

The Indonesian Constitution of 1945: Why it was amended.

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ABSTRACT

In 1999, 2000, 2001, and 2002 the Indonesian Constitution of 1945 was amended by “*Majelis Permusyawaratan Rakyat*” (MPR) or the Peoples’ Consultative Assembly, the bearer of the Peoples’ sovereignty. The amendments were not without opposition. A number of ex-military generals, political elites, and scientists opposed the amendments. They demanded that the amendments be cancelled and that the Peoples’ Consultative Assembly re-enact the Constitution of 1945 purely and consistently. Convinced by arguments that the Constitution had conceptual weaknesses, the majority of the Peoples’ Consultative Assembly insisted on amending the Constitution in order to make it more democratic, modern, comprehensive, and responsive to new challenges. It was also meant to implement the values and ideals formulated by the Preamble and to prevent the power holders from abusing their power and to improve the system of “checks and balances” in the power system. Further the amendments were made necessary to return back the sovereignty to the people; to confine the power and authority of the Peoples’ Consultative Assembly as well as the President, and enforce the power and authority of the Peoples’ Representative Council; to promote autonomy in the local governments; to establish the Regional Representative Council, the Judicial Commission as well as the Constitution Court; to guarantee human rights; to improve the quality of education; etc. And, in order to show that the amendments would not deviate from the basic values formulated in the Preamble, the Peoples’ Consultative Assembly decided not to touch at all the Preamble and to defend the form of the unitary state of the Republic of Indonesia.

Keywords: *the Indonesian Constitution of 1945, “Majelis Permusyawaratan Rakyat” (MPR) or the Peoples’ Consultative Assembly, Amendments.*

INTRODUCTION

On the 17th of August 1945, two days after the Japanese surrender, Soekarno and Hatta proclaimed the independence of Indonesia, and one day later the Indonesian Constitution was enacted. The Dutch who came back together with the Allied forces attempted to reestablish control over Indonesia by launching military aggression, 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 of 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, marking the termination of the Indonesian Constitution of 1945 and the beginning of the Constitution of RUSI.

The next few months, however, saw the quick collapse of the Dutch-established states, and 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, the Constitution of RUSI was replaced with the Provisional Constitution of 1950. The latest constitution then paved the way for the national election of 1955, leading to the establishment of the parliament consisting of 260 members dominated by four parties namely, Parti Nasional Indonesia (PNI) or Indonesian Nationalist Party and Masyumi each with 57 seats, the Nahdatul Ulama (NU) with 45 seats, the Parti Komunis Indonesia (PKI) with 39 seats, and the rest shared among a number of small parties (Kahin, 1969:208). It also led to the establishment of the Constituent Assembly which was in charge of formulating the new constitution.

The Provisional Constitution of 1950, however, was not enacted until the 5th of July 1959 when President Soekarno, supported by the military officers as well as by a number of political elites, issued a decree popularly called the Presidential Decree, dissolving the Constituent Assembly, re-enacting the Indonesian Constitution of 1945, and establishing the Provisional Peoples’ Consultative Assembly (which was composed of members of the Peoples’ Representative Council and augmented by delegates from the regions and from groups) and the Provisional Supreme Advisory Council. (Feith, 1970:100) Since that time, the Indonesian Constitution of 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 of 1945. But he was forced to step down after the failure of the Communist rebellion (on the 30th of September 1965) led by DN Aidit (the leader of PKI or the Indonesian Communist Party). Through what was popularly called “*Surat Perintah Sebelas Maret*” (Letter of 11 March), on the 11th of 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 as well as the defender of the New Order government also pledged that he would carry out the Indonesian Constitution of 1945, purely and consistently.

During the time of both President Soekarno (1959-1966) and President Soeharto (1966-1998), Indonesia was trapped in an authoritarian government. Because of its elasticity and the dominant role of the President, the Indonesian Constitution 1945 had facilitated both Soekarno and Soeharto to develop an authoritarian political system. Under such a power system, any discussion relating to amending or even changing the Indonesian Constitution of 1945 would not be entertained.

