

KONSTITUSI DAN KONSTITUSIONALISME INDONESIA

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Konstitutionalisme

- Isme
- Abstrak



Konstitusi

- Dokumen
- Praktik

CONSTITUTIONALISM (Paul Craig)

- Can be used to refer to the **philosophical issues that surround the existence of constitution**. Why constitution is legitimate, why it is authoritative and how it should be interpreted?
- Descriptive. Which a particular **legal system** does or does not possess the features associated with a constitution.
- The constitution assign ultimate power to the people by way of elections. **Power is only lawful if it conforms with precepts of the constitution**. Those will be policed by a special constitutional court.
- Public Law. It is used to cannote not wheter a legal system has the features of the constitution, but also the axtent to which it satisfies desirable precepts of **good governance**. **Accountability of government and human rights**.

KONSTITUSIONALISME

- NILAI, IDEOLOGI, PEMBATASAN KEKUASAAN
- KARAKTER SISTEM HUKUM NASIONAL
- KARAKTER BERNEGARA
- SUPREMASI KONSTITUSI
- GOOD GOVERNANCE AND HUMAN RIGHTS

C.F. Strong:

Konstitusionalisme Yunani Kuno → negara kota, direct democracy.

Konstitusionalisme Romawi → monarchi, republic, aristocracy.

Konstitusionalisme Abad Pertengahan → feudalisme, imperium.

Konstitusionalisme Renaissance → enlightened despotism.

Konstitusionalisme Modern → national, democratic.

AKAR SEJARAH

- YUNANI KUNO: Pembatasan dalam bentuk pemikiran tujuan negara dan pilihan bentuk pemerintahan

Tujuan negara: “not merely to make life possible but to make life good”.

Aristoteles → Polity, a type of middle class gov.

Plato → Aristocracy of political intellect.

AKAR SEJARAH

- ROMAWI: Dokumen hukum dan pembentukan lembaga perwakilan

Tahun 500 SM muncul elemen demokrasi sebagai akhir pertarungan antara Patricians dan Plebesians (Senate and Tribunes).

Kodifikasi Hukum Romawi → the supreme legislative authority still rested with the Roman people.

AKAR SEJARAH

- PERTENGAHAN: Nasionalisme

Pecahnya imperium romawi.

Munculnya kekuasaan gereja, tetapi terdapat tuntutan nasionalisme. Joan of Arc → France for the French.

Penyatuan Aragon dan Castile menjadi kerajaan Spanyol.

AKAR SEJARAH

- RENAISSANCE: Nasionalisme, parlemen, pemisahan kekuasaan.
- ABAD 18: Nasionalisme

AKAR SEJARAH

- ABAD 19:
- Nasionalisme → Konstitusi sebagai dokumen pembentukan negara baru.
- Demokrasi perwakilan.
- Supremasi konstitusi.
- Jaminan Hak Asasi Manusia
- Pemisahan Kekuasaan.

KARAKTER KONSTITUSIONALISME MODERN

- PEMBATASAN KEKUASAAN
- NASIONAL
- DEMOKRATIS

KONSTITUSIONALISME MODERN

CJ Bax dan van der Tang:

1. A state must be founded upon law. Power exercised within state should conform to definite legal rules and procedures.
2. Institutional structure of gov. should ensure that power resides with, or is divided among, different branches which mutually control their exercise power and which are obliged to co-operate.
3. The relationship between the government and the individual members of society should be regulated in such manner that it leaves the latter's basic rights and freedoms unimpaired.

KONSTITUSIONALISME MODERN

- By creating basic principles of justice and individual rights policed by court who independent of government.
- By splitting up power between different government bodies to ensure that no one person has too much power.
- By adopting representative institutions of government that chosen and can be remove by the people.
- By providing for direct participation by the people in the process of government decision-making.

