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The Probability of Extra-Constitutional Amendment on the 1945 Constitution of Indonesia: The Politic of Parliament Against its Constitutionalism

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Abstract
Is the Constitution a 'product' of Parliament, or is it run its constitutionalism? This question directs the attention of this Article to the distinction between glorification and constitutional amendment. The Constitution has an unamendable provision that serves as a self-limitation. This restriction is enshrined in constitutional conventions, and it emphasizes that the Parliament cannot rewrite the Constitution in a way that abolishes the natural character of the Constitution. The Parliament, on the other hand, is the organ of government. This body was given the power to amend the Constitution by the Constitution. As a result, it designates Parliament as the greater authority in charge of all organs as well as the Constitution. The research of its Article uses philosophy and comparative methodology. It took a doctrinal approach to determine the correlation between political will and constitutional normativity while the amendment was in place. The political wills of Parliament are essentially determined by the normativity of the Constitution, as the Parliament was born from a constitutional norm. Whereas, according to Hans Kelsen, the Constitution existed before all the norms. In this paradox, the Constitution was taken before the Parliament itself.
Keywords: Constitutionalism; Natural Character Unamendable Provision

Abstrak
Apakah konstitusi merupakan produk dari Parlemen, atau konstitusi menjalankan konstitusionalismenya? Pertanyaan memantik atensi dari tulisan ini yang berfokus pada distingsi antara glorifikasi konstitusi dan proses amandemen. Secara faktual, konstitusi memiliki klausula yang tidak dapat diubah sebagai batasan perubahannya. Limitasi tersebut memiliki fokus pada konvensi konstitusional, dan menegaskan bahwa Parlemen tidak dapat mengubah konstitusi hingga merubah 'karakter awal' dari konstitusi itu sendiri. Meskipun Parlemen merupakan Lembaga Pemerintahan, kewenangannya untuk dapat merubah konstitusi pada dasarnya diberikan oleh Konstitusi. Konsekuensinya, Parlemen terdesain secara tidak langsung sebagai lembaga tertinggi yang dimandatkan oleh konstitusi. Untuk mengelaborasi permasalahan tersebut, penelitian ini menggunakan metode filosofi dan komparasi hokum. Dengan pendekatan Filsafat, akan didapatkan pandangan atas determinasi hubungan antara kehendak politik dengan normatifitas konstitusi pada saat amandemen sedang berlangsung. Secara Ideal, kehendak politik parlemen terdeterminasi oleh normatifitas konstitusi, karena parlemen dilahirkan dari Rahim konstitusi. Sedangkan, menurut Hans Kelsen, konstitusi telah lahir jauh sebelum seluruh norma. Dalam paradoks ini, disimpulkan bahwa konstitusi telah lahir jauh sebelum parlemen.
Keywords: Konstitusionalisme; Karakter Konstitusi; Klausula yang Tidak Dapat Diubah

A. INTRODUCTION

In the mind frame of constitutionalism, the Parliament is prohibited from amending the Constitution formulated by subjective political will on its body. The unamendable Provision in the Constitution creates a new paradigm of equality before the law, and it plays a significant role in the era of political constitutionalism. Otherwise, the legislators only took minor actions following the legislation. In practice, electorates see elections as merely a democratic means of obtaining the "hot seats" of authority. Instead of celebrating democracy, their goals frequently deviated from its principles, implying that the government runs beneath *volkgeist* as the fundamental source of all norms.

As a legislative body, the Parliament was given authority by the Constitution. It means that the Parliament is the "epicentre" of the legal order, having enacted laws and serving as a representative of public needs, either politically or functionally. In other words, Parliament held the highest position in the national body as a framer of laws, including the Constitution. However, it is the polar opposite of the old emperor era, in which the authority could create any order subjectively.

In this era of constitutionalism, the highest authority, Parliament, would and should function beneath the supreme law, the Constitution. Although the Parliament appears to be one of the emperor's institutions, its power is limited by law. Even though Parliament enacted the Constitution, there was a superior core to the Constitution, which is the basic structure of its Constitution. The basic design could reincarnate as the unamendable Provision, the spirit that limited the main "actors" in its Constitution. But how do they work?

