government will uphold certain rights as the people's rights that cannot be violated. This is the core of constitutional justice. In other words, the core conception of constitutional justice lies in the constitutional obligation for the government not to violate certain rights of the people. Cappelletti in his other work states that constitutional justice is a development of the concept of natural justice and legal justice. In fact, according to him, constitutional justice is actually a combination of the concepts of natural justice and legal justice[9].

The substance of constitutional justice is formulated in the constitutional rules contained in the UUD and/or other laws and regulations, including practices.

constitutional law (convention) as non-legal rules of the constitution[10]. These constitutional rules contain principles about the structure and organization of the state, state apparatus, duties and authorities, and the relationship between the government and citizens. These rules are stated and treated as the highest positive legal rules in a country. Because as Finer said, the constitution is a legal rule that has a higher position than other legal rules.[11].

[7]CJ Friedrich (editor), 1967, *The Philosophy of Kant,* New York: The Modern Library, p. 213.
[8]Cappelletti, 1971, *Judicial Review in the Contemporary World,* London: The Bobbs-Merrils Company Inc
[9]Cappelletti & William Cohen, 1979, *Comparative Constitutional Law,* The Bobbs-Merrils Company Inc,
[10]KC Wheare, 1971, *Modern Constitutions,* Oxford University Press,
[11]SE Finer, Five Constitutions: Contrasts and Comparison, Penguin Books, 1979, p. 33

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It is clear that the essence of the constitution is as: (1). A collection of rules on the limitation of state power over the people, (2). A document on the division of tasks of state institutions, (3). A description of the framework for state institutions, (4). Affirmation of the human rights of the governed. Therefore, the constitutional function of the constitution is no less than a source and basis for the ideals of the nation and state in the form of basic values and rules for national life. In a modern state, the constitution acts as a framework for state administration that determines the limits of the authority of the ruler, guarantees the rights of the people, regulates the running of government, and determines the shared ideals of a nation/state. Therefore, a modern constitution not only contains legal rules but also formulates legal principles, state direction, and policy benchmarks—all of which bind the ruler.

To ensure that the constitutional rules contained in the Constitution or other laws and regulations are not violated or deviated from (either through legislative products that conflict with the constitution or government actions), there needs to be a body and procedures to oversee the constitution. Of the two methods currently known, one is through the Constitutional Court.

The idea of building a strong Constitutional Court (MK) must inevitably be linked to the ideal tasks inherent in the MK itself. These tasks include: guardian and interpreter of the constitution, protector of human rights, protector of citizens' constitutional rights, and protector of constitutional democracy. A strong MK must have all the requirements needed to carry out all these tasks relatively perfectly. It must be fit in various ways: substance, structure, and culture.

2. Research Methods

The study of the problem was carried out using the flow and working methods of the third type of doctrinal legal research from Terry Hutchinson.[12], namely theoretical research which Hutchinson formulated as: research which fosters a more complete understanding of the conceptual basis of legal principles and of combined effect of a range of rules and procedures that touch on a particular area of activity[13].

3. Result and Discussion

3.1. Strengthening Lawyer Statesman

A strong Constitutional Court needs lawyer statesmen. The image and performance of the Constitutional Court are more or less determined by the quality of judges who are statesmen. According to Posner and Kronman, the

[12]Terry Hutchinson, distinguishes legal research into four categories which include: (1). Docrinal research, (2). Reform oriented research: research which intensively evaluates the adequacy of existing rules and which recommends changes to any rules found wanting; (3). Theoretical research
[13]Ibid

presence of lawyer statesmen as the creme de la creme, not only shows the ability to handle cases technically (technical competence).

but also displays social engineering skills, civic virtue, and practical wisdom.[14]. Technical skills are acquired through education and experience. While the ability as a social engineer is more due to having a vision to present something better. Civic virtue (high social morals) is born from self-discipline to internalize public morality in the duties and responsibilities carried out. While practical wisdom (wisdom in solving problems wisely), is a reliable and non-excessive decision product as the end of the judge's quality.

