

The Constitutional Legitimation of Authoritarianism: Lesson Learned From the Indonesia's Experience

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Abstract

Authoritarian regimes require constitutional legitimation to justify their political actions. In Indonesia, even the amendment of the 1945 Constitution in 1999-2002 has resulted in constitutionalism, contains limited power and human right, however there is still a demand from some elite political groups to return to the 1945 "original" Constitution. The original constitution has a potential to legitimate an authoritarianism. That is why this article aim to find out why the Indonesian constitution before the amendment had the potential to become an authoritarian and how the constitution functions in preventing authoritarian government after amendment. The method of this research is normative legal research or doctrinal research with statute, conceptual, and analytical approach. The data analysis technique employed in this research is qualitative, primarily utilizing content analysis and historical text analysis. This involves interpreting the legal and political meanings of the constitutional texts and their historical contexts, aiming to understand how the text of the Constitution has been used, interpreted, and applied over time. The result of this research revealed that not all constitutions have created constitutionalism. The practices of many countries have shown that using the constitution as a tool for authoritarianism to abuse constitutionalism has a pattern. The phenomenon of 'constitutions without constitutionalism' and 'sham constitutionalism' has a pattern of 'political paradox'. The paradox pertains to the influence of culture and the constraints imposed by historical context. The experiences In Indonesia, the 1945 original Constitution has been used by the Sukarno and Suharto regimes to consolidate their power, ignoring the principles of democracy and human rights, and creating authoritarianism. After 1998 political reform, the 1999-2002 amendment of Constitution has created the more democratic constitution. Nevertheless, the calls for reinstating the original version of 1945 Constitution could be seen as the threat to democracy.

Keywords: Authoritarianism; Constitutionalism; Constitutional Legitimation; Political Paradox.

1. INTRODUCTION

Over the last decade and ongoing, since 2014 in Indonesia, discussions have been escalating regarding the call for a fifth amendment to the Indonesian Constitution. The preceding constitutional change in Indonesia, conducted between 1999 to 2002 through four stages of amendments, has created substantial reforms in the establishment of a democratic system, limited government, check and balances mechanism, and safeguarding human rights. Bambang Soesatyo, the Chairperson of People's Consultative Assembly of the Republic of Indonesia (MPR RI) for the 2019 to 2024 period, explained that five distinct aspirations have been presented to the MPR RI concerning the discourse on

constitutional amendment.¹ First, the view that the recent Constitution is sufficient and there is no urgency to make subsequent amendments.² Second, the need to reinstate the State Policy Guidelines (Garis-garis Besar Haluan Negara - GBHN) through a limited amendment.³ Third, there should be comprehensive study and evaluation on the implementation amended 1945 Constitution in order to formulate the amendments. Fourth, the demand to return to the original “proclamation” 1945 Constitution as authorized on 18 August 1945. Fifth, the call to reverse to the text Constitution with elucidation as a result of Presidential Decree of 1959.^{4,5}

According to Article 37 of the 1945 Constitution, there is a mechanism concerning change to the Constitution. First, proposals to change the articles of the Constitution can be scheduled in the MPR session only if they are submitted by at least 1/3 of the number of MPR members. Second, the proposed change is submitted in writing and indicates the part proposed to be amended and the reason. Furthermore, to change the articles of the Constitution, the MPR session must be attended by at least 2/3 of the number of MPR members.

With the composition of MPR RI of 2024-2029 period, if the regime has constitutional change agenda, the initiating of the fifth constitutional amendment will be possible. If it has happened, the discourse of back to the original 1945 Constitution could be one of the agendas. Although there will still be complex political dynamics, it is still necessary to warn that if restoring the original text of 1945 Constitution, it will accelerate opportunities for the return of authoritarianism in Indonesia.

