

## CONSTITUTIONAL AMENDMENT IN A DEMOCRATIC RULE OF LAW STATE IN INDONESIA

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### Abstract

This research was conducted with the aim of finding out: 1) Procedures and practices for changing the constitution in Indonesia 2) Constitutional amendments in a democratic rule of law state in Indonesia. The type of research used in this research is normative legal research using a statutory approach and a conceptual approach. The types and sources of legal materials in this research are primary and secondary legal materials. The results of this research show that: 1) The procedures and practices for changing the constitution in Indonesia are regulated in several regulations, including: the 1945 Constitution to the RIS Constitution, the RIS Constitution to the 1950 Constitution, the 1950 UUDS to the 1945 Constitution and the 1945 Constitution (Decree) to the 1945 Constitution (Amendment). 2) Constitutional amendments in a democratic legal state in Indonesia, namely: First, changes to the constitution must be in accordance with procedures that have been determined by themselves, because this is what is in accordance with changes to the constitution according to law (*vervassunganderung*). Second, institutions that make changes must receive legitimacy from the people. Third, actions or changes to the constitution must involve the community.

Keywords: Amendment, Constitution, Rule of Law, Democratic

**INTRODUCTION**

The establishment of a state is inseparable from the existence of a constitution as its foundation, as the constitution is essential for any nation. A constitution can take the form of written or unwritten fundamental laws. It serves as the basis of a state's legal framework, encompassing protections for human rights (HAM) and regulating the distribution of power in governance (Stacy, 2009). Nearly all states possess a constitution as part of their national structure.

When a constitution is drafted and adopted, it tends to reflect compromises or conclusions between shared beliefs and interests. Additionally, constitutions do not always purely represent political or legal ideologies; they may incorporate compromises regarding economic and social issues. A constitution is the product of various political, economic, and social forces at play during its formation.

Every constitution typically includes a clause for amendments in its text. This acknowledges the inherent imperfection of human endeavors, including the drafting or formulation of a constitution. Furthermore, as the principal reference for regulating national and state life, the constitution serves as a social contract reflecting the dynamic relationships among diverse components of society. Periodic renewal of the constitution is essential because global environmental dynamics, directly or indirectly, lead to shifts in public aspirations (Kharlie, 2013)

A constitution cannot be separated from the historical processes that shaped it. It is the outcome of historical experience, dominant philosophical thought, and social, political, legal, and economic conditions at a given time and for the foreseeable future. Social, political, legal, and economic changes are often more dynamic than what is stipulated in a constitution, making constitutional changes over time inevitable.

Every sovereign state must have a constitution. In constitutional debates, two primary forms of constitutions emerge: written (codified) and unwritten (uncodified). In addition, Dicey distinguishes between constitutions that are legal in nature and those that are not. A constitution is a political resultant, meaning it crystallizes prevailing political wills into a legal framework. These political wills vary among individuals and may also align among groups, reflecting the dynamic nature of political aspirations. Changes in political will inevitably influence constitutional changes.

Constitutions are indeed political resultants because they crystallize political wills and are established by political institutions. However, on the other hand, constitutions are legal products with the status of the highest law. Consequently, as the supreme law, the constitution imbues all subordinate legal regulations with its spirit.

Regarding constitutional amendments in Indonesia, the country has experienced several constitutional changes, including transitions from the 1945 Constitution to the Federal Constitution of the Republic of Indonesia (Konstitusi RIS), the Provisional Constitution of 1950 (UUDS 1950), the return to the 1945 Constitution by Decree, and the amendments to the 1945 Constitution. These changes were undertaken to ensure that the constitution could respond to contemporary challenges and meet evolving, dynamic aspirations and interests (Lobel, 2004).

This study aims to analyze the procedures and practices of constitutional amendments in Indonesia and their alignment with the principles of a democratic rule-of-law state. Specifically, it examines the historical and legal frameworks governing constitutional changes, including transitions such as the 1945 Constitution to the RIS Constitution, the RIS Constitution to the 1950 Constitution, and subsequent amendments. The research employs a normative legal methodology, utilizing both statutory and conceptual approaches, with primary and secondary legal materials as sources. The findings highlight that constitutional

amendments in Indonesia must adhere to established procedures, derive legitimacy from the people, and involve public participation, ensuring alignment with democratic principles and the rule of law.

