The Indonesian Constitution 1945: Why was it amended?

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Abstract

In 1999, 2000, 2001, and 2002, the Indonesian Constitution 1945 was amended by MPR or the People’s Consultative Assembly, the bearer of the people’s sovereignty. The amendment was not without opposition. A number of ex military generals, political elites, and scientists opposed the amendment. They demanded that the amendment be cancelled and that MPR re-enact the Constitution 1945, originally and consistently. But, convinced by the argument that the Constitution had conceptual weaknesses, the majority of MPR insisted on amending the Constitution in order to make it more democratic, modern, comprehensive, and responsive to every new challenge. The amendment was also meant to implement the values and ideals formulated by the Preamble and to prevent the power holders from doing power abuse by returning back the sovereignty to the people; confining the power and authority of MPR as well as the President, but enforcing the power and authority of DPR or the People’s Representative Council; promoting autonomy for the local governments; establishing DPD or the Regional Representative Council, the Judicial Commission as well as the Constitution Court; guaranteeing the honor of human rights; improving the quality of education by allocating 20 percent of the national and local government budget; etc. In order not to deviate from the basic values formulated in the Preamble, the amendment did not at all touch the Preamble and not alter the form of the unitary state of the Republic of Indonesia.

Keyword: The Constitution 1945, MPR or the People’s Consultative Assembly, and amendment

INTRODUCTION

On August 17, 1945, two days after the Japanese surrender, Soekarno-Hatta proclaimed the independence of Indonesia, and one day later the Constitution 1945 was enacted. The Dutch who came back together with the Allied forces attempted to reestablish control over Indonesia by launching military aggressions, first in 1947 and second in 1948. They also carried out a policy of “divide at impera” by sponsoring the establishment of 15 small states in the region of Indonesia such as: State of Sumatra, State of East Indonesia, State of Pasundan, State of East Java, etc. (Asshiddiqie 2005: 44)

But, at the round table Conference at The Hague between August and November 1949, the Dutch agreed to give up their claim to sovereignty over all Indonesia except West New Guinea or West Irian and to support the establishment of the Republic of the United States of Indonesia (RUSI), a federation of which fifteen small Dutch-built states would be members but where preponderant power would lie with the sixteenth member state, the Republic of Indonesia. (Feith 1970: 63) The RUSI came into existence on December 27, 1949, remarking the termination of the Constitution 1945 and the beginning of the Constitution of RUSI.
The next few months, however, saw the quick collapse of the Dutch-established states, and so by August 17, 1950, RUSI had been transformed into a new unitary state, the second Republic of Indonesia. (Feith 1970: 63) In the second Republic of Indonesia, in which the role of political parties began to dominate the political life, the Constitution of RUSI was replaced with the Provisional Constitution 1950. This latest constitution had paved the way to the national election of 1955, leading to the establishment of the parliament consisted of 260 members dominated by four parties (the PNI and Masyumi each with 57 seats, the NU with 45 seats, the PKI with 39 seats, and the rest was distributed to a number of small parties) (Kahin 1969: 208) as well as the establishment of the Constituent Assembly who was in charge of formulating the new constitution.

The Provisional Constitution 1950, however, was only enacted until July 5, 1959 when President Soekarno, supported by the military officers and a number of political elites, issued a decree popularly called the Presidential Decree, dissolving the Constituent Assembly, re-enacting the Constitution 1945, and establishing the Provisional People’s Consultative Assembly (composed of the members of the People’s Representative Council augmented by delegates from the regions and from groups) and the Provisional Supreme Advisory Council. (Feith 1970: 100) Since that time, the Constitution 1945 once again became the basis for the Indonesian political life.

