

# Law, Ethics, and Constitutional Morality: Lessons from Indonesia and the United States of America

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**ABSTRACT:** This study examines the development of legal reforms in strengthening constitutional morality, constitutional ethics, and the rule of law in Indonesia and the United States, with an emphasis on the different approaches taken by the two countries based on their respective legal systems. This research is normative legal research with a conceptual, comparative, and legislative approach. The research findings confirm that in Indonesia, constitutional morality and ethics are considered to require special regulation in law as a formal effort to provide legitimacy and normative binding force within the national legal system, given that these values have not yet become naturally ingrained outside of written rules. Conversely, in the United States, the strengthening of constitutional morality and ethics is more often realised through judicial mechanisms, specifically through the dynamic and responsive rulings of the Supreme Court, where judicial review serves as the primary instrument for interpreting and enforcing moral and ethical values as an integral part of living legal practice. This study confirms that the effectiveness of legal updates in strengthening constitutional morality and ethics is highly dependent on the foundation of each country's legal system. Therefore, Indonesia needs to focus on strengthening legal formality, while the United States utilises the strength of its judicial institutions as guardians and developers of ethical and moral values within the constitution. This finding confirms the importance of contextual legal updates as key to making constitutional morality and ethics not just normative concepts, but practically realised in national life in order to achieve clean, democratic, and just governance.

**KEYWORDS:** Constitution; Ethics; Law; Morality.



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## I. INTRODUCTION

A country's constitution cannot be fully understood if viewed merely as a collection of written norms contained in the state's formal documents and basic laws. Instead, it must also encompass a broader dimension that includes constitutional morality and constitutional ethics, both of which underlie and animate the fundamental values in the written text.<sup>1</sup> A country's constitution cannot be fully understood if viewed merely as a collection of written norms contained in the state's formal documents and basic laws. Instead, it must also encompass a broader dimension that includes constitutional morality and constitutional ethics, both of which underlie and animate the fundamental values in the written text.<sup>2</sup> One important aspect of understanding a constitution is constitutional morality, which encompasses the principles of justice, truth, and propriety that inform the spirit of constitutional rules. This ensures that the constitution is not merely a collection of mechanistic and rigid legalistic norms, but also a document capable of reflecting the noble will of society and the ethical aspirations that must be maintained and realised in the practice of governance of a country.<sup>3</sup>

This constitutional morality then transforms into constitutional ethics, which is closely related to the behavior and attitudes of state actors, including the drafters, interpreters, and implementers of the constitution. They must uphold the values of honesty, responsibility, and integrity in carrying out their constitutional functions, so that they are not only formally compliant with the text but also maintain the spirit and primary purpose of the rule itself.<sup>4</sup> In various countries undergoing democratisation,

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<sup>1</sup> Mei Susanto et al, "Should the Muslim President become a constitutional convention in Indonesia? Based on constitutional debates about Islam and state, and the constitutional practice" (2023) 9:1 *Cogent Social Sciences* 3–4.

<sup>2</sup> Vicki C Jackson, "Holistic interpretation and the interdependence of constitutional structures and rights: an essay in honor of Cheryl Saunders" (2024) 2:2 *Comparative Constitutional Studies* 196–217.

<sup>3</sup> Hananto Widodo Dicky Eko Prasetio, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi" (2022) 4:1 *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 2.

<sup>4</sup> Harid Fendra, Indah Adi Putri & Ria Ariany, "Analisis Dampak Putusan Mahkamah Konstitusi Terhadap Etika Penyelenggara Pemilu" (2022) 2:3 *Journal of Social and Policy Issues* 121.

the practice of constitutional ethics is fundamentally aligned with the understanding of the constitution. Thus, a country's written constitution will be comprehensively practiced in society when constitutional ethics has become a common understanding or part of community life. Nevertheless, in many countries around the world, the understanding of constitutional morality and constitutional ethics is becoming increasingly minimal, especially when the constitution is often used as a "plaything of power" and is imprisoned in the substance of the written constitution alone.

Some of these practices occur in countries such as China, which amended its constitution to ensure that Chinese President Xi Jinping could lead for longer, even for life.<sup>5</sup> Similar to China, in Russia there are also efforts to revise various laws and regulations, including the constitution, to ensure that Russian President Vladimir Putin can continue to lead Russia, even until 2036.<sup>6</sup> Another practice also occurs in Belarus, where changes to the law are specifically aimed at granting the Belarusian President, Alexander Lukashenko, immunity from criminal prosecution and the ability to rule indefinitely in Belarus.<sup>7</sup> These examples demonstrate a distortion of the constitutional text, often manipulated or even revised solely for the narrow interests of power. This confirms that in recent developments, constitutional morality and constitutional ethics are increasingly marginalised and even considered unimportant.

This research analyses constitutional morality, constitutional ethics, and constitutional law (written constitutions) and their relationship to democracy, with a focus on Indonesia and the United States. The focus of analysis in Indonesia and the United States is based on at least two main reasons: first, the reason for comparison between developed and developing countries or global south countries, where Indonesia can be said to represent a developing country or global south country, while the United

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<sup>5</sup> Huw McKay, "China's Strategic Pursuit under Xi Jinping and the New Era" in *The Strategic Logic of China's Economy Contributions to Economics* (2024) 259.

<sup>6</sup> Fatimatuz Zakiya Makmun & Sholahuddin Al-Fatih, "Extension Time Presidential Office Through Delay General Elections in A Constitutional Democracy Perspective" (2023) 4:3 *Audito Comparative Law Journal (ACLJ)* 118–133.

<sup>7</sup> Anton Liavitski, "Negotiating Democracy: A Genealogy of Presidential Power in Belarus, 1991–1996" (2025) 77:6 *Europe-Asia Studies* 895–918.

States can be said to be a developed country, where this will comprehensively analyse whether there is a relationship between the status of developed and developing countries with the implementation of constitutional morality, constitutional ethics, and constitutional law (written constitution) in a country. Second, the analysis focusing on Indonesia and the United States is also intended to see the development of the ideas of constitutional morality, constitutional ethics, and constitutional law (written constitution) in countries with different legal systems, namely Indonesia, which is a country with a "dominant" civil law system, and the United States, as a country with a common law system.