To demonstrate, the 1945 Constitution of Indonesia provides two main restrictions of the amendments process. Article 37 (1) – (4) set the minimum requirements of the number existing and approval of the Senator's Vote to hold or authorized the Constitutional amendment. Substantially, Article 37 (5), set the unamendable Provision as the amendment limitations, the form of the state, and Unitarianism in Indonesia.

In France's Constitution, the Parliament is prohibited from amending the basic idea of the Republic.[1] In Germany's Constitution, the Provision led to the form of a Federal State and Humanity.[2] In America's Constitution, the unamendable norms bring limitations to the equal representation of each state in the Senate.[3] Furthermore, in India, in the case of Indira Nehru Gandi v. Raj Narain (1975) and Minerva Mills v. Union of India (1980), the Supreme Court of India re-implemented this basic structure doctrine to overturn amendments to the Indian Constitution to pave the way for the restoration of democracy in its country. At the end of the Parliament's power, the Constitution can always recover after the legislator's despotic will.

[1] French Republic, "Article 89", *La Constitution* 1958 (Konstitusi).
[2] Federal Republic of Germany, "Article 79 (3)", *Grundgesetz* 1949.
[3] United States, "Article V", the Constitution of the United States of America.

B. METHODS

This research exercise normative juridical principles, namely research that connects and analyses legal regulations towards an issue. Such research is also known as black letter research, a technique for structuring, correcting, and clarifying a statutory regulation relating to a particular topic through a typical analysis method of primary and secondary authoritative texts. This research uses a statutory approach and a conceptual approach. Meanwhile, the legal material analysis technique used in this study uses qualitative analysis, namely an analysis that describes the legal research material into elements by descriptively utilizing a series of arguments or statements.

Many aspects of legal philosophy would be confronted if we discussed this issue. This discourse is based on philosophy and comparative methodology. It took a doctrinal approach, elaborating ideas about the balance of power between political will and constitutional normativity, mainly while the amendment was being debated. It begins by discussing the ideal form of the Constitution and its inspiration, then the politics of the Constitution, the legitimations of the Parliament, and finally, the constitutional paradox between the constitutionalism of Parliament and the Constitution as its creation.

C. RESULTS AND DISCUSSION

1. The Constitution and Its Restrictions; Kelsen's Normativity

Hans Kelsen is a Vienna Scholar who has spent significant time studying law. Kelsen's dedication to science began long ago, despite the length of his path. Kelsen founded a game about the philosophy of law that systematically constructs positive law while a professor at the University of Vienna. The Pure Theory of Law or Normative Jurisprudence is the name given to it today. This plant is not set against a serene backdrop. Even the birth of a new country, Austria, occurred amid the hegemony of World War One. Moreover, various problems were plaguing social conditions at the time, beginning with the global economic crisis and a great deal of uncertainty in constitutional reform. With this background, Kelsen's work emerges as a refreshing oasis for the world's mind.

Immanuel Kant's idealist-transcendental viewpoint influenced Kelsen's view of the law.[4] As a result, Kelsen is also known as a neo-Kantian in legal philosophy.[5] And the international community refers to him as a Legal-Positive! This person separates the law from anything that might threaten it. Kelsen believes that the law must be free of elements that could jeopardize his independence. According to J. Walter Jones, the law's physical, psychological, and sociological aspects are part of nature, not law, for Kelsen.[6]

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[4] Fx. Adji Samekto, "Menelusuri Akar Pemikiran Hans Kelsen Tentang *Stufenbeautheorie* Dalam Pendekatan Normatif-filosofis", *Jurnal Hukum Progresif*, Vol. 7, No. 1, April 2019, p. 3.

[5] Michael H. Ducey, *the Legal Positivism of Hans Kelsen*, (Thesis-Master, Loyola University Chicago, 1959), p. 8.

[6] J. Walter Jones, *Historical Introduction to the Theory of Law*, 2nd ed, (Oxford, 1956), p. 224.