For almost six years (1959-1966) Soekarno ruled the country based on the Constitution 1945. But he was forced to step down after the failure of the Communist rebellion (on September 30, 1965) led by DN Aidit (leader of the Indonesian Communist Party). Through what popularly called “Surat Perintah Sebelas Maret” (Letter of 11 March), on 11 March, 1966 Soekarno ordered Soeharto “to take all measures considered necessary to guarantee security, calm, and stability of the government and the revolution, and to guarantee the personal safety and authority of the President/Supreme Commander/Great Leader of Revolution/Mandatory of the MPRS in the interests of the unity of the Republic of Indonesia and to carry out all teachings of the Great Leader of the Revolution.” (Crouch 1978: 189) Like Soekarno, President Soeharto who regarded himself to be the pioneer and the defender of the New Order government also pledged that he would carry out, originally and consistently, the Constitution 1945.

During the time of both President Soekarno (1959-1966) and President Soeharto (1966-1998), Indonesia had been trapped into an authoritarian government. Because of its elasticity and the dominant role of the President, the Constitution 1945 had facilitated both Soekarno and Soeharto to develop an authoritarian political system. Based on such power system, any discussion relating to the idea of amending or even changing the Constitution 1945 would never be allowed to do.

The collapse of the New Order regime led by Soeharto had paved the way to the growing ideas attempting to amend the Constitution 1945. The ideas of amending the Constitution 1945 reached their culmination when in the year of 1999 MPR began to amend the Constitution. Though it had been protested by a number of ex military generals, political elites as well as university scientists, MPR insisted on amending the Constitution 1945. This article attempts to understand and explain why the Constitution 1945 was amended and what issues the amendment were focused on.
PRO AND CON

Up to this time those who reject the amendment of the Constitution 1945 remain rallying political movement, trying to abandon all the amendments made by MPR. One of the groups rejecting the amendment is Keluarga Besar Marhaenis (KBM) or Great Family of Marhaenist. Represented by Hadori Yunus as the Chairman, KBM demanded that the process of the fourth amendment of the Constitution 1945 which would be done in the Annually Meeting of MPR 2002 be cancelled. (Tempo Interaktif, 28 February 2002)

According to Hadori, there was an attempt to change the state system by introducing bicameral system in the form of DPD or the Regional Representative Council. “The attempt is a move contradicting to the basic principle as reaffirmed in the Constitution 1945 which only knows mono-cameral system.” (Tempo Interaktif, 28 February 2002) Hadori further said that based on political and ideological analysis, KBM believed that both the Preamble of the Constitution 1945 and the state system were not familiar to bicameral system, and that articles 29 and 33 (of the original Constitution) symbolizing the harmony of religious life and national economic life had to be defended. (Tempo Interaktif, 28 February 2002)

The other group opposing the amendment is “Forum Kajian Ilmiah Konstitusi” or Scientific Constitution Studies Forum, consisting of Prof. Dr. Budi Harsono, Dr. ASS Tambunan, Sri Mulyono Herlambang (member of MPR from the faction of functional group), Amin Aryoso, and Sadjarwo Sukardiman (both are members of MPR/DPR coming from the faction of F-PDIP), and Prof. Usep Ranuwijaya said that the amendment had been going too far and demanded that MPR stop amending the Constitution. According to them, the amendment of the Constitution 1945 was equal to altering the Constitution 1945 or making the other new Constitution. The amendment affirming that “the sovereignty is in the hands of the people and carried fully on the basis of the Constitution” is the deviation of the Preamble of the Constitution 1945 which stressed on the principle of discussion through representation system. Consequently, the form and sovereignty of the state became blurred; making MPR is no longer the bearer of the people’s sovereignty. (Kompas, 9 April 2002)

Meanwhile, “Front Pembela Proklamasi 45” or Front of the Proclamation ’45 Defender consisting of ex military generals, such as Tri Sutrisno (the ex Vice President), Syaiful Sulun (the ex Chairman of MPR), Tyasno Sudarto (the ex Chief Staff of the Indonesian Army), etc. also sounded their opposition to the amendment. Not only have they rejected the amendment, they also have sent the motion to MPR. (Tempo Interaktif, 8 August 2002)

