HIKMATUNA
Journal for Integrative Islamic Studies
Published by: Pascasarjana Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan
Vol. 8 No. 2 2022
ISSN: 2460-531X (Print)
2503-3042 (Online)

State Institutional Format in the Constitution of 1945 after Amendment: Political and Legal Perspectives

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Abstract

This research discusses the state institutional format in the Constitution of 1945 after the amendment. Since the Constitution 1945 had four changes from 1999 to 2022, so need to know what implications for all state institutions. The Constitution is *the supreme law of the land* in the Indonesian legal system, which was used as the basis for all social practice, nation, and state. This research used a normative approach in which the formation of the state is in accordance with its designation or not. The study of the content used normative juridical or doctrinal methods. This study found that the third and fourth amendments to the 1945 Constitution established three new institutions, namely the DPD, the Constitutional Court (MK) and the Judicial Commission, while the Supreme Consultative Council was abolished. With amendments to the 1945 Constitution, the MPR is no longer the highest institution. Likewise, changes in the constitutional system. These changes cover the government system (the President and Vice President as one leading institution), the representative system (MPR consisting of the DPR and DPD), and the justice system (MA and MK). The reformed format for organizing state institutions in the 1945 Constitution applies a system of enhancing power and the principle of checks and balances between state institutions, as in democratic countries.

Keywords: The Constitution of 1945, Amendment, State Institutional

DOI: https://doi.org/10.28918/hikmatuna.v8i2.91

Abstrak

Penelitian ini membahas mengenai bagaimana format pengaturan kelembagaan negara dalam Undang-Undang Dasar (UUD) 1945 pasca amandemen. Dikarenakan UUD 1945 telah mengalami 4 kali perubahan yaitu sejak tahun 1999 sampai 2002, maka perlu mengetahui implikasi apa saja terhadap semua lembaga negara. Penelitian ini menggunakan pendekatan normatif yang mana dalam lahirnya lembaga negara apakah sudah sesuai dengan peruntukannya dalam sistem ketatanegaraan atau belum. Dalam pengkajian isinya akan menggunakan metode yuridis normatif atau doktrinal. Hasil

ISSN: 1411-1632 (Print) 2527-5992 (Online)

penelitian ini menemukan bahwa Perubahan ketiga dan keempat UUD 1945 menetapkan tiga lembaga baru yaitu DPD, Mahkamah Konstitusi (MK) dan Komisi Yudisial, sedangkan Dewan Permusyawaratan Agung ditiadakan. Perubahan UUD 1945, MPR bukan lagi lembaga tertinggi. Dengan demikian perubahan juga terjadi pada sistem ketatanegaraan. Perubahan tersebut meliputi sistem pemerintahan (Presiden dan Wakil Presiden sebagai satu lembaga pimpinan), sistem perwakilan (MPR terdiri dari DPR dan DPD), dan sistem peradilan (MA dan MK). Format penataan kelembagaan negara dalam UUD 1945 yang telah direformasi dengan menerapkan sistem pemisahan kekuasaan dan prinsip check and balances antar lembaga negara sebagaimana yang terjadi pada negara demokrasi.

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Kata Kunci: *UUD 1945, Amandemen, Kelembagaan Negara*

A. INTRODUCTION

According to its historical roots in the western world, the urgency of the Constitution (UUD) in a country is to determine the limits of the authority of the ruler, guarantee the rights of the people and regulate the course of government. Through the Constitution, it can be known about the form of sovereignty and the system of government of a country. Therefore the state and the Constitution are two institutions that cannot be separated from each other (Martosoewignjo, 1987). The existence of a constitution in a country's constitutional life is crucial because, without a constitution, it may not be possible to form a state (ACCE, 2003). This shows how urgent the Constitution is as a state of apparatus that causes no one country in the world do not have Constitution (Martosoewignjo, 1987).

Why is the Constitution important to a country? According to Strycken A.A.H in Sri Soemantri that in the principle Constitution of formal documents contains four things, namely (1) the results of the nation's political struggle in the past; (2) the highest levels of the constitutional development of the nation; (3) the views of the nation's figures to be realized both for the present and future; and (4) a desire by which the development of the constitutional life of the nation to be led.

The importance of the Constitution for a state can be seen from the purposes of the establishment of the Constitution, namely (1) the Constitution aims to provide restrictions and supervision of political power; (2) the Constitution aims to release the control of power from the ruler himself; and (3) the Constitution aims to provide the limitations of the provisions for the rulers to implement their power (ACCE, 2003).

The Constitution can be viewed as a collection of statements (manifestos), statements of ideals, which Podsnap call the *Charter of the Land of Indonesia* (Manan, 1995), which legally places the Constitution of 1945 as the rule of law (Undang-Undang RI No. 20 Tahun 2003 Tentang Sistem Pendidikan Nasional, 2003). Both as the rule of law and as a statement of principles and ideals, the Constitution, as well as the other law, is the result of the various political, economic and social forces that existed at the time the Constitution was established (Manan, 1995).