This research aims to analyse constitutional morality, constitutional ethics, and constitutional law (written constitution) and their relationship to democracy, focusing on analysis in Indonesia and the United States. There are two legal issues addressed in this research: (i) the development of the regulation and practice of constitutional morality, constitutional ethics, and law in Indonesia and the United States, and (ii) legal reform in strengthening constitutional morality, constitutional ethics, and law in Indonesia and the United States

## II. METHODS

This research is a normative legal study focusing on constitutional morality, constitutional ethics, and constitutional law (written constitution) and their relationship to democracy, with a focus on analysis in Indonesia and the United States. The characteristic of normative legal research is a doctrinal study of legal documents, which in this case are the constitutions of Indonesia and the United States.<sup>8</sup> The primary legal materials used in this research are the written constitutions of Indonesia and the United States. The secondary legal materials used are journal articles, books, and research findings that discuss the constitution, constitutional ethics, and constitutional law, particularly in Indonesia and the United States. The non-legal material is a legal dictionary. The approaches used are conceptual, comparative, and statutory approaches. The collected legal

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<sup>8</sup> Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law" (2016) 8:3 *Erasmus Law Review* 130–138.

materials are then analysed and adjusted to the legal issues to then formulate a prescription or what should be done to realise legal reform as the main solution of this research.<sup>9</sup>

### III. DEVELOPMENT OF THE REGULATION AND PRACTICE OF CONSTITUTIONAL MORALITY, CONSTITUTIONAL ETHICS, AND LAW IN INDONESIA AND THE UNITED STATES

The constitution, as the main foundation of state governance, has received various profound definitions and characterisations from a number of leading constitutional law experts. According to K.C. Wheare, the constitution is seen as a set of fundamental rules that establish the basic structure of a country's government and limit the powers of state institutions so that power is not abused, with special emphasis on the function of separation of powers. Thus, the constitution is not merely a collection of ordinary legal norms, but a framework that regulates how the government must operate systematically and organised.<sup>10</sup> C.F. Strong highlights the characteristics of a constitution by asserting that it is not only a written document, but also includes conventions, political practices, and unwritten norms that support the continuity of the system of government. Therefore, according to him, a constitution is a unified set of principles that governs the pattern of organising power, both formally and substantively, with a degree of flexibility that allows it to adapt to socio-political developments without losing its authority as the supreme law of the land.<sup>11</sup> David A. Strauss also offers a more contemporary and theoretical perspective by defining the constitution as a basic rule that has a unique character because it not only functions as a legal instrument but also

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<sup>9</sup> Wibren Van Der Burg Taekema, Sanne, *Contextualising Legal Research: A Methodological Guide* (Edward Elgar Publishing., 2024).

<sup>10</sup> Uwomano Benjamin Okpevra, "A Critique of Nigerian Federalism and Need for Restructuring Towards Achieving Vision 2030" (2021) 14:2 Fudan Journal of the Humanities and Social Sciences 265–284.

<sup>11</sup> Fradhana Putra Disantara Dicky Eko Prasetyo, *Politik Hukum Pengujian Formil Terhadap Perubahan Konstitusi* (Majelis Permusyawaratan Rakyat dan Laboratorium Hukum Tata Negara, Fakultas Hukum, Universitas Surabaya, 2021).

as a political document that includes continuous interpretation through the role of judicial institutions, especially the constitutional court, which is tasked with interpreting and adapting the constitutional regime to the challenges of the times. He emphasises the importance of a "living constitution" that is dynamic and constantly evolving, and not just a static text.<sup>12</sup> Overall, these three views provide a picture of the constitution as a complex legal entity with the characteristic of having the highest legal status, but at the same time having political and moral dimensions that allow the constitution to be the basis of legitimacy of power as well as a means of protecting the rights and freedoms of citizens within the framework of a democratic rule of law.

Understanding the constitution is not enough only by relying on an understanding of the written constitution as a formal legal document containing a collection of norms and basic rules for the administration of the state, because in reality the constitution has a broader and deeper dimension that includes unwritten aspects that often become an essential foundation in ensuring the continuity and effectiveness of the state system.<sup>13</sup> One of these important aspects is constitutional morality, which refers to the moral values and ethical principles inherent in the spirit and purpose of the constitution that are not always explicitly expressed in the written text, but form the soul and essence of the constitutional rules themselves. Thus, constitutional morality acts as a director and controller so that the application of basic law is not only mechanistic and legalistic but also upholds justice, equality, and respect for human dignity, which becomes the basis for the legitimacy of these norms. This constitutional morality contains universal values such as honesty, responsibility, and fairness that must be upheld by the makers, interpreters, and implementers of the constitution in every state policy and action, so that it not only upholds the written positive law but also maintains the spirit and noble

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<sup>12</sup> Jacob Lamb, Charles M and Neiheisel, Jacob and Neiheisel, "The Supreme Court, Constitutional Development, and Evolution Theory: A Critique" (2024) 99:5 Indiana Law Journal 5–7.

<sup>13</sup> Luka Burazin & Giovanni Battista Ratti, "Rule(s) of Recognition and Canons of Interpretation" in *Judges and Adjudication in Constitutional Democracies: A View from Legal Realism* (2021) 3.

aspirations of the nation contained therein.<sup>14</sup> Therefore, the unwritten constitution in the form of morality bridges the gap between rigid legal norms and dynamic political and social realities, allowing the constitution to remain relevant and adaptive to changing times without losing its authority and binding force.

Understanding the constitution must also include other aspects of the unwritten constitution such as customs, political practices, and conventions that become complementary instruments that regulate the behavior of political actors and state institutions in carrying out state functions, so that the entire constitutional system becomes a harmonious unity between written rules and ethical values as well as political practices that underlie the enforcement of law and democratic governance.<sup>15</sup> A holistic understanding of the constitution demands awareness that the success of the state system not only relies on formally written legal norms, but also greatly depends on constitutional morality, which becomes the spirit, and constitutional ethics, which become the guidelines for the behavior of state officials. Thus, the constitution is able to guarantee a balance between power and freedom, between law and justice, and become a lens that filters every policy so that it is in harmony with the values of humanity and the common good within the framework of a civilised and just rule of law.<sup>16</sup>

Understanding the constitution is not enough only by relying on an understanding of the written constitution as a formal legal document containing a collection of norms and basic rules for the administration of the state, but also understanding constitutional morality. Constitutional morality refers to the moral values and ethical principles inherent in the spirit and purpose of the constitution that are not always explicitly expressed in the written text, but form the soul and essence of the constitutional rules themselves. Thus, constitutional morality acts as a

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<sup>14</sup> A Raghuwanshi, "The Many Interpretations of Constitutional Morality" (2025) 12:2 Kutafin Law Review 407–427.

<sup>15</sup> Dicky Eko Prasetyo, Muh Ali Masnun & Noviyanti Noviyanti, "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective" (2025) 7:1 Jambura Law Review 176–196.

