

Dynamics of the 1945 Constitution: Reflection on 74 Years of Constitutional Republic of Indonesia

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Abstract- For the modern state, the constitution must be understood as a development concept. The constitution can not be viewed as a static document, but it lives and grows as the basic principle of the state organization that always follows the developments and dynamics of society. The constitution was born from constitutionalism which provides limits of state power in one side and guarantee for the rights of people through constitutional provisions in another side. During 74 years of Indonesia's independence, the constitution give the color in the organization of state administration. Many important events woven in 3 (three) constitutions in this period, namely the Constitution of 1945, the Constitution of 1949 United Republik of Indonesia and Provisional Constitution of 1950. Departing of the view that the constitution should follow the development and dynamics of society, this paper will explore the journey of life about the constitution of the early independence to this present era. For a dynamic society, creation of awareness constitution is very important, because the constitutional talks in the future will increasingly contentious and polemical as in previous years.

Keywords- *Constitution, Constitutionalisme, State Power*

I. INTRODUCTION

According to the administration of a modern state that adopts a democratic system, a constitution means the supreme law of the land, which underlies every form of law or other legislation. It is also understood as a developing concept which means that the constitution cannot be seen as a "dead" or static document, but rather lives, grows and develops one, as basic principles of the administration of a state that always lives by following the developments and dynamics of its society and era. It shall be an embodiment of living constitution.[1]

The constitution is the general consensus or common agreement of all people regarding basic matters related to the basic principles of life and the administration of the state, as well as the organizational structure of a state. Constitutionalism is an understanding that limits the power of the state on one party and guarantees the rights of the people on the other by the rules in the constitution. By delivering an understanding on the 74 years of the Indonesian constitutionalism, the present paper is a reflection of Indonesian constitutional journey from the early era of independence to the present, focusing on the 1945 Constitution. The writing is inspired by the

phenomenon of increased today's awareness of constitutional citizenship. [2]

II. FINDING AND DISCUSSION

1. Constitution, Constitutionalism, and State Power

James Bryce, as quoted by C.F. Strong, gives the definition of constitution as "a frame of political society, organized, through and by law, that is, to say on it which law has established permanent institutions with recognized functions and definite rights". Further, C.F. Strong adds and completes James Bryce's definition by stating that "constitution is a collection of principles according to which the power of the government, the right of the governed, and the relations between the two are adjusted." Meanwhile, K.C. Wheare limits the definition of constitution as "the entire system of government of a country, the collection of rules which establish and regulate or govern the government". [3]

F. Lassale divides the constitution into two meanings. First, the sociological or political understanding that refer the constitution as a synthesis of real power factors in society. He describes the relationship among these powers, such as the king, parliament, cabinet, pressure group, political parties and others. That is what it calls the real constitution. Second, juridical understanding that highlights the constitution as a text that contains all state buildings and government joints. Based on the first understanding, it is seen that Lassale adheres the notion showing that the constitution actually comprises a broader understanding than the 1945 Constitution. Based on a juridical sense, however, it also seems to be affected by the notion of codification which equates the constitution to the 1945 Constitution.[4]

The debate on the aforesaid constitution, it does not only focus on whether the Constitution, the 1945 Constitution and Basic Law are the same or different. Each generation had an argument over time and finally complemented it each other to what extent or scope the constitution is. Constitutionalism plays a role as an idea to limit the governmental power in such a way, so that its implementation shall not be arbitrary and thus, it is hoped

that the rights of citizens shall be more protected, arising earlier than the constitution itself. [5]

Therefore, Carl J. Friedrich describes constitutionalism as an idea showing that a government is a series of activities carried out by and on behalf of the people, but it imposes some limitations that are expected to guarantee that what is needed for governance is not misused by those who have been mandated. Indicating the meaning of constitution for a state, Sri Soemantri reveals that there is no state in the world that does not comprise a constitution nowadays. The state and constitution are two institutions which cannot be separated one to another. Hamid S. Attamimi believes that the importance of the constitution or the Basic Law is as a giver of authority or a boundary as well as how a state power should be implemented. Meanwhile, Bagir Manan sees the nature of constitution as an embodiment of constitution or constitutionalism, that is, a restriction on government power on one party and guarantees on the rights of citizens on the other. [6]

In addition to the guarantee of the human rights of citizens, the thing that gets the attention of the constitution is the limitation of power. It is considerably important because in general, power tends to abuse (power tends to corrupt). Therefore, the constitution is drafted and adopted in order to prevent the possibility of power abuse. There are three types of constitutions according to the history of Indonesian constitution that have been in enactment, namely (1) the 1945 Constitution, which was in enactment between August 17, 1945 and December 27, 1949; (2) the 1949 Constitution of the Republic of the United States of Indonesia, which was in enactment from August 17, 1949 to August 17, 1950; (3) the 1950 Provisional Constitution, which was in enactment between August 17, 1950 and July 5, 1959; (4) the 1945 Constitution, which has been in enactment since the Presidential Decree of July 5, 1959 to date. [7]