Due to the wave of reforms that hit Indonesia in 1998 and the political changes that occurred, and based on the results of the 1999 General Elections, it has been confirmed that (the People's Consultative Assembly) MPR as an institution that makes changes to the Constitution of 1945 as well as a controller in the process of change. However, it does not deny the participation of the community (Harijati, 2003).

MPR using its authority following Article 37 of the Constitution of 1945, has made four changes to the Constitution1945, namely the first amendment (in 1999), as many as 9 articles, the second amendment (in 2000), as many as 24 articles including the addition of new articles, the third amendment (in 2001) as many as 23 articles also including the addition of new articles and the fourth amendment in August 2002 covering 15 articles plus transitional rules and additional rule (Fajar, 2003).

The Constitution was made to have an indefinite reach. This is to allow the achievement of its goals so that the Constitution is formulated to have as much far-reaching adaptability in accordance with the changes that will occur. However, it is undeniable that there is a development of new situations and needs that are not contained in the Constitution to allow formal changes (Manan, 1995).

This research discusses how state institutional format in the Constitution of 1945 after amendment. Since the Constitution of 1945 had four changes from 1999 to 2022, so need to know what implications for all state institutions (Isra, 2003). The Constitution of 1945 might become the higher or the supreme law of the land in the Indonesian legal system. This is used as the basis for all practices of society, nation and state in accordance with the joints of the state democracy based on the law and social justice (Manan, 2003).

This research used a normative approach in which the formation of the state is in

accordance with its designation. The study of the content used normative juridical (Mamudji, 1985) or doctrinal method (Sunggono, 1997) that uses positivist legislators who state that laws are identical to written norms created or promulgated by authorized institutions or officials. In addition, the law is also considered a normative system that is autonomous, closed and independent of people's lives.

B. DISCUSSIONS

Legal Politic in Indonesia

Law as a social phenomenon is not an autonomous institution but is in a position related to other societal sectors. For instance when the law must always adjust to the goals to be achieved by its people. Thus the law has dynamics. Legal politics is one of the factors that cause the dynamics of law towards the realization of the *ius constituendum* (the law that will be applied) (Raharjo, 2000).

Legal politics seeks to create rules determining how human beings should act. The politics of law investigates what changes must be made in the law to be in accordance with reality. Legal politics makes an *ius contituendum* (the law that will be applied) and seeks that ius contituendum in the next day act as an *ius contitutum* (the current law) (E. Utrecht, 1991).

ISSN: 1411-1632 (Print) 2527-5992 (Online)

According to Mahfud MD, legal politics can be formulated as a legal policy that will or has been implemented nationally by the government, including of how politics affects the law by looking at the configuration of the forces that are behind the creation and enforcement of the law. Here the law cannot be viewed only as an imperative article or imperative of *a das sollen*, rather it should be viewed as a subsystem which, in reality (*das sein*) is largely determined by politics, both in the formulation of the material of its articles and their implementation and enforcement (MD, 2001).

However, the political subsystem has a greater concentration of energy than the law when the two have to face the law, which is in a weaker position. Sri Soemantri M once constated the relationship between law and politics in Indonesia like the journey of a train locomotive that went off its tracks. If the law is likened to a rail and politics is likened to a locomotive, then it is often seen that the locomotive is off the rail that is supposed to be passed (Martosoewignjo, 1997). The adagium that is often used to state that law and politics must cooperate and strengthen each other is that "the law without power is wishful thinking, power without law is unlawfulness."

Legal Politics Amendments of Constitution of 1945

In Indonesia's constitutional history, according to Tim ACCE (2003), the Constitution of 1945, which is enforced in Indonesia, has changed since the proclamation of Indonesian Independence, which is detailed below:

a) The Constitution of 1945 (August 18th 1945 – December 27th 1949);
b) The Constitution of the United Republic of Indonesia (December 27th, 1949 – August 17th, 1950);
c) The Provisional Constitution of the Republic of Indonesia 1950 (August 17th, 1950 – July 5th, 1959);
d) The Constitution of 1945 (July 5th, 1959 – October 19th, 1999);
e) The Constitution of 1945 and The First Changes (October 19th, 1999 - August 18th, 2000);
f) The Constitution of 1945 dan The Second Changes (August 18th, 2000 - November 9th, 2001);
g) The Constitution of 1945 dan The Third Changes (November 9th, 2001 - August 10th, 2002);
h) The Constitution of 1945 dan The Forth Changes (August 10th, 2002);

Article 37 of the Constitution of 1945 regarding the authority to amend the Constitution of 1945 is in the hands of MPR. The meaning of the word "change " in the context of Article 37, according to Sri Soemantri M is to be interpreted concerning "changing the constitution," which in English is "to amend the constitution," as well as the change of the Constitution which in English is "constitutional amendment" so that the meaning of changing the Constitution is the same as amending the Constitution, which contains the meaning of not only changing something in the Constitution but also to add something that has not been regulated in the Constitution (Martosoewignjo, 1997).

