

INDONESIAN CONSTITUTIONAL AMENDMENT IN 4.0 ERA: MAIN CHALLENGES AND FUTURE PROSPECT

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INDONESIAN CONSTITUTIONAL AMENDMENT IN 4.0 ERA: MAIN CHALLENGES AND FUTURE PROSPECT

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ABSTRACT

Indonesian constitutional amendment that occurred in 1999-2002 had blind spots, especially in terms of the process, low public participation, especially when compared to countries that made constitutional amendments in the regime transition, an important reminder to revise in the momentum of the Fifth Amendment to the Indonesian constitution.

This article aims to define the constitutional amendment process that relies on democratic principles requiring public participation in the amendment process, especially in the 4.0 era where technological advances become an important part in legal development, including the constitutional amendments. This study used a qualitative method with a historical, conceptual, and comparative approach.

The resistance that the People's Consultative Assembly (MPR) holds towards the results of a comprehensive study by the Constitutional Commission formed by the MPR itself indicates that the MPR dominates of the implementation of constitutional amendments in 1999-2002 by the MPR, which also led to low public participation. The momentum of the fifth amendment of the Indonesian Constitution must be carried out on the basis of democratic principles that open the way for public involvement in constitutional dialogue directly and by the use of technological advances in the 4.0 era, which in fact can bridge over the demographic and topographical conditions that have been an obstacle to public participation in general policy formulation.

Keywords: Amendment; Constitution; Democracy; Public Participation.

INTRODUCTION

Constitutional amendment naturally takes place in countries adhering to the democratic constitutional concept, Denny Indrayana even used the term “*Sunatullah*” (Badu et al., 2018). Albert regarded that constitutional amendment is very strategic and important to create a constitution that a state could ask for (Albert, 2015). A good amendment process will produce an expected constitution, as constitutional amendments are strategic term in creating a desired constitution. One important aspect in the constitutional amendment process is that there are widely open public spaces in the constitutional amendment process, as stated by Benvindo to be a logical consequence of democracy (Badu et al., 2019).

Indonesia made the last constitutional amendment in the period 1999-2002, which was marked by the fall of the President Soeharto regime that had reigned over Indonesia for 32 (thirty

two) years. The results of the constitutional amendment from the beginning as determined by the People's Consultative Assembly have received criticism from various groups, not only in terms of constitutional material, but also in terms of processes that are considered to be very elitist and have minimal public participation (Nggilu, 2014). Admittedly, Indonesia is quite broad topographically and in terms of demographics, it has a fairly large population, thus it becomes one of the obstacles and challenges in maximizing public participation in the constitutional amendment.

There are several writings discussing the fourth amendment, among them writings that focus on criticism of the process of change and offer the involvement of the Court in the Constitutional Amendment (Huda, 2013), as well as writings that focus on the content material that is the object of the constitutional amendment, but no writing specifically discusses not only criticism of the constitutional amendment process, but also offers the idea of a democratic process of change in 4.0 era, where technological advances seem to be an instrument that can no longer be separated from the development of the law, no exception in terms of amendments to the Indonesian constitution.

The issue of the Fifth Amendment to the 1945 Constitution, which denotes the Indonesian constitution, has increasingly become more evident lately as seen from the massive Focus Group Discussion conducted by the MPR with the theme of Constitutional Amendment, Amendment Process and Material, as well as the Decree of the MPR No. 8/MPR/2019 on Recommendations to the MPR Term of Office 2019-2024 that basically, there is a desire to restore the authority to establish and determine the State Policy that the MPR had before the fourth amendment been carried out.

The desire to carry out the fifth amendment to the Indonesian Constitution must be well planned, and the blind spots occurred during the fourth amendment process of 1999-2002 must be corrected with maximum public participation in the fifth constitutional amendment, as for the issues regarding quite large size of the territory and population, it is necessary to formulate solutions that pay attention to technological advances in the 4.0 era that are able to bridge communication and information appropriately and quickly.

Public Participation in the 1999-2002 Constitutional Amendments

Cheryl Saunders classified Indonesia as one of the 3 (three) countries that amended the constitution at the turn of the regime in the 21st century (Saunders, 2012). The constitutional amendment was carried out as a consequence of the reforms that took place in 1998 of which President Soeharto's regime which had reigned over 32 years characterized by the fall of authoritarianism, these conditions caused euphoria of the people at that time, and then continued in the reform of the constitution through amendments in 1999-2002. Euphoria overwhelming the Indonesian people at that time was unable to be followed up by the MPR as an institution that carried out constitutional amendments through maximizing public participation in the fifth amendment process, whereas one of the constitutional amendment paradigms was based on the people's sovereignty paradigm with democratic principles that were not solely representative through the people's representatives in the MPR, but also must be participatory, and must be done by keeping away excessive domination and hegemony of state institutions (MPR) (Nggilu, 2013).