As the Secretary General of FPP 45, Syaiful Sulun has ever said: “We do not reject the amendment but the amendment has been out of track from the meaning of the Preamble of the Constitution 1945.” (Tempo Interaktif, 8 August 2002) According to him, the amendment changing the format of MPR, establishing DPD or the Regional Representative Council, introducing direct Presidential election, and omitting functional groups in MPR has been the deviation of the principle of collectiveness and family hood as the highest values of Indonesian democracy. He further said: “In the previous time, president was elected by MPR as the manifestation of the Indonesian people sovereignty. But, nowadays president is only elected by majority of people. MPR has been poisoned by liberalism and individualism.” (Tempo Interaktif, 8 August 2002)

In a separate occasion, while commemorating the Presidential Decree 1959, Tyasno Sudarto also said that the amendment of the Constitution 1945 had been going too
far. “The amendment even has caused uncertainty, either in the field of ideology, politics, economy, or social culture.” (Kompas, 6 July 2006) He further said: “The danger of disintegration has come before our eyes. We must save the nation by returning back to the Constitution 1945, Pancasila and Bhineka Tunggal Ika.” (Kompas, 6 July 2006)

On the other hand, those who supported the amendment said that the amendment was meant to implement the Preamble of the Constitution 1945. Amien Rais (the Ex-Chairman of MPR) said that the third amendment had been going on the right track. According to Amien Rais, the amendment done by MPR would make the Constitution 1945 more democratic, modern, comprehensive, and responsive to any demand. (Tempo Interaktif, 1 November 2001)

JE Sahetapy, member of the Ad Hoc Committee I of MPR, also stated that the amendment was really needed. According to him, thinking that amendment was not needed was really illogical. Everyone had to acknowledge that the Constitution 1945 had facilitated the establishment of dictator government. This had to be the spirit for formulating the amendment of the Constitution 1945. (Kompas, 5 April 2002) He further said: “We must prevent the highest state institution from abusing power.” Sahetapy also stated that “President must be elected by the people, so that the state could avoid every conspiracy, in which someone who does not have majority vote could be elected president.” (Kompas, 5 April 2002)

Responding to the critique launched by “Gerakan Nurani Parlemen” or The Conscience Parliamentary Movement, saying that the amendment had been going too far and therefore had to be stopped, Jacob Tobing, Chairman of the Ad Hoc Committee I of MPR, in his statement said “that the formulation was meant to express the values which have been stated in the Preamble of the Constitution 1945 in the form of the existing articles.” (Kompas, 5 April 2002) Jacob further explained that “the existing system of MPR is in fact against the people’s sovereignty principle as formulated by the Preamble of the Constitution 1945. The real people’s sovereignty must be fully owned by the people is monopolized by an institution of the bearer of the people’s sovereignty, changing into sovereignty through representation system.” (Kompas, 5 April 2002)

Meanwhile, Adnan Buyung Nasution (a prominent lawyer) in his article the title of which is “Kembali ke UUD 45, Antidemokrasi” (Kompas, 10 July 2006) also said: “The demand that we return to the original Constitution 1945 which I usually call as the idea of integrality by Prof. Soepomo is, according to me, like switching the hands of the history watch unclockwise, into the era of Guided Democracy (Old Order) or Pancasila Democracy (New Order) which is, in fact, anti democracy.” (Nasution, 10 July 2006)

He further asserted that many researchers such as Benny K Harman, Margarito Kamis, Aidul Fitri, and Aulia Rahman had come to the conclusion that the Constitution 1945 had conceptual weaknesses if being used as the basis for national state. According to Adnan Buyung Nasution: “The weakness of the integrality concept of Prof. Soepomo was lying on the existence of MPR which had been stated as the manifestation of the people’s sovereignty and had to be the bearer and to carry out fully the people’s sovereignty and, therefore, had the highest power and authority. As soon as MPR was established, the people no longer had their sovereignty because it had been transferred to MPR. The Presidential election MPR meant that the people’s sovereignty was transferred to the hands of and carried out by the President. Consequently, the President would have broad and unlimited authority.” (Nasution, 10 July 2006)
THE AMENDMENT OF THE CONSTITUTION 1945