It is necessary to pay attention to the relationship between social change and constitutional change, considering that the Constitution is a product of its time. Time will

also change, and there will be forces power to change the Constitution. According to KC. Where (2003) that the changes of the Constitution which from the encouragement of power form of:

a) Certain forces can make the changes in circumstances without causing any real changes in the sentences to the Constitution but cause the Constitution to have a different meaning from the previous meaning.
b) The power that makes the constitutional changes through formal amendment processes, judges' decisions, customary law, and conventions.

According to Bagir Manan (2003), it is said that the main factors that determined the changes to the Constitution of 1945 were various situations in society, such as the encouragement of democracy, the implementation of the welfare state, the changes in economic systems due to industrialization, advances in science and technology. In simple terms, the people are the main cause of the change in the Constitution.

The Constitution of 1945 was legally on August 18th, 1945, by the Preparatory Committee for Indonesian Independence as a *revolutiegrondwet* or express Constitution or temporary Constitution, which is a short text. The Constitution of 1945 contains only general principles and leaves more subsequent arrangements to the lower legislation (Suni, 1986). Furthermore, Ir. Soekarno stated that the Constitution of 1945 is temporary, an express Constitution, which later will be made more perfect and complete (Indonesia, 1995). The Constitution of 1945 has been changed three times; the first time, it was replaced with the Constitution Republic of the United States of Indonesia 1949, which was temporary, then the second was replaced with the Contemporary Constitution of 1950, and the third when President Soekarno issued a Presidential Decree on July 5th, 1959 which stipulated the re-enactment of the Constitution of 1945, under the condition of a state emergency (*staatsnoodrecht*) (Fajar, 2003).

Despite the temporary trait of the Constitution of 1945, the various weaknesses in Constitution of 1945 need to change or even replaced the Constitution with a new Constitution. The weaknesses are in the Constitution of 1945, according to A. Mukhtie Fajar (2003) and Susi Dwi Harijati (2003) as follow:

a) Lack of detailed clause necessary to guarantee constitutionalism. There are three ways to protect constitutionalism: first, through the doctrine of separation of power. In practice, this teaching of separation of powers is impossible to implement purely. It, therefore, develops in several forms, namely (1) the separation of branches or departments; (2) the separation of government functions; (3) the separation of persons. Secondly, separating the functions of power becomes meaningful when equipped with checks and balances. This doctrine is based on the view that the functions of the branches of government, in certain respects, will be mixed and overlap. Third, the doctrine of separation of power and the doctrine of checks and balances requires a certain mechanism for the supervision of the actions of the branches of government if they commit an act contrary to the Constitution, the doctrine of judicial review will fill the void. Related to the above, the Constitution of 1945 does not adequately contain a

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system of checks and balances between the branches of government, so the power of the President is very dominant;

b) Bias or intoxication of philosophies by the mixing of various conflicting ideas, such as between the understanding of popular sovereignty and the integralistic understanding and between the understanding of the state of law and the understanding of the state of power;
c) Theoretical bias, from the point of view of constitutional theory (constitutionalism), the existence of the Constitution is essential to limit power. However, the 1945 Constitution under-accentuates it and even accentuates integration.
d) The structure of the Constitution of 1945 places and gives too much power to the President (executive heavy), that the President holds the power of government (chief executive), runs the power of forming laws (legislative power), and also various powers and constitutional rights (prerogatives) of the President as head of state;
e) The Constitution of 1945 contains various vague provisions that open up opportunities for multi-interpretation, such as the use in Article 1, paragraph 2, Article 7 and Article 8
f) The Constitution of 1945 contains provisions that are discriminatory, such as provisions regarding the requirement that the President must be a native Indonesian (Article 6 paragraph 1);
g) The Constitution of 1945 lacks provisions regarding the recognition, guarantee and protection of human rights;
h) The Constitution of 1945 does not contain provisions for the deadline for ratification of the draft constitution that DPR and the President have approved;
i) The existence of an explanation of the Constitution of 1945 that causes theoretical problems (the impropriety of the Constitution) has an explanation, juridical and its content material that is only sometimes consistent or even ambiguous with the use in the torso.