Regarding the ability to handle cases technically (technical competence), it requires mastery of legal techniques (procedures and materials), legal reasoning skills, mastery of legal doctrine and theory, mastery of doctrine and theory of justice, and techniques for drawing conclusions. The requirement for such quality requirements has dual benefits. The first benefit is to be a measure of the competence and capability of the apparatus carrying out certain tasks.

Based on the "minimal competence" benchmark, there should be an obligation to provide a weighty argumentative basis (using normative reasoning, principled reasoning, doctrinal reasoning, and philosophical reasoning) for every choice/determination of facts or evidence, determination of the norms used, and the decisions made. The weight of the reasoning/argumentation regarding all of these things should be the measure of the quality of a job. Any work below these standards should be considered unprofessional and therefore should be corrected and subject to professional sanctions.[15].

The second benefit is to prevent case manipulation. It must be admitted that the emergence of bribery practices, manipulation of articles, legal mafia and so on, is precisely because of the lack of strict quality control of a job. It will be very difficult for a judge to quickly "catch a cold", if every detail of his work is required to have a weighty rationale/argumentation based on normative reasoning, principled reasoning, doctrinal reasoning, and philosophical reasoning. For example, the question of the relevance of a fact/evidence. What is the rationale/argumentation (based on rules, based on principles, based on doctrine, and based on philosophy) so that for example only fact A is considered relevant and other facts are considered irrelevant? Acceptance of fact A and rejection of other facts must be given an equally strong argument based on the scope of reasoning above. If this is not done, then it must be considered below quality and therefore must be sanctioned for being incapable and unprofessional.[16].

[14]Richard A Posner and Anthony Kronman, in Anthony Hol & M Loth, 2004, Reshaping Justice, Judicial Reform and Adjudication in Nedherlands, Shaker Publishing BV Maastricht, p. 99-106
[15]Bernard L. Tanya, 2011, *Legal Politics: Agenda of Common Interests,* Genta Publishing, Yogyakarta
[16]Ibid

Regarding social engineering capabilities, Roscoe Pound refers to efforts to make changes from poor conditions (unproductive, conflict-ridden, and wasteful) to more civilized conditions (productive, minimal conflict, and not wasteful). Pound's law as a tool of social engineering function lies in the intended engineering. The method used to organize social change is by "arranging the interests that exist in society". These interests must be arranged in such a way as to achieve proportional balance. The benefit is the construction of a social structure in such a way as to achieve maximum satisfaction of welfare needs by preventing conflict and waste. The interests that need to be arranged proportionally are public, social, and personal interests.[17].

So the important point of Pound's social engineering is the use of law as a means to social goals and as a tool in social development through proportional arrangement of various interests (general, social, and individual) so as not to cause conflict and waste in society. As a sociological jurisprudence thinker, Pound proposed that the legal community needs to take social facts into account more in its work, whether law making, interpretation, or application of regulations.

Pound's main focus with the concept of social engineering is interest balancing, and therefore the most important thing is the ultimate goal of the law that is applied and directs society in a more advanced direction. In other words, law as a means of social engineering, is aimed at the conscious use of law to achieve order or a state of society as desired. Law is no longer seen merely as a system of maintaining the status quo, but is believed to be a regulatory system to achieve certain goals in a planned manner, namely "the creation of a productive, conflict-free, and non-wasteful civilized society"[18].

Civic virtue and practical wisdom are issues that are beyond rules. The noble diction attached to judges reflects this. This honor demands responsibility as a judge who places truth and justice as the highest measure of his decision. The nobility he bears requires judges to prioritize wisdom and sensitivity of conscience regarding truth and justice in judging[19].