Kelsen fights for legal purity in terms of methodology and legal substance. According to him, radical methodological purification of law will be achieved by separating law philosophy and sociology from the analysis process.[7] According to Kelsen, norms are a deliberate form of human thought. If desired, it will become the norm, and the norm will become the law if selected. Kelsen formed this opinion due to Kant's influence on his thinking. One well-known statement is that cognition creates its object or that consciousness must form its entity.[8]

However, this does not imply that Kelsen does not want the law to be based on morals, justice, and all other considerations. However, according to Kelsen, all forms of discourse about ideas should be in the process of becoming law. All idealized abstractions, according to him, must be based on a norm and are meta-jurist. Furthermore, something meta-jurist is *das-sollen*, an idea that has not been built into the law and applied to society.[9] Everything ideal, in his opinion, can be made into law if combined with the concept above it. So, once the law has been established, the discussion of justice and other ideals must halt. Because the law is obeyed in Kelsen's intellectual realm, not because of its substance, which is the umbrella of justice, but because the law is a product of authority.[10]

Kelsen not only explained substance and object, but he also explained the field of law enforcement. Each country, he believes, has its own fundamental and natural character. However, complications arise when International Law is applied. The reason for this is that, while state rules apply in their respective territories, they must be readjusted to existing regulations, which cannot be forced and must be implemented through agreements. Thus, according to Kelsen, international law governs states' birth and death.[11] However, each country must play the role of the main character.[12] Because a fundamental norm of international law is each state's identity or natural legal character.

Why should international law, as a rule, conflict with the state as a power? A state, according to Kelsen, is a juristic person or subject of international law.[13] Corporations are subject to national law as well. Although international law is intended to protect individual human lives, it is implemented through state intermediaries.[14]

In Kelsen's opinion, the existence of international law is an epistemological postulate. According to him, legal experts who acknowledge both validities must work

[7] Hans Kelsen, *General Theory of Law and State*, (US: Harvard Univ. Press, 1946), p. xv.

[8] Hans Kelsen, *Natural Law Doctrine and Legal Positivism,* translated by Wolfgang Herber Kraus, in ibid, p. 389-448.

[9] Samekto, loc.cit, p. 13.

[10] Ibid, p. 14.

[11] Ducey, op.cit, p. 54.

[12] Kelsen, op.cit, p. 369.

[13] Ducey, poc.cit, p. 54-55.

[14] Ibid, p. 55.

to harmonize the rules.[15] Because the law is a set of norms, it must be viewed holistically and harmoniously.[16] However, even if it is considered a unit, if there is a unity between international law and national law, as Kelsen suggests, federal law retains a superior position compared to international law.[17]

What is the reason for this? Because international law is based on general customs that are mutually agreed upon treaties. Indeed, making law through an agreement is a custom-made norm of *pacta sunt servanda*.[18] Even if it returns to the fundamental value of customary law, it will still be carried out by each party adjusting it.[19] Inherent in Kelsen's thoughts above is the idea that each country's struggle for natural customs (rules, values, etc.) is in the 'formulation process.' State law must be subject to and adapted if it has become a contract. What about the Constitution, though?

According to Kelsen, the Constitution is the fundamental norm, and the basic norm is upstream of the procedure for forming all laws, including the law for establishing international law in a country. In this matter, a constitution exists before all norms and is created by the highest power. In another sense, the Constitution is also known as the norm of higher authority or the norm of the highest power holder.[20] The Constitution is the pinnacle of positive law in a country when linked to the logic of the legal system. It is not uncommon for a constitution to be created in the form of a document, also known as a written constitution.[21]

2. Constitution and Its Constitutionalism

The majority of modern constitutions describe the fundamental principles of the state, the structures and processes of government, and citizens' democratic freedoms in a divine mandate that cannot be modified unconstitutionally by an ordinary legal instrument. This more excellent law is commonly known as a constitution.[22] As the highest law, the Constitution has many principal purposes. Thus, Constitutions could indeed declare and classify the political society's boundaries. Second, constitutions could proclaim and identify the social community's nature and authority. Third, constitutions could express national identity and values. Finally, constitutions could declare and define citizens' rights and responsibilities.[23]

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[15] Kelsen, op.cit, p. 373.

[16] Ducey, op.cit, p. 57.

[17] Ibid, p. 58.

[18] Hans Kelsen, *the Pure Theory of Law"*, see Michael Freeman FBA, *Lloyd's Introduction to Jurisprudence*, 9th ed, (London: Sweet & Maxwell, 2014), p. 510.

[19] Ibid.

[20] Ibid, p. 505-506.

[21] Ibid, p. 511-512.

[22] Elliot Bulmer, *What is a Constitutin? Principles and Concepts*, 2nd ed, (Stockholm: International Institute for Democracy and Electoral Assistance, 2017), p. 1.

[23] Ibid, p. 2.