### **RESEACRH METHOD**

This study utilizes normative legal research to analyze legislation pertinent to the issues being examined. Normative legal research examines legal norms, relevant regulations, and principles embedded in statutory provisions (Johnny Ibrahim, 2005; Syahrums, 2022). This study employs the legislative approach and the conceptual approach. The categories and origins of legal materials utilized comprise primary legal materials and secondary legal materials. The research use library research and documentation studies as the principal methods for collecting legal materials (Marzuki, 2021).

### **RESULT AND DISCUSSION**

#### **Constitutional Functions and Practices of Constitutional Amendments in Indonesia**

Before elaborating on the regulation and practice of constitutional amendments in Indonesia, it is necessary to first discuss the functions of a constitution within a democratic rule of law state. In countries that adhere to constitutional democracy, the constitution serves a distinctive role: it limits governmental power to prevent arbitrary exercise of authority (Lindsey, 2017; Nggilu et al., 2024). This ensures better protection of citizens' rights a concept known as constitutionalism.

The functions of a constitution are closely tied to the functions of the state. As the framework for the functioning of the state, the constitution encapsulates the fundamental values of a nation. According to Asshiddiqie (2020), the functions of a constitution include:

1. Defining and limiting the powers of state organs.
2. Regulating power relations among state organs.
3. Governing the relationship between state organs and citizens.
4. Providing legitimacy for state authority and governance activities.
5. Transferring or delegating authority from the original source of power (the people in democratic systems) to state organs.
6. Acting as a symbolic unifier (symbolic unity).
7. Serving as a reference for national identity and greatness (identity of the nation).
8. Acting as a ceremonial center.
9. Functioning as a means of social control, both narrowly in politics and broadly in socio-economic contexts.

#### **Types of Constitutions**

In addition to the functions of a constitution, constitutions can be categorized in various ways:

1. Rigid and Flexible Constitutions
2. Monarchical and Republican Constitutions
3. Democratic and Autocratic Constitutions

According to Jimly Asshiddiqie, constitutions can also be categorized based on their characteristics as follows:

1. Flexible or rigid.
2. Written or unwritten.
3. Formal or material.

Scholars typically determine whether a constitution is flexible or rigid by examining two criteria:

1. The ease or difficulty of amending the constitution.
2. The constitution's adaptability to changing times.

#### Regulation and Practice of Constitutional Amendments in Indonesia

The regulation and practice of constitutional amendments in Indonesia have undergone significant historical transitions, as outlined below:

- 1) From the 1945 Constitution to the Federal Constitution of 1949 (Konstitusi RIS)  
The transition from the 1945 Constitution to the Federal Constitution of 1949 was not solely based on Indonesia's internal desires but was influenced by negotiations and compromises between the Dutch government and the Indonesian government. The amendments involved substantial changes in name, articles, and substance.
- 2) From the Federal Constitution of 1949 (Konstitusi RIS) to the Provisional Constitution of 1950 (UUDS 1950)  
The Federal Constitution of 1949 was short-lived, replaced by the Provisional Constitution of 1950 on August 17, 1950. The Federal Constitution had been heavily influenced by Dutch interference, prompting a swift transition to the Provisional Constitution.
- 3) From the Provisional Constitution of 1950 (UUDS 1950) to the 1945 Constitution  
The Provisional Constitution of 1950 provided formal procedural guidelines for its amendment in Articles 140 and 141. These provisions specified that the amendments were to be carried out by the "Constitutional Amendment Assembly," comprising members of the Provisional People's Representative Council (DPRS) and additional members from the Indonesian National Committee.
- 4) From the 1945 Constitution (Post-Decree) to the Amended 1945 Constitution  
Amendments to the 1945 Constitution were procedurally regulated in Article 37 of the 1945 Constitution. Key requirements for amendments included:
  - a. The People's Consultative Assembly (MPR) as the authorized body.
  - b. Attendance of at least two-thirds of the MPR members during amendment discussions.
  - c. Approval by two-thirds of the members present for an amendment to be valid.

On October 6, 1999, a historic agreement was reached to amend, rather than entirely replace, the 1945 Constitution. This decision marked a significant step toward constitutional reform while maintaining a commitment to the core principles of the original constitution.

#### Constitutional Amendments in a Democratic Rule of Law State in Indonesia

Constitutional amendments in Indonesia, as in any democratic rule of law state, are a mechanism to adapt the nation's fundamental legal framework to evolving societal needs and aspirations. The amendments aim to uphold the principles of democracy, ensure the rule of law, and protect the rights of citizens.