The Constitution 1945 was finally amended in four steps. The first amendment was done in 1999, focused on the amendment of the Presidential power and authority as well as the power and authority of “Dewan Perwakilan Daerah” (DPD) or the People’s Representative Council. (Undang-Undang Dasar 1945, 2005: 25-27)

The second amendment was in 2000, focused on the format of local government, the re-statement of the existence of Indonesia, the position of the citizens, the human rights, the defense and security of the state, the flags, the language, the symbol and the anthem of the state. (Undang-Undang Dasar 1945, 2005: 31-37)

The third amendment was in 2001, focused on the people’s sovereignty, the structure and authority of “Majelis Permusyawaratan Rakyat” (MPR) or the People’s Consultative Assembly, the presidential election, the structure and authority of “Dewan Perwakilan Rakyat Daerah” (DPRD) or the Local People’s Representative Council, the national election, and the financial auditoria body. (Undang-Undang Dasar 1945, 2005: 41-48)

And the fourth amendment was in 2002, focused on the omission of “Dewan Pertimbangan Agung” (DPA) or the Supreme Advisory Council, the establishment of DPD, the presidential election, the national education, the national economy and social welfare, and the transition regulation of the Constitution. (Undang-Undang Dasar 1945, 2005: 51-56)

The People’s Sovereignty

Before amendment, sovereignty was in the hands of the people but carried out fully by MPR (consisted of members of DPR, delegates of regions and functional groups). Since most of the members were appointed by the President, then MPR was often used by the President as the mean to preserve his power. Now, after amendment, beside all members of MPR (consisting of members of DPR and members of DPD), are chosen directly by the constituents, MPR is also no longer the bearer of the people’s sovereignty. Article 1 (2) of the Constitution reaffirms that sovereignty is in the hands of the people and carried out in accordance with the Constitution. (Persandingan UUD 1945, 2002: 4-5) Meaning, whoever having power to carry out the people’s sovereignty must comply with the Constitution, not others, such as TAP MPR (the decisions made by MPR) or any other else. The amendment has shown us that the Constitution is everything. All citizens, including the executives officials (such as the President, Vice President, Ministers, Governors, Regents, Mayors, etc.), as well as the legislative and judicative officials, must comply with it.

The Power and Authority of MPR

Before amendment, MPR had the authority to carry out fully the people’s sovereignty. MPR, under the Presidential shadow, was the only one super body that could do anything they liked, including to impeach the president. After amendment, sovereignty remains in the hands of the people but must be carried out in accordance with the Constitution. In the past time, before amendment, members of MPR consisted of
members of DPR, delegates from regions and functional groups. The procedure to elect these members was regulated by law, made by the President with the approval of DPR. There was a space for manipulation done by the President because the Constitution 1945 did not at all reaffirm that they all had to be elected through national election. In fact, only around 40 percent of the members of MPR were elected. Others were only appointed by the President. Nowadays, the Constitution, article 2 (1), reaffirms that members of MPR consist of members of DPR and members of DPD, and all of them have to be elected through national election. (Persandingan UUD 1945, 2002: 5)

Before amendment, MPR had the authority to change and stipulate the Constitution as well as GBHN (Great Guidelines of the State) and to elect and impeach President and Vice President. Nowadays, the authority to stipulate GBHN was eliminated. MPR also no longer has the authority to elect President and Vice President. The authority to impeach President and Vice President is still in the hands of MPR but it is regulated strictly and could only be done on the basis of the Constitution, article 7A and 7B (1,2,3), not on the basis of any other. (Persadingan UUD 1945, 2002: 6) Nowadays, MPR is no longer the super body that could do everything. They themselves have to comply with the Constitution they have already stipulated.