A constitution 'marries authority with morality'.[24] It makes the exercise of power dynamically realistic, embraces the rule of law, and limits power's subjectivity. It is the basis of law and establishes the requirements that usual statutes must obey. The Constitution prescribes a country's decision-making institutions: constitutions "describe the ultimate authority," "distribute power responsibly that contribute to successful decision making," and "also provide a guideline for continuing political struggle."[25] The political stipulations describe that government institutions (Parliament, executive, courts, head of state, local governments, independent bodies, and so on) are organized, on which powers they have, and how they interact with one another.

To protect democratic processes and fundamental human rights, a procedural constitution defines public institutions' legal and political structures and establishes the legal limits of government power. A procedural figure may be appropriate when it is difficult to reach a standard agreement on issues of values or identity, but where a more limited and pragmatic consensus on using democratic procedures to resolve these differences can be reached. The procedural archetype is closely reflected in the constitutions of Canada (1867 and 1982) and the Netherlands (1848 / 1983). They proclaim no single vision of a good society and rely only on a bare commitment to coexistence.[26]

A normative constitution reinforces the Constitution's foundational purpose as a "basic declaration of the state's identity" that performs "a critical role in indicating the desired goals and collective principles that support the state".[27] Furthermore, in certain states, the role of the narrative is not restricted to the Constitution. It can also be conducted by a separate pre-constitutional or extra-constitutional text, such as a declaration of independence or republic declaration, which is not part of the country's legal order but plays a vital role in sustaining socio-political norms. Then, how the Constitution works?

To implement the Constitution, it needs ism that provides the concept of its normativity, called constitutionalism. Presently, constitutionalism is a topic as essential as good governance. Constitutionalism is generally described as a 'belief in a constitutional republic.' However, what exactly is a governmental body? Is it an authority with a constitution, an organ instituted by a figure, or a government coinciding with a figure? The improvement of the proposal is hazy.[28]

Constitutionalism is the doctrine that regulates the validity of government action, and it assumes something far more vital than the concept of legality, which

[24] D. S. Lutz, *Principles of Constitutional Design*, (Cambridge: Cambridge University Press, 2006), p. 17.

[25] Ibid.

[26] Bulmer, op. cit, p. 9.

[27] H. Lerner, *Making Constitutions in Deeply Divided Societies*, (Cambridge: Cambridge University Press, 2011), p. 18.

[28] Maru Bazezew, Constitutionalism, *Mizan Law Review,* Vol. 3, No. 2, 2009, p. 358.

higher requirements actions to follow pre-determined procedural principles.[29] In those other worlds, constitutionalism examines how a government's act is lawful or if authorities hold out their social responsibilities under relevant laws that have been well before in anticipation.

Constitutionalism is mainly used interchangeably with limited government. By most, this doctrine is correlated with slight or even less government. However, this is only one understanding, far from the most influential previously. A rather general definition of constitutionalism is that it aims to prevent an irrational government. At the broader level, subjectivity is defined as rulers' right to manage deliberately. That is, with absolute authority and to satisfy their desires instead of the objectives of the governed. Constitutionalism seeks to avoid these risks by establishing mechanisms that govern who would rule, how, and for what purposes.[30] To sum up, constitutionalism restricted any organs through the Constitution.

3. Genealogy of Parliament's Normativity

Parliament knows as a "predominantly elected body of people that acts cooperatively, and that has at least the formal but not inherently restricted power to enact laws obligating on all members of a particular political entity".[31] Parliament is defined as a 'flexible institution capable of performing a variety of functions within a political process. If the question "which comes first, the parliament or the constitution?" arises, the answer is "both." As a result, it differs from the well-known paradox of "which came first, the egg or the chicken?" For the question of eggs and chickens, we will, of course, be stuck in a logic game with no concrete answer; this is not achieving knowledge to check until the emergence of the chicken species.

After all, the Constitution gave birth to all the rules. Including the rules for establishing an institution, such as a parliament. Previously, Parliament was simply a group of people with various interests. However, in the post-constitutional era, these representative institutions have considerable powers, including the ability to enact legislation. So, in a nutshell, Parliament is an institution derived from the law itself.

