

Participative Model of 1945 (Fifth Amendment) Amendment Through the Constitutional Commission

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Abstract. The research problems are about what participative amendment model of the 1945 Constitution of the Republic of Indonesia is. In this study, the researchers used statute and conceptual approaches as well as comparative approach, with primary and secondary sources of authorities. This research used prescriptive analysis. In general, this study examines the constitutional, conventional process amendment as managed in Article 3 Paragraph (1) and Article 37 of the 1945 Constitution of the Republic of Indonesia, the conventional amendment which constitutes the MPR's authority is considered challenging to result in a democratic and participatory constitution. This can be seen from two Dimensions, namely as follows; a very strong MPR has changed the philosophical dimension in which the philosophical constitution limits power with an orientation of interests and power; second is the historical dimension referring to the process and 1999, 2000, 2001 and 2002 constitutional amendments outcome. Therefore, the good results vanadium existence that will be primarily determined by the process, this research hence is directed to reconceptualize the change model of the 1945 Indonesia Republic Constitution which is participative by constitution commission institution which has the state auxiliary body characteristic as well as describes how the process and mechanism action which is participatory as to produce the people's constitution without negating the constitutional amendment authority is currently attached to the MPR institution. To strengthen this paper analysis, researchers also conducted a constitutional comparison amendment in 3 (three) countries, namely Thailand, Philippines, and South Africa.

Keywords: Participative Model, Fifth Amendment, Indonesian 1945 Constitution, Constitutional Commission

1. Introduction

A constitutional amendment is a very strategic matter within the constitutional state that determines the nation constitution development in which the importance and strategic of legal provisions affirmation on the constitutional change[1]. This is certainly reasonable, since the constitutional changes, especially the articles that regulate it, able to determine the political actors who change to the existing legal norms in the constitution or redesign to the fundamental norms. This constitutional amendment constitutes sections a two-dimensional as follows; the institutional authority dimension and the constitutional amendments limitation. Therefore, it provides the confirmation of which institutions have the authority to make changes, as well as how the terms and change mechanisms are made constitutionally.

Also, the constitutional amendment norm is an essential part of the constitution, while another decisive point is the process of constitutional change. This means that constitutional amendment norm is constitutionally "entering" to make constitutional changes, the change process constitutes all political and academic actors "constitutional space" and even the general public collects the concepts, ideas, correction and improvement on the constitution weaknesses contained in the amended constitution, since the constitutional amendment is actually an "endeavor" to correct and improve the constitutional aspects contained in the constitution [2]. However, to what extent such "public" elements could directly be involved within the constitutional process? In a democratic country, it is logical to think that such popular movement could directly influence the constitutional change, thus the public move as a constitutional moment [3]. In other words, the change process will significantly affect the constitutional amendment material, whether the amended constitution by the constitution requirements and the "spirit of the times" when the constitutional amendments are made or not, will much depend on the constitutional amendment process. A good result of the constitutional amendment, of course, is one which manifests not only the sovereignty of the state and its laws but also the sovereignty of the people as a nation.

In Indonesian constitution, there is an awareness of the need to place constitutional amendment norm to the 1945 Constitution of the Republic of Indonesia, as outlined in Article 3 paragraph (1), and Article 37 paragraph (1) - (5). It is intended constitutional amendment to be done constitutionally not to facilitate change, due to the complicated change to be mature or not random based only on the narrow politician's interests (Were, 2003). Also, Indonesia Constitution holds a constitutional democracy which places the people as the highest holder sovereignty. In that context, the constitution change by maximizing public participation in the constitutional amendment is a logical consequence of the democratic constitutional application[4].

The point is, the result of the constitutional amendment during the four-stage interval from 1999 to 2002 still raises fundamental constitutional issues even the change result is considered to tap into experimental transition "space" caused by the constitution reforms occurred in the 1999-2002 period contaminated with the pragmatic compromise and ideological divisions[5]. The short-term nature obscures the constitutional change in material substance. Also, another aspect is considered weak in the constitutional change process in that period is the lowest public involvement in the constitutional amendment participation.

2. Correction Of The Fourth Amendment Process and Result To Welcome The 1945 Constitution Of The Republic Of Indonesia

The constitutional amendment four stages have produced the results of the constitutional amendment over 1999-2002 periods must be recognized to have laid down some constitutionalism principles in Indonesian constitution, such as the human rights principle protection, however it should be admitted that result of constitutional amendment left several worthwhile notes to be corrected and improved by the Fifth Amendment. The corrected and improved parts of the Indonesian Constitution can be described as follows:

1. Indonesian legislative, the institutional design does not fully reflect the check and balance aspects. This can be seen from the very minimalist DPD authority compared to the DPR authority, DPD looks very inferior in front of the House, whereas DPD has great people's legitimacy directly even the filling process of DPD members is much heavier than the charging members process of the House (Compare Article 20, 20A to Article 22D)

2. Based on the executive aspect, it is necessary to strengthen the presidential system by ensuring the power balance between the president and the Representatives House by the political parties simplification numbers, the two rows presence in the House and create the president' possibility through personal channels
3. In the judicative field, management of a judicial system which guarantees the judiciary quality with the independence principle balanced by accountability and ensures the public confidence along with the duties divided between the Constitutional Court, Supreme Court and Judicial Commission to succeed the law enforcement agenda and upholds the dignity and the judges are needed [6].
4. The high corruption contemporary condition practices, theoretical and juridical debates regarding the KPK existence and authority in eradicating corruption agenda, raise the anti-corruption constitution idea means, the need to regulate the KPK existence and its authority in the constitution.

