



## Hamdan Zoelva's Political Thoughts in the Book Constitutional Struggle

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### Abstract

Political thought has a crucial role in determining policies and shaping the ideal social order. In Indonesia, various ideologies are present, including Pancasila as the foundation of the state as well as the concepts of pluralism, nationalism, and democracy. Hamdan Zoelva's thought emphasizes the importance of the constitution as the basic norm of the state of law and the protector of human rights. Hamdan criticized liberalism and capitalism which he considered could erode the values of Pancasila in Indonesia's political and economic system. In his book *Constitutional Struggle*, he warns that the dominance of capitalism must be controlled according to the principles of Pancasila. This research aims to 1) understand Hamdan Zoelva's political journey, and 2) find out the causes of his political thinking about the constitution. The research data includes primary and secondary sources, processed through interviews and documentation. The validity of the data was checked by examining Hamdan's background, such as his curriculum vitae, education, influence, and political and cultural conditions at the time. The results of the study show that Hamdan Zoelva sees the constitution as the will of the people that must be respected. He emphasized the role of the Constitutional Court (MK) in maintaining the balance of power and protecting human rights. However, Hamdan criticized the amendment to the 2024 Constitutional Court Law which he considered threatening the independence of judges.

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## INTRODUCTION

Political thinking is important in determining a person's political direction and shaping the desired order of society, nation, and state. In Indonesia, political thought developed from three main ideologies: liberalism, capitalism, and socialism, respectively with the concept of freedom, the capitalist economic system, and criticism of capitalism. Indonesian political thought is also influenced by Pancasila as a state ideology that prioritizes unity, deliberation, and mutual cooperation, in contrast to Western liberal democracy.

Indonesian politics is also influenced by religion, the history of the struggle for independence, and the spirit of nationalism. Since the 1998 reform, there has been an increase in social activism and civil society participation in human rights, environment, and corruption issues. Regional autonomy is also developing, giving more authority to local governments. The influence of globalization can be seen in openness to foreign investment and global issues, such as climate change.

Indonesia went through several political phases, from National Awakening, Guided Democracy, New Order, to Reformasi. Each phase brings changes in political structure and policy, with the Constitutional Court as the guardian of the constitution. Dr. Hamdan Zoelva, former Chairman of the Constitutional Court, sees Pancasila as a guideline against the domination of capitalism and liberalism, as well as encouraging a sovereign and fair political system.

Currently, even though Pancasila is the basis of the state, its implementation in policy is still minimal. The middle class needs to be strengthened so that democracy is not controlled by the elite, but oriented to the interests of the people.

## METHODS

This research is a form of historical research that uses a biographical approach. Historical research, in accordance with (Rachman, 5 C.E.) is a research method that aims to reconstruct the past systematically and objectively through the collection, evaluation, interpretation, and conclusion of data. The focus of this research is on the process of collecting and interpreting phenomena, events, or concepts that emerged in the past to identify generalizations that are useful in understanding historical events.

Through this biographical approach, the researcher tries to understand a perspective of the individual being studied, in this study the characteristics studied are the phenomenon of Hamdan Zoelva's political thought in the book *The*

*Struggle of the Constitution*. The purpose of the researcher is to find out the history of Hamdan Zoelva's life, try to establish and explain carefully the thoughts of Hamdan Zoelva in the book *The Struggle of the Constitution*.

The author is directly involved in the life of the informant to collect the necessary data. All the informants' speeches, actions, and thoughts are recorded, and documented in the form of photos and recordings. These words and actions were obtained through interviews, following the guidelines of the research instrument.

## RESULTS AND DISCUSSION

### **Political Thoughts of Hamdan Zoelva (Former Chief Justice of the Constitutional Court of the Republic of Indonesia 2013-2015) in Hamdan Zoelva's 2015 Constitutional Struggle Book**

Dr. H. Hamdan Zoelva, S.H., M.H. is a legal expert and political figure who has a great reputation in Indonesia. He served as Chief Justice of the Constitutional Court in the 2013-2015 period, Hamdan Zoelva was born in Bima, West Nusa Tenggara on June 21, 1962, he grew up in a family that emphasized a very strong religious education. Hamdan Zoelva's father himself is a retired teacher and now leads an Al-Mukhlisin Islamic Boarding School in Bima while Hamdan Zoelva's mother is a housewife, Hamdan Zoelva's parents have always instilled strong religious values since childhood, at least always supervised about prayer.