<sup>16</sup> Harmoko M Said, "Menggagas Peradilan Etik Penyelenggara Negara Di Indonesia" (2021) 27:1 Sasi 24–37.

director and controller so that the application of basic law is not only mechanistic and legalistic but also upholds justice, equality, and respect for human dignity, which becomes the basis for the legitimacy of these norms.<sup>17</sup> This constitutional morality contains universal values such as honesty, responsibility, and fairness that must be upheld by the makers, interpreters, and implementers of the constitution in every state policy and action, so that it not only upholds the written positive law but also preserves the spirit and noble aspirations of the nation contained therein.<sup>18</sup> Therefore, the unwritten constitution in the form of morality bridges the gap between rigid legal norms and dynamic political and social realities, allowing the constitution to remain relevant and adaptive to changing times, so that the entire constitutional system becomes a harmonious unity between written rules and ethical values as well as political practices that underlie the enforcement of law and democratic governance.<sup>19</sup>

A holistic understanding of the constitution demands awareness that the success of the state system not only relies on formally written legal norms, but also greatly depends on constitutional morality, which becomes the spirit, and constitutional ethics, which become the guidelines for the behavior of state officials. Thus, the constitution is able to guarantee a balance between power and freedom, between law and justice, and become a lens that filters every policy so that it is in harmony with the values of humanity and the common good within the framework of a civilised and just rule of law. George Grote made an important contribution to the in-depth understanding of the constitution, especially the concept of constitutional morality, which is based on the history of Athenian democracy under the rule of Cleisthenes.<sup>20</sup> According to Grote, constitutional morality is an absolute respect for the norms and

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<sup>17</sup> Nakul Nayak, “Constitutional Morality: An Indian Framework” (2023) 71:2 *The American Journal of Comparative Law* 354–387.

<sup>18</sup> Syamala Kandadai M R Sreenivasa Murthy, “Human Ingenuity, Emerging Technologies & IPR – Need for setting Doctrine of Constitutional Morality as Standard” (2025) 30:2 *Journal of Intellectual Property Rights* 115–125.

<sup>19</sup> Melissa Crouch, “The challenges for court reform after authoritarian rule: The role of specialized courts in indonesia” (2021) 7:1 *Constitutional Review* 1–25.

<sup>20</sup> Aniruddha Shrivastava, “The many meanings of constitutional morality” (2020) 1:1 Available at SSRN 3521665 1–4.

constitutional forms that form the basis of peaceful and orderly governance, where this morality is not present as a natural feeling but must be built and maintained with high awareness and caution. Because the core of constitutional morality is a culture that respects the basic legal system and legitimate authority operating under the limitations of that constitution, which emphasises the importance of freedom of speech and action that is only subject to clear legal control, as well as the habit of the public to openly criticise public officials who fail to carry out their constitutional duties. Thus, constitutional morality contains an obligation for citizens and public officials to respect and obey the constitution, while upholding principles such as self-restraint and respect for the plurality of diverse societies.<sup>21</sup> Grote's view was later adopted and further developed by figures such as Bhimrao Ambedkar, who defined constitutional morality as a deep respect for constitutional forms and the obligation to uphold the rule of law and openness to criticism in the realm of politics and government, which is essential to ensure the functioning of a healthy and stable democracy.<sup>22</sup>

Constitutional morality, constitutional ethics, and constitutional law have a very close relevance and are three complementary pillars in maintaining the legitimacy and effectiveness of state governance.<sup>23</sup> Constitutional morality refers to the moral values that become the soul and spirit of the basic norms in the constitution, which are not always explicitly written, but serve as guidelines in ensuring that these basic rules of law are implemented with the principles of justice, equality, and respect for human dignity, thus underlying the moral legitimacy of state power. Constitutional ethics focuses on the moral norms and ethical principles that must be upheld by all state actors, including lawmakers, constitutional interpreters such as constitutional judges, and government administrators, so that the application of constitutional law is not only formalistic and legalistic but also has integrity, is transparent, and accountable, which ultimately

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<sup>21</sup> *Ibid.*

<sup>22</sup> Ashish Sharma, "Ambedkar as a critical Theorist: Emancipatory idea of democracy and nation building" (2025) 12:1 Social Sciences & Humanities Open 101885.

<sup>23</sup> Balmiki Prasad Singh, "Dr B.R. Ambedkar's Philosophy of Constitutionalism as an Instrument of Justice: Social, Economic and Political" (2020) 66:4 Indian Journal of Public Administration 596–608.

maintains public trust in state institutions.<sup>24</sup> On the other hand, constitutional law is the entirety of written norms and rules that regulate the structure, functions, and mechanisms of government as well as the relationship between state institutions and citizens officially and legally binding. However, without constitutional morality and ethics, constitutional law can lose legitimacy and become vulnerable to practices of abuse of power and corruption that undermine the democratic system.<sup>25</sup> Therefore, constitutional morality provides a normative and ethical foundation that guides constitutional law to remain relevant and fair, while constitutional ethics guides the behavior of humans and institutions in carrying out state duties in accordance with these moral values, so that the three form an inseparable synergy to realise a clean, accountable, and democratic government.

The idea of constitutional ethics according to Jimly Asshiddiqie is a progressive thought that combines legal and ethical aspects in the context of democratic and integrity-based state administration, where he asserts that the upholding of the constitution is not only based on legal mechanisms alone, but also greatly depends on ethical standards that become the basis for the behavior of public officials and state institutions in carrying out their duties and obligations.<sup>26</sup> Jimly Asshiddiqie argues that the development of a constitutional ethics system is an important step to introduce a "rule of ethics" that runs alongside the "rule of law," meaning legal rules that serve as guidelines in enforcing the constitution and statutory regulations, while also ensuring that state actors not only adhere to written law but also firmly uphold moral values, integrity, and social responsibility.<sup>27</sup> In Jimly Asshiddiqie's view, constitutional ethics needs to be codified and institutionalised through the establishment of codes of

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<sup>24</sup> Fathan Fadhlullah, "Politik Hukum Putusan Majelis Kehormatan Mahkamah Konstitusi Tentang Etika Hakim Mahkamah Konstitusi" (2024) 14:1 Madania: Jurnal Hukum Pidana dan Ketatanegaraan Islam 30–44.

<sup>25</sup> Simon Butt, "Constitutional Recognition Of "Beliefs" In Indonesia" (2020) 35:3 Journal of Law and Religion 457.

<sup>26</sup> Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi*, 1st edn (Jakarta: Sinar Grafika, 2014).