The collapse of the New Order regime of Soeharto in May 1998 then paved the way to the growing ideas of amending the Constitution of 1945. It culminated when in 1999 the Peoples' Consultative Assembly began to amend the Constitution. Though there were protests from a number of ex military generals, political elites as well as university scientists, the Peoples' Consultative Assembly insisted on amending the 1945 Constitution. This article attempts to explain why the Constitution of 1945 was amended and the issues that made these amendments necessary.

PROS AND CONS

Those who were against the amendment to the Constitution of 1945 remained the rallying political movement. One of the groups to reject the amendment was the *Keluarga Besar Marhaenis* (KBM) or Great Family of Marhaenist. Represented by Hadori Yunus as the Chairman, KBM had demanded that the fourth amendment to the Constitution of 1945 which was to be done during the Annual Meeting of the Peoples' Consultative Assembly in 2002 be cancelled. (Tempo Interaktif, 28 February 2002)

According to Hadori, there was an attempt to change the state system by introducing a bicameral system in the form of a Regional Representative Council or DPD. *“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 had further said that based on political and ideological analysis, KBM believed that both the Preamble of the Constitution of 1945 and the state system were not familiar to bicameral system, and that articles 29 and 33 (of the original Constitution) which symbolized the harmony of religious life and national economic life had to be defended. (Tempo Interaktif, 28 February 2002)

The other group opposing the amendment was the *“Forum Kajian Ilmiah Konstitusi”* (FKIK) or Scientific Constitution Studies Forum. Some of the leading members of FKIK were 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 members of MPR/DPR from the faction of F-PDIP), and Prof. Usep Ranuwijaya. They believed that the amendment had been going too far and demanded

the Peoples' Consultative Assembly to stop amending the Constitution. According to them, any amendment to the Constitution of 1945 was equal to altering the Constitution drastically if not making a new Constitution. The amendment which affirmed that "*the sovereignty is in the hands of the people and carried fully on the basis of the Constitution*" was a 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 no longer the bearer of the Peoples' sovereignty. (Kompas, 9 April 2002)

Meanwhile, "*Front Pembela Proklamasi 45*" (FPP '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 the Peoples' Consultative Assembly), Tyasno Sudarto (the ex Chief Staff of the Indonesian Army), and others also sounded their opposition to the amendment. Not only did they reject the amendment, they also had sent the motion to the Peoples' Consultative Assembly. (Tempo Interaktif, 8 August 2002)

As the Secretary General of FPP 45, Syaiful Sulun had 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 the Peoples' Consultative Assembly (MPR), establishing the Regional Representative Council (DPD), introducing direct Presidential election, and omitting functional groups in the Peoples' Consultative Assembly was a deviation of the principle of collectiveness and family-hood as the highest values of Indonesian democracy. He further said: "*In the past, the president was elected by the Peoples' Consultative Assembly as the manifestation of the Indonesian people sovereignty. But, nowadays president is only elected by majority of people. The Peoples' Consultative Assembly has been poisoned by liberalism and individualism.*" (Tempo Interaktif, 8 August 2002)

While commemorating the Presidential Decree 1959, Tyasno Sudarto had also said that the amendment of the Constitution 1945 had been going too far. "*The amendment has even caused uncertainty, not only in the field of ideology, politics, and economy, but also in 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 the Peoples' Consultative Assembly) said that the third amendment had been going on the right track. According to him, the amendment carried out by the Peoples' Consultative Assembly would make the Constitution of 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 the People Consultative Assembly, had stated that the amendment was really necessary as many had acknowledge that the Indonesian Constitution of 1945 had facilitated the establishment