This is in line with the opinion of Syaiful Bahri Djamarah (in Juanda, 2021) to instill religious values in children from an early age, the important role of parents as the smallest institution in society that is also the closest to children. As the primary educator in the family, parents are the first source from which a child receives education. Therefore, the early education that children receive mainly comes from the family environment.

Political views according to Hamdan Zoelva Indonesia is a large country with a wealth of diverse cultures, ethnicities, and religions. Hamdan Zoelva, a prominent legal expert and politician, emphasized that Indonesia is based on Islamic values, where justice, humanity, and unity are the main pillars in the life of the nation and state. For Hamdan Zoelva, these Islamic values not only serve as a moral guide, but also as a basis for building just and prosperous state governance, as well as for creating harmony in a pluralistic society. (In Mukhtarom & Susilo, n.d.) stated that Indonesia is a big country based on

Islamic values, with Pancasila as the basis of the country in line with Islamic law. This creates a civilized order of life, based on faith and knowledge. As a country with a majority Muslim population, Indonesia needs to continue to be developed within the framework of Islam and nationality, to become an Islamic and progressive Pancasila country, and towards a superior civilization for all its people.

As a political actor and legal expert in Indonesia, Hamdan Zoelva highlights several important issues in national politics. He criticized the electoral system as too expensive and complicated, and considered dynastic politics a serious threat to democracy that requires strict rules to control it. Hamdan also emphasized the importance of strong law enforcement against corruption to restore public trust. In addition, he expressed concern over the growing political polarization, which could trigger social conflicts, and proposed dialogue and reconciliation as solutions to overcome divisions.

This research focuses on Hamdan Zoelva's political thought in the 2015 book *Constitutional Struggle*, which includes his various views and ideas related to democracy, constitutionalism, and the role of law in maintaining state stability, which as a whole plays a significant role in understanding political dynamics and the development of the government system in Indonesia.

According to Hamdan Zoelva, the constitution is the highest form of the will of the people. The constitution not only includes what is stated in the text, but also reflects the values and aspirations that live in the conscience of the people. For Hamdan Zoelva, the constitution is not only a legal document that regulates the structure and functions of the state, but also a representation of the collective will of society that continues to evolve over time. He emphasized that the constitution, both written and unwritten, must be respected as the highest will of the people, both those that have been embedded in the nation's history and those that continue to develop in public consciousness. Therefore, maintaining and respecting the constitution means also respecting the deepest aspirations of the people, which is the main foundation in building the life of the nation and state.

In (Tugan P. Citizenship (M. Yoewan), n.d.) according to (Adnan Buyung Nasution, 1995: 16). The Constitution is the main foundation in political life that has existed since the beginning of human civilization, because most countries want a state life based on law. The characteristics of constitutional government include the expansion of political participation, the granting of le-

gislative authority to the people, and the rejection of authoritarian forms of government.

In the views expressed in the book *Constitutional Struggle*, the author notes that Hamdan Zoelva has a deep view regarding the protection of Human Rights (HAM) through the constitution. For Zoelva, the constitution not only serves as the legal foundation of the state, but also as the main instrument in protecting the basic rights of each individual from potential abuse of power. He believes that the constitution should be a key pillar in safeguarding human rights, ensuring that any action or policy of the state does not conflict with the fundamental rights guaranteed to citizens. Zoelva also invites the public to play an active role in understanding and fighting for their rights regulated by the constitution, making it a joint obligation, not just the responsibility of government agencies or law enforcement.

In addition, Zoelva's thoughts on the Constitutional Court (MK) emphasize the importance of the role of the Constitutional Court in maintaining the balance of power and protecting human rights. Zoelva sees the Constitutional Court as a guardian that prevents the domination of power by any branch of government, both executive and legislative, through its authority to overturn policies or laws that violate the constitution or human rights. The Constitutional Court is also considered a democratic control mechanism that ensures that the political process runs in accordance with the principles of justice and the constitution. With this role, Zoelva believes that the Constitutional Court is a key instrument in preventing the abuse of power and maintaining the health of democracy in Indonesia. Overall, Zoelva emphasized that the strength of the Constitutional Court in safeguarding human rights and democracy is very important for the healthy development of democracy in Indonesia. With the existence of an independent and authoritative Constitutional Court, he believes that Indonesia can continue to move towards a fairer and more transparent system, where citizens' rights are respected and guaranteed by law and the constitution. Zoelva's thinking is in accordance with the content of article 2 of the Constitutional Court Law which explains that the Constitutional Court as one of the State institutions that exercises independent judicial power to organize the judiciary to uphold law and justice. In line with this explanation, Nawas (2021) also emphasized that the Constitutional Court is a manifestation of the constitution itself, which means that the Constitutional Court is not just a collection of basic norms, but also includes the principles and