<sup>27</sup> Jimly Asshiddiqie, "Memperkenalkan Peradilan Etika" (2021) 1:1 Jurnal Konstitusi dan Demokrasi 1–7.

ethics, ethical conduct supervisory bodies, and ethical justice mechanisms that can guarantee the enforcement of ethics in a real and effective way in all lines of government, so that democracy functions not only as a political system but as a system that has integrity and is trusted by the public.<sup>28</sup> Jimly Asshiddiqie also highlights that ethics in the context of the constitution is not something private or separate from the state, but must be an integral part of state administration that is public and transparent, countering the old view that separates religion or morality from state affairs. Jimly Asshiddiqie even proposes that the regulation of ethics for public officials be made more concrete and receive strict legal attention through special legislation governing public ethics governance, because without strong ethical controls, abuse of power and corruption are difficult to avoid, even if there are formally binding legal rules.<sup>29</sup>

Jimly Asshiddiqie's idea of constitutional ethics is a new paradigm that combines constitutional law and constitutional ethics as two fundamental elements that mutually support each other to realise democratic, clean, and just state governance, where codes of ethics and ethical justice become important instruments in maintaining public trust while strengthening the rule of law that is ethical as the main pillar of a healthy and sustainable democracy. The development of the regulation and practice of constitutional morality, constitutional ethics, and law in Indonesia has undergone a long evolution that emphasises the integration of moral and ethical values into the legal system and state governance to ensure clean, transparent, and just governance. Since independence, morality has been a fundamental aspect in the formation of laws, where law is expected not only to regulate relations between citizens and the state but also to reflect the values of Pancasila as the basis of the state and the highest source of legal norms in Indonesia.<sup>30</sup>

Specifically, constitutional ethics requires state officials and law enforcers not only to submit to formal law but also to uphold moral norms and public

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<sup>28</sup> Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi*, revisi edn (Jakarta: Sinar Grafika, 2017).

<sup>29</sup> Asshiddiqie, *supra* note 27.

<sup>30</sup> Dicky Eko Prasetyo, "Pancasila sebagai Pengembangan Moral Virtual dalam Perspektif Living Ideology" (2023) 3:2 Pancasila : Jurnal Keindonesiaan 127.

ethics that are in line with constitutional ideals. The development of the regulation of constitutional morality, constitutional ethics, and law in Indonesia is a systematic effort that is simultaneous between positive legal norms, the ethics of judges and state officials, as well as the philosophical moral foundation sourced from Pancasila and the 1945 Constitution of the Republic of Indonesia. This aims not only to maintain the stability and legitimacy of government, but also to guarantee that the constitutional rights of the community are fulfilled in a fair and dignified manner, and to minimise abuse of power and practices that harm public trust in state institutions and the national legal system, one of which is based on the Decree of the People's Consultative Assembly (TAP MPR) Number VI/MPR/2001 concerning the Ethics of National Life, which is a moral foundation and fundamental guideline for all elements of the nation in carrying out state life based on the noble values of Pancasila and the 1945 Constitution.<sup>31</sup> This TAP MPR was born in response to a multidimensional crisis that included a decline in moral and ethical standards in societal and national life, which genuinely threatened national unity, justice, and stability. In that TAP MPR, it was affirmed that the noble ideals of the Indonesian nation enshrined in the Preamble of the 1945 Constitution, to protect the entire nation and all of Indonesia's homeland, as well as to advance general welfare and enlighten the nation's life can only be realised if accompanied by the practice of national ethics, encompassing aspects such as honesty, trustworthiness, exemplary conduct, sportsmanship, discipline, work ethic, independence, tolerance, a sense of shame, responsibility, and maintaining one's honor and dignity as a citizen of the nation.

The substance of TAP MPR Number VI/MPR/2001 contains a number of core principles of national ethics that serve as fundamental guidelines for state administrators, political institutions, and the wider community in realising a harmonious and highly civilised national life. Firstly, the upheld state ethics must be rooted in national unity and a strong spirit of nationalism, which prioritises national unity, cohesion, and resilience.

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<sup>31</sup> Dinie Anggraeni Dewi Nurassyifa Qurotul Aini, "Sistem Etika Pancasila dalam Kehidupan Berbangsa dan Bernegara" (2022) 6:2 Jurnal Pendidikan Tambusai, 11121.

Secondly, moral values such as honesty and trustworthiness become the main foundation in building public trust in state administration.<sup>32</sup> Thirdly, the TAP MPR affirms the importance of sportsmanship and discipline as attitudes that public officials and the public must possess in carrying out their obligations and rights. Fourthly, independence and a strong work ethic are prerequisites for the nation to progress and be able to face various challenges in the global order. Fifthly, tolerance and a sense of shame as forms of respect for differences and prevailing social norms become pillars of solidarity among citizens. Social responsibility and respect for human dignity as citizens must always be maintained as the foundation for carrying out a just and dignified national life.

Furthermore, TAP MPR VI/2001 also mandates that all public officials and political elites internalise these ethical values in every aspect of state administration, including the willingness to resign from office if proven to have violated the rules and value system of state ethics, as a form of moral and political accountability. Therefore, this TAP not only speaks at the normative level, but also sends a strong message to all elements of the nation regarding the importance of consistency and moral courage in maintaining the integrity of the state system. In the context of its practice, this TAP MPR serves as the foundation for various policies, regulations, and codes of ethics that demand law enforcement and governance that is clean from corruption, collusion, and nepotism, as well as transparent and accountable in accordance with the principles of a just rule of law. Thus, the idea of constitutional ethics based on this TAP MPR on State Ethics not only strengthens the regulation of legal morality in Indonesia, but also functions as a moral compass that must be followed so that the vision of independence, social justice, and the welfare of all Indonesians can be realised in a real and sustainable manner.

The aspect of constitutional ethics in the 1945 Constitution of the Republic of Indonesia, particularly as reflected in Article 7A, affirms that one of the conditions for the dismissal of the President and Vice President is committing disgraceful acts, which is a direct manifestation of the idea of constitutional ethics as the highest moral principle in state administration.

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<sup>32</sup> *Ibid.*

Article 7A of the 1945 Constitution states that the President and/or Vice President can be dismissed during their term of office by the People's Consultative Assembly (MPR) upon the proposal of the House of Representatives (DPR), if proven to have committed legal violations in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, or proven to no longer meet the requirements as President and/or Vice President.<sup>33</sup> The use of the phrase "disgraceful acts" in this context demands a broader and deeper understanding, because constitutionally it does not only refer to violations of formal law, but also to the denial of moral norms, public ethics, and constitutional obligations that must be upheld by the President/Vice President in order to maintain the dignity and honor of the office, as well as public trust in state institutions as guardians of the principles of the rule of law and social justice.