Judges as noble parties, are no longer in the position of spellers of rules or servants of rules. They are readers of the moral law, and use what Ronald Dworkin calls moral reading. Law and justice are in the law, but still have to be found, said Paul Scholten. The judge's task is to find the law and justice in the regulations he faces.[20]

[17]Ibid
[18]Ibid
[19]Yovita A. Mangesti dan Bernard L. Tanya, 2014, *Moralitas Hukum,* Yogyakarta: Genta Publishing,
[20]Ibid

Spelling out the rules is not enough. The honorable judge must seek, dive into the spirit of the rules, capture the principles and principles underlying the rules to find the moral of the rules. The logical connection between the moral of the rules and the facts revealed, becomes the basis for the decision to be taken. So, it could be that on the surface or literally, the judge's decision goes beyond the wording of the law. But that does not mean ignoring the law, because what is used is not the wording but the moral of the law itself. The supremacy of law is not just the availability of regulations (gezetz, wet, rule), but more than that is the need for the ability to uphold the rules (recht, norm). According to Professor Satjipto Rahadjo, rules are spiritual meaning, spirit. While regulations are translations into words and sentences. Reading the law is not wrong, but stopping there can bring disaster. The logic of the regulations is only one. In addition, there is the logic of social propriety (social reasonableness) and there is also the logic of justice[21].

One of the greatness and glory of the judge corps is its ability and sophistication in reading moral rules through moral reading. The way a judge reads the law must be more sophisticated than investigators and prosecutors, because he is the judge who must test all constructions and legal readings from both the prosecutor and the accused. Not only that, to produce a truly weighty and fair decision, the judge must be able to elegantly explore the spirit of the law behind all constructions built by the parties.

In the context of the meaning hunt, judges are required to dig deeper into legal texts to the root of their meaning while testing how far the regulation reaches the case being handled. Borrowing Paul Scholten's paraphrase, judges do not simply apply the law (*wetstoepassing*), but rather carry out *rechtsvinding* (legal discovery). Or as Dworkin said, judges must be able to interpret in an integrated manner[22].

One of the Constitutional Court decisions that reflects an integrated interpretation is Decision No. 97/PUU-XIV/2016. The decision is related to several norms of the Population Administration Law, namely Article 61 paragraph (2) and Article 64 paragraph (5). In the context of the Electronic Population Card (KTP-el), the religious identity of the Belief Adherents cannot be included in the "Data Element Column on Religion", and is only recorded in the population database. The reason is that Belief Adherents are beliefs that have not been recognized as a religion by statutory regulations. For the Court, the a quo provisions contain regulations that are considered discriminatory against the Belief Adherents community (in population administration), along with the accompanying excesses. Therefore, the Court decided: First, Article 61 paragraph (2) and Article 64 paragraph (5) of the a quo Law are declared to be contrary to

[21]Ibid
[22]Ibid

the 1945 Constitution and do not have binding legal force. Second, the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of the a quo Law is declared to be in conflict with the 1945 Constitution and does not have conditional binding legal force as long as it does not include "belief".

Placed in the context of the state and nation, the a quo decision actually does not only benefit the community of Believers in Belief. More than that, the decision also has a broader significance that touches on important issues in the life of the nation and state in Indonesia. One of the significances of the decision is to overcome the harassment of Believers in Belief in God Almighty. If you carefully read the contents of the two articles reviewed, there is a phrase that has nuances of harassment of the community of Believers in Belief in God Almighty, namely categorizing the Believer community as "a religion that has not been recognized by law and legislation". This phrase has the same meaning as saying that Believers in Belief are an unofficial religion, and therefore are not required to receive (proper) legal protection. By maintaining the two provisions of the a quo, Believers in Belief will lose the right to dignity just because they have not been recognized by the state, even though the constitution guarantees that they show their identity or self-respect as they are[23].

The harassment actually touches on issues or rights that are categorized as absolute basic human rights because they are in the forum internum which is a manifestation of inner freedom (freedom to be) so that it is included as a non-derogable right. This means that the right to religious belief is a right that is specifically stated in the human rights agreement.

human and constitutional rights as rights that cannot be postponed by the state in any situation and condition, including during times of danger, such as civil war or military invasion. The right to religious belief is not the domain of the forum externum which can be limited, taking into account the principles of necessity and proportionality.[24].

