

Journal of Law & Legal Reform

VOLUME 3 ISSUE 1, JANUARY 2022

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ISSN (Print): [2715-0941](#) ISSN (Online): [2715-0968](#)

History of Article

Submitted: August 2021

Revised: October 2021

Accepted: December 2021

How to cite:

Siburian, H. M. S. R. (2022). Constitution Formulation and Amendment in Indonesian and American Legal System: A Comparative Study. *Journal of Law and Legal Reform*, 3(1), 39-66. <https://doi.org/10.15294/jllr.v3i1.49536>

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Type: **Research Article**

Constitution Formulation and Amendment in Indonesian and American Legal System

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ABSTRACT

The purpose of this study is to find out the comparison of constitutional law in Indonesia and the United States in terms of the development of the constitution and the mechanism for changing the constitution (UUD). The method used in this research is in the form of legal research. The type of research used for this approach is normative legal research. As in the

United States constitution, Article V regulates how to amend the constitution. Meanwhile, in Indonesia, the mechanism for this change is regulated in Article 37 of the 1945 Constitution (UUD). The United States and Indonesia are countries that have adopted a presidential system of government with a republican form of government. In addition, the state institution authorized to make changes to the constitution of each country is the legislature. If in the United States the one who can amend the Constitution is the Congress consisting of the House of Representatives and the Senate, then in Indonesia the authority to make changes to the Constitution is the MPR, which includes the DPR and DPD. Then, the form of the constitution used by the two countries is the same as the Written Constitution. The existence of the United States Constitution is actually an effort to realize the principles stated in a Declaration of Independence (1776). The Declaration is based on French philosophical and English Enlightenment schools. The main purpose of the United States constitution is to guarantee the rights of the states.

Keywords: *Constitutional Law; Procedure; Amendment; American Legal System; Indonesian Legal System*

INTRODUCTION

The state is an integration of political power and is the main organization of political power. The state is an *agency* (tool) of society that has the power to regulate human relations in society and regulate the symptoms of power in society. This control is carried out based on the legal system and government intermediaries and all equipment.¹

Every country has a constitution which is the basic or basic rule for other laws and regulations. The constitution describes the entire state administration system of a country, namely in the form of a collection of

¹ Kasful Anwar Us. *Dimensions of State Relations, Politics and Education*. Ta'dib, Vol. XV. No. 02. Edition, November 2010. p. 299

regulations that form, regulate or govern the country.² The legal system is the basis legal of the state, the entire structure and function of the state is determined by law. The law that applies to a country reflects a combination of the attitudes and opinions of the leadership of the state government and the wishes of the wider community regarding the law. It is a logical consequence if in a country, there is the completeness of the state and its functions which are derived from its constitution³. The term constitution comes from the French (*constituer*) which means to form. The use of the term constitution is meant to establish a state or to compose and declare a state.⁴ If in France the term used, *constitue is* then in countries that use English as their national language, the term used *constitution is*, the equivalent of the term in Indonesian is constitution.⁵

It is in accordance with what was stated by Sri Sumantri M⁶ which explains that in countries that speak English as its national language agreed upon terms *Constitution* that in Indonesian is called the Constitution. In terms of the object of constitutional law, constitutional law is a legal science that has a constitutional material object and has an object of basic legal form including the Constitution as (*written fundamental law, written basic law*) which is the highest written basic law. of *the national legal order of a country*.⁷ Because in general, countries after the 19th century, had a written constitution, it is natural that the constitution can be equated with the Constitution. Because the basic norms that exist in today's society, for the existence of a legal certainty, have been used as written rules.⁸

² Point Quarterly Tutik, *Construction of Indonesian Constitutional Law Post Amendment to the 1945 Constitution*, Jakarta : Kencana, 2011, p. 90.

³ Aka Prima. *Comparison of Legislative Powers in Indonesia and the United States*. Master of Law in Islamic University of Malang : Malang, 2019. p. 2.

⁴ Wirjono Prodjodikoro, *Principles of Constitutional Law in Indonesia*, Jakarta: Dian Rakyat, 1989, pp. 10.

⁵ Widodo Ekatjhajana. *The State of Law, Constitution, and Democracy: Dynamics in the Administration of the State Administration System of the Republic of Indonesia*. Jember: University Press., 2015. p. 4

⁶ Sri Sumantri M, *The State Administrative Structure According to the 1945 Constitution In Indonesian Constitution In Indonesian Political Life*, Jakarta: Sinar Harapan, 1993, p. 29.

⁷ Astim Riyanto. *Knowledge of Constitutional Law Becomes Knowledge of Constitutional Law*. 44th Year Journal of Law and Development No. 2 April-June 2015. p. 186.

⁸ Aldri Frinaldi and Nurman S. *Constitutional Amendment And Its Implication On Changes in State institutions*. Journal of Democracy Vol. IV No.1 Th. 2005. p. 11.

The development of modern constitutional history equates the understanding of the Constitution with the Basic Law not only due to the codification flow but long before since Oliver Crom Well became *Lord Protectorat* in 1660 *Grundgezet* (Basic Law) has been equated with *Instruments of Government*, namely the guide / reference for Since then, the identification of the meaning of the Constitution and the Constitution has the same basic principles, so that in 1687 the notion of the Constitution proposed by Crom Well was taken over by the United States. It was then introduced to France by Lafayette in 1789.⁹

The constitution is a framework for political life that was actually built when world civilization began, because almost all countries require a constitutional state life. The constitution is an important condition for establishing and building an independent state. Once the importance of the constitution in a country, the characteristics of a constitutional government include expanding political participation, giving legislative power to the people, rejecting authoritarian government and so on.¹⁰

The constitution has a very important function for a country. In the opinion of A Hamid S Attamimi¹¹ a constitution or Basic Law serves as a conduit grip and giver limit, regulate how the power of the state is run.