The phrase "disgraceful acts" has also become a source of debate because of its abstract nature and openness to broad interpretation, thus requiring clarity of formulation so that it is not politically misused in the impeachment or dismissal process, and must be understood in light of the principles of legal certainty and legality. Therefore, Article 7A also serves as a guardian of moral and constitutional ethics, demanding that the President and Vice President not only carry out executive functions but also uphold the ethos, character, and honor of the state in exercising power for clean, transparent, and accountable government. Thus, Article 7A is a concrete manifestation of the idea of constitutional ethics that demands that state leaders carry out their duties with the highest integrity, avoid conflicts of interest, abuse of power, and actions that undermine public trust, because disgraceful acts are tantamount to violations of moral and constitutional ethics that can shake unity and justice in national and state life. Therefore, this norm proves that ethics in the context of the Indonesian constitution is not only a philosophical discourse, but is realised in a formal juridical manner by giving the MPR the authority to uphold state morality through the dismissal of the highest officials who violate these ethical norms and constitutional values, so that this constitutional mechanism becomes an

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<sup>33</sup> Hananto Widodo, Dicky Eko Prasetyo & Fradhana Putra Disantara, "Relasi Kekuasaan Antar Presiden dan Wakil Presiden dalam Sistem Ketatanegaraan Republik Indonesia" (2020) 15:1 *Pandecta Research Law Journal* 13–25.

important instrument in maintaining the balance between power and state responsibility in order to achieve clean and just governance.

The defects in aspects of constitutional ethics in Indonesia can be clearly seen in the 2024 general election contest, especially regarding the nomination of Gibran Rakabuming Raka as Vice President of Indonesia, which became a controversial political and legal phenomenon that is very interesting to analyse in depth, especially within the framework of the concept of constitutional ethics that promotes the principles of justice, integrity, and accountability in state administration. In terms of positive law, the Constitutional Court (MK) has issued decision No. 90/PUU-XXI/2023 which allows Gibran Rakabuming Raka to be a candidate for vice president even though his age has not reached the minimum limit of 40 years, which has been required in the Election Law, on the grounds that he has served as a regional head who was directly elected through general elections, thus meeting the alternative requirements that are open based on the Constitutional Court's decision.<sup>34</sup> However, when viewed from the perspective of constitutional ethics, this nomination raises serious issues because it reflects an offer that is not only legally formal but also morally and ethically problematic in the administration of the state. This is closely related to allegations of power intervention and nepotism, where there are concerns that Gibran Rakabuming Raka's nomination is supported by political forces that potentially ignore the principle of fair competition and threaten the principle of meritocracy in substantive democracy.

The Constitutional Court's decision regarding Gibran's nomination does affirm its legality, but the public and a number of legal experts assess that the decision is laden with constitutional ethical defects due to indications of conflicts of interest, especially considering the family relationship between Gibran Rakabuming Raka and the former Chief Justice of the Constitutional Court who had been proven to have violated serious ethical codes, thus raising doubts about the independence and objectivity of law enforcement by the institution. Here, there is a shift in constitutional

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<sup>34</sup> John Tumba Jacob Muhammad Rinaldy Bima, "The Age Threshold for Presidential Nominations in the Perspective of Dignified Justice Theory: Why is there a Mahkamah Keluarga Issue?" (2023) 11:3 IUS Kajian Hukum dan Keadilan 403–422.

ethics, which should uphold the values of justice, transparency, and accountability, becoming distorted by political influence and family relationships inherent in power, thus creating the perception that the nomination process is not entirely free from collusive practices that undermine the principles of the rule of law. This phenomenon creates public distrust in the legitimacy of leadership due to the emergence of the impression of dynastic politics, which then potentially creates a bad image for the administration of the state, which ideally is based on the values of constitutional ethics that prioritise the interests of the nation and the people above personal or group interests.

In terms of constitutional ethics, Gibran Rakabuming Raka's nomination as Vice President does not reflect the values of a just and clean rule of law and state ethics, which are norms that must be respected by every state official, especially those holding strategic positions as regulated in, among other things, the TAP MPR on the Ethics of National Life and Article 7A of the 1945 Constitution, which states that the President and Vice President must carry out their duties without committing disgraceful acts. Therefore, although formally procedurally Gibran Rakabuming Raka's nomination is legal according to the Constitutional Court's decision, it still raises issues of constitutional ethics because it violates the moral principles that underlie the legitimacy of constitutional and democratic power. Gibran Rakabuming Raka's position as the son of the highest state official also drives public opinion that this nomination procedure potentially creates an unbalanced political force and ignores diversity and equal opportunities for other candidates, thus disrupting the principles of clean government and healthy democracy.

The case of Gibran Rakabuming Raka's nomination is not only an administrative legal issue that is often judged unilaterally only from the procedural side, but is also a real illustration that aspects of constitutional ethics have not been fully internalised in the political process and decision-making related to prospective state leaders. Therefore, there needs to be a strengthening of the mechanism for supervising and enforcing constitutional ethics that is both preventive and repressive, so that phenomena such as legally valid but ethically problematic nominations do

not recur, thereby maintaining the quality of democracy and the credibility of state administration in Indonesia.

In the United States, the role of constitutional morality and constitutional ethics is very important because in a country with a common law legal system, constitutional morality and constitutional ethics develop in practice to complement the legal provisions regulated in statutory regulations that are commonly known as constitutional conventions.<sup>35</sup> One of the constitutional moralities and constitutional ethics upheld in the United States is that the office of President and Vice President should not exceed two terms, based on constitutional morality and constitutional ethics. However, this provision regarding the term of office of the President and Vice President was later violated by Franklin D. Roosevelt, who led the United States for up to four terms and can be considered to have "violated" constitutional ethics that developed as a constitutional convention.<sup>36</sup> This subsequently led to the term limits for the President and Vice President in the United States being formally restricted to a maximum of two terms.

Furthermore, during President Donald Trump's administration, he was also considered to have violated the constitutional ethics of the United States by not establishing the ethics rules typically issued by a new president on their first day in office, which had been standard practice in the executive branch of the U.S. government for over 50 years. This action by President Donald Trump, in fact, opened the door to greater conflicts of interest because his administration did not adopt an ethics pledge that binds political officials to prevent personal interests from influencing public decisions.<sup>37</sup> President Donald Trump also revoked the ethics requirements established by the previous administration and failed to institutionalise a new ethics pledge, thereby weakening oversight and accountability mechanisms in government. During his transition, President Donald Trump also refused to sign an ethics pledge requiring the avoidance of conflicts of interest for the transition team, indicating a pattern of disregard

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<sup>35</sup> Mila Versteeg, Adam Chilton & Erensu Altan, "Constitutional Duties" (2024) 72:3 *The American Journal of Comparative Law* 685–731.

<sup>36</sup> Prasetio, Masnun & Noviyanti, *supra* note 15.

<sup>37</sup> Marc Edelman, "Democracy," USA" (2025) 22:3 *International Journal of Applied Psychoanalytic Studies* 1–3.

for ethical standards that continued throughout his term. His administration, operating without this ethics pledge, made his cabinet more vulnerable to the influence of special interests and raised public concerns about the potential abuse of power for personal and group gain, representing a serious violation of the fundamental principles of constitutional ethics that prioritise serving the people without undue influence. Therefore, this neglect is not only a moral and political issue, but also weakens the legitimacy of the government and undermines public trust in the integrity of the executive branch within the American democratic system.