The Power and Authority of the President and DPR

Before amendment, the President had the power to pass laws with approval of DPR. The President was also the Mandatory of MPR. In fact, the position of the President in the power system was really very dominant. Many powers which should have been regulated by the Constitution were given to the President. The strong position of the President upon other higher state institutions (such as MPR, DPR, and Mahkamah Agung or the Supreme Court) had paved the way to the establishment of the power system which was often characterized to be centralistic, authoritarian, personal, and sacral.

But, nowadays after amendment, the power to pass laws is lying in the hands of DPR. The Constitution, article 5 (1 and 2), reaffirms that the President has only the right to propose draft of law to DPR and to stipulate government regulation in order to carry out the laws. (Persandingan UUD 1945, 2002: 7) On the other hand, before amendment, DPR often functioned only as rubbers stamp, giving approval to every draft of law proposed by the President. The Constitution did not regulate what the exact functions and rights of DPR. After amendment, the Constitution, article 20 (2 and 4), reaffirms that DPR together with the President discuss the drafts of law in order to get approval from both sides, and that the drafts of law approved by both sides are then legalized by the President to be laws that must be carried out. The President could no longer reject the draft of law which he has agreed together with DPR. If within 30 days after being agreed the draft has not yet been legalized by the President, then the draft will automatically become legalized law and is obliged to be obeyed. (Persandingan UUD 1945, 2002: 27-28)

The Constitution, article 20A (1, 2 and 3), also reaffirms that DPR has a number of functions and rights. The functions of DPR include the function of legislation, budget, and supervision. And the rights of DPR include the right of interpellation, the right of delivering questionnaire, and the right of expressing opinion. The other rights of DPR stipulated by the Constitution include the right to deliver questions, proposal and opinion as well as the right of immunity. (Persandingan UUD 1945, 2002: 29) Before amendment, such functions and rights were not clearly defined.
The Criteria of the Presidential Candidates

Before amendment, the Presidential and Vice Presidential candidates had to be Indonesian origins. The question aroused, what the criteria of Indonesian origins were. It was quite debatable. After amendment, the Constitution, article 6 (1), clearly reaffirms that the Presidential and Vice Presidential candidates must be Indonesian citizen since they were born and never get any citizenship from other country on his own will. (Persandingan UUD 1945, 2002: 8)

Before amendment, the conditions and procedures for presidential election were always formulated and stipulated by MPR through the decision popularly called TAP MPR. According to TAP MPR, the Presidential and Vice Presidential candidates were proposed by the existed factions in MPR. TAP MPR regulated the procedures how to nominate and elect the President and Vice President so that it would be difficult to get more than one candidates since, during the time of the New Order regime, MPR was always under the control of the incumbent President. After being nominated, the Presidential candidate was given the right to select which one to be nominated as the Vice President. It was also stipulated by TAP MPR that the presidential election was done by the system of “musyawarah untuk mufakat” (discussion in order to get agreement), not by one man one vote system.

After amendment, the right to elect President and Vice President has been transferred from MPR to the constituents. The Constitution, article 6 (2) reaffirms that the conditions and procedures for presidential election would be regulated by law. The Constitution, article 6A (1 to 5), also reaffirms that the President and Vice President are elected in a pair, the candidates are nominated by political parties or a group of political parties participating in national election, and that a pair of candidate managing to get more than 50 percent of the votes in the national election, coming at least from 20 percent in every province spread out in more than a half number of provinces in Indonesia would be inaugurated by MPR as President and Vice President. (Persandingan UUD 1945, 2002: 8-10)

Before amendment, the term of period for the President and Vice President was still “debatable.” TAP MPR stipulated that the term of period for the President and Vice President was 5 years and could be reelected as long as the incumbent President was still willing to be re-nominated. Beside of it, the procedure of impeachment was unclear. Nowadays, after amendment, the Constitution, article 7, stipulates that the term of period for President and Vice President is only for 2 terms of period. The Amendment also clarifies the procedure how to impeach the President and Vice President by involving the Constitution Court. According to article 7B (1 to 7), the proposal for impeachment is promoted by DPR to MPR. (Persandingan UUD 1945, 2002: 10-11)

