

CONSTITUTIONAL COMPARISON BETWEEN INDONESIA AND SWITZERLAND CONSTITUTIONS REGARDING THE MECHANISM OF CONSTITUTIONAL AMENDMENT

Muhammad Zulhidayat ^{1*} 

¹ Jakarta University, Jakarta, Indonesia

*Corresponding author: zulhidayat007@gmail.com

Abstract

The constitution is often equated with the Basic Law, each State has its own characteristics in drafting their Constitution, the Constitutional differences between one State and another also have an impact and influence the constitutional amendment system of each State. The purpose of this article is to find out how the comparison of the constitutions of Indonesia and Switzerland is related to the mechanism for amendment the constitutions of the those State. The results of this study indicate that in changing the constitution Indonesia must have 2/3 members of the *MPR*. Meanwhile, Switzerland in making amendment to their constitution gives the people veto rights to participate in determining amendment to their State's constitution. The conclusion in this study is that the Indonesian constitution is more rigid than the Switzerland constitution, the rules regarding amendment to the constitution that are rigid after the fourth amendment can be returned as the rules for changing the constitution before the amendment are more flexible, this will have a positive effect on the constitutional system in Indonesia. The writer's suggestion in this paper is that the Executive and Legislative Institutions immediately make a fifth amendment to replace outdated rules and strengthen the existing government system in Indonesia.

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INTRODUCTION

Philosophically, the state will be difficult to separate from the constitution, the two are like two sides of a coin that are tied together and cannot be separated. In fact, after the development of the idea of democracy, there is an opinion among legal experts who explain that without a constitution, it is impossible for a state to be formed. This is because the constitution is considered as an important foundation for a State to survive after proclaiming their independence. In theory, the basic rules in a State should be based on the constitution so that the country continues to run according to its rules. So this confirms that a State can be said to be ideally a sovereign state if the State has a constitution.

In terms of understanding, the Constitution is often equated with the Basic Law. There are also legal experts who divide this understanding of the constitution into a formal sense and a material sense, in a formal sense the constitution is also called an official state document and contains a number of norms used to run the wheels of government of a State. Whereas in a material sense, the constitution is called a set of general rules starting from the

highest to the lowest, each of these rules must always be in harmony and continuous with one another (Kelsen, 2016). This concept has also inspired the birth of *lex superior derogate legi inferiori*.

Some legal experts such as Jimly Asshiddiqie also provide a definition of what a constitution is, he states that a constitution can be called a legal foundation, this foundation will support the State to remain upright and can run as it should (Asshiddiqie, 2004). The constitution is like the Al-Qur'an and the Sunnah as a guide for a Muslim's life, as well as a state that must have a handle to carry out state rules, and these rules are accommodated into a "book" entitled constitution. So the importance of a constitution in a State as well as the importance of the Qur'an and Sunnah for Muslims. Therefore, a constitution must contain all values or principles that come from the local wisdom of a country, so that every rule made is always suitable and compatible and able to become a characteristic of the country.

A State should no longer use the laws of the colonial state as their constitution, this is because a State that still uses the laws of its colonized country will always clash between one rule and another. It takes courage to take your own policy and no longer use the rules as the principle of concordance. Because the constitution must also develop over time and must be dynamic. So it is not good philosophically if we still use the system of the colonial state. The constitution is not built in a vacuum, but is born from the social and political conditions of the people that surround it and then becomes a collective agreement as outlined in the constitution. The same thing also happened to the concept of the state, in the beginning the state was only a policy, now it has become a sovereign and independent state.

As described above, the constitution is a very important part for every nation and state, both those that have been independent for a long time and those that have recently gained their independence. The constitution is the law that is considered the highest level in every country as well as a source of reference for the regulatory model for all types of legislation under the constitution. A constitution is sometimes used as a control for government not to take arbitrary actions. On the other hand, the constitution can also be used as a shield/protector for the people against the policies of the authorities that are detrimental to the interests of the people. Such is the importance of the Constitution, making every country in the world must have a Constitution. As example, working and getting a compensation as well as decent living are the constitutional rights of citizens in which the existence of these rights are guaranteed by the State through the 1945 Constitution of the Republic of Indonesia (Arrizal, 2020).