At first the constitution was understood as a collection of rules and customs solely in a civilization, then gained additional meaning as a collection of provisions and regulations made by the emperors. In historical records, the emergence of a constitutional state is a long process and is always interesting to study in building a constitutional government. Starting from the time of Greece, namely the time of Aristotle who has managed to collect so many constitutions from various countries. Apart from being a regulation made by the emperor, the constitution also includes statements or opinions from legal experts/statesmen, as well as the customs of local civilizations, including laws. During the Roman civilization, the constitution had a great influence until the Middle Ages, so the inspiration for representative democracy was sparked which was strong enough to give birth to the notion of representative democracy and

⁹ Bintan Regen Saragih, *Amendments to the Replacement and Stipulation of the Constitution in Indonesia*, Bandung : CV. Utomo, 2006, p. 5.

¹⁰ Adnan Buyung Nasution, *Aspirasi Constitutional Government in Indonesia*. Jakarta: Graffiti, 1995, p. 16.

¹¹ A Hamid S Attamimi, *Developments in the Formation of Laws in Indonesia*, Jakarta: Constitution Press, 2014, p. 215.

nationalism, from here as the forerunner to the emergence of modern constitutionalism in a country. In a further development of the organizers of state power by the basic law (*Constitutional Droit*), Constitution or *Verfassung*, by Carl Schmit regarded as the highest political decision so that the constitution has the position or degree of constitutional supremacy in the legal order of a country¹². In establishing a state at least, the following elements are required:

1. The existence of a certain area;
Territory is the boundary of a country covering land, sea and air.
2. People;
People are a group of humans who live in a place that is opposed to other creatures¹³.
3. Recognized governance.¹⁴
The government is a tool for the state in carrying out all the interests of its people, and is also a tool in realizing the goals that have been set.¹⁵

As a tool, the government must have permanently set boundaries called the constitution. The principle of legality and constitutional principles are characteristics that must be possessed by a legal state, while the constitution or the Constitution is a form of legality because of the existence of written regulations, then constitutionally which is also the main characteristic of a state of law has been fulfilled, so that the constitution or the Constitution is an absolute requirement that must be fulfilled. fulfilled in a legal country such as Indonesia. While the form of the constitution in a period will describe the condition of democracy at that time as well.¹⁶

The principle in the modern constitution is actually related to the principle of limiting power which is commonly referred to as the principle of "*Limited Government*"¹⁷. the principle of "*Limited Government*" which

¹² Parlin M. Mangunsang, *Conversion of the Constitution as One of the Means of Amending the Constitution*, Bandung: Alumni, 1992, hlm. 22.

¹³ Parlin M. Mangunsang, 1992, p. 93.

¹⁴ Muh. Kusnardi and Bintan Saragih, *State Science*. Jakarta : Perintis Press, 1985, p. 91.

¹⁵ Muh. Kusnardi and Bintan Saragih, 1985, p. 97

¹⁶ M. Agus Santoso. *The Development of the Constitution in Indonesia*. Yustisia Vol.2 No.3 September - December 2013. p. 119.

¹⁷ Sirojul Munir. *The Identity of the Meaning of the Constitution with the Constitution in the State Administration System*, IUS Journal Vol II Number 5 August 2014 The Study of Law and Justice, p. 406.

according to William G. Andrews "*Under Constitutionalism, Two Types of limitation impinge on government power proscribed*"¹⁸. It can also be formulated several functions of the Constitution which are very important both academically and in practice as stated by William G. Andrews: *The constitution imposes Restraint on government as a function of constitutionalism, but it also legitimizes the power of the government. It is the documentary instrument for the transfer of authority from the residual holders the people under democracy, the king under monarchy to the organs of state power.* ¹⁹of the Constitution on the one hand to throttle power as a function of constitutionalism, but on the other hand also serves as an instrument to transfer the authority of the authority of origin (both the people in the democratic system and the king in a monarchy to organ organs of power).

Furthermore, as a measure to study the laws of a country, including the state of Indonesia as an independent country, of course it has a constitution as the basis for running the state government. The formation of the constitution in Indonesia began with the promise of Japan which later formed the Investigation Agency for Preparatory Work for Indonesian Independence (BPUPKI) in Japanese called *Dokuritsu Zumbi Choosakai*, then formed on April 29, 1945, inaugurated on May 28, 1945, started work on May 29, 1945, then the establishment of the Indonesian nation legally BPUPKI prepare its independence, to formulate the conditions that must be met as an independent country²⁰

The countries of Indonesia and the United States have many similarities in the structure of the state. Both are led by the President and the Vice President, who are directly elected by the people. The division of state power is also in the United States constitutionally divided into legislative, executive, and judicial. The principle of *checks and balances* is also applied in the United States. and its system of government which adheres to a presidential system but differs in its application in the form of

¹⁸ Jimly Asshidiqie. *The idea of people's sovereignty in the constitution and its implementation in Indonesia*, Ichtiar Baru-Van Horve, 1994, p. 13

¹⁹ William G. Andrews, *Constitutionalism and Constitutionalism*, 3rd edition, New Jersey: Van Nestrand Company, 1968, pp. 9.

²⁰ Darji Darmodiharjo, *Santiaji Pancasila*. Surabaya: National Business, 1991, p. 26.

state, that Indonesia is a unitary form, and the United States is a federal form with many states.²¹

The purpose of this research is to achieve the expected goals, then the goals should be in line with the problems that have been determined. The aims of this study are: To find out the comparison of constitutional law in Indonesia and the United States (in terms of the development of the Constitution and the mechanism for amending the Constitution).