Therefore, the Court's decision to annul the two a quo provisions is very significant to overcome state harassment (using the law) against a group of residents or citizens. Steps to stop harassment like this are very important for the interests of national unity. The basic norms regarding national life, according to the constitution, are: The state protects the entire Indonesian nation and all of Indonesia's territory based on unity. The key word here is, protection of all children of the nation within the framework of unity.[25].

This has two implications. First, there should be no legal rules that allow harassment of a group of people, and there should also be no baseless privileges

[23]23Bernard L. Tanya and Theodorus Yosep Parera, Op.cit
[24]Ibid
[25]Ibid

for a particular group/group, including hidden privileges in any case. All legal instruments that regulate matters related to national life must be a glue between elements of the nation in the spirit of shared destiny and peaceful coexistence. The principle of protective justice *(iustitiaprotectiva*) as intended by Helmut Coing, must be the core of legal ideals in this field. The law must provide a living, encourage equality, and maintain security for all elements of the nation regardless of social, ethnic, cultural, political, religious, and economic status.

Second, the people scattered from Sabang to Merauke must be respected and their diversity protected. Clifford Geertz called Indonesia a "new nation" consisting of thousands of "old communities". Thousands of old communities then wanted to unite politically in a "new nation" and "new country" called Indonesia.[26].

The diversity that exists cannot be forced to be uniform through any category of unity, let alone primordial ones. The reason is, each group has self-esteem and identity that cannot be underestimated and forced to merge into certain primordial uniformity categories. Indonesian unity will be strong if each group respects each other, when one does not feel more special than the other,

when each understands each other's unique needs, when one appreciates the other's strengths, also when one empathizes with the other's shortcomings, and when each respects each other's identities and differences. The end result is solidarity, brotherhood and a sense of shared destiny and suffering. Only then can the "Indonesian house" become the "common home" of this pluralistic and diverse nation.[27].

It is a big gamble, if the "Indonesian house" - a place with more than two hundred million inhabitants who are so diverse in terms of geography, ethnicity, social, cultural composition, economic adaptation, social structure, and political system - who want to live in peace, tranquility, and prosperity, is then allowed to be managed unfairly, discriminatively, and sectarianly.[28].

We have Pancasila which provides an ontological framework, normative framework, and operational framework to manage a harmonious life as a nation, as a state, and as a society of the Indonesian nation-state. In my opinion as a legal scholar, Pancasila as a basic norm, actually surpasses Kelsen's Grundnorm, surpasses Radbruch's finality of justice, and surpasses the teachings of classical natural law (Thomas Aquinas' version) as well as the teachings of modern natural law (Grotius' version). Not only that, it also surpasses Savigny's Volksgeist and

[26]Ibid
[27]Ibid
[28]Ibid

Luijpen's critical norm. What is very lacking from us as the owners of Pancasila is the reluctance to implement it because of narrow interests.[29].

3.2. Strengthening Recruitment Patterns

The recruitment pattern of constitutional judges will more or less determine the ability of the Constitutional Court to carry out the major tasks it is entrusted with. First, the recruitment pattern of constitutional judges must be a pure ability selection process carried out by an independent scientific institution (without involving political institutions). The involvement of political institutions in the recruitment of constitutional judges not only has the potential for political intervention in the judicial field, but can also reduce the scientific quality needed by the Constitutional Court as an interpreter of the constitution.

Second, constitutional judges must be recruited from various legal disciplines. This is related to the legal material to be reviewed which covers various legal fields. It is difficult to imagine judges who only have expertise in one legal field being able to adequately and proportionally review other fields that are not

mastered. The task of interpreting the constitution is not only a matter of "testing the suitability" of the law to the constitution in a formal-legalistic manner according to rationalist reasoning alone, but also the wisdom of delving into the spirit and rules behind the law being reviewed and the constitution itself, both constitutive and contextual. This is an important prerequisite, in fact very important for the birth of "correct", "good", and "right" decisions.