The constitution continues to develop from time to time, in the past the constitution has always been the absolute legitimacy of the king's power, then the constitution developed into a text called the *Leges Fundamentalis*. Therefore, experts agree that each period has a different form of constitution from one another. The difference does not only occur based on the period or time when the constitution comes into force, differences also occur in each region even though it is within the same time span.

Constitutions between one State and another certainly have differences and similarities. Each *Leges* has its own characteristics in drafting their constitution. This can not be separated from various reasons, both the influence of the values that developed in the country, as well as the influence of the colonial state which applied its laws in the colonized country based on the principle of concordance. As a rule of law, law enforcement must comply with applicable regulations and also be based on Pancasila and Indonesia Constitution (Setiawati, 2021).

Constitutional differences between one State and another also have an impact and affect the state administration system of each State. This state system is also different because each State has its own characteristics in the form of their constitutional system. This

is certainly an interesting problem to study, considering that the comparison method will be very effective if it is used to obtain other values from the constitutions of other States.

Based on the description above, the author in this article will discuss how the comparison of the constitutions of Indonesia and Switzerland related to the constitutional system of the those States.

MATERIALS AND METHODS

This article uses a normative juridical research method, the author also uses a comparative legal approach to laws and regulations (Statute approach). The data sources contained in this article are divided into two namely primary data and secondary data, while the primary data include, the 1945 Constitution of the Republic of Indonesia, the Constitution of Switzerland, while secondary data consists of previous research journals related to the subject matter discussed in this study. The results of this research will be made in the form of an analytical perspective.

RESULTS AND DISCUSSION

1. The Mechanism of Amendment to the Indonesian Constitution

As an archipelago, Indonesia tends to be unique in its constitutional system. Indonesia is more inclined to use the Unitary State as the basis and basis for running its government. This is in contrast to other archipelagic countries in the world which tend to use a federal system or divide their country into several states. Indonesia should be a single-composed country, this identification comes when we look at the Indonesian constitution which tends to use the central government as the axis of power to accommodate the country's problems. Although the role of local governments cannot be ruled out either, the Indonesian constitution tends to choose a safe path such as decentralization rather than creating states.

The problems in the legal world and its enforcement occurring in Indonesia today generate harmful excess (Sari, 2021). A State like Indonesia only has one basic constitution which we often call the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*), the Constitution which was ratified exactly 1 day after the proclamation was used as the state's legitimacy to run its government. Indonesia also only has one head of state led by the President. The cabinet system in Indonesia is also only led by one Minister in each department. This minister will later assist the president in achieving the country's goals. The synergy produced by the Executive will also have to be balanced with the Legislature and the Judiciary.

Moving on to the constitution in Indonesia, changes to the constitution in Indonesia have passed for the fourth time in 2002. After the outbreak of reform in 1998, along with the resignation of Soeharto as the number one person in this country. The Indonesian constitution has always been flexible and flexible in its changes. However, after the reform of the Indonesian constitution, it became more rigid and rigid in its changes. Initially, it was sufficient to amend the constitution with the support of not more than 50% of the total members of the *MPR*. Changes occurred after the reforms that demanded a quota of 2/3 of the total *MPR* to be fulfilled if you wanted to change the articles in the 1945 Constitution of the Republic of Indonesia.

Amendments to the 1945 Constitution of the Republic of Indonesia in Indonesia not only contain legal aspects but are also influenced by political aspects. Therefore, even though proposals related to amendments are submitted, if they are not supported by a majority power, then this amendment will never happen, the high friction between political parties also makes the mechanism for changing the constitution in Indonesia rigid, this is what causes the aspirations to make amendments V is only limited to black on white paper that never applies.