METHOD

In this research, the center of the study is a comparison of constitutional law in Indonesia and the United States (in terms of the development of the constitution), therefore the research form includes legal research, namely as research that finds law *in concreto* which includes various activities to find out what is a law that deserves to be applied *in concreto* to adjust something based on certain methods, systematics and thoughts, by analyzing it.²²

The type of research used for this approach is normative legal research which includes research on legal principles, or also called doctrinal legal research using only secondary legal sources, namely statutory regulations, court decisions, legal theory and expert opinions. The primary material for normative legal research consists of the Constitution and various official documents containing legal provisions, including notarial deeds and contracts. Meanwhile *textbooks, monographs, research reports* and so on are secondary materials.²³

In this study, what will be explored is the comparison of constitutional law in Indonesia and the United States in terms of the development of the constitution and the mechanism for changing the constitution. Besides that, it is known that this research is a historical study of the constitution or the constitution in force in Indonesia and the United

²¹ Haris Fadillah Wildan. *Comparison of the Constitutional Impeachment of the President and Vice President between the Republic of Indonesia and the United States in Realizing Democracy*. Surakarta: Eleven March University. 2010. p. 6-7.

²² Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: University of Indonesia, 1986, p. 43.

²³ Agus Santoso M. *Study on the Benefits of Legal Research for Regional Development*, Legal Scientific Journal "YURISKA", Vol. 3 No. 01 FH UWGM Samarinda, August 2011. p. 18.

States of America. the method of research is by examining the 1945 Constitution and other constitutions that have been in force in Indonesia and the United States as primary legal materials and other legislation. Furthermore, as secondary legal material, several literatures related to the comparison of constitutional law in the countries of Indonesia and the United States of America are seen in terms of the development of their constitutions and the mechanism for amendments to the Constitution, then analyze them and present them in this paper in an analytical descriptive form.

RESULT & DISCUSSION

At this part, Author discuss and analyze the amendment practices in Indonesian and American Legal System. Author begins with description and explanation of constitution development in Indonesia and America.

I.

DEVELOPMENT OF THE CONSTITUTION IN INDONESIA

One of the experts on modern Constitution KC Wheare argued that apart from being understood as a term to describe the entire system of government of a country, it is also a collection of rules that shape and regulate or determine the government of the country concerned.²⁴ So as an independent country, it is impossible for Indonesia to form and run a government if it does not form a constitution or a constitution first, because the constitution states the order to form a government as outlined in the Preamble to the 1945 Constitution, paragraph 4, which reads: "*an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and so on...*" So that based on the constitutional order

²⁴ CF Strong, *Modern Political Constitutions An Introduction to the Comparative study of their History and Existing form*, London: Sidgwick Jackson Limited, 1996, p. 11.

that has been ratified, Indonesia can legally form a government according to what it aspires to.

The body of the 1945 Constitution also describes how and who holds the power of government, namely in Article 4 paragraph (1) of the 1945 Constitution both before and after the amendments state that: "The President of the Republic of Indonesia holds the power of government according to the Constitution." Besides that, the body of the 1945 Constitution also mentions other powers, so that it is clear that the 1945 Constitution as the constitution of the Republic of Indonesia contains basic provisions in running the state government, therefore in an independent country, the constitution or the Constitution is indispensable. Indonesia is a state of law, while the characteristics of a state of law are:

1. The principle of recognition and protection of human rights;
2. The principle of legality;
3. The principle of power sharing;
4. The principle of an independent and impartial judiciary;
5. The principle of people's sovereignty;
6. The principle of democracy; and
7. Constitutional principles.²⁵

Act 1945 as constitutional in Indonesia is the highest law defined constitutionally, whereas the law is a political product, because in reality every legal product is a product of politics, so that the law can be seen as a crystallization of political thought that mutual interaction among politicians ²⁶while politics is thick with interests, therefore it is not impossible because interests can then change legal products as well, as is the case with the constitution in Indonesia which is always changing and following political developments. Since the Proclamation of Indonesian Independence on August 17, 1945, and followed by the ratification of the 1945 Constitution as a constitution on August 18, 1945, until now the 1945 Constitution as a constitution has undergone developments and changes, this is due to the development of democratic politics which is always evolves and changes too. Changing interests are also the reason for the changing of the constitution, but all of them must have the same goal, namely towards the aspired law (*ius constituendum*).

²⁵ Mukti Fajar. *Type of Rule of Law*. Malang: Bayumedia, 2005. p. 43.

²⁶ Mukti Fajar, 2005, p. 45; Agus Santoso M, 2010, pp. 9-11.

The development of the constitution in Indonesia is strongly influenced by the political system at a certain time, at first the 1945 Constitution was made a constitution, but it was not enforced in the government of the United States of Indonesia and during the parliamentary government system, finally the 1945 Constitution as a constitution in Indonesia was re-enacted until now and has undergone changes.

The term constitution comes from the French language, namely *constituer* means to form, what is meant is to form a country, in English the term used *constitution* which is in Indonesian is called constitution, in practice it can mean wider than the understanding of the constitution, but there are also those which equate with the Constitution.²⁷ In Latin, the word constitution is a combination of two words, namely *cume* is a reposition which means together with, and *statuere* comes from the word *sta* which forms the main verb *stare* which means to stand. On that basis, the word *statuere* has the meaning of making something to stand or to establish.²⁸

The definition of constitution according to French, English and Latin, in essence is an expression to form, establish/stipulate, further known as the intention of forming, compiling or declaring a country, so in other words simply, the constitution can be interpreted as a statement concerning the form and structure of a country, which is prepared before and after the establishment of the country concerned.²⁹

In terms of terminology, the notion of a constitution is not only understood as simple as that, but can be understood more broadly, this is due to the increasingly complex problems in a country, so the approach in understanding the constitution is not only seen from a legal point of view, especially constitutional law, but must also be understood from the point of view of political science. It is therefore not surprising that some constitutions will be more politically charged than juridical.

