



Involvement of The Constitutional Court in Amending The 1945 Constitution Law

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Abstract. New instruments that can balance constitutional changes are urgently needed at this time. It is hoped that the changes will not become a mastery of political institutions, namely MPR RI. The Constitutional Court is given enormous authority by the Constitution as the executor of the "Constitution (1945)". This is concrete manifestation of the integrity of the constitutional. The many social problems related to law that cannot be avoided can be explained through the very interesting rhetoric, including criticism of jurisprudence and then legal research as a form of their "frustration". In consequence, this legal research is essentially unique, not intended to explain the concept of legal research. This research aims to find new things that are worthy of publication with study program-based research. The contributions of this research include form a scientific perspective, this research contributes to the development of legal science. Besides that, this research can be a reference for making decisions regarding the system of Indonesian constitutional. The kind of research used is normative legal research. Researchers use study objects in the form of norms or basic rules, doctrine, and legal science. Researchers also use legislative, conceptual and comparative approaches as research approaches.

Keywords: Constitutional commission, MPR, Constitutional Court, Amendment.

1 Introduction

According to Jimly Ashiddiqie as a Constitutional Law Expert state that the preparation and formulation of changes to the 1945 constitution were carried out without going through in-depth conceptual debate, where he was involved in the process of discussing changes to the constitutions 1945 indonesia after reform. This is because MPR

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members do not have adequate time to conduct in-depth debates. In addition, the influence of political interests in the design discussion process affects the atmosphere and political dynamics. As a result, Choice regarding academic truth are often forced to be put aside by choices regarding political truth. [1] Constitutional reform that is not free from political conflict, it would be like contaminated a short-term political negotiation virus if it was then handed over entirely to the people's representative institutions such as the MPR as stated by Denny Indrayana. [2]

Because of this, a new variation that can be balance in making changes of constitutional is very necessary. In this way, the monopoly of constitutional changes from

political institutions such as the MPR RI can be avoided, this aims to be a solution to problems regarding the constitution which can be changed by political institution that have power. Based on that, a balancing institution is needed in making constitutional changes, where the constitutional court (MK) is one of the institution that can make constitutional changes according to the researchers.

The constitution gives great authority to the constitutional court as the keeper of the constitution. Based on democratic principles, the constitution protects human rights as the highest law which also regulates state administration and is guaranteed in the constitution. It is one of its function that the constitutional rights of citizen are.

The constitutional court should have the authority to be one of the parties that can make changes to the constitution itself because this is a form of responsibly as a keeper of the constitution. Basically, Indonesian citizens will be affected and feel a huge impact from the debate that occured during the constitutional changes.

2 Problems

Referring to the background, the problem formulation created by the researcher becomes the material for the study, namely:

1. What is the importance of the complicity of the constitutional court in changing the Indonesian's constitution?
2. What legal provisions are the basis for the constitutional court to amend the 1945 constitutional?

3 Methods

In conducting thus research, the author apply the normative legal research method.

4 The Importance of the participation of the Constitutional Court in the Amendment to the 1945 Constitution

4.1 Frailty of the amendments to the Indonesian's constitution

In Term of Process

No changes to the basic framework and table of contents. The complete draft of the contents of the Constitution, which is the first step and the basis for changes to the constitution, was not owned by the MPR at the time of making the changes, even though this was something that could be offered to the public for discussion. The design of the content is based on a clear model, which then turns into a framework regarding the broad presentation of state ideas the relationship between the state and citizens, the state and religion, and the state and its history. It is also based on a deep exposition of the essence of democracy, what its terms are and its principles as well as its checks and balances on how it is carried out in depth.

The existence of political interest bias. MPR members be composed of political factions who in every discussion and decision making are very strongly influenced by their political interests and tastes.

Not optimal and Intensive. There is short time in the amendment process, for several reasons including MPR members are also or concurrently as DPR members with a very large workload, political party members who have to follow several DPR members who are very dense so that the limited time produced is certainly not optimal.