This shows that there is a significant difference between the changes to the Indonesian constitution before the reform and after the reform. Prior to the reform in 1998, constitutional changes tended to be more flexible, whereas after the fourth amendment in 2002, the system of constitutional changes in Indonesia became more rigid. This rule further emphasizes that one of the reasons why the constitutional system tends to be more complex is because the existing rules have not been able to keep up with the times. Law should be able to become a wheel that continues to run along with the times that also keep changing.

When viewed from the history of the state administration in Indonesia, the form of the Indonesian state has undergone changes. Based on the original 1945 Constitution of the Republic of Indonesia, Indonesia is a Unitary State in the form of a Republic. This affirmation can be seen explicitly in the constitution of the State's early establishment. Not only on the form of the state, the 1945 Constitution of the Republic of Indonesia also explicitly stated that Indonesia would use a decentralized and deconcentrated system. This is intended so that regional governments can run the wheels of government in their respective autonomous regions. Local governments are given special authority to manage their own households and are less dependent on policies from the central government.

Time went on until finally Indonesia underwent a major change in 1949, against the backdrop of Indonesia's increasingly heated conditions with the Dutch impacting the policy of changing form by making Indonesia a federal state. At that time a federal state was formed with the title *RIS* (Republic of the United States of Indonesia). Political propaganda played by the Dutch made Indonesia waver. The policy to create an *RIS* state was considered a blunder at that time, so that the *RIS* only existed less than 1 year. Although the *RIS* constitution was considered to be one of the best constitutions in the world at its time, because it contained three main elements in the constitution, such as guaranteeing human rights, dividing and limiting administrative tasks between state institutions and having basic rules in the state administration system. The articles in the *RIS* Constitution also seem neatly arranged and illustrate other values of the Indonesian nation. We can see this in the appendix chapter which is well organized. However, the form of the *RIS* state is considered to be able to divide the integrity of the Unitary Republic of Indonesia.

In the era of the existence of *RIS*, Indonesia divided the State into several states, including the following:

1. The Republic of Indonesia, in this first state consists of the State of East Indonesia, the State of Pasundan, the State of East Java, the State of Madura, the State of East Sumatra to the State of South Sumatra.
2. State that stand alone and are united with the *RIS*, among others, are Central Java, Bangka, Belitung, Riau, Central Kalimantan, East Kalimantan, Banjar, Dayak, and other areas in Kalimantan.
3. Areas that are not listed in the points above are considered not part of the *RIS*.

Furthermore, Indonesia surprisingly changed back their constitutional system by ratifying the 1950 Constitution. This constitution was born in order to restore the direction of the state back when the proclaimer ordained independence in 1945 ago. Although a steep road is always in the way with the formation of the states by the Dutch. However, the spirit of the founding fathers at that time did not subside for the sake of upholding the Indonesian nation. All states that were originally separated are reunited to maintain the integrity of the Unitary Republic of Indonesia. The form of the state was again changed to a unitary state and left the concept of a federal state. Exactly on August 17th 1950, the 1950 Constitution of the Republic of Indonesia officially became the foundation of the state to replace the Constitution of the Republic of Indonesia in 1949. This change was stated explicitly in the Federal Law no. 7 of 1950 concerning changes to the provisional constitution of *RIS* to become *UUUDS*.

The 1950 Constitution was only valid until 1959, precisely on July 5th 1959 along with the issuance of a presidential decree at that time, Indonesia changed the 1950 Constitution back into the original 1945 Constitution as it was ordained on August 18th 1945. With the return to the original 1945 Constitution, The form of the state will certainly return to the form of the republic as it was before. This constitution was valid from 1959 until the New Order era collapsed in 1998. After the collapse of the New Order, Indonesia carried the spirit of reform, changed a number of rules and made amendments from 1999 to 2002.