The existence of the constitutional record reform in Indonesia is suspected caused by the 1945 Constitution amendment model, which was implemented in conventionally 1999-2002 and absolutely by MPR philosophically has each other conflict. Philosophically, the constitution existence has limited the power, while the MPR as a powerful institution with political interests and power orientation. It means that how could a philosophical constitution limit the power changed by strong political interests and power orientation institution. The most reflected in the amendment process to the 1945 Indonesia Constitution with high-level political compromise ultimately obscures the constitutional change substance and it can be seen in the formulation minutes of Article 22 of the DPD where the MPR split into two camps, Bicameral with the DPD formation with the same authority to the Parliament, while the second camp counter with bicameral system on the grounds is an application system to the federal state. The endless debate finally made the two camps lobbying and formulating the 1945 Constitution Article 22 is very compromise, both sides agreed, the DPD could be formed but with compromise and minimalist authority.

Another thing to note in the constitutional change process is also not wholly involving people's participation in the change process made by the MPR, whereas the right constitution meaning is the people's resultant or agreement in the politics, economy, society and culture fields), as the fact in the process constitutional amendment field by the 1999-2002 MPR, only 127 letters came to the MPR out of a total of 200 million people.

3. Participative Fifth Amendment Of The 1945 Constitution Of The Republic Of Indonesia Trough The Constitutional Commission

Constitutionally, a constitutional amendment is indeed, the People's Consultative Assembly authority (vide Article 3 Paragraph (1)) which can be done under the 1945 Constitution fairly strict conditions (vide Article 37 paragraph (1) - (5), representative democracy interpreted the MPR as the embodiment of the people's representatives. On the constitutional change basis in the period, 1999-2002 is done with many controversies. This normative provision to this day has become a constitutionally binding constitutional amendment norm. However, the 1945 Constitution Article 3 good norm paragraph (1) and Article 37 constitute an open legal policy for the MPR to regulate the constitutional amendment mechanism further. During this time, the constitutional amendment model implemented by the MPR is formed an Ad Hock Committee contains MPR members as well, whereas to ensure and avoid the change process from the political compromise and pragmatic interests, the MPR may form a constitutional commission assigned to perform the capturing

Public task input on constitutional amendments, and preparing a constitutional amendment draft before it will be agreed upon and adopted by the MPR as a political decision. In fact, in the constitutional amendment process, the MPR once formed a KK, but the formation has lost its momentum and even the KK formation spirit. The KK was formed after the constitutional amendment process in 2003 and served as the editor who synchronized and harmonized the first to fourth amendment stages.

If we compare it with some countries, such as Thailand with the Constitutional Drafting Assembly, and the Philippines with the Constitutional Commission, the three constitution institutions commission succeeded in formulating a democratic constitutional amendment draft and the people's constitution. [7].

Therefore, welcoming Fifth Amendment of the 1945 Constitution of The Republic of Indonesia become very important to establish a Constitutional Commission on the Article 3 Paragraph (1) and Article 37 basis the 1945 Constitution of The Republic of Indonesia. It was an open legal policy, means the MPR should form a COW before a constitutional amendment preparing a constitution draft than being determined by the MPR. The constitutional change process of democratic maximizes the public's participation can be done by:

1. Community involvement in the Constitutional Commission establishment and its authorities;
2. The community involvement in the filling of Constitutional Commission members should be a member of the representatives of the academic in the HTN field and the constitution, state administration, politics, culture, and economy.
3. Community Involvement in the grand design preparation as Fifth Amendment roadmap of the 1945 Constitution of The Republic of Indonesia.
4. Community Involvement in constitutional content material preparation and discussion.
5. Making the society as the main subject in socializing the constitution either through socialization and other means.

All ways to involve the community's participation in constitutional amendment can be done by opening the space to receive public letters related to the initial process in a constitutional amendment, opening the telephone hotline service, creating interactive discussions on TV, radio and mass media as well as focus group discussion on campuses and other academic spaces.

4. Conclusion

Indeed, the constitution content is just as crucial as the amendment process since the amendment process can affect the constitutional amendment substance. The conventional amendment model required by the MPR needs to be developed. The Article 3 Paragraph (1) and Article 37 are the open legal norms policy means the MPR is allowed to determine the constitutional amendment whether absolute by the MPR through ad-hock committee, or to form a constitutional commission process as an auxiliary body preparing a constitutional amendment draft. The most appropriate and rational choice is the MPR form a constitutional commission filled by the scientific and non-partisan actors. Also, the choice to establish KK in constitutional amendments suppresses a philosophical clash between the limiting power of constitutional philosophy and the MPR philosophy as a strong institution with a political interest orientation.

The constitutional commission work must be able to maximize the people mass participation in various ways either through discussion forum, the hotline services provision,

and constitution commissions must also formulate a constitution draft that will become the people's constitution with the enormous public participation indicator in the change process, Constitutional norms oriented to strengthen the citizens constitutional rights as well as the majority recognition or legitimacy of the people against the constitutional amendment results designed by the constitutional commission and determined by the MPR.

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