From its substance

1. The indistinct system of Indonesian representative institutions in the 1945 Constitution.
2. Ambiguous and disproportionate systematics of the "1945 Constitution" after it was amended. [1]
3. The inconsistency of the presidential government system with the theory of the 1945 constitution.
4. It cannot be changed or can be changed by certain conditions related to the problem of inconsistencies which part of the 1945 Constitution is after amendment.
5. There is still ambiguity in regional autonomy arrangements regarding the pattern of relations between the center, provinces and districts/city.
6. Overlapping articles regulating Human Rights (HAM) on another articles and another chapters regulated in the Constitution.
7. Incomplete cultural arrangements, as well in the 1945 Constitution doesn't regulate how to defend the native Indonesian culture.

4.2 The Existence of MPR as a Political Institution.

The theory of population sovereignty can't be separated from the existence of the MPR. When viewed based on the second proceedings, the actual initial draft of the MPR was actually as a political institutions that represented the people's power as holders of power seen from the philosophical aspect of the formation of the MPR. Therefore the people's consultative assembly is the establishment that carry out changes to the Indonesia's constitution constitutionally. The following are state institutions that can formulate legal politics if referring to the 1945 constitution which has been amended four times.

The MPR is no longer the highest state of the country, but is a joint institution that brings together the people's deliberative council with the regional representative council. After the third amendment to the 1945 constitution.

4.3 MK as The Keeper of Constitution.

MK was be formed with the aim of supervising and ensuring that the administering of state life in accordance with the principles of a modern legal state and the constitution as the highest law of the state is actually implemented or enforced, determine the overall social dynamics, economic. Rectifying or replacing bad legal products such is law in something that the constitutional court can do.

4.4 Strengthening Checks and Balance System.

To build a constitutional democratic state in Indonesia, it is required to reform and improve the legal system and constitution. After the amendment of the 1945 Constitution, the Indonesian constitutional system used the principle of checks and balances. Where stated expressly by the MPR as one of the purpose of changing the 1945 Constitution, through shared power, a system of mutual supervise and balance which is stricter and more transparent. [3] In a democracy, the existence of checks and balances is natural, even very necessary. The goal is to avoid abuse of power by a person or an institution, or also to avoid centralizing power on a person or an institution, because with a mechanism like this, one institution with another will control or supervise each other, even can complement each other. [4]

Based on Indonesia's constitutional experience, it can be seen that juridically there were many power lapses in the past because the 1945 Constitution (before the amendment) gave great power to the President. In addition, in the executive field, it also has power in the legislative and judicial fields. The 1945 constitution gives more weight to the executive institution, which is President, or is said to be executive heavy.

Prof. Dr. H. Mohammad Mahfud Mahmodin, S.H., S.U., M.I.P. said that the absence of checks and balances mechanism was one form of weakness of the 1945 Constitution before the amendment. The president is the central of power who has various prerogatives.

As Prof. Dr. H. Mohammad Mahfud Mahmodin, S.H., S.U., M.I.P. said, because laws are political products which are certainly not sterile from the political interests of the members of the institutions that from them, a system of Checks and balances is needed which is the institution of judicial review. Political products may contain content that better aligns with a group's political interests. [5]

5 Legal Provisions Underlying the Involvement of the Constitutional Court in Amending the 1945 Constitution of the Republic of Indonesia

It can be said that the constitutional court has an important role in changing the constitution in the formal legal norms of the 1945 constitution is based on the research contact which emphasizes the urgency of the constitutional court's role in changing 1945 constitution. Apart from that, The Constitutional Court is a high state institution whose position is equal to other institutions, this is a consequence of the presence of the MK in the constitution.

The role of the MK in making changes to the Indonesia's Constitution by means of the fifth amendment where the article on complicity and adjustment on the obligation of the Constitutional Court in the legitimacy of the Constitutional Court as one of parties involved in amending the 1945 Constitution is further strengthened by article 24c and article 37 concerning amendments to the 1945 constitution. This is a joint effort to create a democratic constitution.

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