The development of the regulation of constitutional morality, constitutional ethics, and law in Indonesia and the United States shows that both countries officially recognise the importance of ethical principles in state administration, which are enshrined in legal norms and moral guidelines that are systematic. In Indonesia, this regulation is based on the philosophical foundation of Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as the MPR Decree Number VI/MPR/2001 concerning the Ethics of National Life, which serves as a fundamental guideline for all elements of the nation in maintaining the integrity of state administration. Meanwhile, in the United States, constitutional ethics has developed as part of constitutional conventions that complement formal legal rules, such as the limitation of presidential terms. Nevertheless, in practice, both Indonesia and the United States face serious challenges related to the low level of ethical awareness among political elites, which impacts the credibility and legitimacy of the state system. This phenomenon of ethical violations can be seen in the case of the nomination of Vice President Gibran Rakabuming Raka in Indonesia, which, although having a formal legal basis based on the decision of the Constitutional Court, sparked serious ethical controversy. The nomination is considered to violate the principles of justice, transparency, and meritocracy due to indications of nepotism and conflicts of interest that undermine public trust in legal institutions and substantive democracy. This reflects a failure to internalise the values of constitutional ethics in the political process and decision-making, which ideally should reflect integrity and accountability as mandated by TAP MPR VI/2001 and Article 7A of the 1945

Constitution. In other words, even though ethical norms exist, practice shows that there is a moral degradation that potentially disrupts stability and justice in national and state life.

Similarly, in the United States, violations of constitutional ethics occurred during the Donald Trump administration, which refused to adopt government ethics pledges and violated conventional practices that had been in place for decades. This disregard for ethics pledges opened the door to conflicts of interest and weakened oversight and accountability mechanisms in carrying out government functions. This attitude caused the government cabinet to be vulnerable to the influence of special interest groups and created public doubts about the integrity of the executive as a pillar of democracy. This case illustrates that although constitutional ethics is recognised normatively in the American legal system, awareness and implementation in political practice can decline, thus threatening the achievement of clean and trustworthy governance. Thus, both Indonesia and the United States face the same dilemma caused by the low level of constitutional ethical awareness among state officials and political elites, even though the regulatory framework and legal norms that promote ethics have been carefully prepared. The cases of Gibran's nomination and ethical violations by Donald Trump are concrete illustrations that the regulation of constitutional ethics is not enough to rely on formal norms alone, but requires strengthening oversight, enforcement, and consistent internalisation of ethical values so that state morality is maintained, the legitimacy of democracy is preserved, and public trust in state administration is not eroded.

#### **IV. LEGAL REFORM IN STRENGTHENING CONSTITUTIONAL MORALITY, CONSTITUTIONAL ETHICS, AND LAW IN INDONESIA AND THE UNITED STATES**

Constitutional morality and constitutional ethics are two interrelated concepts crucial to maintaining the sustainability and legitimacy of a state system and the exercise of public power. However, in practice, both concepts are often ignored or disobeyed in state administration at various

levels and institutions. Constitutional morality can be understood as a deep awareness and commitment to the fundamental values contained in the constitution, including honesty, justice, equality, and respect for human rights. Meanwhile, constitutional ethics refers to the norms of behavior that govern how state officials, rulers, and public apparatuses act in accordance with the obligations and responsibilities mandated by the constitution to maintain the rule of law and public trust. However, in reality, many state officials and institutions set aside or even violate these moralities and ethics due to various factors, including the existence of very strong political and economic interests that drive them to commit irregularities for personal or group gain.<sup>38</sup>

Weak law enforcement and the lack of effective oversight mechanisms lead to a lack of serious consequences for those who violate constitutional morality and ethics, allowing them to act in ways that contradict constitutional values without fear of sanctions. Furthermore, a corrupt political culture and pragmatism within the realm of government create an environment that is less conducive to the implementation of constitutional morality and ethics, as it prioritises results and power over processes and values, especially in less transparent and participatory systems where the public and media have limited space to oversee the conduct of state administration.<sup>39</sup> Another factor is the lack of education and in-depth understanding of the importance of constitutional morality and ethics, both among officials and the general public, resulting in a very low level of collective awareness to uphold these values, which ultimately creates a cycle of actions that violate constitutional norms that is difficult to break. Therefore, although constitutional morality and ethics are the main foundations for the realisation of a just and integrated rule of law, the reality on the ground shows that both often become mere formal jargon that is not followed by real action. Without political commitment, strict law enforcement, and active public participation in controlling and

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<sup>38</sup> Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, "Membangun Moralitas dan Hukum Sebagai Integrative Mechanism di Masyarakat Dalam Perspektif Hukum Progresif" (2021) 14:2 *Mimbar Keadilan* 128–138.

<sup>39</sup> Lasmauli Noverita Simarmata, "Korupsi Sekarang Dan Yang Akan Datang" (2021) 11:2 *Jurnal Ilmiah Hukum Dirgantara* 87–99.

demanding accountability, constitutional morality and ethics will remain an idealism that is difficult to realise and continues to be ignored in everyday state practice.

In the development of modern legal systems that increasingly emphasise the importance of positive law as the main instrument in regulating society, there has been a significant paradigm shift regarding how constitutional morality and constitutional ethics are understood and practiced in state administration. The idea of positive law, which explicitly contains norms attached to clear and firm sanctions, has become the only reference considered to have strong binding power and capable of guaranteeing public compliance. Meanwhile, constitutional morality and ethics, which are normative and sublime in nature and not in the form of laws or official rules bound by legal sanctions, have gradually lost their position as the main foundation in shaping the behavior of state officials and law enforcement officials. This is because the modernisation of law places written rules with concrete sanctions as the sole source of legitimacy and coercive power in the legal system, so that the public and legal actors tend to prioritise compliance with positive law, which can be clearly processed legally if violations occur, while the moral and ethical aspects inherent in the constitution are considered abstract, idealistic, and difficult to measure and enforce formally.<sup>40</sup> As a result, constitutional morality and ethics, which are actually the enforcers of the values of justice, integrity, and respect for human rights in a constitutional context, are often ignored because of the absence of legal sanctions attached to them. Therefore, violations of these values do not directly result in legal consequences, and the enforcement of norms becomes highly dependent on the awareness and good faith of the individuals or groups involved.