Furthermore, regarding the term constitution, the scholars and scientists of Administrative Law are of the opinion that the constitution is the same as the Basic Law, on the basis that all legal regulations must be

²⁷ Dahlan Thaib, *Constitutional Theory and Law*. Jakarta: Raja Grafindo Persada, 2008. p. 7.

²⁸ Dahlan Thaib, 2008.

²⁹ Jazim Hamidi. 2009. *Comparative Constitutional Law*. Jakarta: Achievement of the Publisher Library. p. 87.

written, and the written constitution is the Basic Law. There are also those who argue that the constitution is not the same as the Basic Law, on the basis that not all important matters must be contained in the constitution, but only basic matters.

There are no principal differences in the opinions of the two groups, because the first group equates the term constitution with the Constitution, while the second group looks at the material contained in the constitution or the Basic Law.³⁰ So that the difference is only an important or unimportant issue that must be contained in the Constitution or the Basic Law, therefore the difference is not a principle in understanding the constitution. Based on the definition of the constitution according to CF Strong, written by Jazim Hamidi, there are three elements contained in the constitution, namely:

1. Principles regarding the power of government;
2. Principles concerning the rights of citizens; and
3. Principles regarding the relationship between citizens and the government³¹.

The constitution in general has formal and material properties. Constitution in formal sense means the constitution is written in a constitution of a country, in this view a new constitution substantially if the constitution has been shaped written and enacted, such as 1945, while the constitution material is a constitution if people look at in terms of its contents, the content of the constitution basically concerns matters that are basic or essential for the people and the state.³²

The nature of the written constitution is stated in the form of the Constitution of a country, while the constitution besides containing legal aspects also contains more political aspects, namely politics at a certain period of a country. A country always experiences political developments, thus the constitution also always develops in accordance with the political development of a nation, as well as Indonesia has experienced constitutional developments in line with political developments since independence. Certain political configurations will affect the development of a nation's state administration, as well as in Indonesia, which has experienced political developments for several

³⁰ Dasril Radjab. *Indonesian Constitutional Law*. Jakarta: Rineka Cipta. 2005. p. 45.

³¹ Jazim Hamidi, 2005, p. 88

³² Tutik Quarterly Points. *Pokok the Basic Law of the State*. Jakarta: Achievement of the Publisher Library. 2006. p. 2.

periods, will certainly affect the development of the Indonesian state administration. The development of the state administration is also in line with developments and changes to the constitution in Indonesia as described in the following discussion.

a. The period from 18 August 1945 to 27 December 1949, the period when the 1945 Constitution came into force

During the period when the Republic of Indonesia was first formed, the first applicable constitution was the 1945 Constitution drafted by BPUPKI, then ratified by PPKI on 18 August 1945. According to the 1945 Constitution, sovereignty is in the hands of the people and is carried out by the MPR which is the highest state institution.

At this time, it was proven that the constitution had not been implemented in a pure and consistent manner, the state administration system was changing, especially when the Vice President's edict was issued. X dated October 16, 1945, which stated that the Central Indonesian National Committee (KNIP) prior to the formation of the MPR and DPR was entrusted with legislative duties and stipulates the GBHN with the President. KNIP together with the President stipulate laws, and in carrying out their daily tasks formed a workers' body which reports to the Central National Committee.³³

b. The period from December 27, 1949 to August 17, 1950, was the validity period of the Constitution of the Republic of the United States of Indonesia (RIS)

In 1949 the Indonesian constitution changed from the 1945 Constitution to the Constitution of the United States of Indonesia (UUD RIS), then the form of the Unitary State of the Republic of Indonesia was changed to become a United States (*federal*). The sovereign power of the United States of Indonesia is exercised by the government together with the DPR and the Senate. The presidential system of government changed to parliamentary, in which the responsibility for government policy was in the hands of the Ministers, both jointly and individually responsible to the parliament (DPR). However, the constitution of the RIS has not been

³³ Dasril Radjab, 2005, p. 67.

implemented effectively, because state institutions have not been formed in accordance with the mandate of the RIS Constitution.

c. The period from 17 August 1950 to 5 July 1959 was the period for the 1950 Provisional Constitution (UUDS 1950)

The form of state in this constitution is a unitary state, namely a single-composed state, meaning that there is no state within the state as is the case with a union state. The provisions of the Unitary State are affirmed in Article 1 paragraph (1) of the 1950 Constitution which states that an independent and sovereign Republic of Indonesia is a democratic and unitary state of law. The implementation of this constitution is the incarnation of the Unitary State of the Republic of Indonesia based on the Proclamation of August 17, 1945, and it also carries out autonomy or the division of authority to regions throughout Indonesia.

The government system is a parliamentary system of government, because executive tasks are accountable to the Ministers either jointly or individually to the DPR. The head of state as the head of government, the head of state is considered to have never made a mistake, then if the DPR is deemed unrepresentative, the President has the right to dissolve the DPR.³⁴

d. The period from July 5, 1959 to October 19, 1999, was the validity period of the 1945 Constitution

During this period the 1945 Constitution was re-enacted on the basis of a presidential decree dated July 5, 1959. The re-enactment of the 1945 Constitution meant changing the state administration system. The President who previously only served as head of state then also functions as head of government, assisted by Cabinet Ministers who are responsible to the President. The government system that was previously parliamentary has changed to a presidential system.

