

RECONSTRUCTION OF TRADITION IN THE INDONESIAN CONSTITUTION: IDEAS AND PRACTICES¹

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Abstract

The research focuses to investigate the ideas of reconstruction of constitutional tradition among the founding father of Indonesia and its development in practices before and after the amendment of the Indonesian Constitution. Based on documentary or normative research, the research finds that there are two pattern of reconstruction of tradition in Indonesia, which is used as model for reconstruction of tradition in the constitution, namely the absolute particular and the relative particular. Historically, before the amendment of the Indonesian 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. Generally, it can be concluded that the amendment of the Indonesian 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.

Keywords : the Indonesian Constitution, reconstruction of tradition, original democracy, adat law

I. INTRODUCTION

There is no monarchy that doesn't collide with values of constitution and democracy (Suara Yogya, 26/11/2010). President Susilo Bambang Yudhoyono (SBY) addressed the statement to the Bill of the Specialty of Yogyakarta. Relatively, President proposed that the Governor of Yogyakarta shouldn't be occupied by the Sultan or the King of Yogyakarta any longer because it is considered as incompatible with democracy. In the sense of SBY, democracy must be reflected in the election of Governor—directly or indirectly, not by appointment of the Sultan Yogyakarta which is obtained by descent.

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Inevitably, the statement raises a strong reaction among Yogyakarta people. They rejected the claim of President because it opposed to the history of the founding of the Special Region of Yogyakarta (DIY), of which the monarchy system is accepted within the Republic of Indonesia. For the people of Yogyakarta, the monarchy is a privilege of Yogyakarta, which if it is removed, it would abolish the specialty of Yogyakarta. In addition, distinction between monarchy and democracy is not appropriate because, institutionally, the Governor of Yogyakarta executes the government in the region together with the Regional People's House of Representatives (DPRD) whose members are elected in general election. That means that the government of DIY is practiced based on the principles of democracy and representative government.

The people of Yogyakarta expressed their response in a political statement that Governor of Yogyakarta come to existence by way of the Sultan's appointment as it has been practiced before. The stance of Yogyakarta people is considered based on the historical aspect of the specialty of Yogyakarta given by Government as an admiration from Government with respect to the greatest role of Sri Sultan Hamengkubuwono IX in his support to the Republic of Indonesia during the difficult situation in early period of independence. For the people of Yogyakarta, the privilege of Yogyakarta is not only a respect for the individual role of the Sultan. However, it is a historical agreement or "ijab-kabul" (political contract) between government of the Republic of Indonesia and the King of Yogyakarta to give the privilege for Yogyakarta to apply a monarchy system within the Republic of Indonesia. In addition, normatively, the stance of people of Yogyakarta is considered based on the provision of Article 18 (1) of the 1945 Constitution that obliges the State to recognize and respect for units of government having privileges.

Meanwhile, Government through the Bill of the Specialty of Yogyakarta remains to keep his position to charge the governorship in Yogyakarta by election as it is practiced in

another provinces. Government creates two kinds of Governorship, Prime Governor which is permanently held by the Sultan and Governor as Head of Regional Government that is elected through election. This position is based on the provision of Article 18 (4) of the 1945 Constitution stating that Governor as Head of Regional Government should be democratically elected. Based on that provision, Government argues that all of governors should be elected by democratic process, even Governor in special region like Yogyakarta. Consequently, the specialty of Yogyakarta is not determined by the position of Governor attributed to monarchy system, but in the other aspect especially aspect of culture which is originated from Yogyakarta Kingdom.

The principle contrast between the people and DPRD vis-à-vis Government in respect with the position of Governor of Yogyakarta can be traced on the paradigm of democracy within the amendment of the 1945 Constitution. View of government about democracy system refers to electoral-democracy that is democracy with emphasis on general election process. Conceptually, electoral democracy is the standard of liberal democracy giving priority to individual freedom. In the other sense, liberal democracy means as negation to state intervention within individual area. Consequently, the power of state has to be restricted in order not to create abuse of power. Practically, the mechanism of the power restriction will be executed through general election that periodically restricts and circulates the government.

The Concept of electoral democracy in 1945 Constitution amendment also can also be traced in relation with a phenomenon of global democratization. That phenomenon, which is said by Samuel P. Huntington as “the third wave democratization”, is a process that emphasizes on general election as the standard of democracy in a state (Huntington, 1995:4-5). This also happens in the amendment of the 1945 Constitution. One of fundamental change in the amendment of the 1945 Constitution is regulation of general election in a specific article with more detail provision. The article 22E of the Third Amendment mentions that

general election will be accomplished to elect the members of DPR directly, the members of DPD, the President and Vice President and the members of DPRD.