moral aspects of the constitution. This includes the principles of the state of law and democracy, the protection of human rights, and the protection of citizens' constitutional rights.

Hamdan Zoelva argued that the Constitutional Court has a very important role in maintaining the balance of power between state institutions and serves as the main tool to prevent abuse of authority. According to him, the task of the Constitutional Court is not only limited to interpreting and enforcing the constitution, but also acting as the last protector for democratic principles. He emphasized that the Constitutional Court must carry out its functions independently, without political interference or external pressure, in order to carry out its role effectively. Zoelva also believes that only by maintaining the integrity and freedom of this institution can democracy be maintained, and the constitutional rights of citizens can be protected to the fullest. Zoelva's opinion is in line with the explanation from Syafriani, et al. (2024) that the Constitutional Court is a government institution that in its decision-making is carried out with a progressive approach to protect human rights, so that judges who work in the Constitutional Court are required to be independent and free from political pressure so that the decisions issued can be objective and fair. The independent nature of the Constitutional Court is the key for this institution to ensure that all decisions issued truly protect human rights without any intervention from any party.

Hamdan Zoelva showed deep concern for the relevance of the 1945 Constitution in facing the development of the times. He assessed that although the 1945 Constitution has undergone several amendments, these changes have not fully accommodated global challenges and modern dynamics, such as technology, globalization, and socio-economic changes. Hamdan argued that the constitution should be seen as a living framework and needed to be constantly updated in order to remain relevant. In addition to amendments, he emphasized the importance of improving the interpretation and implementation of the constitution to be in accordance with the principles of democracy, human rights, and social justice. Otherwise, he warned, the constitution could become an obstacle to the nation's progress. Zoelva's thoughts on the importance of the Constitutional Court to continue to improve its framework to remain relevant, are in accordance with the opinion of Rohmah, et al. (2021) which states that the implementation of decision-making carried out by the Constitutional Court must be in accordance with the 1945 Constitution,

but to ensure that the decisions to be taken are in accordance with the current situation, the Constitutional Court will conduct a material test. The material test carried out by the Constitutional Court is an effort that can be made to protect human rights, especially as an effort to realize justice for citizens who feel that their constitutional rights have been harmed.

Hamdan Zoelva emphasized the importance of constitutional amendments to maintain the relevance and effectiveness of the country's legal base. However, he reminded that this process must be carried out carefully and through in-depth study. According to him, constitutional changes should aim to strengthen the country's foundations and protect the basic rights of citizens, not undermine them. Hamdan emphasized that the constitution is a living document that needs to evolve with the times, but changes must be made with careful consideration so as not to cause legal uncertainty or damage public trust. He also encouraged open and inclusive discussions before amendments were made, involving various parties to ensure that the constitution still reflects the aspirations of the people and protects democratic principles. Zoelva's opinion is in line with the explanation from Manganti (2023) who also argues that open community involvement is one of the main factors in good governance that provides important benefits for the interests of all Indonesian citizens, including improving the quality of policies that have been made and as a source of input to the government before deciding on a policy or regulation.

Hamdan Zoelva emphasized that strong law enforcement is a key element in maintaining constitutional democracy in Indonesia. According to him, constitutional democracy is not only about the power of the people, but must also be based on the rule of law and the constitution. Without consistent and fair law enforcement, the principle of democracy will only become rhetoric without substance, which is incapable of guaranteeing justice and the welfare of the people. He argued that the rule of the constitution is the main foundation for a healthy and stable democracy. The Constitution must be treated as the supreme law that regulates all aspects of state life, so that all government policies and actions must be in accordance with constitutional principles. Without this supremacy, the country risks abuse of power, corruption, and human rights abuses, which threaten political and social stability. In line with the explanation above, Mustikasari (2024) also explained that the constitution has a function as a guardian of the rule of law which

in its implementation ensures that the law applies fairly and non-discriminatory to all citizens. A good constitution will have a foundation for good governance, the enforcement of the rule of law, good protection of human rights, and a healthy democratic process.