of dictatorial government. Therefore there had to be the spirit in formulating the amendments to the Constitution of 1945. (Kompas, 5 April 2002) Sahetapy also stated: *"We must prevent the highest state institution from abusing power."* He further added that the *"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" (GNP) or The Conscience Parliamentary Movement, saying that the amendments had been going too far and therefore had to be stopped, Jacob Tobing, Chairman of the Ad Hoc Committee I of the Peoples' Consultative Assembly, 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 Peoples' sovereignty principle as formulated by the Preamble of the Constitution 1945. The real Peoples' sovereignty must be fully owned by the people is monopolized by an institution of the bearer of the Peoples' sovereignty, changing into sovereignty through representation system."* (Kompas, 5 April 2002)

Meanwhile, Adnan Buyung Nasution (a prominent lawyer) in his article entitled *"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 said that many researchers like Dr. Benny K Harman, Dr. Margarito Kamis, Dr. Aidul Fitri, and Aulia Rahman SH had come to the conclusion that the Constitution 1945 had conceptual weaknesses if 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 the Peoples' Consultative Assembly which had been stated as the manifestation of the Peoples' sovereignty and had to be the bearer and to carry out fully the Peoples' sovereignty and, therefore, had the highest power and authority. As soon as the Peoples' Consultative Assembly was established, the people no longer had their sovereignty because it had been transferred to the Peoples' Consultative Assembly. The Presidential election by the Peoples' Consultative Assembly meant that the Peoples' 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 AMENDMENTS TO THE CONSTITUTION OF 1945

The Indonesian Constitution of 1945 was amended in four steps. The first amendment which 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" (DPR) or the Peoples' Representative Council. (Undang-Undang Dasar 1945, 2005:25-27) The second amendment was in 2000, and it focused on the format of local government, re-

statement of the existence of Indonesia, position of the citizens, human rights, defense and security of the state, flags, language, the symbol and the anthem of the state. (Undang-Undang Dasar 1945, 2005:31-37) The third amendment in 2001, focused on the peoples' sovereignty, the structure and authority of "*Majelis Permusyawaratan Rakyat*" (MPR) or the Peoples' Consultative Assembly, the presidential election, the structure and authority of "*Dewan Perwakilan Rakyat Daerah*" (DPRD) or the Local Peoples' Representative Council, the national election, and the financial auditoria body. (Undang-Undang Dasar 1945, 2005:41-48). And the fourth amendment in 2002, focused on the omission of "*Dewan Pertimbangan Agung*" (DPA) or the Supreme Advisory Council, the establishment of "*Dewan Perwakilan Daerah* (DPD) or the Regional Representative Council, 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 Peoples' Sovereignty

Before the amendments, the sovereignty was in the hands of the people and carried out fully by MPR or the Peoples' Consultative Assembly (made up of members of DPR, delegates of regions and functional groups). Since most of the members were appointed by the President, then the Peoples' Consultative Assembly was often used by the President as the mean to preserve his power. Now, after the amendments, all members of MPR or the Peoples' Consultative Assembly (consisting of members of DPR or the Peoples' Representative Council and members of DPD or the Regional Representative Council) are chosen directly by the constituents. The Peoples' Consultative Assembly is also no longer the bearer of the Peoples' 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 has the power to carry out the Peoples' sovereignty must comply with the Constitution, not others, like the TAP MPR (the decisions made by MPR). The amendments have shown that the Constitution is all encompassing. All citizens, including the executive officials (like the President, Vice President, Ministers, Governors, Regents, Mayors, etc.), as well as the legislative and judiciary officials, must comply with it.