According to Jimly Asshiddiqie, as quoted by A. Mukthie Fajar (2003) that these various weaknesses in political practice during the old regime (1959-1966) and the new regime (1966-1998) have made the Constitution of 1945 a political instrument to legitimize the practice of authoritarianism. Political and comprehensive economic reforms are only possible with legal reforms. While comprehensive legal reform must also be carried out on a fundamental constitutional reform agenda, it means that a constitutional reform is needed that is not half-hearted.

Shortly, Moh. Mahfud MD (1999) says that the identification of the causes of the emergence of an undemocratic political system under the Constitution of 1945 is due to several things as fundamental flaws inherent in the Constitution of 1945 itself, namely first, is executive heavy or centralized power executive agencies led by the President without a mechanism of checks and balances; secondly, contains multi-interpretation articles whose correctness of interpretation can be determined unilaterally by the President; third, too much attribution of the authority to the legislature and the executive to re-regulate important matters with follow-up regulations; and fourth, too much faith in

the spirit and good faith of the state organizers without adopting the axiom that power is likely to be corrupt, so it must be strictly limited. These weaknesses are the reasons for the emergence of authoritarian governments, giving birth to the idea of amendments to the Constitution in 1945.

According to Bagir Manan (2003), the idea of reforming or changing the Constitution of 1945 departs from various assumptions or views, namely:

First, the Constitution of 1945, as the main source of constitutional life, must be able to encourage the development of constitutional life as a way of life that is internalized in every aspect of the life of society, nation and state.

Second, In order to build a constitutional order of life, the Constitution of 1945 must be able to grow and develop following the dynamics of society, nation and state. Therefore the renewal of the Constitution of 1945 is a necessity.

Third, the Constitution of 1945 was developed to ensure a better society, nation, and democratic state, based on law and social justice.

Fourth, the Constitution of 1945 was renewed by confirming certain basic philosophical and constitutional values and ensuring the realization of popular sovereignty and controlled and balanced constitutional relations.

Fifth, the renewal of the Constitution of 1945 was carried out with the approach of maximizing the functions and tools of the existing state to maintain the historical continuity of the Constitution of 1945 system.

Sixth, the renewal of the Constitution of 1945 only sometimes has through formal amendments. However, it can also be through constitutional practices and the role of judges by adhering to democratic principles, state principles based on the law, and principles of justice to realize justice, freedom, equality, welfare, and peace in society.

Seventh, the scope of renewal is open-ended, adapted to the principles of good legislation, the development of constitutional understanding, and the need to create the constitutional there is the life of a democratic society, nation, and state based on law.

Still, according to Bagir Manan (2003) that the amendments to the Constitution of 1945 also contain reforms. Systemically, the renewal of the Constitution of 1945 can be categorized into the:

a) Updating the structure of the Constitution

   The structure of the new Constitution of 1945 is only the Preamble and the Torso. The explanation of the Constitution of 1945 has been abolished, and its material containing a constitutional principle or norm is incorporated into the torso.

b) The renewal of state joints

   The state joint can be distinguished between the philosophical and political joint. The philosophical joint of statehood is Pancasila. The political joint includes the joints of democracy, the joints of the state based on the law, the joints of social justice, and others

c) The renewal of the form of the state structure

   The form of arrangement includes the form of a unitary state and a republican form of government.

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d) The institutional renewal or state fittings

In the legislative, there are three institutions: MPR, The People's Representative Council (DPR), and The Regional Representative Council (DPD). DPD is a new institution representing the regions at the center or the regional representative. The legislative also the Audit Board of the Republic of Indonesia serves as control in the field of state finance. In the field of the judiciary, there is the Supreme Court, the Constitutional Court and the Judicial Commission. The Constitutional Court and the Judicial Commission are new institutions of judicial power in Indonesia. Meanwhile, in the executive, there are presidents and vice presidents whom the people directly elect through elections as a unit of the presidential institution.

e) The renewals related to population and citizenship

f) The renewals are related to state identity.

According to Sri Soemantri M, by adopting George Jellinek's theory of constitutional change, changes of the Constitution are only limited to an important thing called *verfassungsanderung*. This kind of change is regulated in the Constitution itself. On the other hand, if changes are made to all things even, including the *staatsfundamentalnorm*, then it is no longer a change but a replacement and is known as *verfassungswandlung* (Sabon, 2000).

The MPR carried out the second amendment of the Constitution of 1945 in accordance with the provisions of the Constitution of 1945 Article 37. If it is connected with Jellinek's theory, then MPR's action to amend the Constitution of 1945 is still within the limits of change (*verfassungsanderung*). However, on the contrary, looking at the material that was changed, almost all parts, even the entire torso of the Constitution of 1945, were added. So that if it was connected with the George Jellinek theory, then MPR would no longer change but replace (*verfassungswandlung*) (Sabon, 2000).