Hamdan also highlighted that democracy without effective law enforcement will result in injustice and instability. Law is the pillar that prevents democracy from being trapped in anarchy or authoritarianism. Strong law enforcement includes the independence of legal institutions from political influence, which is essential for ensuring democratic processes, such as elections, freedom of expression, and the right to participation, run fairly. Political instability due to weak law enforcement will affect public trust in state institutions, create a crisis of legitimacy, and hinder economic and social development. Therefore, Hamdan called for a strong commitment from all stakeholders to respect the law and the rule of the constitution so that democracy can produce true justice and sustainable political stability. Susanto (2013) argues the same as Zoelva that a good legal institution is an independent or independent one. Judges as holders of power in legal processes that are not independent or independent will create a judicial process that is easy to manipulate, lack of court legality, illegal or arbitrary actions by state power administrators. Meanwhile, independent judges will create a court that is the door to uphold the constitution and justice.

According to Hamdan Zoelva, decentralization and regional autonomy are important steps to create a more effective and responsive government to the needs of the people. By giving greater authority to the regions, local governments can make decisions that are more in line with local conditions, manage resources innovatively, and accelerate national development. However, Zoelva also warned that decentralization without effective oversight could increase the risk of abuse of power, corruption, and poor resource management. He stressed the importance of strict supervision from the central government and civil society to ensure that regional autonomy is used for the benefit of the people, not the local elite. In addition, Zoelva emphasized the need to improve the capacity and integrity of regional apparatus through training, education, and a strong code of ethics. He also encouraged community participation in decision-making as a strengthening of local democracy. For Hamdan Zoelva, decentralization is an important part of government reform, but its success depends heavily on good oversight and accountability. If managed

correctly, decentralization can create a fairer and more effective government, but if it is not, the existing problems will actually worsen. Agreeing with Zoelva, Harsasto (2020) also explained that the implementation of decentralization must consider two things, namely the suitability of the organizational structure and the quality of human resources in it. A good organizational structure does not guarantee the creation of a good implementation of decentralization if the human resources in it do not carry out their duties as they should, so in this case it is necessary to enforce layered supervision.

Hamdan Zoelva emphasized the importance of protecting the rights of minority groups as part of a fair and democratic rule of law. He argued that the constitution not only governs the country, but also guarantees the human rights of all citizens, including minorities, who often face discrimination. This protection is necessary to prevent social injustice and instability. Zoelva also promotes inclusivity, equality, and full participation of minority groups in public life, with states and communities having a shared responsibility to protect their rights in order to create peace and sustainable development. Andriati, et al. (2022) are of the same opinion that the Indonesian government, as a country based on the law, has a responsibility to ensure protection for minority groups. This is done by providing equal rights and opportunities to individuals and legal entities representing minorities, as well as harmonizing laws and regulations to protect and maintain the rights of these minority groups.

Hamdan Zoelva assessed that the amendment to the Constitutional Court (MK) Law in 2024 poses a serious threat to the independence of judges. This change, especially related to the division of judges' terms of office into two five-year periods, makes judges vulnerable to political influence because they must obtain approval from proposing institutions such as the House of Representatives, the President, or the Supreme Court to extend their terms. Hamdan Zoelva is worried that this rule could reduce the freedom of judges to make neutral decisions. During his tenure as Chairman of the Constitutional Court in 2013-2015, Hamdan Zoelva had several values that influenced public policy in Indonesia. Hamdan Zoelva in carrying out his duties reflects his commitment to the values of justice such as human rights, public participation, as well as transparency and accountability. There are several decisions as public policies related to these values, namely:

**Decision No. 16/PUU-XI/2013**

This decision contains a decision that the Constitutional Court, which granted the request for a material test against the legal provisions governing domestic violence, emphasized the need for protection for victims of violence.

#### **Decision No. 35/PUU-XI/2013**

This decision contains a decision that the Constitutional Court emphasizes the importance of community participation in the preparation of regional regulations so that the policies taken can reflect the aspirations of the people.