Third, the judges recruited must also consider the philosophical orientation of the law they adhere to. The wealth of values in the constitution and the desire to present justice will be difficult to realize if only left to jurists who are only fanatical about one school of thought. As is known, in addition to schools of thought that are droctinal in nature such as legalism, legal positivism or Ideenjurisprudenz, and rechtsdogmatiek or analytical jurisprudence, there are also schools of thought that are more teleological and contextual such as the school of natural law (with all its variants), Frei Rechtslehre, Interessenjurisprudenz, Sociological Jurisprudence, Realistic Jurisprudence, and Responsive Law and Progressive Law which are now increasingly prominent.

In other words, to interpret the constitution that is simultaneously 'correct', 'good', and 'appropriate', it requires a constitutional judge who has a variety of perspectives. In capturing the normativeness of the constitution and the reviewed law, it is not only based on the formal-legalistic aspect as in the rechtsdogmatiek view, but must also capture the summum bonum (virtue) contained in the regulation.

[29]Ibid

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3.3. Expand Authority

In order to explain the ideals of law, strengthen the foundations of the rule of law, protect the constitutional rights of citizens, and protect constitutional democracy, the Constitutional Court needs to be given strategic powers. First, the Constitutional Court needs to have the authority to review all types of legislation outside the constitution. This is important in the context of legal harmonization, both in terms of content and spirit. The separation of judicial review powers between the Constitutional Court and the Supreme Court is the main obstacle for the Constitutional Court in realizing legal harmonization. It is difficult to understand why there is a separation of judicial review powers over legislation outside the constitution between the Supreme Court (for regulations below the law) and the Constitutional Court (for the law). In addition to being contradictory to the concept of the right to test itself, it also does not fit with the formal and horizontal separation of power system which prioritizes the checks and balances mechanism that has been adopted by the amended 1945 Constitution. In this context, the separation between the material of the law and the material below the law should not be done.[30].

In order to ensure the constitutionality of all laws and regulations, the Constitutional Court should be given dual authority, namely in addition to judicial review of all regulations outside the constitution including MPR products, also the authority to provide opinions on all bills and materials for amendments to the Constitution. With this authority, several benefits can be achieved at once:

• It is possible to create legal harmonization both concerning its content and spirit,

• Prevent substantive conflicts between regulations under the law reviewed by the Supreme Court and the law reviewed by the Constitutional Court.

• By submitting judicial review of all laws and regulations to the Constitutional Court, the Constitutional Court can concentrate more on handling issues of justice and injustice for citizens, while the Constitutional Court guarantees the constitutionality of all laws and regulations.

• The takeover of this authority by the Constitutional Court can reduce the burden on the Supreme Court in handling conventional cases.

Second, the Constitutional Court needs to be given the authority to handle disputes, both between state institutions and regional institutions. The current authority of the Constitutional Court only concerns disputes between state institutions, not covering disputes involving regional institutions with central institutions, disputes between regional institutions, between regions and the

[30]Jimly Asshiddiqie, Consolidation of the UUD'45 Manuscript After the Fourth Amendment, Jakarta: Center

center, and disputes between one region and another. This is actually very crucial for the Constitutional Court to handle, because the current implementation of regional autonomy allows for the occurrence of the above conflicts—which can directly or indirectly threaten the integration of the state and nation.

Third, the authority of judicialization of politics that is in the Constitutional Court needs to be more comprehensive. In terms of impeachment, the authority that the Constitutional Court currently has only concerns the President and Vice President, and not all state institution officials. Its decisions are merely "recommendations" for the MPR. The shadow of parliamentary power (MPR) is still very strong. This will certainly give rise to political supremacy above the law—which in principle violates the principles of constitutional democracy as adopted in Article 1 paragraph (2) of the 1945 Constitution.

At the same time, it is not excessive, especially in the context of Indonesia's current and future needs. In other countries such as the Slovak Republic, Slovenia or South Africa, in addition to having the authority related to the interpretation of the constitution.

The country also has the authority to test the constitutionality of legal regulations issued by the regional or federal government. In addition, there is also the authority to adopt international agreements into the constitution, including the issue of adjusting international agreements, both those that are still in process and those that have been ratified, with the constitution.