Max Boli Sabon (2000) said that the amendment of the Constitution 1945 was through formal and extra-formal amendments. The formal amendment is the change of the Constitution which is carried out through the process of official change according to the Constitution itself. Formal amendment occurred during Amendment I and Amendment II of the Constitution of 1945. The Extra-Formal Amendment is the part of the amended Constitution, written explicitly in that Constitution, but does not overtly follow the proper procedure for changing the Constitution. This change occurred during Amendment III and Amendment IV of the Constitution of 1945.

Therefore, based on these various constitutional theories, Sri Soemantri M in A. Mukhtie Dawn (2003) argued that there are four aspects contained in the amendment to the Constitution, namely as follows:

a) The amendment procedure, in this case, relates to the institution authorized to make changes to the Constitution, the quorum and its decision-making. Article 37 of the 1945 Constitution (before the amendment) contains three legal principles: The authority to amend the Constitution is MPR; To amend the Constitution, the quorum for MPR session is 2/3 of the total members of MPR; Amendments to the Constitution are valid if they are approved by at least 2/3 of MPR members present. Suppose it is

related to the views of KC. Wheare and James Bryce, the Constitution of 1945 can be categorized as rigid and supreme Constitution, while if it is associated with the views of Wolf and Phillips, it is a conditional and superior constitution because the procedure for amendments is carried out by institutions that are not ordinary legislators and subject to conditions. - special conditions.

b) The mechanism of change, whether in preparing the constitutional amendments, is carried out by the institution authorized to change it or can it be delegated to other institutions formed by the competent institution. Then the authorized institution only determines or ratifies it. The Constitution of 1945 did not specify this mechanism. In practice, from the first amendment (1999) until the fourth amendment plan (2002), the mechanism was completely left to the MPR through its trial procedures,
c) System changes, in this case, according to Constitutional Theory, can be done through Manuscript updates (changes in the text concerning certain matters); Replacement of the script (change material is quite basic and a lot), Through additional texts (annex and addendum) according to the United States amendment system.
d) The substance of change, namely what things can be changed/updated and what things cannot be changed or must be continuously maintained in constitutional reform. It turns out that the Constitution of 1945 does not contain provisions on this matter, in contrast to the Constitution of the Republic of France V, which prohibits changes to the form of republican government and changes that endanger territorial integrity (Article 89) and the Constitution of the Republic of Italy (1947) which prohibits changes to the form of Republican government (Article 139). According to the consensus of the MPR factions in 1999, the things that were agreed not to be changed were the opening of the 1945 Constitution, the form of a unitary state, and a presidential system of government.

Format of State Institutional Arrangements in the Post-Amendment Constitution of 1945

Amendments to the Constitution of 1945 are numerous and cover a wide scope. The following are the changes according to Bagir Manan (2004):

a) Changes to the content of existing provisions, for example, changes in the President's authority to make laws become merely the authority to submit draft laws. In the First Amendment, the authority to make laws becomes the authority of DPR.
b) Addition of existing provisions, for example, from one paragraph to several articles, such as Article 18 and Article 28 in the Second Amendment.
c) Reduction of the existing Payload Material into a new chapter. For example, the chapter on the Supreme Audit Agency.
d) New addition, for example, chapters on State Territory (Second Amendment), Regional Representatives Council (Third Amendment), and General Elections (Third Amendment).
e) Elimination of existing provisions, for example, removing Transitional Rules and Additional Rules, and Removal of DPA (Fourth Amendment).

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f) Entering and transferring some of the contents of the explanation into the Body, such as the principle of the state based on the law (Third Amendment), an independent judiciary (Third Amendment).
g) Amendment to the structure of the Constitution of 1945 and abolishing the elucidation as part of the Constitution of 1945 (Fourth Amendment).

The changes that occurred in State Institutions after the Constitution of 1945 Amendment were as follows:

Regulation of the People's Representative Body (Parliament)

Changes concerning the Representative Body (parliament) are changes in the status of MPR, which are changed from state organs or equipment, which are considered the highest state institutions to be parallel to state equipment. The membership structure of MPR is a derivation of members of DPR and DPD, which is filled through elections. The new formulation of the Constitution of 1945 changes the representative bodies into three representative bodies, namely DPR, DPD and MPR, which are independent and have their members and sphere of authority. The new formulation of the Constitution of 1945 does not at all reflect the concept of a two-chamber representation system because the two-chamber representation shows that one representative body consists of two elements that both carry out all the powers of the representative body.(Manan, 2004). Therefore, MPR only relies on two pillars of representation: political representation through DPR and regional representatives through DPD. According to Bagir Manan (2004), the three essences of people's representatives are as follows:

1) The nature of regional representatives in DPD and the nature of people's representatives in DPR should be distinguished from each other; DPD represents the interests of the region, while DPR represents the interests of the people;
2) Differences in their recruitment procedures mark the nature of the different regional representatives and people's representatives. Candidates for DPD members are elected as individuals, while candidates for DPR members are elected as members of political parties and so that nominated by political parties;
3) Because the nature of DPD is closely related to regional interests, its functions, such as the legislative function, supervisory function and consideration function, are specifically related to regional interests or related to matters that directly affect regional interests.