Mahfud who also involved in the constitutional amendment, considered that the MPR during the amendment at that time tended to be conservative as it argued that only the MPR held constitutional authority in the constitutional amendment, and led into polemic and political tensions as in practice, it tended to monopolize the constitutional amendments (Mahfud, 2010). The dominance over the constitutional amendment was also reflected in the resistance that the MPR indicated towards the input of the Constitutional Commission which was formed by the MPR itself in 2003 (the Constitutional Commission that had lost momentum, as it should have been formed before the amendment was carried out), where the constitutional commission considered that there were still blind spots in substance from the material content of the results of the constitutional amendments carried out by the MPR (Constitutional Commission, 2004). On this basis, Jimly stated that the amendment draft compiled and formulated by the MPR denoted a shallow conceptual understanding (Ahmad & Nggilu, 2019).

South Africa during the constitutional amendment in the regime transition was able to maximize public participation so as to successfully form a people's constitution. Public participation took place through Constitutional Assembly, as there were 2 million entries from more than 24 million people, other public participation was administered by carrying out constitutional discussions and debates on 37 television programs, talk shows on the radio with eight topics, 160,000 bi-monthly journals, the internet and hot lines telephone calls in five languages, as well as sectoral meetings held with around 200 organizations representing a number of groups (Indrayana, 2007), which indicates how public spaces for people's participation in constitutional amendments were opened with such breadth. Such condition is inversely proportional to Indonesia, the dominance of the constitutional amendment process by failing to widely open up spaces of public participation causes the MPR in the amendment process to receive 127 of the total population of around 200 million people, as well as the limited space for discussion through socialization and workshops (Nggilu, 2014).

The dominance and limitations of public participation in the constitutional amendment actually distorted the sense of openness and freedom initiated by President BJ. Habibie at the beginning of his length of service as president. Habibie opened up a political space and discussion with the MPR through the Legal Expert Council chaired by Romli Atmasasmita and affirmed that the constitution is no longer sacred to be touched by amendments (Gillespie, 2016), but this spirit is not inspired by the MPR in the constitutional amendment process.

Public Participation for the Fifth Constitutional Amendment in Era 4.0 (Prospect for the Future)

The MPR's move to the fifth Indonesia constitutional amendment must rely fully on the paradigm of popular sovereignty with democratic principles, where the elitist domination of the MPR in the fourth amendment of 1999-2002 must be transformed into a participatory constitutional amendment. Zachary Elkins et al. regarded public participation in constitutional amendments to be important for legitimacy and process (Elkins et al., 2008), even the affirmation was further confirmed by Ronald Van Crombrugge affirmed that constitutional amendments were important to carry out democratically, due to 2 (two) considerations, first, democratic constitutional amendments are an instrument to achieve the objectives desired by the public. The importance of public participation is to ensure an institution becomes effective and

obtains legitimacy from the people regarding principles perpetuated in the constitution. Second, the democratic constitutional amendments will give birth to democratic constitutions as well, and this reflects how open the way for citizens to get involved in influencing public policy (Crombrugge, 2017).

Reflecting on the success of constitutional amendments in other countries, both South Africa, Iceland (Crombrugge, 2017), including the Philippines and Thailand (Nggilu, 2014), Indonesia needs to establish plans and strategic steps to make constitutional amendments, including:

First, the Indonesian constitutional amendments must be based on democratic principles, it is important, as the characteristics of a democratic constitutional amendment require maximum public participation since the beginning of the amendment process. Means of discussion, constitutional dialogue must be opened as wide as possible. Domination by one group of actors (MPR) become the antithesis of the democracy principle, even Anne Meewese and Marnix Snel have affirmed that in the constitutional amendment process it is necessary to have constitutional dialogue intended for an open and frank interchanges, exchange and discussion of ideas and opinions in the seeking of mutual harmony (Meuwese & Snel, 2013).

Second, it is necessary to establish an independent commission, which supports the work of drafting constitutional amendments. The formation of this independent commission was carried out by the MPR as constitutionally, the MPR has the authority to amend and establish the constitution as Article 3 paragraph (1) of the 1945 Constitution. Even though this independent commission was formed by the MPR, the composition must be chosen by the experts, statesmen, and shall be non-partisan, it is necessary so that the process of drafting material for constitutional content can be filtered from short-term pragmatic political interests, which will adversely affect the constitution that will be enacted in the future. The formation of a constitutional commission must also be formed after the MPR establishes a political agreement to amend the constitution, rather than forming after the constitutional amendment is carried out (the missed momentum) as happened in the fourth amendment to the constitution.

Third, the fifth constitutional amendment, it is necessary to utilize the advancement of information technology, in order to bridge the involvement of citizens in the constitutional amendment process. Since it is undeniable that Indonesia's demographic conditions are as large as 1,916,862 km², as well as topographical aspect that reaches 265 million populations (Central Statistics Agency, 2019) and the less uncomplicated Indonesia's topographic. Utilization of technology in the context of legal development in Indonesia is actually not a brand new thing, one of which can be referred to is the use of technological advances in the Indonesian Constitutional Court, in which since the application process, the trial process, to the verdict all of them can be accessed through CLICK MK. Empirically it denotes that the majority of citizens are active internet users, which is 175.4 Million People, an increase of around 17% percent from 2019 (Detik, 2020), while regions that have limited internet access can be prioritized into an area to visit by an independent commission drafting the constitution, not only to socialize the existence of constitutional amendments, but more than that, trying to solicit input to find out the situation of the fundamental mysticism and desire of the people who will be perpetuated through constitutional amendments. The MPR and the independent commission can take advantage of technological advancements by moving “meeting rooms and discussion rooms” into public

spaces that can be easily accessed by the public either through YouTube's constitutional amendments made by the MPR or other media.