In practice, it turned out that the 1945 Constitution was not fully enforced until 1966. Changes in national leadership occurred during this period, from President Soekarno to Suharto, which was originally based

³⁴ Dasril Radjab, 2005, p. 202.

on the March Eleventh Order, then a second general election was held in 1972. started, the state administration system was based on the constitution, general elections were held every 5 (five) years, national development was going well, but on the other hand there was an extraordinary dictatorship with reasons for the implementation of national stability and economic development, so that the democratic system desired by the 1945 Constitution not going well.

The existence of political parties is limited to only three parties, so that democracy seems barren, there is no freedom for the people who want to express their will, even though the pillars of state power such as the executive, legislative and judiciary already exist but their role is not fully, political will requires the power of the state to be in the hands of one person namely the President, leading to large demonstrations in 1998 with demands for reform, which led to a change of national leadership.

e. The period from 19 October 1999 to 10 August 2002, the validity period of the amendments to the 1945 Constitution

The form of state in this constitution is a unitary state, namely a single-composed state, meaning that there is no state within the state as is the case with a union state. The provisions of the Unitary State are affirmed in Article 1 paragraph (1) of the 1950 Constitution which states that an independent and sovereign Republic of Indonesia is a democratic and unitary state of law. The implementation of this constitution is the incarnation of the Unitary State of the Republic of Indonesia based on the Proclamation of August 17, 1945, and it also carries out autonomy or the division of authority to regions throughout Indonesia.

As an implementation of the demands for reform that erupted in 1998 is to make changes to the 1945 Constitution as the basis of the Republic of Indonesia. The legal basis for amendments to the 1945 Constitution is Article 3 and Article 37 of the 1945 Constitution which is carried out by the MPR in accordance with its authority, so that the values and principles of democracy in the Unitary State of the Republic of Indonesia appear to be implemented properly. In making changes to the 1945 Constitution, the MPR stipulates five agreements, namely:

1. Not changing the Preamble to the 1945 Constitution of the Republic of Indonesia;
2. Continue to maintain the Unitary State of the Republic of Indonesia;

3. Strengthening the presidential system of government;
4. The explanation of the 1945 Constitution of the Republic of Indonesia which contains normative matters will be included in the articles (stem); and
5. Make changes by way of *addendum*.

In this period the 1945 Constitution was amended for the fourth time, thus affecting the process of democratic life in the State of Indonesia. Along with the amendments to the 1945 Constitution which were held from 1999 to 2002, the official text of the 1945 Constitution consisted of five parts, namely the 1945 Constitution as the original text plus the first, second, third and fourth amendments to the 1945 Constitution, so that it became the fundamental basis of the state. in carrying out the life of the nation and state.

f. The period of August 10, 2002 until now is the validity period of the 1945 Constitution, after undergoing changes

Whereas after undergoing changes for the fourth time, the 1945 Constitution is the fundamental basis of the Republic of Indonesia to deliver the life of the nation and state for the Indonesian people, of course democratic life is even more guaranteed, because the amendments to the 1945 Constitution are carried out in a careful, unhurried manner. and by using sufficient time, unlike what BPUPKI did when drafting the Constitution at that time, which was very hasty and was still under Japanese colonial rule.

At first the idea to implement changes/amendments to the 1945 Constitution was not accepted by the existing political forces, even though the debate about amendments to the 1945 Constitution had begun to warm up in the 1970s. At the time of reform, the main agenda was implementing changes to the 1945 Constitution, which was held at the 1999 MPR General Session and succeeded in establishing the first amendment to the 1945 Constitution, followed by the second, third and fourth amendments. In the past, every idea to amend the 1945 Constitution was always considered wrong and considered to have a tendency to subversion of the state and

government, but with the first amendment in 1999, the myth about the sanctity and sacredness of the constitution collapsed.³⁵

The nuances of democracy were more secure during the 1945 Constitution after undergoing changes. The existence of parallel state institutions, namely executive institutions (government), legislative institutions (MPR, which consists of DPR and DPD), judicial institutions (MA, MK and KY), and auditive institutions (BPK). The position of these state institutions has a clearer role than in the past. The term of office of the president is limited to only two terms, which are directly elected by the people. The implementation of regional autonomy is described in more detail

In the 1945 Constitution after the amendment, so that development in all fields can be carried out evenly in the regions. Regional head elections are carried out democratically, then further regulated in the Law concerning direct regional head elections, so that the people can determine democratically the choice of leaders in accordance with the will of the people. Guarantees for human rights are guaranteed to be better and described in more detail and the 1945 Constitution, so that democratic life is more secure. The existence of political parties is not shackled as in the previous period, there is freedom to establish political parties based on their will as long as they do not conflict with Pancasila and the 1945 Constitution, as well as holding honest and fair elections.³⁶

II. DEVELOPMENT OF THE UNITED STATES CONSTITUTION

KC Wheare explained that while the Constitution is understood as a set of rules, there is a connotation or understanding that what is meant is the Constitution in a narrow sense, which is focused on written rules that are used as the basis for the administration of government. by setting aside unwritten rules in the administration of a country's government, for this

³⁵ Muh Mahfud, MD. *Democracy and Constitution in Indonesia, Studies on Political Interaction and State Administration*, Jakarta : Rineka Cipta. 2003. p. 176.