In an era of increasingly dominant positive law, the orientation of state administration tends to be pragmatic and mechanistic, where respect for the law is limited to formal and procedural aspects alone, without regard to the moral and ethical values that are actually the spirit and purpose of the

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<sup>40</sup> Dita Perwitasari Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law" (2021) 8:1 Rechtsidee 4.

constitution itself.<sup>41</sup> This shows that the binding power of positive law, coupled with the existence of sanctions, has created normative discrimination between legal rules with clear sanctions and constitutional norms that are not attached to sanctions, which ultimately leads to low implementation and respect for constitutional morality and ethics in modern state administration practices.<sup>42</sup> In short, an excessive reliance on positive law contradicts the essence of the constitution as a basic norm that is not only legalistic but also ethical and moral. Therefore, without a mechanism that integrates moral and ethical aspects as a binding part and effective sanctions for its enforcement, constitutional morality and ethics will tend to be disobeyed, considered non-binding, and easily ignored in an atmosphere of modernisation that emphasises the validity of written rules and their implementation that can be legally enforced.

The phenomenon of violations of constitutional ethics, as in the case of the nomination of Vice President Gibran Rakabuming Raka in Indonesia, and violations of constitutional ethics during the Donald Trump administration in the United States, which refused to adopt government ethics pledges and violated conventional practices that had been in place for decades as discussed in the previous sub-chapter, basically show the same symptom: that constitutional ethics is not written law, so there is no obligation to obey it. In the case of the nomination of Vice President Gibran Rakabuming Raka in Indonesia, supporters of Vice President Gibran Rakabuming Raka's nomination argued that Vice President Gibran Rakabuming Raka's nomination was in accordance with the law, especially with the presence of the Constitutional Court's Decision. Similarly, violations of constitutional ethics occurred during the Donald Trump administration in the United States, which refused to adopt government ethics pledges and violated conventional practices that had been in place for decades, also based on the same view that this is only a non-binding

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<sup>41</sup> Dicky Eko Prasetyo, "Inventarisasi Putusan Peradilan Adat Sendi sebagai Upaya Memperkuat Constitutional Culture dalam Negara Hukum Pancasila" (2021) 2:3 *Jurnal Hukum Lex Generalis* 249–273.

<sup>42</sup> Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia sebagai Strategi Menghadapi Era Modernisasi Hukum" (2021) 6:1 *Al-Adalah: Jurnal Hukum dan Politik Islam* 1–36.

constitutional convention that is also not attached to legal sanctions, so it is not considered mandatory.

From the phenomenon of the weakening of constitutional ethics in Indonesia and the United States above, it is necessary to carry out legal reform efforts to strengthen the position of constitutional ethics in Indonesia and the United States by positivizing constitutional morality and ethics. Efforts to positivize constitutional morality and ethics in Indonesia are basically already apparent with the existence of TAP MPR VI/2001, which substantively affirms national and state ethics. The Decree of the People's Consultative Assembly (TAP MPR), as a legal product in Indonesia, has several significant weaknesses, both in its hierarchy of laws and regulations and in its substance, which, in practice, create confusion and complex legal problems. Hierarchically, TAP MPR is placed at the same level as the 1945 Constitution based on Law Number 12 of 2011 concerning the Formation of Laws and Regulations, but this placement has been criticised for inconsistency and uncertainty of the legal status of TAP MPR in the order of regulations, because the MPR constitutionally no longer has the authority to issue legal products that are regulatory (*reglementerend*), so the TAPs that are still in effect are remnants of the past that some parties believe should no longer be recognised as a binding formal source of law.<sup>43</sup> This issue becomes more complex when there is no institution with clear authority to judicially review TAP MPR, either against the Constitution or against other laws and regulations. Therefore, if there is a conflict between TAP MPR and other regulations or the constitution, there is no effective legal control and correction mechanism, which means creating legal vacuums and uncertainty, and potentially causing norm conflicts. In substance, many TAP MPRs contain provisions that are controversial and no longer relevant to current legal and socio-political dynamics, such as the TAP MPR on the dissolution of the PKI or the determination of opinion in East Timor, which, if continued to be enforced, could trigger polarisation and injustice.

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<sup>43</sup> Khairul Fahmi Desip Trinanda, Yuliandri, "Problematika TAP MPR dalam Hierarki Peraturan Perundang-undangan dan Peluang Judicial Review ke Mahkamah Konstitusi" (2022) 19:3 *Legislasi Indonesia* 398.

In some cases, TAP MPR also contains weaknesses in the technical aspects of formation and regulation, for example, TAP MPR No. III/MPR/2000, which incorrectly places Government Regulations in Lieu of Laws (Perppu) below the Law, even though constitutionally Perppu is equivalent to the Law, which indicates a conceptual error in the preparation and regulation of this legal product; this weakness not only weakens the legitimacy of TAP MPR as a source of law, but also has implications for the practical implementation of law, which becomes inconsistent and confusing for implementers and the public. In addition, TAP MPR, which is more of a policy direction and not a positive legal norm that is strictly binding, makes it tend to be considered only as a normative and political guideline without enforceable sanctions, so its effectiveness as a legal product becomes very limited; all of this indicates an urgent need for reform and clarification of the position of TAP MPR in the national legal system, so that it does not become a source of legal conflict and uncertainty, and so that state legal products have certainty, clarity, and consistency that encourages fair and effective law enforcement for all Indonesian people. Therefore, TAP MPR VI/2001, which substantively affirms national and state ethics, should be formulated specifically in the form of a law to optimise the substance of constitutional morality and ethics in state life.

The formulation of TAP MPR VI/2001, which substantively affirms national and state ethics, in the form of a law to optimise the substance of constitutional morality and ethics in state life is necessary because in the civil law system adopted by many countries, including Indonesia, laws hold a very important position as the main legal product and fundamental basis in the national legal order, where the main characteristic of the civil law system is the existence of systematic and written legal codification that aims to provide legal certainty, uniformity, and ease of law enforcement.<sup>44</sup> In this context, laws become instruments that comprehensively regulate various aspects of social, economic, and political life, so that all state administration and society must be guided by laws as a binding source of law that has the

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<sup>44</sup> Purwanto Purwanto et al, "Streamlining Regional Regulations with Omnibus Law for Legal Harmonization" (2024) 12:2 Rechtsidee 7–13.

power to regulate generally.<sup>45</sup> The existence of clear and structured laws serves as a means for judges to find and apply the law in every case they handle without having to rely on precedents or past case decisions as is the case in the common law system, which relies more on jurisprudence. Therefore, in civil law, judges act more as implementers who interpret laws and apply their provisions rather than as lawmakers, so that the legal order becomes more predictable and stable.

The importance of laws in the civil law system is also seen in the ongoing codification efforts to ensure that all written laws are accessible and understood by all elements of society and legal actors in order to create legal certainty and prevent arbitration or arbitrary actions.<sup>46</sup> In addition, laws, as the main legal product in the civil law system, provide a strong legal basis for government administrators, judicial institutions, and law enforcement officials to carry out their duties and functions in a legalistic, transparent, and accountable manner. This is because every policy and decision must be based on norms that have been established in laws. Likewise, in the current era of modernisation and internationalisation of law, laws play a role in harmonising national legal provisions with international legal norms and standards, thereby strengthening the position of national law in the eyes of the world, while also protecting the rights and obligations of citizens in a structured and guaranteed manner. Essentially, without strong and reliable laws, the civil law system will not be able to function effectively because it will lose its main foundation for creating an orderly, just, and sustainable legal order in state administration and social life. Therefore, the importance of laws in the civil law system is as the main pillar that guarantees certainty, justice, and legal order, which is the foundation for the sustainability of a democratic and civilised rule of law.