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NILAI - IDEOLOGI

- Konstitusi sebagai produk peradaban → perkembangan pemikiran bernegara dan hukum.
- Dokumen Konstitusi

UUD 1945



Preamble

Pasal - Pasal

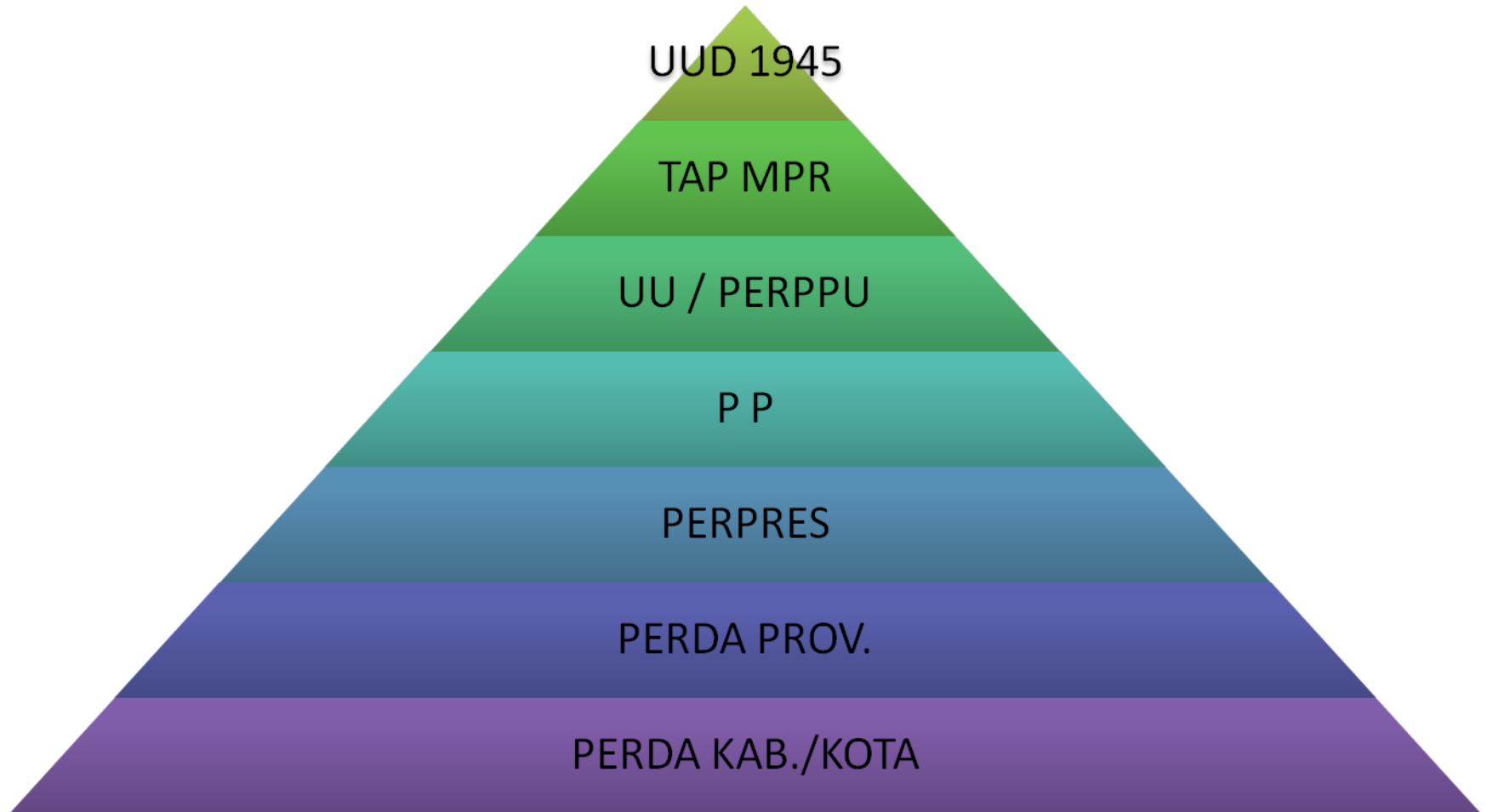
PREAMBULE

- TUJUAN BERNEGARA
- CITA BERNEGARA (STAATSIDEE)
 - Persatuan
 - Demokrasi
 - Negara hukum
- DASAR BERNEGARA (PANCASILA)

PASAL - PASAL

- Prinsip Penataan organisasi negara dan penyelenggaraan negara
 - Negara Hukum
 - Negara Demokrasi
 - Republik
 - Supremasi Konstitusi
 - Negara Kesatuan
- Penataan Organisasi negara
 - Presidensial
- Arah penyelenggaraan negara
 - Politik
 - Ekonomi dan Kesejahteraan
 - Agama, Budaya
 - Pertahanan dan Keamanan
- Jaminan hak asasi manusia

PIRAMIDA REGULASI



TERIMA KASIH