The provision of direct general election is very important to indicate electoral democracy in Indonesia. In practice, the provision of general election is extended to election of head of regional government that are governors in provinces, regents (bupati) in regencies, and mayors (walikota) in municipalities. Whereas, article 18 (4) of the Second Amendment of the 1945 Constitution states that the head of regional government should be elected democratically, without provision it should be conducted by direct general election. Consequently, there is incoherence in several regions where the head of regional government is elected indirectly that have legal basic on the article 18 (4) the Second Amendment of 1945 Constitution but viewed contrarily to the electoral democracy principle.

That incoherence points out that the amendment of the 1945 Constitution with emphasis on electoral democracy has contradiction with Indonesia constitutional tradition. Just from notion point of view, it can be concluded that electoral democracy in the amendment of 1945 Constitution is the adoption and transplantation from Western democracy model, which imposed together with the moment of democratization after the collapse of communism in East Europe. Therefore, it is not surprising if the amendment of 1945 Constitution has no sensitivity to the Indonesian constitutional tradition discourse as it is practiced in Yogyakarta.

It is different from the discourses and practices before the amendment of the 1945 Constitution having strong orientation to the constitutional tradition in the society. The discourses of constitutional tradition have been developed among the Indonesian founding fathers and became the basic conception for the formation of the Indonesian constitution system within the 1945 Constitution. The concept of deliberation (*permusyawaratan*) as a basic concept in the fourth principle of Pancasila, for example, refers to tradition of

deliberation that practiced along centuries within the Indonesian society. Also concept of people sovereignty is a concept that designed by Mohammad Hatta as a form of reconstruction of democratic tradition that practiced by Indonesian people in the rural area or villages (Hatta, 1977:41).

In practice, the constitutional tradition has become a reference especially when the periods of the Guided Democracy and the New Order. The conception of Guided Democracy, which created by Soekarno, explicitly referred to a kind of genuine democracy that cultivated within Indonesia society (Soekarno, 1959:20). The conception of Pancasila democracy, which is created by the New Order regime, referred to concept of familial state (or *negara-kekeluargaan*) that viewed as a kind of collectivity tradition in Indonesian society (Azhari, 2010:59).

In general, the constitutional discourses and practices in Indonesia is an effort to build a reconstruction of constitutional tradition of Indonesian society into the modern Indonesian constitution system. The purpose of reconstruction of traditional constitution is to adapt the tradition into modern life in order the national constitutional system has foundation on the living values that developed within society. Therefore, the constitutional system will be cultivated and developed based on the history and culture values of Indonesia. Thereby, the constitutional system will be able to push progress of nation without disorientation values and national disintegration.

Unfortunately during reformation era, the people accused the constitutional reference to tradition because it was viewed as one of factor for development of authoritarianism practice during the Guided Democracy and New Order periods. For that reason, the amendment of the 1945 Constitution did not make the tradition as the main reference for the formation of the Indonesia constitutional system after reformation. Although there is recognition to constitutional tradition, but it is viewed as local traditions as a kind of local

wisdom that is not fully used as the main reference for the establishment of a constitutional system in the national level. Generally, in national level, constitutional system refers to Western democratic system that commonly studied in the academic sphere.

The purpose of this research is to study further about the reconstruction of constitutional tradition within the 1945 Constitution after amendment. Refers to explanation above, the reconstruction of tradition remains an important issue in the Indonesian constitutional law because there are incoherencies between the original notions in the 1945 Constitution and the alteration notions in the amendment of 1999-2002. In addition, there are incoherencies between norms within the amendment of the 1945 Constitution and constitutional tradition that practiced in the society. In the context of national interest, those incoherencies have made conflicts among society. Accordingly, a further study is required to solve those incoherencies concerning the reconstruction of constitutional tradition in the 1945 Constitution after amendment.

A model of reconstruction of tradition is expected to be the basis for consolidation of democratic processes that have not been completed until now. Democracy has consolidated if there is an agreement on the rules of game or “the only game in town” (Huntington, 1995:273). The assumption is that the consolidation of democracy was not achieved because there is incoherence between the post-amendment constitutional norms that oriented to the Western values and the practice of constitutional tradition that still living in the society.

II. PURPOSE AND OUTPUT OF RESEARCH

The research will be conducted in three years. In the first year, the research produces a description of ideas and norms about reconstruction of tradition, both before and after independence. It also describes a normative development of reconstruction of tradition in the