

# Urgency of Amendment The 1945 Constitution in Realizing Consolidation of Democracy in Indonesia

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**Abstract.** One of the important reform agendas is to create a democratic country. The 1998 reformation was the initial phase of democratization in Indonesia, one of which was marked by changes to the constitution, namely the amendments to the 1945 Constitution which were carried out by the MPR. The amendments of 1945 Constitution were carried out with the aim of accelerating the democratization process in Indonesia and realizing a consolidated democracy. This study analyzes the urgency of the amendment to the 1945 Constitution in realizing the consolidation of democracy in Indonesia. The theory used in this research is Dahl's constitutional theory and Larry Diamond's theory of Consolidated Democracy with a juridical normative approach. The results of this study are that fundamentally the amendments to the 1945 Constitution have been in accordance with the ideals of democracy, but problems arise in practice and implementation, there are still some basic problems in the 1945 Constitution that must be changed in order to create a consolidated democracy. The things that must be changed include, among others, the addition of the Basic Principles of State Policy in the 1945 Constitution, the arrangement of the authority of the MPR and the arrangement of the authority of the DPD.

**Keywords:** Amandment, Consolidate Democracy, Democratization

## 1. Introduction

The end of the New Order era in 1998 was the initial phase of democratization in Indonesia. Samuel Huntington in his book entitled *Third Wave of Democratization* mentions the phenomenon or wave of democratization is a change or change in various regimes that were previously non-democratic to become democratic [1]. In Indonesia, this event was marked by the end of the New Order era towards the Reformation era. In addition to the reform phenomenon marked by the resignation of Suharto from power, the next monumental phenomenon that occurred in Indonesia was the amendment of the 1945 Constitution, which was carried out by the MPR four times in 1999-2002 as one of the implications of the democratization process. This is considered phenomenal because almost no one thinks that the 1945 Constitution which is considered sacred was then amended, even up to four times [2].

The amendment of the 1945 Constitution has been considered as the first step in realizing the consolidation of democracy in Indonesia. In fact, some people think that the 1945 amendment can lead Indonesia to a consolidated democracy, because the various contents of

the amended constitution are considered to be in line with the goals of democracy. However, up to 24 years of reform, there are still some aspects of the 1945 Constitution which are expected to be amended in order to realize the consolidation of democracy. The discourse of the fifth amendment to the 1945 Constitution was then echoed by several parties with various considerations, among others, for the realization of a democratic state administration system [3].

Based on the description of the background of the problem above, this research focuses on the implementation of the amendments to the 1945 Constitution in the life of the nation and state and their influence in strengthening the democratization process in realizing the consolidation of democracy in Indonesia.

## **2. Method**

This research uses qualitative research methods with normative juridical methods. Normative juridical research is a legal research method conducted by examining library materials or secondary data [4]. The technique used in data collection is literature study technique. Literature study, carried out by collecting library materials obtained from various literatures or books, and legislation related to the problems in this research. This study uses two main theories to analyze and answer research questions, namely the Constitutional theory by Robert Dahl [5] and the theory of consolidation of democracy by Larry Diamond [6].

## **3. Discussion**

### **3.1. Implementation of Amendments to the 1945 Constitution**

Amendments to the 1945 Constitution have been carried out in stages four times, namely in 1999-2002. The most basic things related to the amendment to the 1945 Constitution are, among others, because the 1945 Constitution before the amendment was considered to provide a gap for the continuation of an authoritarian political system, such as in the era of guided democracy and the New Order era. In addition, in the 1945 Constitution before the amendment, it gave very large powers to the president (executive heavy), the distribution of power was disproportionate between the executive, legislative and judicial institutions, there was a mechanism for checks and balances that was strong and minimal and the content of human rights was minimal [2].

Amendments to the 1945 Constitution are closely related to democracy in Indonesia. There are several main impacts of the amendment to the 1945 Constitution, among others, first, namely the recognition of people's sovereignty. After the amendment to the 1945 Constitution, the fundamental change experienced by the Indonesian people was the guarantee of people's sovereignty. Prior to the amendment, the people's sovereignty was fully in the hands of the MPR. The next change is the principle of strengthening checks and balances between branches of state power, which consists of the executive, legislature and judiciary. After the amendment, there is no longer a higher position institution, all institutions can control each other.