In South Africa, Lithuania, and Federal Russia, the Constitutional Court is authorized to test the constitutionality of the actions of executive, legislative, and judicial power holders. In Germany, the Constitutional Court can also handle the dismissal of judges, both central and regional, and try violations of basic rights. Meanwhile, in Thailand, the Constitutional Court has the authority to assess the qualifications of members of parliament, the senate, ministers, and high-ranking state officials. In Maldova, the Constitutional Court has the task of giving opinions on constitutional amendments, as well as determining the unconstitutionality of Supreme Court decisions. Meanwhile, in France, the Constitutional Court is tasked with ensuring the implementation of referendums.

Fourth, the authority of constitutional control over parliamentary activities. This is important, because through the amendment of the Constitution, the parliament (DPR) becomes a state institution with enormous power exceeding other institutions. Without adequate constitutional control, it will inevitably give birth to parliamentary tyranny, for three reasons. The first reason, for now, there is no institution or legal and political mechanism that is specifically prepared to control parliamentary activities in exercising the great power in its hands. In the

logic of constitutionalism[31], great power as possessed by parliament must be followed by great and strict control to prevent arbitrariness. The second reason, explicitly or implicitly, some of the powers possessed by parliament penetrate into the executive and even judicial areas. Without adequate constitutional control, not only is it impossible to guarantee that the implementation of checks and balances between state institutions will run well, but it also has the potential to give rise to parliament heavy in the true sense[32]. And the third reason, the monopoly of legislative power in the hands of parliament, requires constitutional control in order to maintain the constitutional dignity of the law, both in terms of content and direction of legal politics.

3.4. Strengthen Professionalism

This capital is needed because the task of enforcing the law is a task full of challenges and temptations. In the entire process, it not only requires precision, but is also very full of temptations. There is the temptation to abuse power, because law enforcement officers hold great power, including technically manipulating articles and verses of the law. There are also many temptations of money, as well as offers of nepotism and collusion, because people tend to seek safety when dealing with the law.

By definition, professionalism assumes at least four things. First, a professional works based on very high and special expertise. Second, a professional is also sworn to be able to work based on noble intentions and refrain from using his expertise for evil. Third, a professional has an abundance of honor (honor, honoraria), and refrains from lowering the dignity of his profession. Fourth, a professional works based on ethical rules that are organized in the form of a code of ethics.[33]33. Commitment and responsibility to carry out duties while adhering to professional norms is what we hope will become the basic moral in law enforcement.

Professionalism should be an idealism. From there, people talk, for example, about commitment to justice, anti-evil, pro-truth, never deceiving oneself, never

[31]Constitutionalism as a doctrine has a number of imperatives, including: (1). All political power must be subject to the law. (2). Guarantee and protection of human rights. (3). Free and independent judiciary, (4). Public accountability, as the main pillar of people's sovereignty. These four principles are the "mascot" of a constitutional government.

[32]Symptoms of the continued strength of the MPR's supremacy can be seen, for example, from its significant role in determining the decision to dismiss the President, even though there has been a recommendation from the Constitutional Court.

[33]Soetandyo Wignjosoebroto, 2006, "The Realization of an Independent Judiciary with Professional and Impartial Judges", Lecture and discussion paper on "Criteria and Definition of Judges in Philosophical, Sociological and Legal Perspectives" held in the framework of the National Seminar with the theme "Problems of Law Enforcement Supervision in Indonesia" held by the Judicial Commission and PBNU-LPBHNU in Jakarta, September

harming others, never acting corruptly and so on. It becomes a moral foundation and at the same time a guide to the mission that must be realized.

Without idealism, the law is easily twisted and diverted into a tool of crime. Without the guidance of idealism, the law can be used for evil purposes and goals. Marx, when he labeled the law as an evil thing, did so precisely because the law was managed in the absence of idealism and "chose" to become a servant of capital. The courts became a platform for oppression (the strong trying the weak) precisely because the law was implemented without idealism. Likewise, officials and legal institutions always fall into the mafia, precisely because there is no idealism.

