

not use a model of relative-particular to reconstruct the tradition in the constitutional amendment. Conversely, the constitutional amendment conducts a separated agenda: adopting the Western constitutional system, but at this same time accept the Islamic tradition to be applied simultaneously in the Indonesian constitutional system.

Both non-Javanese and Islamic tradition have a same interest to reject authoritarian interpretation of Javanese tradition so that both traditions adopt Western constitutional system that considered more democratic. However, because there is no conflict between non-Javanese and Islamic tradition, so there is no resistance to accept Islamic tradition in the constitutional system of Indonesia. Consequently, although structurally the constitutional amendment adopts the Western constitutional system, particularly American presidential system, but Islamic law can be operated as a part of Indonesian constitutional law.

X. CONCLUSION

Conceptually, tradition cannot be distinguished from modern rationality because rationality in the Western modern society essentially is a tradition derived from the ancient Greek civilization. Tradition, similar with law or legislation, has a social function to maintain social order and certainty. Therefore, in line with development of nationalism and modern nation state, many countries maintain their tradition by a reconstruction of tradition in each constitutional system.

However, there is no single pattern of reconstruction of tradition. In history of Indonesia, there are two patterns of reconstruction of tradition, which used as model for the reconstruction of tradition in the constitutional system of Indonesia. First, the absolute-particular model that emphasizes on originality of tradition so that tradition should be reconstructed in the constitution absolutely without a significant modification or adjustment. Second, the relative-particular that emphasizes on relativity or universality aspect of tradition

so that tradition should be reconstructed by extension and adaptation with size and character of a modern nation-state.

Historically, before the amendment of the 1945 Constitution, the reconstruction of tradition was practiced based on absolute particular model, while after the constitutional amendment tends to reject to reconstruct the tradition at the national structure but recognize the tradition at local structure. The reconstruction of tradition that practiced according to absolute particular model has created two authoritarian regimes, namely Guided Democracy and New Order. Those regimes applied the 1945 Constitution based on their interpretation of native democracy of Indonesia that referred to Javanese tradition. The interpretation of Guided Democracy emphasized on a guided deliberation process, which guided by President as the highest national leader. While New Order more emphasized on the unity between the State and the people according to the idea of Soepomo about the integrality state.

The constitutional amendment has no discourse about reconstruction of tradition at the national structure. Conversely, the constitutional amendment adopts a pure presidential system that practiced in the American presidential system. The adoption has purpose to create a constitutional system that democratic, advanced, and rational. This perspective shows that the constitutional amendment has been guided by a distinction between tradition and rationality. According to Karl Popper, this perspective is incorrect, because rationality in the modern Western society essentially derived from tradition of the ancient Greek civilization. Consequently, the rejection of tradition in the constitutional amendment based on rationality purpose has no a strong academic reason.

However, at the national structure, the constitutional amendment also recognizes the Islamic law to be applied by the Religion Courts. The recognition can be understood as a kind of reconstruction of Islamic tradition in partly, particularly in part of judiciary. Thus, at the national structure, there is a plurality where Islamic law can be operated in the Western

constitutional system. On the other hand, the constitutional amendment recognizes and preserves customary or *adat* law at the local or regional structure. However, the recognition of *adat* law at the local structure demonstrates more on preservation than a reconstruction of tradition. Preservation has purpose mainly to maintain the existence of tradition, while the reconstruction has purpose to apply tradition in a modern state structure.

Generally, it can be concluded that the amendment of the 1945 Constitution does not have an obvious pattern of reconstruction of tradition. It contradicts with the original meaning of the founders that obviously believed tradition as a basic to create a national constitutional system.

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