Fourth, it is necessary to make the amendment process belongs to all elements, not only by citizens, but also by institutions, as social institutions, higher education institutions and state institutions need to be maximally involved in the constitutional amendment process. Especially for the Constitutional Court, it is necessary to be given space to conduct a constitutional crosscheck on the material content of the draft of constitutional amendments prepared by such independent commission, in order to ascertain whether the material content is in accordance with universal constitutionalism and Indonesian constitutionalism (Huda, 2013). It is highly necessary because after the constitutional amendment has been completed, the Constitutional Court is an institution that will oversee the implementation of the constitution carried out responsibly by all elements of the state (Nggilu, 2019).

The Fifth Amendment to the Indonesian constitution, which is based on public participation rooted in the principle of democracy, is expected to produce a people's constitution as taking place in South Africa under Nelson Mandela's leadership.

CONCLUSIONS

The constitutional amendment with democratic principles that requires public participation is like two sides of an inseparable coin. Community involvement in constitutional amendments needs to conduct by an approach of constitutional dialogue through talk shows, Focus Group Discussion as a means to read the soul of mysticism and the fundamental desires of the people to be perpetuated through the constitution, and shall be equipped with strategies for utilizing information technology advancements to bridge the obstacles, particularly the demographic aspects of Indonesia. Apart from the term of process, as well as institutionally, the MPR is still an institution that constitutionally changes and establishes the constitution, but it still needs to form an independent commission that will prepare a draft of constitutional amendment.

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REFERENCES

- Ahmad, & Nggilu, N.M. (2019). The Pulse of the Fifth Amendment of the 1945 Constitution through the Involvement of the Constitutional Court as the Principle of the Guardian of the Constitution. *Jurnal Konstitusi*, 16(4), 785-808.
- Albert, R. (2015). Amending constitutional amendment rules. *International Journal of Constitutional Law*, 13(3), 655-685.
- Badu, L.W., Nggilu, N.M., & Imran, S.Y. (2018). Alienation changes in formation commission of indonesia constitution of 1945 (Contemplation toward the fift amandemen). *Legal Reform Journal*, 5(1), 74-82.

- Badu, L.W., Nggilu, N.M., Imran, S.Y., & Suci, P.C. (2019). Participative model of 1945 amandement through the constitutional commission. *1st International Conference on Islamic Development Studies (ICIDS)* (p. 2). Bandar Lampung-Indonesia: European Union Digital Library.
- Central Statistics Agency. (2019). *Statistik Indonesia (Statistical Yearbook of Indonesia)*. Jakarta: Badan Pusat Statistik Indonesia.
- Constitutional Commission. (2004). *Book I academic manuscript comprehensive study of the constitutional commission on amendments to the 1945 constitution of the republic of Indonesia*. Jakarta: Sekretarian Jendral MPR RI.
- Crombrugge, R.V. (2017). Belgium and democratic constitution-making: Prospect for the future. *Netherlands Journal of Legal Philosophy*, 46(1), 13-36.
- Detik. (2020). Retrieved from <https://m.detik.com/inet/cyberlife/d-4907674/riset-ada-1752-juta-pengguna-internet-di-indonesia>
- Elkins, Z., Ginsburg, T., & Blount, J. (2008). The citizen as founder: Public participation in constitutional approval. *Temple Law Review*, 81(2), 361-382.
- Gillespie, J. (2016). Public discourse and constitutional change : A comparative of Vietnam and Indonesia. *Asian Journal of Comparative Law*, 11(SI2), 209-218.
- Huda, N. (2013). Involvement of the Constitutional Court in Participatory Amendments to the 1945 Constitution through the Constitutional Commission. *Yustisia*, 2(2), 12-22.
- Indrayana, D. (2007). *Amendments to the 1945 constitution, between myth and demolition*. Bandung: Mizan Pustaka.
- Mahfud, M.D. (2010). *Constitutional and legal issues in controversy*. Jakarta, Indonesia: Rajawali Press.
- Meuwese, A., & Snel, M. (2013). Constitutional dialogue: An overview. *Utrecht Law Review*, 9(2), 123-140.
- Nggilu, N.M. (2013). *The Urgency of the Presence of the Constitutional Commission in Amendments to the 1945 Constitution*. Yogyakarta: Master of Law Program, Faculty of Law, Islamic University of Indonesia.
- Nggilu, N.M. (2014). *Constitutional law and theory (Participatory and Populist changes to the constitution)*. Yogyakarta: UII Press.
- Nggilu, N.M. (2019). Initiating sanctions for constitution disobedience actions against constitutional court decisions. *Constitutional Journal*, 16(1), 45-55.
- Saunders, C. (2012). Constitution making in the 21st century. *International Review of Law*, 4(2), 1-10.

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