In contrast to the United States, which uses the common law system, strengthening constitutional morality and ethics does not always have to be formulated in the form of laws but can be done by involving the role of

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<sup>45</sup> Djoni Sumardi Gozali, *Pengantar Perbandingan Sistem Hukum: Civil Law, Common Law, dan Hukum Adat* (Bandung: Nusamedia, 2020).

<sup>46</sup> Osny da Silva Filho, "Doctrinal Methods in Civil Law Jurisdictions" (2024).

court decisions.<sup>47</sup> The strengthening of constitutional morality and ethics in the United States is very evident with the active involvement of judicial institutions, especially the Supreme Court, through their decisions that not only carry out normative functions but also substantive functions in interpreting and bringing constitutional values to life as the main guidelines for state administration. This is a characteristic feature of the common law system, which places great emphasis on jurisprudence or court decisions as a source of law and an instrument for developing moral and ethical principles in the constitution. The decisions of the United States Supreme Court often contain deep ethical and moral considerations in resolving cases involving human rights, civil liberties, social justice, and limitations on state power, resulting in jurisprudence that not only upholds positive law formally but also strengthens the fundamental values contained in the constitution, which in turn strengthens public trust in the rule of law and the legitimacy of the state system. For example, in the case of *Marbury v. Madison*, which became an important milestone in establishing judicial review, the Supreme Court not only rejected government actions that were contrary to the constitution but also established the principle that the constitution must be upheld as the highest norm governing all state administration, showing the court as the guardian of constitutional morality that can oversee and limit other branches of power, thus creating a balance of power and enforcement of fair and civilised constitutional principles.<sup>48</sup> In addition, through principles such as judicial restraint and judicial activism, the courts demonstrate their sensitivity to the socio-political context and the need to maintain state stability and avoid abuse of power. Judges in their decisions do not merely enforce the law rigidly but also carefully promote constitutional ethics and morality in deciding cases, which proves the central role of the courts in maintaining the integrity and honor of the constitution amidst the dynamics of social change. Furthermore, controversial decisions that spark debate but still leave room for revision and retesting also show that constitutional morality and ethics

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<sup>47</sup> Ilir Qabrati, "The Concept of Law and Justice" (2020) 4:3 Prizren Social Science Journal 69–73.

<sup>48</sup> Dicky Eko Prasetyo, "Ius Constituendum Legal Standing Bagi WNA Terkait Proses Judicial Review di Mahkamah Konstitusi dalam Perspektif HAM" (2023) 2:1 Hunila 125–138.

are not static concepts but are dynamic and evolving with critical and reflective court decisions as a vehicle for strengthening these values. Thus, the strengthening of constitutional morality and ethics in common law countries like the United States is effectively realised through the involvement of judicial institutions as the main mediators and guardians of constitutional principles in just, transparent, and accountable legal practice.

Legal reform in strengthening constitutional morality, constitutional ethics, and law in general in Indonesia and the United States shows significant differences in approach. In Indonesia, aspects of constitutional morality and ethics still require specific regulations that are explicitly regulated in laws as a formal effort to strengthen these values in the national legal system. This is because constitutional morality and ethics have not fully become a natural and binding part outside of written legal products, so special legislation is needed to provide a clear legal umbrella so that basic constitutional values can be maintained and realised. Conversely, in the United States, which adheres to the common law system, the strengthening of constitutional morality and ethics is more realised through judicial practice and the decisions of judicial institutions, especially the Supreme Court. Through their decisions, they dynamically interpret and bring moral and ethical values to life in a constitutional context. Judicial review not only functions as a control over the authority of other state institutions but also as a vehicle for strengthening moral and ethical norms in national legal practice. This is based on the common law tradition, which gives a central position to jurisprudence as a source of law that is developing and responsive to socio-political changes. Therefore, without the need for special written rules, the role of the courts in justifying and interpreting moral and ethical values of the constitution can run effectively and adaptively. In other words, legal reform in Indonesia must still go through formal and explicit legislation to integrate constitutional morality and ethics into the framework of positive law in order to have binding force, while in the United States the judicial mechanism becomes the main instrument that carries out this function practically and continuously through the binding power of decisions that contain constitutional values. This difference shows that effective legal reform in the context of strengthening constitutional morality and ethics is highly dependent on the

legal system adopted by each country, where Indonesia needs to focus on strengthening formal legal aspects while the United States uses the power of judicial institutions as guardians and developers of constitutional values that are moral and ethical in nature.

## VI. CONCLUSION

The development of regulations on constitutional morality, constitutional ethics, and law in Indonesia and the United States affirms that although both countries have built systematic normative frameworks and ethical guidelines in state administration, major challenges still arise from the low ethical awareness among political elites. The case of the nomination of Vice President Gibran Rakabuming Raka in Indonesia and the ethical violations by President Donald Trump in the United States illustrate that formal norms without internalisation of values and consistent ethical enforcement are not enough to maintain integrity, legitimacy, and public trust in the state system. Therefore, strengthening ethical oversight mechanisms and political accountability is a crucial step to ensure that constitutional morality is not only a normative discourse but also a real practice that supports clean, democratic, and just governance in both countries.

Legal reform in order to strengthen constitutional morality, constitutional ethics, and law as a whole in Indonesia and the United States shows different approaches but both aim to maintain the integrity of the state system. In Indonesia, this reform must be realised through special regulations in laws that explicitly regulate constitutional morality and ethics so that these basic values get formal legitimacy and clear binding power in the national legal system, considering that morality and ethics have not fully adhered naturally outside of written rules. Meanwhile, in the United States, the strengthening of constitutional morality and ethics is more done through judicial mechanisms, namely the involvement of judicial institutions through dynamic and responsive decisions of the Supreme Court, making judicial review the main instrument in translating, interpreting, and enforcing moral and ethical values as an integral part of living legal practice. This difference confirms that the effectiveness of legal reform in strengthening constitutional morality and ethics is highly

dependent on the foundation of each country's legal system, where Indonesia needs to strengthen formal legal aspects as the basis for strengthening constitutional values, while the United States utilises judicial power through the courts as guardians and developers of ethical and moral values in the constitution. Thus, appropriate and contextual legal reform is the main key in ensuring that constitutional morality and ethics are not only normative concepts but also practically realised in state life.

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