The Power and Authority of MPR

Before amendment, MPR or the Peoples' Consultative Assembly had the authority to carry out fully the Peoples' sovereignty. MPR, under the Presidential shadow, was the only one super body that could do anything they liked, including to impeach the president. After the amendments, sovereignty remains in the hands of the people and must be carried out in accordance with the Constitution. In the past, members of MPR consisted of members of DPR or the Peoples' Representative Council, 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 therefore space for manipulation by the President because the Constitution of 1945 did not at all reaffirm that all had to be elected through national election. In fact, only around 40 percent of the members of the Peoples' Consultative Assembly were elected. Others were only appointed by the President. Now, article 2 (1) of the Constitution 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 the amendments, 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. Presently, the authority to stipulate GBHN has been eliminated. MPR 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 the Peoples' Consultative Assembly but it is regulated strictly and could only be done on the basis of the Constitution, article 7A and 7B (1,2,3) and nothing else. (Persandingan UUD 1945, 2002:6) This means that MPR is no longer the super body that could do everything. They themselves have to comply strictly with the Constitution.

The Power and Authority of the President and DPR

Before the amendments, the President had the power to pass laws with the approval of DPR or the People's Representative Council. The President had the mandate of MPR. In fact, the position of the President in the power system was really very dominant. Many of the powers which should have been regulated by the Constitution were instead given to the President. The strong position of the President over the other higher state institutions (such as MPR, DPR, and MA and the Supreme Court) had paved the way for the establishment of the power system which was often characterized as centralistic, authoritarian, personal, and sacred.

But, after the amendments, the power to pass laws has moved to the 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) Before the amendments, DPR often functioned only as rubber stamp, giving approval to every draft of law proposed by the President. The Constitution did not stipulate the exact functions and rights of the Peoples' Representative Council. After the amendments to 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 become laws. The President could no longer reject the draft of law which he had agreed together with DPR. If within 30 days after the agreement the draft had still not yet been legalized by the President, then the draft automatically becomes legalized law and is obliged to be obeyed. (Persandingan UUD 1945, 2002:27-28)

Article 20A (1, 2 and 3) of the Constitution also reaffirms that the Peoples' Representative Council 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 questioning, and the right of expressing opinion. The other rights of DPR stipulated by the Constitution include the right to deliver questions, make proposals and give opinions as well as the right of immunity. (Persandingan UUD 1945, 2002:29) Before these amendments, such functions and rights were not clearly defined.

The Criteria of the Presidential Candidates

Before the amendments, the candidates vying for President and Vice President had to be of Indonesian origin. However, the question of what was meant by of Indonesian origin was raised and debated at length. After the amendments, article 6 (1), reaffirmed that the Presidential and Vice Presidential candidates must be Indonesian citizens and not be citizens of any other country. (Persandingan UUD 1945, 2002:8)

Before the amendments, the conditions and procedures for presidential election were always formulated and stipulated by MPR or the Peoples' Consultative Assembly through the decisions popularly called TAP MPR. According to TAP MPR, the Presidential and Vice Presidential candidates were proposed by the factions in MPR. TAP MPR regulated the procedures on how to nominate and elect the President and Vice President so that it would be difficult to get more than one candidate since, at 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 nominate his the Vice President. It was also stipulated by TAP MPR that the presidential election was to be carried out by the system of "*musyawarah untuk mufakat*" (discussion for agreement), and not by the one man one vote system.

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

Before amendment, the tenure of the President and Vice President was very "debatable." TAP MPR had stipulated that the tenure of office of the President and Vice President was 5 years and that they could be reelected as long as the incumbent President was still willing to be re-nominated. Besides, the procedure of impeachment was unclear. Now, after the amendments, article 7 of the Constitution, stipulates that the President and Vice President can only hold office for 2 terms. The Amendment also clarifies the procedure on how the President and Vice President could be impeached through the Constitutional Court. According to article 7B (1 to 7), the proposal for impeachment is delivered or submitted by DPR to the Peoples' Consultative Assembly. (Persandingan UUD 1945, 2002:10-11)

The Autonomy of Local Governments

Before the amendments, the form and authority of local government were not clearly regulated by the Constitution. Now, the form and the authority of local government has been stipulated clearly by 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 the amendments, no article in the Constitution regulated how the Governor, Regent and Mayor were to be elected. Now, 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), the head and vice head of the local government (Governor, Regent and Mayor), like the President, are also to be elected together directly by the people. (Undang-Undang Otonomi Daerah 2004:25)