2. Indonesian State Administration on the 1945 Constitution Period

Since the beginning of the Indonesian independence, two days right after the Japanese empire signed its defeat from the allies in front of General Mc. Arthur, the independence leaders then used this open opportunity in “fast” act and “improvised” preparation through the Indonesian Independence Preparatory Committee or *Panitia Persiapan Kemerdekaan Indonesia* (PPKI) or called *Dokuritsu Zjumbi Inkai* to declare Indonesian independence on August 17, 1945. The day after, on August 18, 1945, the nation’s leaders who convened in PPKI made an important decision by establishing a constitution, namely the Unitary State of the Republic of Indonesia, known as the 1945 Constitution. In addition, the PPKI also appointed the President and Vice President, namely Soekarno and Hatta, both of whom were coincidentally the Chair and Vice Chair of the PPKI. [8]

By the enactment of the 1945 Constitution, based on Article I concerning Transitional Provisions of the 1945 Constitution, the PPKI was then legally a statutory institution that is obliged to carry out the transfer of government power from the Japanese Army Government to the Constitutional Government based on Article I concerning the Transitional Provisions of the 1945 Constitution. Further, PPKI held a second session on August 19, 1945 which resulted in two important decisions, namely the determination of 12 (twelve) ministries in the Government Cabinet of the Republic of Indonesia and the establishment of the Republic of Indonesia territory into 8 (eight) provinces headed by a Governor.

Again, in the last assembly on August 22, 1945, PPKI made decisions, namely the establishment of formation of *Komite Nasional*, *Partai Nasional Indonesia*, and *Badan Keamanan Rakyat* (BKR). PPKI, before and after the proclamation, had shown its very valuable achievements for the interest of independence, when the nation and the state needed it. This is proven by the aforesaid decisions in order to fill and to maintain the independence. After the third assembly, PPKI disbanded and its members became members of the KNIP (*Komite Nasional Indonesia Pusat*) on 29 August, 1945. In line with the provisions of the 1945 Constitution, the governmental system was presidential in which the president is the head of state as well as the head of government. However, after the establishment of the KNIP, the presidential system was transformed into a parliamentary system. [9]

Although the existence of KNIP existence is absolute due to Article IV concerning Transitional Provisions, its task is merely to assist the president based on what field the assistance is. The course of history proves that the 1945 Constitution has undergone rapid development since it was made. Approximately two months after the enactment of the 1945 Constitution, a change was made in the practice of state administration, especially that of in Article IV concerning Transitional Provisions.

By this declaration, the duties of *Komite Nasional* were actually prepared as well as expanded. By narrowing the meaning, the initial duties of MPR, DPR and DPA were carried out by the president based on Article IV concerning Transitional Provisions of the 1945 Constitution. The expanding duties in *Komite Nasional* were in legislation. Therefore, KNIP has no longer become the assistant of President (that has been assisted by the ministers) to *firstly* make the Act (the duties of the DPR based on Article 5 of the 1945 Constitution) and *secondly* to determine the GBHN (the duty of the MPR based on Article 3 of the 1945 Constitution).

The next important course in the administration of the state was the issuance of the Government Declaration on November 14, 1945. This declaration was actually an action intended to reform the existing cabinet structure. By issuing this declaration, the names of the ministers of

new cabinet were then announced. The existing declaration was rather assigned the cabinet to no longer do their duties under than the initial cabinet that was originally under the leadership of the President that was a council chaired by a prime minister, namely Syahrir. [10]

That is how the dynamics of state administration is seen from the internal point of view of the constitution, while the external point of view shows the interference of the Dutch government who want to regain their power over Indonesia, which of course greatly affected the implementation of the new 1945 Constitution lasted one year only. The Dutch attacked Indonesian people under Military Aggression I on July 21, 1947 and Military Aggression II on December 19, 1948 during the early period of the 1945 Constitution. A physical revolution then ensued throughout the initial republic of Indonesia. In addition to physical struggle, the diplomatic struggles were also done by negotiating the problems. The negotiation was called *Perundingan Linggarjati* which aimed at bringing the sovereignty back on March 25, 1947, *Perundingan Renville* on December 17, 1948, *Perundingan Rum-Royen* on May 7, 1949 and *Konferensi Meja Bundar (KMB)* on August 23 to November 19, 1949.