Autonomy for Local Governments

Before amendment, the form and authority of local government were not clearly regulated by the Constitution. Nowadays, the form and the authority of local government have been stipulated clearly by the Constitution, article 18 (1 to 7). The form of local government includes “pemerintahan daerah propinsi” or provincial government, “pemerintahan daerah kabupaten” or municipality government, and “pemerintahan
daerah kota” or city government. Each local government has authority to regulate and manage its own government on the basis of autonomy and decentralization principle. The head of “pemerintah propinsi” or the provincial government is “Gubernur” or Governor, the head of “pemerintah kabupaten” or municipal government is “Bupati” or Regent, and the head of “pemerintah kota” or city government is “Walikota” or Mayor.

(Persandingan UUD 1945, 2002: 23-25)

Before amendment, no article in the Constitution regulated how the governor, regent and mayor had to be elected. Nowadays, it is quite clearly stated by the Constitution that Governor, Regent and Mayor are to be elected democratically. According to “Undang-Undang Otonomi Daerah 2004” or the Local Government Code 2004, article 24 (5), like the President, the head and vice head of local government such as Governor, Regent and Mayor, are also elected directly in a pair by the constituents. (Undang-Undang Otonomi Daerah 2004: 25)

The local government is also given authority to carry out the autonomy as largely as possible, except the governmental affairs which according to the law belong to the central government, such as foreign policy, defense and security, justice, finance and fiscal, and religion. Before amendment, the central government often interferes in local government affairs. As for example, the head of local government used to be elected by DPRD, but the President had power to decide which candidates were eligible to be elected. Nowadays, the local government is also entitled to stipulate local codes and other regulations in order to carry out their autonomy and the tasks of the government. The structure and procedure to carry out the local government are regulated by local government code. By such stipulation there is a guarantee toward the existence of the local government because it has been clearly reaffirmed by the Constitution. Such guarantee was not found in the original Constitution 1945.

Financial Affairs

Before amendment, the Constitution only reaffirmed that all related to the state financial such as budget, tax, value of money, etc. were stipulated annually by law. Since the authority to make law was in the hand of the President, it was relatively easy for the President to manipulate the use of state budget in accordance to his own interests. After amendment, article 23 (1 and 2) of the Constitution reaffirms that the state budget as the essence of the state financial management is stipulated annually by law and carried out openly and responsible fully for the welfare of people. The President proposes the draft of state budget to DPR to be discussed (Persandingan UUD 1945, 2002: 37) This article is meant to give more authority to DPR to control the President particularly in spending the state budget. By such a control, manipulation and corruption would be able to be curbed.

National Election

Before amendment, there was no article in the Constitution reaffirming the need of national election. The Constitution only stated that the structure of MPR, of DPR, and of DPA would be stipulated by law. Based on such regulation, it would not be against the Constitution 1945 if the law stipulated another system except national election.
After amendment, the Constitution, article 22E (1 to 6), reaffirms that members of DPR, DPD, DPRD, as well as President and Vice President are all elected directly by the constituents, that participants of national election for members of DPR and DPRD are political parties, and that participants of national election for members of DPD are individuals. The national election is carried out by the Commission of Election which is independent and national in character. (Persandingan UUD 1945, 2002: 35-36) The Constitution, however, does not regulate how to elect Governor, Regent, and Mayor. The conditions and procedures to elect Governor, Regent and Mayor are stipulated by the Local Government Code 2004, article 24 (5). (Undang-Undang Otonomi Daerah 2004: 25)

Omitting DPA and Establishing Other Institutions

The amendment has reaffirmed the omission of DPA and the formation of other state institutions such as: “Dewan Perwakilan Daerah” or DPD, “Komisi Judisial” or the Judicial Commission, and “Mahkamah Konstitusi” or the Constitution Court. DPD also has the rights to propose draft of law to DPR, to participate in discussing the draft of law on local autonomy, to supervise the implementation of the local autonomy, etc.