#### **Decision No. 84/PUU-XII/2014**

This decision is regarding the material test of the provisions regulating the supervision of state institutions and in it there is a decision that the Constitutional Court emphasizes the importance of a clear supervision mechanism to ensure the accountability of state institutions in carrying out their duties.

Hamdan Zoelva explained that during the implementation of the Constitutional Webinar held at the Halu Oleo Faculty of Law on September 13, 2024, he explained that all decisions submitted by the Constitutional Court have a very devastating impact, even a single request from a citizen can have an impact on the President, the House of Representatives, and even all state institutions. This makes Hamdan give advice to judges in Indonesia to make decisions on a case with the true truth (Muhtar, 2023). He added, a good judge is a judge who decides a case with truth and a decision from will get strong legitimacy if it meets three conditions, namely the fulfillment of the elements of formality, the second rationality, and the third morality. In several cases of the Constitutional Court's decision that occurred recently, Hamdan Zoelva in the Webinar agenda at Insan Cita University Indonesia said that the Constitutional Court's decision that occurred at this time, in this case, is related to the decision on the age of prospective participants in the 2024 election. Hamdan argued that the decision made by the Constitutional Court was strange, he saw that there was something incomplete within the Constitutional Court even though in its implementation there was a process *judicial review*. However, in this case, Hamdan did not express his opinion regarding the involvement of judges with politics. Hamdan said that whatever decision has been made by the Constitutional Court, the result will be final and binding (Muhtar, 2023).

#### **CONCLUSION**

In this study, Hamdan Zoelva's life history

from a political perspective and his thoughts on the Constitution, as explained in the book *The Struggle of the Constitution*, are very important. As a legal expert and former Chief Justice of the Constitutional Court, he emphasized that Islamic values are the foundation for justice, humanity, and unity in Indonesia. Hamdan Zoelva also views the constitution as a representation of the will of the people that needs to be respected, and highlighted the essential role of the Constitutional Court in maintaining the balance of power and protecting human rights, in addition to criticizing changes to laws that could threaten the independence of judges.

Life history Dr. H. Hamdan Zoelva, S.H., M.H. is a legal expert and political figure who has a great reputation in Indonesia. He served as Chief Justice of the Constitutional Court in the period 2013-2015, Hamdan Zoelva was born in Bima, West Nusa Tenggara on June 21, 1962, he grew up in a family that emphasized a very strong religious education. Political views according to Hamdan Zoelva Indonesia is a large country with a wealth of diverse cultures, ethnicities, and religions. Hamdan Zoelva, a prominent legal expert and politician, emphasized that Indonesia is based on Islamic values, where justice, humanity, and unity are the main pillars in the life of the nation and state. For Hamdan Zoelva, these Islamic values not only serve as a moral guide, but also as a basis for building just and prosperous state governance, as well as for creating harmony in a pluralistic society.

In Hamdan Zoelva's view, the constitution is the highest manifestation of the will of the people that reflects the values and aspirations of the people. Hamdan Zoelva emphasized that both written and non-written constitutions must be respected as a collective will, and maintaining the constitution means respecting the aspirations of the people in the life of the nation and state. a.Hamdan Zoelva also emphasized the crucial role of the Constitutional Court (MK) in maintaining the balance of power and protecting human rights, as well as serving as an important tool to prevent abuse of power in Indonesia; b.In his criticism of the 2024 amendments to the Constitutional Court Law, Hamdan Zoelva expressed concern about the threat to the independence of judges, which could make their decisions politically swayed. Hamdan Zoelva argued that the Constitutional Court should remain independent and should not be influenced by pressure from any institution.

Dr. H. Hamdan Zoelva, an Indonesian legal expert and political figure, is known as the

Chief Justice of the Constitutional Court (2013-2015). Born in Bima, West Nusa Tenggara, he grew up in an environment that emphasized religious education. He considers Islamic values, such as justice, humanity, and unity, as an important foundation for building fair state governance and creating community harmony. Hamdan emphasized the role of the constitution as a representation of the will of the people and the importance of the Constitutional Court in maintaining the balance of power and protecting human rights. He also criticized the amendment to the 2024 Constitutional Court Law, which is considered to threaten the independence of judges due to political pressure.

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