3.5. Strengthen Accountability

Accountability is the capital needed in law enforcement. This is related to the nature of law as a relatively closed system building. It has a special logic, has a specific way of working, special procedures, special meanings, and is run by special institutions that are not easily controlled freely and openly by everyone.

In simple terms, accountability is a weighty responsibility. An action, for example, must be accountable,

starting from the question of validity, reasons, to the question of the accuracy and normality of the steps taken. Why, for example, were certain steps taken and not others. Why did it take a month, and not a week. Why was A detained, and not B, even though both were in the same position. Why was the charge against the defendant five years, and not four years. Why was the sentence imposed two years, and not three years. And so on.

Accountability, does not recognize pretense and manipulation. Accountability demands open explanations, makes sense, supported by evidence, accepted by reason, clear normality and abnormality. It is not enough with normative answers/explanations. Also, logical deceptive arguments called ignoratio elenchi are not valid.

Without accountability, almost all stages and phases in the legal process will be felt as a dark, gripping and mysterious tunnel, so that those seeking justice will be haunted by anxiety, fear and uncertainty.[34]. Without accountability, the legal process will be passed through trial and error, speculation, gambling, and luck. At the worst end, this kind of atmosphere opens up bargaining space and is easy for mafia to enter.[35].

Accountability is the disclosure of the normality of something in its entirety, both in terms of its validity and in terms of urgency and necessity, as well as its

[34]Bernard L. Tanya, Loc. cit
[35]Ibid

benefits and implications. That way, everyone can reasonably reason the logical flow and normality of an action or decision.

Control through accountability, not only warns the apparatus against the possibility of wrong policies or wrong actions (sin of commission), but also shows what should be done but is not done (sin of omission). It is the task of the accountability assessor to qualify whether something should be done, or should not be done, or even should not be done at all.

Many problems can be solved relatively effectively and efficiently, if only accountability is used as a control tool for the quality of the apparatus' work. We do not have to spend budget and energy to form supervisory commissions for law enforcement agencies, if only accountability is strictly implemented. It is hard to imagine manipulation occurring freely (with any motive), if every step at every stage in the legal process is tested for its accountability. By strictly detecting the accountability of every step taken, not only can the quality of the apparatus' work be guaranteed, but also the opportunity for manipulation becomes very small.

3.6. Strengthen Burden of Proof

Burden of proof must be a moral capital for constitutional judges. In the field of ethics, burden of proof refers to the burden that must be borne by someone who acts below the standard norms of obligations or duties that they carry. For example, the norm: "do not act discriminatively against anyone". Once you give someone privilege, then at that moment you are subject to the burden of proof. You are obliged to provide evidence and reasons that are quite basic about why you did the "below standard" action.

If your actions are based solely on considerations of like or dislike or on trivial considerations, then you are ethically reprehensible. But if it is done on the basis of unavoidable urgency, for example, then you are morally tolerated. A person who is seriously injured and critical in an accident, of course, must be helped first rather than a friend who at the same time asks to be taken to the doctor because of the flu. In short, we must be able to show the "normality" of the "abnormality" of our actions.

The same principle, without exception, also applies to law enforcement officers. In accordance with the professional standards as judges, it is mandatory for them to work according to the quality standards of expertise, namely using normative reasoning, principled reasoning, legal doctrine reasoning, and justice doctrine reasoning, in assessing, selecting, and determining something as something important and relevant or something unimportant and irrelevant for the purposes of proving a legal case. All work results that do not reflect the quality of such expertise are automatically subject to the burden of proof. If without a

fundamental reason, then "substandard results" will result in professional sanctions.