In conclusion, the genealogy of Parliament and the Constitution born a constitutional riddle. The Constitution, as a grundnorm, exists earlier and forms the institution termed Parliament, while the Constitution is created directly by the founding fathers of the nations as the framers of the constitutions. Yet, its consequence is that the Parliament has no right and no authority to change the whole Constitution. The Parliament can only amend, add or remove some articles in a constitution.

In Indonesia, the Parliament is limited under two constrained provisions of the constitutional amendment. First, procedurally, the Constitution would be able to

[29] Hilaire Barnett, *Constitutional and Administrative Law*, 3rd ed, (London: Cavendish Publishing Limited, 2000).

[30] Richard Bellamy, "Constitutionalism", *International Encyclopaedia of Political Science*, 2010, p. 1.

[31] M.L. Mezey, *Comparative Legislature*, (North Carolina: Duke University Press, 1979), p. 6.

constitutionally amend that limited only to the articles in the 1945 NRI Constitution.[32] Second, the material amendment substantially forbids changing the form of the Unitary State of the Republic of Indonesia. The second restriction became a non-amendable provision in the amendable constitutional Article.[33]

In the previous political constitutional amendment history, parliaments in Indonesia have carried out amendments to the Constitution or the 1945 NRI Constitution by not heeding the existence of the "procedural amendment constitution", as mentioned above. In 1949-1950, in the process of amending the 1945 Constitution into the United States of Indonesia (*Republik Indonesia Serikat* / *RIS*) Constitution, the RIS Constitution became the 1950 Constitution of RIS. The transformation of the 1945 Constitution to the RIS Constitution was caused by the *geshlichen Hintergrund* of the State, which was in a state of unstable security and defense of the country. In addition, there was dutch military aggression against the Indonesian government—the dutch re-plan to change Indonesia from a unitary state to a federal state.

Therefore, the origins of the 1945 Constitution, which adhered to the form of a unitary state, were replaced by the applicability of the 1950 RIS Constitution, which adhered to the federal state form. In this phenomenon, it was a violation of the constitutional mandate to amend the Constitution formally. Since Parliament changed the entire content of the 1945 Constitution and replaced it with a RIS constitution. The same thing also happened in the change of the RIS Constitution to the 1950 Temporal Constitution and the evolution of the 1950 Temporal Constitution reformed to the basic 1945 Constitution, the Constitution that before the Parliament replaced a constitution with another.

Such changes erode the natural construction of the Constitution, as well as change national identity since it has been amended into the basic structure of a constitution.[34] Constitutional Identity is violated in the form of a system of government and state form, to the relationship between the Constitution and culture, as well as other relevant identities, such as national identity, religion, and ideology.[35] According to Yaniv Roznai, there are 5 (five) characteristics that must be present in a constitution, namely protection or preservation (preservative), character change (transformative), aspirational character (aspirational), character to overcome conflict (conflictual), and character as a result of compromise (bricolage).[36]

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[32] Article 37 Poin 1 – 4 UUD NRI 1945.

[33] Article37 Poin 5 UUD NRI 1945.

[34] According to Ali Masykur Musa from the KB Faction, the Non-amendable article must be based on national pride which is the hallmark of the Indonesian nation with other countries. That in this case the preambule and the form of a unitary state is the national pride of the nation which is not owned by any other nation in the world. Secretariat General of the People's Consultative Assembly of the Republic of Indonesia, Minutes of Amendments to the Constitution of the Republic of Indonesia of 1945 (1999 – 2002), Session Year 2002 Book Three, (Jakarta: Secretariat General of the People's Consultative Assembly of the Republic of Indonesia, 2009), p. 320.

[35] Michael Rosenfeld dan Andreas Sajo eds, 2012, The Oxford Handbook of Comparative Constitutional Law, p. 756.

[36] Yaniv Roznai, *Unconstitutional Constitutional Amendments the Limits of Amendment Powers*, 1st ed., Oxford: Oxford University Press, 2017, p. 26.

The principle of nature construction of the Constitution was first initiated and introduced by the Supreme Court of India as the first judicial institution that adjudicated cases between Kesavananda Bharati v. The State of Kerala in 1973. Although the Supreme Court of India held that the basic structure of the Constitution was the essential spirit underlying the texts, "*the basic structure of the Constitution could not be abrogated even by a constitutional amendment*".[37]

Comparing these cases to the 1945 Constitution of Indonesia, grammatically, the unamendable Provision means 'irreversible clause', as stated in Article 37 paragraph (5) of the 1945 Indonesian Constitution. This text refers to articles related to the substantial prohibition of the amendment, namely Article 1 section (1) of the 1945 NRI Constitution, and articles that intersect with it. Therefore, the existence of this Article is called an unamendable article.[38] Based on such an Interpretation, it means that as long as Article 37 Paragraph 5 still exists, then as long as it is also the integrity of the nation is maintained.