The amendment also reaffirms the establishment of the Judicial Commission as stated in article 24B (1 to 3). The main purpose of Judicial Commission is to control the Supreme Court by proposing candidates of the Higher Judges to DPR for approval. The President would then decide which candidates to be stipulated. The other authority of the Judicial Commission is to maintain the honor and attitude of judges. (Persandingan UUD 1945, 2002: 43-44)

The amendment also reaffirms the establishment of the Constitution Court who has the power to put any case on trial in the first and final step, the decision of which is final in character in order to examine laws towards the Constitution, to dissolve political parties and to make decision relating to conflict on the result of national election. (Persandingan UUD 1945, 2002: 44-45)

In the past time, before amendment, if there was a conflict or a different opinion relating to the interpretation and the implementation of the Constitution, as for example conflict or different opinion on the term of period for President and Vice President, than the President’s interpretation would always be used as the guidance. Very often, the conflict relating to the interpretation and the implementation of the Constitution would end quickly as soon as the President delivered his own opinion to public. Nowadays, after amendment if there is a conflict relating to laws, involving any party, then the Constitution Court has the authority to make decision, neither MPR nor the President.

Improving the Quality of Education

Before amendment, the Constitution only reaffirmed that every citizen was entitled to get the teachings. But, after amendment, the Constitution, article 31 (1), asserts that every citizen is obliged to follow the basic education program and the government is obliged to finance. The other most important amendment in the field of education is the decision to allocate at least twenty percent of the state as well as local government budget for education, as asserted in article 31 (4). (Persandingan UUD 1945, 2002: 60)
This amendment has put the quality of education as the highest priority of the nation. The stipulation is taken in order to resolve the national problem, the multidimensional crisis, which began to occur in Indonesia in the late 1990’s. Through this policy, the quality of the Indonesian human resources development index could be upgraded so that they could compete with other human resources coming from other countries.

National Economy and Social Welfare

After amendment, the Constitution, article 33 (4), reaffirms that national economy should be carried out on the basis of economic democracy principle with the principle of collectiveness, efficiency, sustainability, environmental outlook, independent, and always to maintain the balance between the progress and national economic unity. (Persandingan UUD 1945, 2002:62-63) This amendment is meant to encounter either liberal capitalism or authoritarian and centralistic economy in Indonesia and to prevent the growing practice of corruption, collusion and nepotism.

Honoring Human Rights

Before amendment, the Constitution did not explicitly reaffirm about human rights. The Constitution 1945, articles 27 (1 and 2) and 28, only asserted the existence of the principle of equality before law, freedom of occupation, freedom of life, humanism, freedom of union, freedom of speech, etc. But, nowadays after amendment, the Constitution stipulates a number of articles which explicitly reaffirm that human rights are honored and guaranteed. After amendment, the Constitution stipulate ten articles, i.e. articles 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I and 28J (Persandingan UUD 1945, 2002: 49-57), proving that Indonesia has adopted the Universal Declaration of Human Rights by the United Nations. The amendment is meant to show to all other nations that Indonesia is a country always honoring human rights, that any infringement against human rights would be regarded as a crime toward humanism and therefore obliged to be punished.

Amendment of the Constitution

Before amendment, the Constitution 1945 stipulated that in order to alter the Constitution, at least 2/3 of the members of MPR had to be present and the decision could only be taken by two thirds majority. However, it was not easy to amend the Constitution since the People’s Consultative Assembly had committed not to alter but to carry out the Constitution 1945 originally and consistently by issuing TAP MPR on Referendum. Based on TAP MPR on Referendum, alteration of the Constitution required that 2/3 of the people be in favour for amendment. During the New Order regime, such a referendum had never been done since any idea or even attempt to alter the Constitution would be regarded as infringement against the national consensus. After amendment, the Annex (article II) of the Constitution clearly reaffirms that by the stipulation of amendment, the structure of the Constitution 1945 now only consists
of the Preamble and the articles. There is no longer explanation of the Constitution. The Constitution, article 37, reaffirms that only the articles of the Constitution could be amended, the other could not. (Persandingan UUD 1945, 2002:66) This stipulation means that the Preamble of the Constitution 1945 would and could never be amended. MPR believe that amending the Preamble would mean dissolving the existence of the Republic of Indonesia with its “Pancasila” (the Five Principles) as a noble philosophy of the state as well as the source from all sources of laws and constitution.