The change in membership position and MPR membership mechanism has two purposes: closing the opportunity for abuse or deviation from the practice of the will of the Constitution, and intended as a way to realize the idea of eliminating the position of MPR as the highest state institution. This idea confirms that MPR is not the only institution that implements people's sovereignty. Every institution that carries out the political tasks of the state and government (excluding judicial power) is the executor of people's sovereignty and must obey and be responsible to the people. The reform is meant to eliminate the abuse of MPR's position as the highest state institution.

According to Bagir Manan (2004), the highest position can be maintained as long as it is defined as an expanded membership system (members of DPR plus group and

regional delegates) and authority is only limited to matters stated in the Constitution. Then the idea of a two-chamber *(bicameral*), namely MPR, became a forum for a representative body consisting of DPR and DPD. There is also the idea of simplifying the membership system by eliminating group delegates and turning regional delegates into DPD. The change in the regional delegation system is intended to make it more democratic, increase regional participation in the day-to-day administration of state and government practices, and be a forum for fighting for regional interests. Lastly, the idea of realizing democracy in filling MPR membership utilizing direct elections by the people. Therefore, collusion and nepotism are eliminated in filling the membership of MPR.

Amendments to Article 20 paragraph (1) restore the position of DPR as the holder of legislative power in the context of checks and balances. Similarly, Article 5 paragraph (1) is changed to that President has the right to submit a draft law to DPR (First Amendment). This provision shows that even though there are changes, it does not mean there is a separation of power between DPR and President in formulating laws so that the power to form laws is carried out jointly by DPR and President (Manan, 2004).

The addition of Chapter VIIA concerning the Regional Representative Council in Article 22C and Article 22D indicates the existence of a new central-level representative body, namely DPD. There are various ideas behind the birth of DPD. First, the idea of turning the representative system into a two-chamber system. Second, the idea of increasing regional participation in the course of politics and state management. Therefore, the definition of DPD is not a full legislative body but the complementary body of DPR. The DPD is called a complementary body; this is based on the provisions of Article 22D paragraph (1), which says that the DPD can submit a draft law to the DPR.

Furthermore, the provisions of Article 22D paragraph (3) state that DPD submits the results of its supervision to DPR as consideration for follow-up. DPD said to be a partial legislature because DPD only authorized to submit and discuss the draft of the Constitution in certain fields called enumerative in Constitution of 1945. Article 22D paragraph (1) said that DPD could submit a draft law to DPR relating to regional autonomy, natural resources management, other sources of economic data and relating to the balance of central and regional finances (Manan, 2004).

Based on the Third Amendment to the Constitution of 1945, the idea of forming a DPD in restructuring the Indonesian parliament into two chambers has been adopted. Provisions regarding DPD are regulated in Article 22C and Article 22D. Thus, the definition of the representative council in Indonesia includes DPR and DPD, which of them can be collectively referred to as MPR. The difference between DPD and DPR lies like the interests they represent. DPR is meant to represent the people, while DPD represents the regions. The interests that DPD must prioritize in the context of regional representation are the interests of the region as a whole, apart from the interests of individual people whose interests should be channeled through DPR. Therefore, a regional interest which fight for by DPD automatically relates to the interest of all the people in those areas (Asshiddiqie, 2004).

ISSN: 1411-1632 (Print) 2527-5992 (Online)

MPR, DPR and DPD can be called institutions that can be distinguished but cannot be separated as a unitary Indonesian parliament based on the Constitution of 1945; even though MPR is actually a joint session between DPR and DPD, MPR is also an institution in its own right. Therefore MPR is also said to have members, namely in the formulation of Article 2 paragraph (1) of the Constitution of 1945 stating that MPR consists of members of DPR and DPD. Even if the existence of MPR is still maintained, then MPR is sufficient to be seen as a forum for the highest assembly, namely a joint trial between DPR and DPD, and MPR still maintains the constitutional functions of Article 3 of the Constitution of 1945, namely (1) Amending and enacting the Constitution; (2) Inaugurating the President and Vice President, and (3) Dismissing the President and/or vice president during their term of office (Asshiddiqie, 2004).