³⁶ Muh Mahfud, MD, 2003.

reason it must be emphasized that, in the development of situations and conditions that occur in the midst of society.³⁷ The constitution must be able to accommodate unwritten rules, such as habits that live and develop in society, which can be used as a reference/basic in the administration of government³⁸

The written constitutional law regulations in the sense of a *documentary constitution* have only existed since the United States Constitution of 1787. Furthermore, other modern countries have so far made the 1787 United States Constitution a model for their country's constitution. For example, French Constitution 1791, Spanish Constitution 1812, Norwegian Constitution 1814, Dutch Constitution 1814, Italian Constitution 1848, Swedish Constitution 1866, Swiss (*Switzerland*) Constitution 1874, Ottoman Constitution 1876, Japanese Constitution 1889, Russian Constitution 1918, Weimar Constitution Germany 1919, Finland Constitution 1919, Austrian Constitution 1920, Czechoslovakia Constitution 1920, Hungarian Constitution 1920, Yugoslav Constitution 1921, Belgian Constitution 1921, Soviet Union Constitution 1924, Turkish Constitution 1924, Lebanese Constitution 1926, Portugal Constitution 1933, Indonesian Constitution 1945, the Constitution of Burma 1947, the Constitution of West Germany 1948, the Constitution of Sri Lanka 1948, and the Constitution of India 1950. Modern countries that may be born later are also likely to make the United States Constitution of 1787 as a model Constitution in their country.³⁹

Furthermore, with regard to the United States Constitution, the 1987 United States Constitution is the oldest written constitution still in force today. The 18th-century statesmen who met in Philadelphia the adherents of the concept of the balance of power in the *Trias Politica* from *Charles de Secondat Baron de Labriede et de Montesquieu* (1689-1755). This principle was supported by the experience of the 13 British colonies in the North American continent and reinforced by the teachings of John Locke (1632-1704) which was known to most delegates. These influences give rise to the belief that three branches of government must be established which are equal and parallel, namely legislative power, executive power, and judicial

³⁷ KC Wheare, *Modern Constitution*, London: Oxford University Press, 1975, p. 1.

³⁸ Sayuti Una, *Shifting Power of Regional Government according to the Indonesian Constitution (Study on the Distribution of Power Between DPRD and Regional Heads after the Re-enactment of the 1945 Constitution)*, Yogyakarta: UII Press, 2004, p. 41.

³⁹ Astim Riyanto., pp. 187.

power. The three powers must be so balanced that no one branch of power is more powerful than the other.⁴⁰

The thought of constitutional law as a rule that forms the state has continued to roll from the days of ancient Greece to the time of the Roman Empire to the Middle Ages to the era of Rationalism to the Modern era and then to the Postmodern era. Constitutional law in the material sense and in the sense of *unwritten constitution/non-documentary constitution* in general ended when the United States Constitution was ratified in 1787. The United States Constitution as a modern constitution was born as a follow-up impact of the start of the modern era since the United States Revolution of 1776 and was in line with the French Revolution 1789 which was followed by the Russian Revolution of 1917 and later the Indonesian Revolution of 1945. Since the United States Constitution was ratified/enacted, constitutional law was born as a rule in the sense of *written constitution/documentary constitution*. The birth of the *written constitution/documentary constitution* does not mean that the *unwritten constitution/non-documentary constitution* is completely lost, but in some countries the *unwritten constitution/non-documentary constitution* still adheres to it such as in England, Sweden, Canada, New Zealand, Spain, Israel, and Bhutan.⁴¹

In the 1770s, the thirteen British colonies comprised two and a half million inhabitants. These colonies grew and developed rapidly, and developed their own political and legal systems. However, the development of the British colonies was felt to be unfair to the Native Americans, as many of them died from disease, and they lost their country. The British Parliament enforced its authority over these colonies by imposing new taxes, which Americans deemed unconstitutional because they were not represented in Parliament.

The heated conflict culminated in a full-blown war that began in April 1775. After the American Revolution, the colonies declared independence from the United Kingdom of Great Britain on July 4, 1776 and founded the United States of America. The thirteen colonies in the North American continent which later became the states of the United States of America (in 2009) totaling 50 states declared their independence through the *Declaration of Independence* from the British Empire in

⁴⁰ Astim Riyanto., p. 201.

⁴¹ Astim Riyanto., pp. 187-188.

Philadelphia on July 4, 1776. This date was later used as the United States' independence day.⁴²

Furthermore, in the United States there is a struggle for the recognition of human rights such as the declaration of the *Bill of Rights* in 1776 in the state of Virginia. March 1, 1781 declared the entry into force of *The Articles of the Confederation*. On September 17, 1787, the Constitution of the Republic of the United States of America was ratified in 1787 which came into force on July 2, 1789. Thus, from the founding of the Republic of the United States of America and the ratification/enactment of the Constitution of the Republic of the United States of America in 1787, there was a gap of about 11 years. In a short time, less than 6 years the weakness of the confederation could be felt. For this reason, a United States Constitution is needed.

Then, in February 1787 the Continental Congress which was the legislature of the new state sent an instruction to the states of that, they send their delegation to Philadelphia to revise the Articles of Confederation. The new document, namely the Constitution (UUD) or the Constitution, was completed on September 17, 1787 and officially accepted on March 4, 1789. The preamble to the Constitution states: We the people of the United States, in order to form a more perfect union, build justice, guarantee peace in the country, preparing for the common defense, promoting the common good and safeguarding the gift of liberty for ourselves and our children, actually ordained and established this Constitution for the United States of America.⁴³

The United States Constitution is a relatively simple document that is the supreme law of this country. This additional expression is used with the intention that if a State Constitution or a state law approved by its legislature or by the National Congress is in conflict with the Federal Constitution, the Constitution or the Act becomes invalid.⁴⁴ The decisions given by the Supreme Court of the United States have confirmed and strengthened the doctrine of the supremacy of the Constitution. The final authority remains with the people of the United States who can make changes to the basic law if they wish, either by amending the Constitution

⁴² Blum, John M.; William S. McFeely, Edmund S. Morgan, Arthur M. Schlesinger, Jr., Kenneth M. Stampp, and C. Vann Woodward. *The National Experience: A History of the United States (6th ed.)*. Harcourt Brace Jovanovich. 1985. p. 91.