The local government is also autonomous on many matters, except in foreign policy, defense and security, justice, finance and fiscal, and religion. Before the amendments, the central government often interfered in local government affairs. For example, the head of local government used to be elected by DPRD or the Local Peoples’ Representative Council, but the President had power to decide which candidate was eligible to be elected. Now, the local government is entitled to stipulate local codes and other regulations in order to carry out their autonomy and the tasks of the government at the local level. The structure and procedure to carry out the local government are regulated by local government code. By such stipulation there is a guarantee to the existence of the local government as it has been clearly reaffirmed by the Constitution. Such guarantee was not found in the original Constitution 1945.

The articles of the Constitution of 1945 on local government autonomy are meant to prevent Indonesian politics from being trapped in an authoritarian system, so that political, economic and social stability would be easily reached.

Financial Affairs

Before the amendments, the Constitution only reaffirmed that everything related to the state finances such as budget, tax, value of money, etc. be stipulated annually by law. Since the authority to make laws was in the hands of the President, it was relatively easy for the President to manipulate and use the state budget 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 be stipulated annually by law and carried out openly and responsibly for the welfare of the people. The President proposes the draft of the state budget to DPR to be discussed, by paying attention to the consideration of DPR. (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 mechanism corruption could be curbed.

National Election

Before the amendments, there was no article in the Constitution which reaffirmed the need of national election. The Constitution only stated that the structure of MPR (the Peoples’ Consultative Assembly), of DPR (the Peoples’ Representative Council), and

of DPA (the Supreme Advisory Council) would be stipulated by law. Based on such regulation, it would not be against the Constitution of 1945 if the law stipulated another system except national election.

After amendments to the Constitution, article 22E (1 to 6), reaffirms that members of DPR or the Peoples' Representative Council, DPD or the Regional Representative Council, President and Vice President as well as DPRD or the Local Peoples' Representative Council be all elected directly by the people; that candidates for the national election to DPR and DPRD are from political parties; and that participants for national election to DPD be independent 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 on how the Governor, Regent, and Mayor are to be elected. 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 amendments also reaffirms the omission of "*Dewan Pertimbangan Agung*" (DPA) or the Supreme Advisory Council and the formation of other state institutions such as: "*Dewan Perwakilan Daerah*" (DPD) or the Regional Representative Council, "*Komisi Judicial*" or the Judicial Commission, and "*Mahkamah Konstitusi*" or the Constitutional Court. The Regional Representative Council has the right to propose draft of law to the Peoples' Representative Council, 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 for the posts of Higher Judges to DPR or the Peoples' Representative Council for approval. The President would then decide the candidate to be chosen. 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 Constitutional Court which 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 with regard to the results of national election. (Persandingan UUD 1945, 2002:44-45)

In the past, when there was a conflict or difference of opinion relating to the interpretation or the implementation of the Constitution, the President's interpretation would always be used as the guidance. Very often, the conflict relating to the interpretation as well as the implementation of the Constitution would end quickly as soon as the President delivered his own opinion to the public. Now, after the amendments if there is a conflict relating to laws, involving any party, the Constitutional Court is the final authority to make decisions, not the MPR or the President.

Improving the Quality of Education

Before amendment, the Constitution only reaffirmed that every citizen was entitled to education. But, after amendments, article 31 (1), asserts that every citizen is obliged to follow the basic education program and the government is obliged to finance it. The other amendment which is the most important in the field of education is the decision to allocate at least twenty percent of the state and local government budget for education, as asserted in article 31 (4). (Persandingan UUD 1945, 2002:60)

These amendments are meant to improve the quality of education, which according to many people has become the highest priority of the nation. The stipulation has been made in order to resolve the national problem which, according to many people, including experts and politicians, has been the primary cause of multidimensional crisis which occurred in Indonesia in the late 1990's. Through this policy, the quality of the human resources development index or HRD could be upgraded so that Indonesian human resources would be able to compete with other human resources coming from other countries, particularly ASEAN countries.