Presidential Institution Arrangements

The presidential institution is an institution or position organization that in the government system based on the Constitution of 1945, contains two positions, namely President and Vice President. The system of government of the Republic of Indonesia, under the Constitution of 1945, is actually intended as a presidential system. Politically, the President and Vice President are inseparable institutions. Therefore, usually, both are selected in one election package because it was dropped or dismissed for political reasons (Asshiddiqie, 2004). The Third Amendment to the Constitution of 1945 has adopted the presidential and vice-presidential elections in an election package, and the elections are carried out directly. This is regulated in Article 6A paragraph (1). With the implementation of a direct presidential election system, President is no longer subject to and responsible to MPR as currently determined based on the Constitution of 1945. The existence of an element of presidential accountability to the MPR institution proves that there is a parliamentary element in the government system adopted in the Constitution of 1945, so it cannot be called a purely presidential system. This is because the accountability of the Head of Government to parliament is an important feature of a parliamentary system of government. Implementing direct elections means that the system of government in the Constitution of 1945 is upgraded to a purely presidential system (Asshiddiqie, 2003).

In the system adopted by the Constitution of 1945, the President of the Republic of Indonesia is the Head of State and, at the same time, the Head of Government. The powers stipulated in Articles 10, 11, 12, 13, 14 and 15 of the Constitution of 1945 constitute the position of the President as Head of State. Meanwhile, the authority of the President, according to Articles 4 and 5 of the Constitution of 1945, is the authority of the President as the Head of Government, namely the authority to submit draft laws to DPR (Article 5 paragraph (1)) and the authority to stipulate government regulations to enforce laws (Article 5 paragraph (2)).

The characteristics of the President as an executive officer since the First and Second Amendments to the Constitution of 1945 have limited the President to regulate the public interest, which contains regulatory material regarding the rights and obligations of citizens. Therefore, in the future, it is no longer allowed to stipulate the existence of an

independent Presidential Decree with a function to regulate. The authority to regulate the public interest or to regulate the rights and obligations of citizens, which may be determined independently by the President, is limited to certain matters, namely (a) if the conditions for the implementation of an emergency (emergency law) are fulfilled which allows the President to enact a Government Regulation in place of Law; and (b) in the case that the material that needs to be regulated is related to the internal needs of government administration that are not related to the public interest which called as Freisermessen principle (freedom of action). Besides these two things, the President is not authorized to stipulate regulations that are independent in the sense that they are not in the context of carrying out statutory orders or elaborating the provisions of the law as a product of the legislative body, or in the nature of delegation of authority.(Asshiddiqie, 2004).

The positions of President and Vice President must be seen as an institution, this has been stipulated in the provisions of Article 4 paragraph (2) of the Constitution of 1945 which states that "in carrying out his obligations the President is assisted by one Vice President". Therefore, the important role of the Vice President in his relationship with the President is, first of all, as a substitute for the President. As a substitute for the President, the Vice President can act temporarily or continuously until the President's term of office expires (Article 8 paragraph (1) of the Constitution of 1945). The second role of the Vice President is as a representative or assistant to the President (Article 4 paragraph (2) of the Constitution of 1945) who represents the President carrying out presidential duties in matters delegated to him by the President. In such case, the capacity of the Vice President as a state official carrying out presidential duties, it means that the quality of the Vice President's actions is the same as President. The third role is that Vice President can also assist the President in carrying out all the duties and responsibilities, and of course the quality of Vice President's assistance is clearly different in level from the assistance provided by the ministers who are also assistants to President (Article 17 of the Constitution of 1945).

Judicial Institution Arrangement

The Third Amendment to the Constitution of 1945 regulates the Judicial Power has three institutions: Supreme Court, Constitutional Court and Judicial Commission. What is new here is the existence of the Constitutional Court and Judicial Commission. The branch of judicial power was developed as a unified system culminating in the Supreme Court and the Constitutional Court. So the judicial power now has two doors, namely the door of Supreme Court and Constitutional Court, which means that the Supreme Court is not the only institution that can provide justice for justice seekers.

The Supreme Court as the pinnacle of judicial power has the authority to adjudicate at the level of cassation, examine statutory regulations under the law against the law and have other powers granted by law (Article 24A of the 1945 Constitution).

The Constitutional Court in every country has a different background. However, in general, the formation of the Constitutional Court started from changing the politics of power towards democracy. There are several reasons behind the formation of the

ISSN: 1411-1632 (Print) 2527-5992 (Online)

Constitutional Court, according to Ni'matul Huda (2003): As an implication of the understanding of Constitutionalism; Checks and balances mechanism; Clean state administration; and Protection of human rights.

The Constitutional Court, according to Article 24C, is an institution that has the authority to adjudicate at the first and final levels whose decisions are final to examine the law against the basic Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and disputes about the results of the general election. The Constitutional Court has an obligation to give a decision on the opinion of DPR regarding alleged violations by the President and/or Vice President according to the Constitution. One of the new state institutions formed to strengthen the structure of judicial power is the Judicial Commission, although the Judicial Commission does not exercise judicial power, its existence is regulated in the Constitution of 1945 Chapter IX concerning judicial power (Asshiddiqie, 2005).