From such genealogy, the Constitution curbs Parliament itself from changing objects greater than it, that the Constitution, in truth and essence, contains the fundamental principles of the nation, the structures and processes of government, and citizens' democratic freedoms in a divine mandate that cannot be abolished constitutionally by an ordinary legal instrument such as Parliament. Therefore, the Constitution is a significant legal compass that contains the fundamental values of *Pancasila* and was born earlier than the Parliament was taken. The Parliament could do something referred to as commands by the Constitution. In the context of Indonesia, it can only change its articles according to the Procedural Constitutional Limitation, and Unamendable Provision contained in Article 37, paragraphs (1) - (4) and Article (5) of the NRI Constitution.

4. The Illusion of Political Possibility

Political contracts are formed between parties to achieve common goals, i.e. to provide gains they would not be able to obtain on their own. Such benefits include the ability to rule, to direct the policy with political legitimacy in the case of political elites negotiating the rules of a democratic regime. Furthermore, when it comes to establishing parliamentary democracy, each political party understands that its ability

[37] Some of the basic structures referred to by the Indian Supreme Court are, among others, namely the rule of constitution, the state of law, the separation of powers, the purpose of statehood in the Preamble to the Constitution, the testing of laws and regulations, and the fundamental rights guaranteed by the constitution. See Pan Mohamad Faiz, Constitutional Space" in CONSTITUTION MAGAZINE No. 164, October 2020, p. 90-91.

[38] Original Intent pembahasan mengenai Unamendable article yang tercantum dalam Pasal 37 Ayat 5 UUD NRI 1945 sebenarnya juga hendak mengatur pembatasan mengenai Preambule UUD, Keutuhan NKRI dan Bentuk Negara, akan tetapi terjadi perdebatan serius yang berujung hanya memasukan klausul pembatasan mengenai bentuk negara kesatuan. Lihat dalam Risalah Rapat Komisi A ke-4 MPR, 8 Agustus 2002.

to influence events will rise and fall based on relative electoral fortunes. Each party hopes its policy preferences will be enshrined in law through legislation.[39]

However, the parties recognize that developing stable rules for competition among themselves is a necessary first step in governing. Constitutional Transactions – the selection of rules governing the interaction of policymakers and policy bodies – is frequently more straightforward than selecting the policy alternatives permissible under the rules.[40] Given the widespread support for parliamentarians, the parties were able to reach an agreement on the fundamental rules, not least because each could see itself benefiting from them in the long run.

Elster stated that 'norm-free bargaining' – where 'the only thing at stake is self-interest' – is more likely to result in a settlement, whereas 'norm conflicts' frequently result in a 'bargaining impasse' because the parties interact with one another from radically opposed social essences.[41] Rights debates are inherently social value debates. Indeed, constituent assemblies were occasionally paralyzed by the general problem of determining the catalogue and content of rights provisions. Stalemates were typically broken by awarding partial victories to everyone, simplifying enormously complex political situations. The major parties enshrined their preferred set of rights, albeit watered down due to politicking. Thus, is that work?

In constitutionalist regimes, political and constitutional determinations are frequently at the forefront of debate. On the one hand, the Parliament, which has the political authority to create regulations, is not uncommon for Parliament to appear to be able to break through everything with various noble words. On the other hand, however, unlike the law, it is consistent and static. That's exactly how it sounds. In addition, to be ratified by the authorities, the law also serves as a system within which the law operates.

The 1945 Constitution of Indonesia, which exists as the highest law, governs all aspects of state hegemony. In this case, it also regulates the authority of institutions that have the control to change the Constitution and the procedures. As in Indonesia, handling the minimum attendance of members with what limits can be used as objects of the amendment are all options. It is anticipated that by imposing this restriction, parliamentary politics will adhere to all related constraints, including the thing of change. Yet the question is, could the political runs behind the law, however? Could the law resist it?