If we go back to past, an interesting lesson can also be learned from Indonesia’s constitutional experience and political situation. Indonesia is currently one of the biggest democratic countries in the world. In 1998, a pro-democracy people power movement called “1998 reform movement” changed the 32-year authoritarian regime, called “Orde Baru” under President Suharto. Reform agendas followed the change of regime, one of them and the fundamental one was the constitutional reform. The Indonesian People’s Consultative Assembly or Majelis Permusyawaratan Rakyat (hereinafter referred to as MPR) of 1999 election result agreed to preparing constitutional change through amendment. Afterward, MPR amended the 1945 Constitution in four stages, in 1999, 2000, 2001, and 2002. The amendments incorporate democratic principles through the reform on the form of parliament bodies and system of general election, adopting human rights clauses, establishing Constitutional Court and Judicial Commission, and decentralizing power.⁶ A core foundation of any democratic governance is citizen participation, which manifests most visibly through electoral mechanisms for choosing political leaders at both national and regional levels. Within a democratic framework, the right to vote is intrinsically tied to the freedom of expression, guaranteeing that individuals

¹ Nailin In Saroh, “MPR Leader Admits There Is A Discourse On Amendments To The 1945 Constitution, But It’s Not About The Presidential Election,” *Voice of Indonesia* (voi), 2024, <https://voi.id/en/news/393758>.

² Fardah Assegaf, “Politicians, Academics Reject Discourse on Constitutional Amendment,” ANTARA Indonesia News Agency, 2021, <https://en.antaranews.com/news/188797/politicians-academics-reject-discourse-on-constitutional-amendment>.

³ Sudi Fahmi and Adrian Faridhi, “Limited Amendment of 1945 Basic Constitution and The Return of Main State Guidelines,” *Mimbar* 36, no. 1 (2020): 84–96.

⁴ Gunawan Santoso, “Constitutional Studies in Indonesia: Returning to the Original or Permanent 1945 Constitution in the 1945 Constitution of the Republic of Indonesia in the 2nd Century,” *Jurnal Pendidikan Transformatif* 2, no. 1 (2023): 257–269.

⁵ Kuswanto Kuswanto, “Returning to the Original 1945 Constitution as A Discourse,” *Justicia Journal* 10, no. 1 (2021): 1–14, <https://doi.org/https://doi.org/10.32492/yusticia.v10i1.234>.

⁶ Susi Dwi Harijanti and Tim Lindsey, “Indonesia : General Elections Test the Amended Constitution and the New Constitutional Court,” *International Journal of Constitutional Law* 4, no. 1 (2006): 138–150, <https://doi.org/10.1093/icon/moi055>.

can openly deliberate and influence leadership selection across all administrative tiers. Consequently, safeguarding these participatory and expressive rights is essential to prevent the recentralization of power and to sustain genuine popular sovereignty.⁷

Under the Orde Baru Regime, President Suharto justified his authoritarian actions by relying on the 1945 (original) Constitution. He claimed his regime implemented the 1945 (original) Constitution purely and consistently. Suharto used the 1945 Constitution to justify his power by associating it with the ideology of Pancasila, which had been reinterpreted to support his regime. During the New Order era, Suharto took advantage of the principles of Pancasila contained in the Preamble to the 1945 Constitution to justify his authoritarian regime. This regime associated Pancasila with the collectivist values of Indonesian society, such as harmony and mutual cooperation, which became the basis for Soepomo, member of The Investigation Committee for Preparatory Work for Independence or BPUPK, to form his integralist ideas. Thus, actions that are considered contrary to his regime will be seen as a threat to Pancasila and social harmony.⁸

Before the Suharto regime, President Sukarno also used the original 1945 Constitution from 1959 to 1966 as a tool to create his concept of democracy, which was called “guided democracy” (*demokrasi terpimpin*).⁹ Sukarno used the 1945 Constitution to support his authoritarianism practices in several ways. One of the critical steps was his appointment as President for life on 18 May 1963 by MPRS Decree No. III/MPRS/1963.¹⁰ Sukarno used the Presidential Decree of 1959 to return to the 1945 Constitution after failed attempts to draft a new constitution. This decree provided a legal basis for Sukarno to consolidate his power and ignore the principles of a more liberal democracy.¹¹

In addition, Sukarno appointed members of the Gotong Royong People’s Representative Council (DPR-GR) and the Provisional People’s Consultative Assembly (MPRS), which mainly consisted of people loyal to him. This allowed Sukarno to control the legislature and ensure that his policies did not receive any significant resistance.¹² Thus, Sukarno was able to run a more centralized and authoritarian government, ignoring the principles of checks and balances that usually exist in democratic systems.