3.7. Strengthen the Honeste Vivere Culture

Honeste vivere (living honorably) is worthy of being used as moral capital. The task of a constitutional judge is an honorable task (nobilis). Living honorably means being able to maintain integrity, being loyal to duty, being sensitive to responsibility, not being corrupt, and so on. Therefore, a constitutional judge must be an Aristotelian who is able to act firmly: *Amicus Plato sed magis amica veritas* (Plato is my friend, but I am more friendly with the truth). Law enforcement officers must not be tempted by the jargon of politicians: anything, but the whole truth. Instead, they must adhere firmly to the sacred creed of law: nothing, but the whole truth.

By being able to live honorably/maintain integrity, their presence is dreamed of by justice seekers. They do not need bribes to get justice.

Access to justice through law is not hindered by corrupt actions. The legal process is fair without manipulation. And that, indirectly, has acted fairly to those seeking justice. By not doing otherwise, the rights of others are served, their interests are not harmed, and social order is well maintained. All forms of crime are actually a real manifestation of dishonorable living—which means injustice to others and social order.

Whether or not all of these moral capitals function is determined by the degree of moral awareness possessed by the judges. This is where the real problem lies. In general, the dominant morality in our society (including the elites) is pre-conventional morality. Following Lawrence Kohlberg's logical explanation[36], pre-conventional morality is characterized by two things: (i). Obedience because of fear of punishment, and (ii). Obedience because of profit-loss motives. This is the basic explanation for why "whistle blowers" from among the elite rarely appear. Even if they become justice collaborators, it is more because of coercion, either because they cannot deny the evidence, or because they are hurt by their friends. Generally, they sing about a case, after feeling abandoned or disappointed because of an inappropriate distribution of rations. Exposing corruption is not because of the desire to save state money, but because they do not get the appropriate ration.

This kind of social moral reality actually explains enough why, for example, the elites are easily involved in mafia networks. Likewise, law enforcement in this country has never been optimal, even every time it causes widespread

[36] Kohlberg mentioned six types of human ethical awareness (moral gap). The first stage is the pre-conventional morality stage, the second stage is conventional, the third stage is post-conventional. Each stage consists of two levels (Kohlberg's full review, read The Philosophy of Moral Development, San Fransisco, Herper and Row, 1981)

disappointment. The rules are so abundant, various supervisory institutions are formed, but corruption and mafia practices are growing. The key word is, because our ethical awareness is still at the pre-conventional/very low stage.

The responsibility to fight for maximum law enforcement requires a higher moral basis than just children's morality. The morality in question, according to Kohlberg, is called adult morality. Adult morality is morality that is already at the conventional and post-conventional stages. Unlike pre-conventional morality that is self-centered, conventional morality is more oriented towards conventions, principles, and laws. Not committing corruption is not because of fear of being hunted by the Corruption Eradication Committee, but rather because such acts are prohibited and forbidden by law. Laws and norms are the only measure of the actions of people who are already at this level of conventional morality.

In theory, this kind of morality is enough for normal law enforcement. In the hands of those who are at this level, the law is carried out straight as it is. They are people who obey the principles, and are not easily compromised and play crazy with the law. This morality is very rare in this country, so that the face of our law is so bad.

4. Conclusion

Building a strong Constitutional Court (MK) cannot be separated from the recognition of the existence of the Constitution and Constitutionalism. The Constitution and Constitutionalism are two concepts that were born in the midst of human struggles facing power from time to time. Theoretically, there are a number of motives that can be seen as the basis for the need for a constitution. One that is very prominent is the desire to guarantee the basic rights of the people and control state power. This motive actually stems from the understanding that the state, as Weber said, is an "institution" that (successfully) has a legal monopoly to use/impose its power on other parties in a particular country. Strengthening the Constitutional Court is necessary so that this institution can effectively carry out its constitutional duties such as being a guardian and interpreter of the constitution, protector of human rights, protector of citizens' constitutional rights, and protector of constitutional democracy. There are 7 (seven) aspects that need strengthening: (1). Strengthening Lawyer Statesman, (2). Strengthening the pattern of judge recruitment, (3). Expanding Authority, (4). Strengthening Professionalism, (5). Strengthening Accountability, (6). Strengthening Burden of Proof, (7). Strengthening the Culture of Honesty Vivere.

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