The concept of a democratic rule of law state is an ideal framework in modern governance (Fallon Jr, 1997; Rosenfeld, 2000). Law and democracy are intrinsically interdependent and mutually reinforcing. Without democracy, the law risks becoming arbitrary, while democracy without the rule of law may lead to anarchy. Fundamentally, a rule of law state bases all decisions on legal principles, ensuring accountability and fairness. Democracy, on the other hand, emphasizes public participation, ensuring decisions serve not only those in power but also the broader populace.

### **Mechanisms of Constitutional Amendments According to C.F. Strong**

C.F. Strong identifies four primary methods for constitutional amendment:

1. **Through the Ordinary Legislature with Specific Limitations**  
Amendments can be introduced via the legislature, subject to certain constraints:  
To ensure a proper constitutional amendment process, certain procedural requirements are typically observed. A quorum must be met to guarantee adequate representation during discussions and the approval of amendments. In some cases, the legislature may be dissolved, followed by a general election to elect new members, who would then deliberate on and enact the proposed constitutional changes. In bicameral systems, both houses of the legislature convene in a joint session, where decisions regarding amendments are made through majority or supermajority votes, depending on the established rules.
2. **Public Referendum or Plebiscite**  
This approach directly involves the public in deciding constitutional changes. If the majority of citizens approve the amendment, the constitution is revised; otherwise, the status quo is maintained.
3. **Approval by Federal Units**  
Specific to federal states, this method requires either a majority or unanimous agreement from the constituent federal units. Consent may be sought directly from the populace or through legislative bodies within the federal units.
4. **Special Constitutional Convention**  
A new body is established solely for drafting or amending the constitution. Once its purpose is fulfilled, the institution is dissolved.
5. **The Democratic Rule of Law State: A Harmonized Concept**  
The modern ideal state blends the principles of democracy and the rule of law into what is termed a "democratic rule of law state" (constitutional democracy). In such a state, the procedures for constitutional amendments play a critical role in determining the substance and quality of the resultant constitutional changes.

### **Time Allocation for Drafting or Amending a constitution**

Allocating an appropriate timeframe for constitutional drafting or amendment is crucial to ensuring a balanced and effective process. Excessive delays may undermine political stability, create uncertainty, and risk losing momentum for necessary transitional reforms. Conversely, overly brief timeframes could lead to inadequate deliberation and poorly considered outcomes. A well-defined time allocation allows the drafting institution to plan effectively and ensures the timely completion of its mandate, fostering public confidence in the process.

### **Constitutional Amendments in Indonesia**

Amendments to the Indonesian Constitution within its democratic rule of law framework must adhere to several key principles. Procedural adherence requires that amendments follow the processes outlined in the Constitution itself, ensuring legal legitimacy (*verfassungsänderung*) (Rahmatullah et al., 2022; Wantu et al., 2020). The legitimacy of the amending body is another crucial aspect, as the institution responsible for constitutional amendments must derive its authority from the people. Furthermore, public participation in the amendment process is essential to foster a sense of ownership and legitimacy for the revised constitution, ensuring that it reflects the aspirations and needs of the broader society. By adhering to these principles, constitutional amendments in Indonesia align with the

nation's commitment to democracy and the rule of law, ensuring that legal changes are not only procedurally sound but also reflective of the people's aspirations.

## CONCLUSION

Based on the discussion presented above, it can be concluded that the regulation of constitutional amendment procedures and practices in Indonesia serves as a fundamental reference for governing the nation's social contract. This contract reflects the dynamic interplay of interests among various societal components. The procedural framework for constitutional amendments in Indonesia has included transitions such as the original 1945 Constitution to the Constitution of the Republic of the United States of Indonesia (Konstitusi RIS), the Constitution of RIS to the Provisional Constitution of 1950 (UUDS 1950), UUDS 1950 to the restored 1945 Constitution, and the 1945 Constitution under the Presidential Decree to the amended 1945 Constitution. Constitutional amendments in Indonesia's democratic rule of law framework must align with the procedures established by the Constitution itself, ensuring compliance with the rule of law. The institution responsible for amendments must obtain legitimacy from the people, and the process of drafting or amending the Constitution should involve public participation. This inclusive approach ensures societal ownership and legitimacy of the resulting constitutional changes.

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