The process of amending the Constitution is one of the historical events that occurred in almost all countries. Whether or not constitutional amendments are implemented, the outcomes will determine how whole state relations operate. From

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[39] Alec Stone Sweet, "Constitutional Courts and Parliamentary Democracy", *West European Politics*, Vol. 25, No. 1, 2002, p. 82.

[40] G. Brennan and J. Buchanan, *the Reason of Rules: Constitutional Political Economy*, (Cambridge: Cambridge University Press 1985).

[41] J. Elster, *the Cement of Society: A Study of Social Order*, (Cambridge: Cambridge University Press 1989), p. 215, 244–247.

the relationship between the government and the people to the relationship between the people to their country. Constitutional amendments are promoted by Parliament. Yet, conceptually, the process of constitutional amendments in various countries' constitutions is held in the Parliament. However, the majority of people realized that the Constitution was determined by Parliament. Even if the law states that it is mandatory, if the political will of Parliament speaks otherwise, the law will follow.

We are all aware that the discussion of legal politics leads to an intriguing point. Politics, in particular, will be more dominant than law, but only at the beginning of its establishment. However, once the law has been enacted, the law takes precedence over politics. Based on this perspective, it is possible to conclude that each field has its determination area. Likewise, the Constitution and the amendment process. Based on its discourse, does the constitutional amendment process fall into the political dominancy in that condition?

Politics, in its broadest sense, according to Aristotle, is the activity by which people make, preserve, and amend the general rules by which they live. Isn't the constitutional amendment process a political activity under this definition? Before that, it should be noted that the amendment process is expected to be capable of enhancing constitutional norms. The Constitution gives Parliament the authority to be the institution in charge of it; thus, making amendments is an effort by Parliament to carry out its constitutional functions.

On the other hand, the Parliament is a political institution tasked with producing norms. However, remember that the authority to amend is a constitutional mandate, which means that Parliament also enforces the law. This means that Parliament's political will is limited by its ability to effect amendment and constrained by the system upon which its authority originated. In this sense, it is incoherent with the definition of politics that deliberates the Parliament to be able to hijack the Constitution. Based on this paradigm, the Parliament is the institution that is limited by the law, and the Parliament is still the law enforcer.

After all, what is the basis for declaring Parliament to be the highest institution? Especially by referring to it as a constitution-making institution? Parliament is not an institution that creates a constitution; it is impossible for an institution created by the Constitution to create a figure. On the other hand, Parliament only makes amendments to the Constitution, not the Constitution itself. Because the founders are the founding parents of each Constitution in each country, community representations are collected, not institutionalized, producing a normative basis for a country's life and government running. That is indeed what these days know as the Constitution. In a nutshell, the political possibility of determining the Constitution is always an illusion. The Concepts are ideals, yet the law concentrates on the implementations.

That is the result of constitutionalism in the democratic era, based on the 1945 Constitution of Indonesia, which returned all authority to the people but implemented it equally through the law. As a result of this principle, justice can be achieved for all parties. Specifically, the absence of as much freedom as possible for the people, as well as the lack of potential power that harms the rights of the people. As a result, the noble

ideals of the state are created to make the people's happiness the highest law in every nation.

D. CONCLUSIONS

After all, the Constitution gave birth to all the rules. Including the rules for establishing an institution, such as a parliament. Previously, Parliament was simply a group of people with various interests. However, in the post-constitutional era, these representative institutions are vested with numerous powers, including the ability to enact Constitution. In the 1945 Constitution of Indonesia, the Parliament was given the authority to amend and pass the amended Constitution. This matter leads to the paradigm that Parliament is the main constitutional body in Indonesia. Based on its power to change the highest law, the Associate/Senator of Parliament can run anything above the law but is limited to the authority given by the law. On extraordinary conditions concerning Indonesian history, the past-Parliament made the Extra-Constitutional amendments to the Constitution.

The reality of the present constitutional period in Indonesia, the 1945 Constitution, has its limitation termed unamendable provisions and the natural character of its Constitution. The Article limits the Parliament to amend the form of the Republic of Indonesia or modifies the whole Constitution. Nonetheless, the Parliament is still an institution derived from the Constitution itself. In a nutshell, the Parliament is not forming the Constitution, yet it revises and enacts it. Concerning the essence of the former, making the Constitution is the wisdom of the founding parents who formulated the Constitution without being institutionalized as a parliament.

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