National Economy and Social Welfare

After amendment to the Constitution, article 33 (4), reaffirms that national economy should be carried out along democratic principles of collectiveness, efficiency, sustainability, environmental outlook, independence, and balance between the progress and national economic unity. (Persandingan UUD 1945, 2002:62-63) This amendment is meant to encounter the growing system of either liberalism and capitalism or authoritarian and centralistic economy in Indonesia and to prevent the growing practice of corruption, collusion and nepotism.

Honoring Human Rights

Before the amendments the Constitution did not explicitly reaffirm about human rights. Articles 27 (1 and 2) and 28, of the Constitution of 1945, 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 now the Constitution stipulates a number of articles which explicitly reaffirm that human rights are honored and guaranteed. The Constitution stipulates 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 of the United Nations. The amendment is also meant to show to the rest of the world, particularly to the West, that Indonesia is a country which honors human rights as stipulated in the Constitution, that any infringement against human rights would be regarded as a crime toward humanism and therefore subject to prosecution.

Amendment to the Constitution

Before the amendments, the Constitution of 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 Peoples' Consultative Assembly had committed not to alter but

to carry out the Constitution 1945 purely and consistently by issuing TAP MPR on Referendum. Based on TAP MPR on Referendum, alteration to the Constitution required a 2/3 majority. Under the New Order regime, such a referendum had never been carried out since any idea or even any attempt to alter the Constitution would be regarded as infringement against the national consensus.

After the amendments, the Annex (article II) of the Constitution reaffirms that by the stipulation of amendment, the structure of the 1945 Constitution only consists of the Preamble and the articles. Article 37, reaffirms that only the articles of the Constitution could be amended, not others. (Persandingan UUD 1945, 2002:66) This stipulation means that the Preamble of the Constitution 1945 would and could never be amended. The Peoples' Consultative Assembly 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.

The Constitution is now relatively easy to be amended as any proposal for amendment could also become the agenda of the annual meeting of MPR or the Peoples' Consultative Assembly if supported by at least 1/3 of the members. Amendments to the articles requires 2/3 of the members be present, and to make a decision on amendment of the articles requires at least 50 percent plus one other member to be in favor. One important aspect of the Constitution is that article 37 (5) asserts that no amendment to the form of the Unitary Republic of Indonesia could be carried out. (Persandingan UUD 1945, 2002:67) This is meant to dispel any fear people may have that the form of the unitary state would be changed into federal state which, according to them, is not suitable for an archipelagic state of Indonesia with more than 17,000 islands.

CONCLUSION

The amendments of the Indonesian Constitution of 1945 carried out by MPR or the Peoples' Consultative Assembly in 1999, 2000, 2001, and 2002 was not without any opposition. A number of people coming from many different social and political background had tried to oppose these amendments. Some demanded that the amendments be cancelled, and others demanded that the Peoples' Consultative Assembly re-enact the original Constitution of 1945. Until now, the demand for abandoning the amendments and returning back to the original text continues to exist.

Those who reject the amendments worry that the amendment would change the form of the unitary state into a federal one which, according to them, is not suitable for Indonesia as it may endanger the unity as well as the sustainability of the country. They also worry that the amendments 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 liberalism and capitalism which, according to them, is not suitable for the Indonesian people.

On the other hand, the proponents supporting the amendment, however, are stronger than the opponents. They argue that the amendments would make the Indonesian

Constitution of 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 of 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 government) and the other led by Soeharto (the New Order government). Therefore as a step to prevent the re-emergence of such authoritarian governments, there is a need to amend the Constitution of 1945.