The third change is the limitation of presidential powers and the empowerment of parliament. As explained in the previous explanation that prior to the amendment to the 1945 Constitution, the executive had enormous power, even the legislator was the president. However, after the amendment, the president no longer has the power to make laws, even the amended 1945 Constitution states that each draft law (RUU) must be discussed by the DPR and the President to obtain mutual approval. In addition, the 1945 Constitution also places a limit on the term of office of the president, namely only two terms, previously there was no limit to the periodization of the office of president and vice president. In addition, the president can be impeached under certain provisions, such as being suspected of committing a disgraceful act, violating the law, violating the oath of office and others. The process of impeachment is submitted by the DPR to the Constitutional Court (MK), after it is decided by the Court, whether there has been a violation or not, then the MPR decides politically whether the president is impeached or not. This provision can be seen in Article 7A of the 1945 Constitution after the amendment.

Another basic change after the amendment is the restructuring of state institutions, one of which is regulating the formation of the DPD to strengthen people's representation in the regions. The 1945 Constitution as a result of the amendments also regulates general elections. This election regulation is regulated in the 1945 Constitution Article 22 E as a result of the amendment. In addition, the rules regarding general elections also regulate election organizers, in this case what is meant is that general elections must be carried out by a national, permanent and independent commission. This causal background is the birth of the General Election Commission (KPU) from the center to the regions. Another fundamental change is the existence of rules governing direct presidential and vice presidential elections, this is certainly different from the previous era where the president was elected by the MPR. So since 2004 the President and Vice President are directly elected by the people.

Furthermore, the results of the amendments to the 1945 Constitution also contain substantial human rights enforcement. The fundamental change in the point of upholding human rights in the amendment to the 1945 Constitution is the amendment of article 28, from articles 28 A-28 J. In this article, it also talks about the obligations of citizens to guarantee the rights of other citizens.

### **3.2 The Urgency of Amending the 1945 Constitution to Realize Consolidated Democracy**

One of the important agendas in the democratic transition towards democratic consolidation is to revitalize the existing constitution, in order to accelerate the democratization process. The amendments to the 1945 Constitution which were carried out four times had at least a very large role in the democratization process in Indonesia, but some considered it necessary to carry out a fifth amendment to the 1945 Constitution. MPR/2019 concerning MPR Recommendations for the 2014-2019 Period, which contains several MPR recommendations related to the fifth amendment to the 1945 Constitution, including [7] :

- a. Principles of State Policy
- b. Structuring the Authority of the MPR

- c. DPD Authority Arrangement
- d. Presidential System Arrangement
- e. Judicial Power Arrangement
- f. Structuring the legal system and legislation based on Pancasila as the source of all sources of state law
- g. Implementation of Correctional values of Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, Bhinneka Tunggal Ika, and the MPR Decree.

The seven recommendations of the MPR that have been determined do not have to be carried out in one amendment to the 1945 Constitution. This is because in the process of amending the 1945 Constitution, the principle of prudence must be used in order to maintain constitutional conduciveness to ensure legal certainty in the state process. Of the seven recommendations, there are three main things that are urgently needed to be discussed, namely those related to the Main Principles of State Policy, the Arrangement of the Authority of the MPR, and the Arrangement of the Authority of the DPD.

The urgency of the amendment to the three main things, among others, first is related to the Main Principles of State Policy, after the amendment to the 1945 Constitution the direction of national development is no longer determined through a special guideline that cannot guarantee a sustainable development that is mandated in one vision and mission based on the provisions of the mandate. 1945 Constitution. During the reformation era, the direction of national development which was no longer determined through the Outline of State Policy (GBHN), followed the program or vision and mission of the elected president and vice president (Simamora, 2016).

Second, related to the arrangement of the MPR's authority. After the amendment to the 1945 Constitution, the MPR was deemed to no longer have the authority to stipulate regulatory products other than the amendments and stipulations of the 1945 Constitution. The urgency of structuring the MPR's authority in the fifth amendment of the 1945 Constitution is the implication of the idea of drafting the Main Principles of State Policy. The arrangement of the MPR's authority can be included in articles related to the MPR, for example in Article 3 of the 1945 Constitution, added paragraph 4 which then reads "The MPR has the authority to draw up and determine the main points of the state policy".