This change also has an impact on the constitutional system in Indonesia, one example is the shifting of the position of the *MPR*, initially the *MPR* has great authority in the constitution. After the amendment, the role of the *MPR* is no longer a super power institution, its position is now the same as other state institutions. Indonesia is more inclined to share power by carrying out checks and balances to run the wheels of government. Although many legal experts question Indonesia's position for being ineffective in running the presidential system. This is because some legal experts believe that Indonesia also adheres to a parliamentary system, not a presidential system.

2. The Mechanism of Amendment to the Switzerland Constitution

Before we compare the mechanism for changing the constitution of Switzerland and Indonesia. The author will explain first about the history of the founding of the Switzerland state. Historically, this State on the European peninsula began in 1291. At that time, the Switzerland Conderation was born inspired by the Cantonese that used German as the language of communication used by the founders of the Switzerland state, this is inseparable from the strong influence of the German state for swiss society. At the beginning of the founding of the Switzerland state, it was a military base founded by the German king at that time, Rudolf who came from Habsburg. Switzerland then expanded until it finally expanded to various regions such as the Canton of Lucerne, the Canton of Zurich, the Canton of Glarus to the Canton of Bern.

Over time, the Switzerland territory expanded to include 13 cantons. Each of these cantons merged and became a state of Switzerland and was subject to the rules of the Switzerland confederation. This also prompted major changes so that Switzerland became the State that has the most respected military power on the blue continent. The Swiss constitutional system, which initially consisted of only a few cantons, has now increasingly shown its strength as a strong country and changed the mindset of their citizens who were initially only patriotic towards their respective cantons, shifted to a deep love and nationalism for the Switzerland nation itself. This spirit has been maintained by Switzerland to form modern Switzerland as it is today.

The condition of the Switzerland constitution is also the same as that of Indonesia, Switzerland has changed their constitution several times. The journey of the constitution that attracted quite a lot of attention was when they ratified the Switzerland constitution in 1803. This constitution also became the starting point for the development of the Swiss state which began to accept Italian as the official language of their country, to the Swiss government's recognition of all individuals in all regions of Switzerland, according to the principle of equality before the law as we know it today. Switzerland also uses a centralized parliamentary system to run their constitutional system and to maintain the conduciveness of domestic politics.

Over time, this centralized state administration system actually led to domestic polemics. Switzerland's sustainability as a heterogeneous country is slowly being threatened by a centralized parliamentary system. In line with the fact that this system is not capable of being a bridge between the cantons. Switzerland then boldly drafted and formulated a new constitution in 1815. This new constitution made room for the non-German cantons to have a position in the confederation.

After this new constitution, it has not been able to solve the problem. The 1815 constitution was deemed too decentralized and caused civil war between the cantons. This war is known as the Sonderbund war. After wars broke out in various cantons, the Switzerland government made changes to the constitution again in 1848. This change was aimed at eliminating conflicts between the cantons, so that Swiss political conditions became more stable and more conducive. This change turned out to add a positive wind to the Swiss constitutional system. Since then, Switzerland has grown into a prosperous federal state with political conditions that tend to be stable from time to time.

Along with its development, the Switzerland constitutional system underwent a constitutional change in 1999. The previously used constitution was replaced by the new Switzerland Constitution. The Switzerland constitution after this amendment came into force on January 1st 2000. In the rules in this new constitution, Switzerland as a federal state tries to change about 150 minor rules without changing the foundations and footings of the state which still adheres to the form of a federal state as the previous Switzerland constitution. This rule change had an impact on the canton of Switzerland which expanded from the canton of Zurich, the canton of Bern, the canton of Uri, the canton of Lucerne, the canton of Schwyz, the canton of Nidwald, the canton of Obwald, the canton of Glarus to Geneva, to form the federal state of Switzerland.