After amendment, the Constitution is relatively easy to be amended because the proposal for amendment could become the agenda of the annual meeting of MPR if supported by at least 1/3 of the members. To amend the articles requires that 2/3 of the members be present, and to make a decision on amendment of the articles requires that at least 50 percent plus one of the members be in favor for amendment. One important thing that everyone must understand is that the Constitution, article 37 (5), asserts that the amendment of the form of the Unitary Republic of Indonesia could not be done. (Persandingan UUD 1945, 2002:67)

CONCLUSION

The amendment of the Constitution 1945 done by MPR in 1999, 2000, 2001, and 2002 was opposed by a number of people coming from many different social and political back ground. Some demanded that the amendment be cancelled, and others demanded that MPR re-enact the original Constitution 1945. Up to now, the demand for abandoning the amendment and returning back to the original text remains to exist.

Those who reject the amendments worry that the amendment would change the form of the unitary state into a federal one which is not suitable for Indonesia, and endanger the unity as well as the sustainability of Indonesia. They also worry that the amendment would threaten the existence of the noble state philosophy and ideology of Pancasila and would pave the way to the adoption of the ideology of liberal capitalism which is not suitable for the Indonesian people’s way of life.

On the other hands, the proponents supporting the amendment, however, are stronger than the opponents. They argue that the amendments would make the Constitution 1945 more democratic, modern, comprehensive, and responsive to any new demands. The amendments are also believed to be the instrument to implement the values and ideals formulated by the Preamble of the Constitution 1945. According to them, the original text of the Constitution 1945 in fact had already paved the way to the establishment of the two authoritarian governments, one led by Soekarno (the Old Order) and the other led by Soeharto (the New Order). Such an authoritarian government would have re-emerged if the Constitution 1945 had not been amended.

Convinced by such arguments, MPR insisted on amending the Constitution 1945. But, to accommodate those people worrying the amendment, MPR did not amend the Preamble because they believed altering the Preamble would mean the abolition of the state of Indonesia with its own ideology and philosophy, Pancasila. They also agreed to defend the form of unitary state.

However, the amendment at least has three fundamental meanings. Firstly, the amendment has already introduced or even enforced the constitutionalism system, meaning everyone bearing power has to comply with the Constitution not with any other thing else. During the New Order regime, the structure of Indonesian law consisted of the
Constitution, the decisions made by MPR (popularly called TAP MPR), laws, and government regulations. Nowadays, TAP MPR was erased from the structure of Indonesian law. The Constitution is posited at the top, and other products of law must be in line with the Constitution.

Secondly, the amendment has also improved the quality of check and balances in the Indonesian power system. In the past time before amendment, the power and authority given to the President by the Constitution were too abundant, making the position of the President was too much stronger and more dominant than other existed higher state institutions, such as MPR, DPR, and MA. In other words, the amendment was designed to prevent anyone, particularly the President, from abusing power. Though, many have said that the amendment has already given too much power to the DPR.

Finally, the amendment has erased the Explanation of the Constitution 1945 because it is no longer needed. Beside the substance was much contradictory with the spirit of the amended Constitution, the amended Constitution 1945 is much more detail regulating the subjects than the previous one was. But, in order not to invite polemics, the erase of the Explanation of the Constitution 1945 was not openly stated. Chapter XVI, Addition Regulation, Article II, of the Constitution reaffirms that “by the stipulation of the amendment of this Constitution, the Constitution 1945 consists of the Preamble and the articles.” (Persandingan UUD 1945, 2002: 70) Every conflict relating to the interpretation of Constitution would then be examined by the Constitution Court, and the Constitution Court has the authority to decide which the correct interpretation is.

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