Convinced by such arguments, the Peoples' Consultative Assembly decided to amend the Constitution 1945. But, to accommodate those people worried to the amendments, the Peoples' Consultative Assembly decided not to touch at all the Preamble of the Constitution of 1945. They 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. All members of the Peoples' Consultative Assembly have come to an agreement that the form of the unitary state and "Pancasila" (the Five Principles) as the state ideology and philosophy were two things that must always be defended.

From the above conflicting arguments, three fundamental changes have however been made by the amendments. Firstly, the amendments have already introduced or even enforced the constitutionalism system, meaning everyone bearing power has to comply with the Constitution. Under the New Order regime, the structure of Indonesian law consisted of the Constitution, the decisions made by the Peoples' Consultative Assembly (popularly called TAP MPR), laws, and government regulations. Now, TAP MPR has been erased from the structure of Indonesian law. The Constitution is positioned at the top, and the other products of law must be in line with the Constitution.

Secondly, the amendment has also improved the quality of the system of "*check and balances*" in the Indonesian power system. In the past, before the amendments, the power and authority given to the President by the Constitution were too wide, making the position of the President very strong and dominant over other higher state institutions, such as MPR, DPR, and MA. The present amendments were designed to prevent anyone, particularly the President, from abusing his power. However, many have said that the amendments have already given too much power to the DPR.

Finally, the amendment erased the Explanation of the 1945 Constitution because it was no longer needed. Beside the substance was much contradictory with the spirit of the amended Constitution. The Indonesian Constitution of 1945 after being amended is very much clear in detailing with details. But, in order not to invite polemics, the statement of erasing the Explanation of the Constitution 1945 is not openly stated. Chapter XVI, Addition Regulation, Article II, of the Constitution reaffirms that "*by the stipulation of the amendment of this Constitution, the Indonesian Constitution 1945 consists of the Preamble and the articles.*" (Persandingan UUD 1945, 2002:70) This article clearly tells us that the explanation of the Constitution is no longer a part of the Constitution 1945. Every conflict relating to the interpretation of Constitution would be examined by the Constitutional Court, which is the final authority on such matters.

REFERENCES

- Asshiddiqie, Jimly. *Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia*. Jakarta: Mahkamah Konstitusi Republik Indonesia, 2005.
- Crouch, Harold. *The Army and Politics in Indonesia*. Ithaca and London: Cornell University Press, 1988.
- Feith, Herbert and Castle, Lance. *Indonesian Political Thinking 1945-1965*. Ithaca and London: Cornell University Press, 1970
- Kahin, George McTurnan. *Government and Politics of Southeast Asia*. Ithaca and London: Cornell University Press, 1969.
- Kompas, 05 April 2002. ("*Amandemen Justru Bermaksud Ekspresikan Pembukaan UUD*").
- Kompas, 09 April 2002. ("*Minta Dihentikan, Amandemen UUD 1945*").
- Kompas, 06 July 2006. ("*Peringatan Dekrit Presiden: Indonesia Harus Kembali ke UUD 1945*").
- Nasution, Adnan Buyung. *Kembali ke UUD 45, Antidemokrasi*, in Kompas, 10 July 2006. Harian Kompas: Jakarta
- Persandingan Undang-Undang dasar Negara Republik Indonesia Tahun 1945*. Jakarta: Sekretariat Jendral MPR RI, 2002.
- Tempo Interaktif, 01 November 2001. ("*Amien Menilai Arah Amandemen UUD Sudah Benar*").
- Tempo Interaktif, 28 February 2002. ("*KBM Minta Amandemen Keempat UUD 1945 Dihentikan*").
- Tempo Interaktif, 08 August 2002. ("*FPP 45 Sampaikan Mosi tidak Percaya pad MPR*").
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*. Jakarta: Sekretariat Jendral Mahkamah Konstitusi Republik Indonesia, 2005.
- Undang-Undang Otonomi Daerah 2004*. Bandung: Penerbit Citra Umbara, 2004.