Furthermore, regarding the institutional arrangement of the DPD, the arrangement includes several things, among others, the arrangement of the DPD's Legislative Function Authority and the arrangement of the DPD's Authority in the Consideration function (Gloria, 2021). In the legislative function, based on the Constitutional Court Decision No. 92/PUU-X/2012 and the Constitutional Court Decision No. 79/PUU-XII/2014 it states that there is a balance in the position and role of the DPD in proposing and discussing the Bill with the President and the DPR (as far as the authority of the DPD is concerned). However, the DPD is not given space by the 1945 Constitution in terms of the stages of determining the Draft Law which is being discussed together. Through the amendments to the 1945 Constitution, it is hoped that there will be a strengthening of the legislative function possessed by the DPD in terms of Stipulation of Draft Laws concerning the DPD's authority [10]

In addition, based on the provisions of the Law, the DPD has the authority to provide considerations in the preparation of the APBN Bill which is proposed by the President to be discussed with the DPR. This is based on the provisions of the 1945 Constitution Article 23 paragraph 2 which reads "The Draft Law on the State Revenue and Expenditure Budget is submitted by the President for discussion with the House of Representatives (DPR) by taking into account the considerations of the Regional Representatives Council (DPD)". The phrase "paying attention to the DPD's considerations" in the article seems to indicate the position of the DPD which is not in line with the DPR. In addition, the amendments to the 1945 Constitution are expected to also pay attention to the functions of other DPD considerations related to filling public positions that have an impact on regional interests. For example, in the consideration of filling in the positions of KPU, Bawaslu, DKPP and other commissions or bodies. So far, the DPD's consideration function is still limited in giving consideration to the DPR in selecting BPK members.

#### 4. Conclusion

Indonesia is still in the stage of democratization towards the consolidation of democracy. Procedural amendments to the 1945 Constitution have played an important role in accelerating the democratization process in Indonesia to realize the consolidation of democracy. However, substantially, the implementation of the amendments to the 1945 Constitution can be said to have not been able to lead Indonesia to democratic consolidation. Therefore, several ideas emerged regarding the urgency of the fifth amendment to the 1945 Constitution, to perfect the constitutional system of the Republic of Indonesia. However, the amendment must be implemented using the precautionary principle and prioritizing the principle of legal certainty. Some of the main points that are urgently needed to be amended include the establishment of the State Policy Principles, the arrangement of the MPR's authority, and the arrangement of the DPD's authority.

#### References

- [1] Samuel Huntington. *Gelombang Demokratisasi Ketiga*. Okohama: University of Oklahama Press; 2001.
- [2] Valina Singka Subekti. *Dinamika Konsolidasi Demokrasi*. Jakarta: Yayasan Obor Indonesia; 2015.
- [3] Beragama DK, Jufri M. Urgensi Amandemen Kelima pada Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Terkait Hak dan Kebebasan Beragama. *Jurnal HAM* 2021;12:123–40. <https://doi.org/10.30641/HAM.2021.12.123-140>.
- [4] Soerjono Soekanto, Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajawali Pers; 2001.
- [5] Robert Dahl. *Perihal Demokrasi (Terj)*. Jakarta: Yayasan Pustaka Obor; 2001.
- [6] Larry Diamond. *Developing Democracy : Toward Consolidation* . Baltimor: JHU Press; 1999.
- [7] Budiarti Utami Putri. *Ada 7 Rekomendasi MPR untuk Amandemen UUD 1945, Apa Saja? - Nasional* Tempo.co. TempoCo 2019. <https://nasional.tempo.co/read/1257772/ada-7-rekomendasi-mpr-untuk-amandemen-uud-1945-apa-saja> (accessed March 2, 2022).

- [8] Simamora J. Urgensi Keberadaan GBHN Dalam Sistem Ketatanegaraan Republik Indonesia. *Jurnal Litigasi (e-Journal)* 2016;17:3427–66. <https://doi.org/10.23969/LITIGASI.V17I2.143>.
- [9] Gloria. Pakar UGM dan Kelompok DPD di MPR Diskusikan Haluan Negara dan Amandemen UUD | Universitas Gadjah Mada. *UgmAcDi* 2021. <https://ugm.ac.id/id/berita/20948-pakar-ugm-dan-kelompok-dpd-di-mpr-diskusikan-haluan-negara-dan-amandemen-uud> (accessed March 2, 2022).
- [10] Achmad Syukron Jazuly MEYSH, LLM,. Urgensi Penguatan Fungsi Legislasi Dewan Perwakilan Daerah RI dalam Sistem Checks and Balances Dengan Dewan Perwakilan Rakyat 2012. [http://etd.repository.ugm.ac.id/home/detail\\_pencarian/54217](http://etd.repository.ugm.ac.id/home/detail_pencarian/54217) (accessed March 2, 2022).