⁴³ Astim Riyanto., p. 202.

⁴⁴ Blum, et.al., 1985, pp. 101-103

or at least in theory by drafting a new constitution. However, the people's authority is not directly implemented. Major changes are made in the first two years after the Constitution is ratified/enacted. During that period the first 10 amendments known as the *Bill of Rights* were added to the Constitution. The ten amendments were approved by Congress as a unit in September 1789 and were passed by 11 states towards the end of 1781. To date, 27 amendments have been made to the United States Constitution/Constitution of 1787. Excellence the Constitution/Constitution in regulating the government has made the United States of America a stable and developed country.⁴⁵

III.

COMPARISON OF THE DEVELOPMENT OF THE INDONESIAN CONSTITUTION WITH THE UNITED STATES

According to historical records, the State of Indonesia made amendments 4 times, while the United States made amendments 27 times. For Indonesia, the procedure for changing the constitution is regulated in Article 37 of the 1945 Constitution after the amendment.⁴⁶

In his book, Prof. Satya Arinanto stated that *the expanded Committee elected Sukarno and Hatta as respectively president and vice president of the Republic of Indonesia. It was appointed a commission of seven to finalize the national constitution to finalize the national constitution, which had been drafted in the month before the Japanese capitulation. This proves that Indonesia already has its constitution even in the early days of its independence.*⁴⁷

⁴⁵ Astim Riyanto., p. 203.

⁴⁶ Megawati. Comparison of the Indonesian Constitution with the United States Based on State Forms and Government Systems <https://justitiaindonesia.com/perbandingan-negara-indonesia-dengan-negara-amerika-series-constitutional-comparison%20Indonesia%20with,mellid%20amendments%20%2027%20times>. 2020. Retrieved April 26, 2021 hours 10:51 pm.

⁴⁷ Satya Arinanto, *Constitutional Law and Democratization in Indonesia*, Jakarta: Publishing House Faculty of Law University of Indonesia, 2000, p. 141.

Since it was amended four times in 1999-2002, the constitution has changed the state administration structure. Thus, there is no longer a supreme institution like the MPR, and Indonesia has now adopted a more effective presidential system. For the United States, Amendments 1-10 are known as the Declaration of Rights. The last amendment was made in 1992. The existence of the United States Constitution is actually an attempt to realize the principles stated in a *Declaration of Independence* (1776). The Declaration is based on French philosophical bases and British Enlightenment schools. Main objectives the motto of the United States of America "*E pluribus Unum*" which means "from many, to one".⁴⁸

According to Bagir Manan, some of the main factors that determine the renewal of the constitution include various reforms of the situation in society. The encouragement of democracy, the implementation of the concept of the *welfare state*, changes in economic patterns and systems due to industrialization, advances in science and technology can become the *forces* driving for the renewal of the Constitution.⁴⁹

Furthermore, it is known that the State of Indonesia is a unitary state in the form of a Republic with a presidential system of government. The United States of America is a federal/union with a presidential system of government. The presidential system is a government system where the president's job is as head of state as well as head of government. In carrying out his duties, the president is assisted by the vice president together with ministers who are directly responsible to the president.⁵⁰

A country is said to be a unitary state because the state is single or does not have states, and the power to regulate all its areas is in the hands of the central government. In a unitary state there is only one constitution, one head of state, one council of ministers (cabinet), and one parliament. An example is Indonesia. While the union state is a country consisting of several states, each of which is not sovereign. Each state has a head of state, parliament, council of ministers (cabinet) in the interests of the state. In the United States there are parts of the sovereign state called the federal state.⁵¹

The basic constitutional concept of the United States federal system of government is that the national government only has powers mandated by the constitution. All other powers not delegated to the federal

⁴⁸ Megawati. <https://justitiaindonesia.com>.

⁴⁹ Megawati. <https://justitiaindonesia.com>.

⁵⁰ Megawati. <https://justitiaindonesia.com>.

⁵¹ Megawati. <https://justitiaindonesia.com>.

government will continue to be run by the states. At the Federal level, Presidential and Vice-Presidential Elections are held every 4 (four) years. Likewise, the separation of powers between the *Legislature*, *Executive*, and *Judiciary*, both regarding the implementing organs and regarding the function of power, also limits each other, namely by establishing a mechanism of *checks and balances* so that the three have a balanced position.⁵²

In Indonesia, the legislature has the task and authority to make or formulate a constitution in a country. In addition, the legislature is also defined as a legislator's institution, which if in Indonesia this institution is run by the DPD (Regional Representative Council) DPR (People's Representative Council, and MPR (People's Consultative Assembly). the authority to implement or implement the law. The executive body includes the president and vice president and the ministers who assist them. The third is the judiciary which functions to maintain the implementation of the law. The judiciary consists of the Supreme Court (MA), the Constitutional Court (MK) and the Judicial Commission (KY). In the legislature, the United States does not recognize the term MPR as in Indonesia. Those running the legislature in America are members of the Senate (representatives from the states) and the *House of Representatives* (Dewan Perwakilan Rakyat). Regarding the Supreme Court in the United States judiciary, there are two, namely the American MA the United States (*Supreme Court of the United States*) and the State (*Supreme Court Supreme Court*). Both have different tasks, namely the State Supreme Court only handles cases submitted by the lower courts, namely appeal cases through the state high courts (*Appellate Courts*) and state (*courtstrial courts*). Meanwhile, the United States Supreme Court examines cases submitted by lower courts, namely the *US Court of Appeals* and the *US District Court*.⁵³

IV.