After the amendment to the 1999 Constitution, the position and authority of the cantons were also strengthened as the structure of the state in the Switzerland constitutional system was expanded. Each canton consists of several Communes connected to each other. Policies are also regulated more clearly, which are the duties of the federal government and which are the authority of the respective cantonal governments. The federal government's authority includes regulating foreign relations, defense and security policies to postal and customs affairs. The entire public interest of the Swiss community is explicitly regulated in the 1999 constitution.

The authority of the state government (canton) is also clearly regulated, this cannot be separated from the role and function of the canton in making the constitution, compiling parliament and administering the court itself. The federal government no longer interferes in these matters and is fully under the jurisdiction of the cantonal government. Even with regard to foreign relations policies which are under the authority of the federal government, it is permissible for cantons to enter into agreements with other countries as long as this is subject to permission from the federal government and does not conflict with the *ius constitutum* Switzerland.

In addition to the form of the state which is different from Indonesia, an unique thing also occurs in the Switzerland government system which tends to use a collegial government system. This government system is a government system that is run collectively and together. The system is run by a seven-member federal council elected by the Switzerland parliament. This system is a collaboration between members of the federal council who lead the state. The seven federal councils in the Switzerland constitutional system have the status of ministers who head each department. The president in Switzerland is also elected by the seven members of this federal council. Unlike Indonesia, where the president and vice president are directly elected by the people.

This government system is unique because there is no dominant party in running the wheels of government, the duties and obligations of each element are divided equally, so that no one has a heavy burden and responsibility between one another. All are borne collectively and jointly by the president and the federal council. So it can be concluded that there are quite striking differences between Indonesia and Switzerland. Indonesia gives a bigger portion to the President. This unique constitutional system has been running since the Swiss

modern constitution was ratified in 1848. The system used by the Swiss government is considered effective in suppressing authoritarian leaders and absolute and arbitrary power.

Another difference between Indonesia and Switzerland is also seen in the procedure for changing the constitution of each country. Switzerland in changing the constitution must involve the people as well as each canton. The Switzerland people have a clear share in changing the constitution in Switzerland. The position of the people can even intervene directly against the parliament. Interventions are carried out to achieve common goals for the Switzerland state, whether it is intervention in changing the constitution, to intervention in Switzerland's participation in international organizations and ratifying international treaties.

From the description above, we can see how the differences in the government systems of the two States are. Each system certainly has advantages and disadvantages. Countries certainly have special considerations when using which system is suitable for their State. Indonesia, which consists of thousands of islands, is indeed more suitable to use the form of a unitary state rather than a federal state. This is because, according to the author, if Indonesia uses a federal system, it will be prone to division and conflict.

Furthermore, in the amendment of an Indonesian constitution, it should reflect a more flexible and supple Swiss government system, so that it can have a positive impact on the government to implement the existing constitution.

CONCLUSION

The conclusions of the author in this paper are as follows: The constitution in Indonesia after the Fourth Amendment has a basic agreement. Indonesia in the amendment of the 1945 Constitution after the amendment required 2/3 members of the *MPR*. Meanwhile, Switzerland has differences in making changes to their constitution. Switzerland grants veto power to the people to participate in determining changes to the State's constitution. The Switzerland people can even intervene against the parliament. This is the point of difference between the Indonesian and Switzerland constitutional systems. The government system in Indonesia also tends to be more of a presidential government system, compared to Switzerland which uses a collegial collective government system, this is intended to maintain a more conducive political condition. If it has been agreed to emphasize the presidential system of government, the Indonesian constitution must reorganize the pure presidential government system so that the arrangement of relations and authority between the legislature and the executive becomes clearer.

The author's suggestions are as follows: The Executive and Legislative Institutions should immediately make a fifth amendment to replace outdated rules and strengthen the existing system of government in Indonesia. Rules regarding changes to the constitution that are rigid after the fourth amendment can be returned as the rules for changing the constitution before the amendments are more flexible.

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Regulation

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