According to A Ahsin Thohari (2004), several reasons behind the formation of the Judicial Commission:

1) Weak intensive monitoring of judicial power because monitoring is only carried out internally;
2) The absence of a liaison institution between government powers, in this case, the Ministry of Justice and the Judicial Powers;
3) Judicial power is considered to have little efficiency and effectiveness in carrying out its duties if it is still preoccupied with non-legal technical issues.
4) There needs to be more consistency in the decisions of the judiciary because each decision does not receive strict assessment and supervision from a special institution.
5) The pattern of recruitment of judges is considered too biased with political issues because the institutions that propose and recruit them are political institutions, namely the President and Parliament.

The Judicial Commission is regulated in Article 24B, which has the authority to appoint Supreme Court justices and has other powers to maintain and uphold the honor, dignity and behavior of judges.

C. CONCLUSION

The Constitution's third and fourth amendments of the Constitution of 1945 stated three new institutions: DPD, the Constitutional Court (MK) and the Judicial Commission, while Grand Deliberative Council is abolished. The amendment to the Constitution of 1945, MPR is no longer the highest institution. Thus changes also occur to the constitutional system. These changes include the government system (President and Vice President as one leadership institution), the representative system (MPR consists of DPR and DPD), and the judicial system (MA and MK). The format of state institutional arrangement in the Constitution of 1945 had been reformed by implementing a system of separation of powers and the principle of checks and balances between state institutions, as is the case in democratic countries.

REFERENCES

ACCE, T. (2003). *Demokrasi, Hak Asasi Manusia, dan Masyarakat Madani*. ICCE UIN Syarif Hidayatullah.

Asshiddiqie, J. (2003). *Demokrasi Pemilihan Presiden dan Peran MPR di Masa Depan*. www.Theceli.com

Asshiddiqie, J. (2004). *Format Kelembagaan Negara dan Pergeseran Kekuasaan Negara Dalam UUD 1945*. FH UII Press.

Asshiddiqie, J. (2005). *Konstitusi dan Konstitusionalisme Indonesia*. Konstitusi Press.

Undang-Undang RI No. 20 Tahun 2003 tentang Sistem Pendidikan Nasional, (2003).

E. Utrecht, dan M. S. D. (1991). *Pengantar Dalam Hukum Indonesia*. Sinar Harapan.

Fajar, A. M. (2003). Reformasi Konstitusi dalam Masa Transisi Progmatik. *UNISIA*, *49*.

Harijati, S. D. (2003). Kelemahan Fudamental UUD 1945, Pra dan Pasca Amandemen. *UNISIA*, *XXVI*(III).

Huda, N. (2003). *Politik Ketatanegaraan Indonesia*. FH UII Press.

Indonesia, S. N. R. (1995). *Risalah Sidang BPUPKI dan PPKI*. Ghalia Indonesia.

Isra, S. (2003). Amandemen Lembaga Legislatif dan Eksekutif; Prospek dan Tantangan. *UNISIA*, *XXVI*(III).

Mamudji, S. S. dan S. (1985). *Penelitian Hukum Normatif*. Raja Grafindo Persada.

Manan, B. (1995). *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*. Mandar Maju.

Manan, B. (2003). *Teori dan Politik Konstitusi*. UII Press.

Manan, B. (2004). *DPR, DPD dan MPR dalam UUD 1945 Baru*. Fakultas Hukum UII Press.

Martosoewignjo, S. S. (1987). *Prosedur dan Sistem Perubahan Konstitusi*. Alumni.

Martosoewignjo, S. S. (1997). *Pembangunan Hukum Nasional dalam Perspektif Kebijakan*.

MD, M. M. (1999). *Amandemen Konstitusi Menuju Reformasi Tata Negara*. UII Press.

MD, M. M. (2001). *Politik Hukum di Indonesia*. LP3ES.

Raharjo, S. (2000). *Ilmu Hukum*. PT. Citra Aditya Bakti.

Sabon, M. B. (2000). *Wajah Baru UUD Negara RI; Perubahan atau Penggantian?* Atmajaya Press.

Sunggono, B. (1997). *Metode Penelitian Hukum*. Raja Grafindo Persada.

ISSN: 1411-1632 (Print) 2527-5992 (Online)

Suni, I. (1986). *Pergeseran Kekuasaan Eksekutif*. Aksara Baru.

Thohari, A. A. (2004). *Komisi Yudisial dan Reformasi Peradilan*. ElSAM.

Tim ACCE. (2003). *Demokrasi, Hak Asasi Manusia dan Masyarakat Madan*. ICCE UIN Syarif Hidayatullah.

Where, K. (2003). *Konstitusi-Konstitusi Modern, Pustaka Eureka*. Pustaka Eureka.