MECHANISMS FOR AMENDMENT TO THE CONSTITUTIONS OF THE STATE OF

⁵² Megawati. <https://justitiaindonesia.com>.

⁵³ Megawati. <https://justitiaindonesia.com>.

INDONESIA AND THE UNITED STATES OF AMERICA

1. Indonesia

Amendments to the 1945 Constitution Article 37 states, to amend articles of the constitution, the session of the MPR must be attended by at least 2/3 of the total members of the MPR. Decisions to amend these articles are made with the approval of at least fifty percent (50%) plus one member from all members of the MPR. Achieving a quorum according to the new article 37, it is calculated based on the total number of MPR members, not based on the number of members present at that time, as regulated in the old article 37. The number of members present may only be 2/3 of the total number of MPR members. So, according to the old article 37, the approval of 2/3 of 2/3 of all members of the assembly is the same as 44.44 percent of the total number of members.⁵⁴

This means that it is still below 50%, meaning that the number is less than the 50% plus one of all MPR members, as stipulated in the new article 37.⁵⁵ Amendments to the 1945 Constitution Article 37 states, to amend articles of the constitution, the MPR session must be attended by at least 2/3 of the total MPR members. Decisions to amend these articles are made with the approval of at least fifty percent (50%) plus one member from all members of the MPR. Achieving a quorum according to the new article 37, it is calculated based on the total number of MPR members, not based on the number of members present at that time, as regulated in the old article 37. The number of members present may only be 2/3 of the total number of MPR members. So, according to the old article 37, the approval of 2/3 of 2/3 of all members of the assembly is the same as 44.44 percent of the total number of members. This means that it is still below 50%, meaning that the amount is less than the 50% plus one from all MPR members, as stipulated in the new article 37.⁵⁶

⁵⁴ Farid Arista Marzuk. *Comparison of the Mechanism of Amendment to the Constitution between Indonesia and the United States*. JOM Faculty of Law Volume III Number 2, October 2016, p. 9.

⁵⁵ Farid Arista Marzuk, 2016.

⁵⁶ Farid Arista Marzuk, 2016, p. 147.

2. United States of America

a. Proposed Amendments to the National Convention

In accordance with the provisions of Article V of the United States Constitution, to go through this first procedure there must be a request from at least 2/3 of the State Representatives. The application was submitted to the United States Congress. This congress will call the session of the National Convention. From this fact it can be seen that Congress cannot convene a session of the National Convention on its own initiative. On the other hand, 2/3 of the State House of Representatives ⁵⁷cannot convene the National Convention without Congressional intervention. It should be noted that Congress cannot reject a 2/3rd application from the State House of Representatives. ⁵⁷Once the National Convention has been established, the body will make proposals for amendments to the constitution. In the event that the National Convention has been completed with the proposed amendment to the Constitution, it will then be submitted to the State Convention established by each State.⁵⁸

b. Proposed Amendments to the National Convention

The second amendment proposed by members or members of the United States Congress. It should be stated that in submitting the proposal for change, no specific form has been determined. In other words, several members can submit a joint resolution, or it can be in the form of a law. It should be stated that to amend the constitution, it cannot be done through statutory powers but through special powers regulated in Article V of the Constitution. After a joint resolution on the above amendments is submitted to Congress and read twice, it is then submitted to a commission.⁵⁹

There are three possibilities for this matter: first, and this is what the resolution or draft law is usually discussed in the Judicial Commission. The second possibility is that a joint resolution containing changes to the constitution can also be discussed in the relevant commission with the material contained in the resolution. If the resolution is so important and it is a third possibility, it can be submitted to a commission specially set up

⁵⁷ Farid Arista Marzuk, 2016, p. 123.

⁵⁸ Farid Arista Marzuk, 2016, p. 124.

⁵⁹ Farid Arista Marzuk, 2016.

by Congress. In general, most of the proposed amendments to the Constitution have been rejected in this commission. A new draft amendment to the constitution can be accepted by Congress if it is approved by at least 2/3 of the members of Congress. The question arises, what is meant by this 2/3.⁶⁰

In fact, it is interpreted by Congress 2/3 of all its members. This interpretation is supported by the Federal Supreme Court. With the acceptance of the proposed draft, it does not mean that there will be changes to the United States Constitution. The Congressional decision still has to be communicated to the States. Generally, after Congress has accepted and approved the proposed amendment, the decision is communicated by the United States Secretary of State to each State Governor, who then resumes the House of Representatives.⁶¹

It is in this House of Representatives that the proposed amendment is discussed and decided whether to accept or reject it. Each State House of Representatives is free to set such proposed changes on its agenda. However, as an instrument of federal power and based on the Constitution, each State House of Representatives is bound by Article V of the *Constitution of The United States*.⁶² A proposed amendment to the constitution is accepted if it is approved by at least 3/4 of the House of Representatives of the total number of States in the United States.⁶³

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⁶⁰ Farid Arista Marzuk, 2016.

⁶¹ Farid Arista Marzuk, 2016, p. 126.

⁶² Farid Arista Marzuk, 2016.

⁶³ Farid Arista Marzuk, 2016.

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Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

All authors declared that there is no potential conflict of interest on publishing this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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