3. *The 1945 Constitution: Old Order, New Order, and Reformation Era*

The implementation of the 1945 Constitution as a state constitution was then marked by numerous deviations in the name of democracy. The process began from early months of the enactment of the 1945 Constitution due to a misinterpretation of the constitution. Anhar Gonggong noted that it was the President's Speech on August 17, 1959 that established the DPRGR because the election result DPR had rejected the budget proposed by the government and the determination of GBHN by DPA, not by the MPRS as the first deviation. It was then followed by the appointment of a lifelong president mandated to Soekarno as a Leader of Great Revolution. In case of socializing the concept of government ideology, the *Manipol (Manifesto Politik)* of UESDEK (the 1945 Constitution, Indonesian Socialism, Guided Democracy, Guided Economy, and Indonesian Personality) was developed by improving NASAKOM (*Nasionalisme, Agama, Komunis*) ideology. The indoctrination was performed by *Panitia Pembimbing Jiwa Revolusi* with the guidance book TUBAPI (*Tujuh Bahan Pokok Indoktrinasi*). [11]

In line with the noted matters, the structuring of regional government was developed by firmly adhering to Article 18 of the 1945 Constitution, which, in Yamin's view, must be in accordance with the development of the revolution. Therefore, NASAKOM must be seen in every institution in terms of leadership system, including in the regions (as the implementation of the 1945 Constitution). In a completely revolutionary situation, it made a competition among the political forces. President Soekarno, who positioned himself as a counterweight,

failed and resulted in the fall of his legitimacy as a president in holding the reins of national leadership. Regarding the emergence of the incidence of G 30 S PKI and the issuance of SUPERSEMAR delivered to Suharto as followed by MPRS Decree No. XLIV / MPRS / 1968 concerning Appointment of Caretakers of MPRS Decree No. IX / MPRS / 1966 as President of the Republic of Indonesia, the governance of President Soekarno was then taken over by President Soeharto, which in the history of the constitution was referred to as the transition period of Old Order to New Order. [12]

By the slogan of implementing Pancasila and the 1945 Constitution in a pure and consistent manner, the governance of New Order claimed to leave *Demokrasi Terpimpin* or guided democracy and replaced it with *Demokrasi Pancasila* or Pancasila democracy. However, deviations from the 1945 Constitution suddenly occurred in early period of New Order with the dual concept of the function of ABRI (*Angkatan Bersenjata Republik Indonesia*) or National Military of the Republic of Indonesia. This one-sided interpretation of *the middle way* concept was forced to support the government party, GOLKAR, by placing members of the TNI-ABRI in strategic positions. Previously, New Order had simplified the life of related parties which reduced the number of parties by grouping political parties (fusion) since 1970, which finally PPP (*Partai Persatuan Pembangunan*) and PDI (*Partai Demokrasi Indonesia*) were established on January 5 and 10, 1977. In addition, mono-loyalty in civil servant was developed in KORPRI to the government of New Order. [14]

GOLKAR, in the history of New Order, had always been a single majority that always ended up with Suharto as the chosen president through the election mechanism conducted by the MPR. The character of dictatorial, authoritarian, and uncontrolled leadership was then seen with enrichment of corruption, collusion, and nepotism. The upholding of political rights of citizens as holders of sovereignty had been ended by the resignation of President Soeharto on May 21, 1998, which began with the reform movement as a result of multidimensional crisis that had not been resolved. Therefore, the implementation of the 1945 Constitution as the highest legal norms and regulations in Old Order and New Order era has experienced many deviations and misappropriations. [14]

Both of these regimes always indoctrinated people with sacred constitution and placed the 1945 Constitution like a holy book. It certainly made most Indonesia people lose courage to question the existence of the 1945 Constitution. This was still exacerbated by repressive and preventive actions that did not provide a loophole for the people and all parties to express their ideas to the renewal of constitution. Renewal is a utopian myth and matter. The view that wants to change the 1945 Constitution is considered to be a subversive point. The fall of the Soeharto regime that was strong, centralistic and personal

became a momentum and gave rise to various thoughts that required a fundamental change, especially the change in state system, government and political order. Many analysts argue that one of the factors causing the power abuse and the emergence of authoritarianism in Indonesia is the constitution that is not sufficiently able to provide power signs. By gaining this understanding, the shortcut used to encourage democracy is amendments to the 1945 Constitution. [15]

III. CONCLUSION

The 1945 Constitution had been amended four times to date. The fourth amendment process received extraordinary resistance from various elements like the initial aspirations of the amendment being voiced, and the ongoing constitutional reform efforts were canceled accordingly. In the midst of the debate about whether or not the fourth amendment was about to continue, the political flow in parliament was also confusing. There was resistance from certain circles to stop the amendment process at the same time. Based on the pros and cons, there are at least three groups facing one to another. *The first* is a group of anti-constitutional amendment that struggle to fail the amendment and return to the 1945 Constitution and *the second one* is a group of various components that support the amendment and consider that the existing changes are good movement. Therefore, the changes must be continued. *The last* is more progressive than the second one, that is, even though it supports the fourth amendment, it remains critical and regards the results of the amendments as cases that must be corrected and are therefore transitional in nature.

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