Sukarno’s authoritarianism was also supported by an interpretation of the spirit of Pancasila values and 1945 original Constitution that emphasized principles such as mutual cooperation and deliberation, which were used to justify the disregard for liberal democracy and human rights.¹³ In this way, Sukarno created a system of “Guided Democracy” that emphasized consensus and harmony, but in reality, consolidated power in his own hands.

Following the change of regime, President Suharto claimed his regime as a “new order” to put back Pancasila as a “state ideology” and alleged the “Old Order” regime of President Sukarno had disobeyed Pancasila. During his reign, President Suharto

⁷ Meri Yarni et al., “Democratic Values in Nagari : An Analysis on Electoral System Shifts in One Province of Indonesia,” *Volksgeist* VII, no. 2 (2024): 379–92, <https://doi.org/10.24090/volksgeist.v7i2.12106>.

⁸ Abdurrachman Satrio, “Restoring Indonesia’s (Un) Constitutional Constitution : Soepomo’s Authoritarian Constitution,” *German Law Journal* 24, no. 2 (2023): 402–416, <https://doi.org/10.1017/glj.2023.16>.

⁹ M. C. Ricklefs, *Guided Democracy in A History of Modern Indonesia since c. 1300* (London: Palgrave, 1993).p.257.

¹⁰ Hotma P. Sibuea, Asmak Ul Hosnah, and Clara L. Tobing, “International Journal of Multicultural and Multi-religious Understanding A Study on Authoritarian Regime in Indonesia : Perspective of the 1945 Constitution as a Democratic Constitution,” *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 779-792.

¹¹ Satrio, “Restoring Indonesia’s (Un) Constitutional Constitution : Soepomo’s Authoritarian Constitution.”

¹² David Bouchier, *Organicism in Indonesian Political Thought, The Oxford Handbook of Comparative Political Theory, Dalam Oxpord* ((London: Oxpord Handbook, 2020).

¹³ Indrawan Cahyadi et al., “Ideology , Culture , and National Unity under Soekarno’s Leadership Ideologi , Budaya , Dan Persatuan Nasional Di Bawah Kepemimpinan Soekarno,” *Masyarakat, Kebudayaan Dan Politik* 38, no. 3 (2025): 215–230..

identified the “authentic” Pancasila with “traditional’ village values of hierarchy, harmony, and order”. Furthermore, he used it as tool to determine acceptable behavior and to justify the suppression of freedom of speech, human rights, and any kind of opposition views.

These experiences showed that the 1945 original Constitution could create an authoritarian regime. Experience in Indonesia shows that the original 1945 Constitution can create authoritarian regimes for several reasons. First, the 1945 Constitution was designed as a temporary constitution made in emergency and conflict situations, thus giving the government tremendous power to act.¹⁴ This can be seen in the authoritarian practices of Sukarno and Suharto, where both used the 1945 Constitution to consolidate their power and ignore democratic principles.¹⁵ Second, the 1945 Constitution has no term limits for presidents and lacks a checks *and balances* mechanism, allowing them to extend their power without adequate oversight. After the re-enactment of the 1945 Constitution in 1959, the political system in Indonesia underwent significant changes that led to authoritarianism. President Sukarno, for example, dissolved the elected House of Representatives and replaced it with the President-appointed House of Representatives, which served as the President’s companion. Thus, the original 1945 Constitution provided the basis for establishing an authoritarian regime whenever it was used as a state constitution.¹⁶

Reflecting on the historical background of the emergence of the modern constitution, the existence of the constitution was intended to limit power, ensure the realization of justice, guarantee the protection of human rights, and to improve the people’s welfare. This eventually evolved into the principle of constitutionalism. The establishment of the first written constitution in a modern state, the United States of America (U.S.) Constitution of 1787, served as a counter to authoritarianism or tyrannical authority. Subsequent developments, various countries in Europe and Latin America adopted written constitutions as a means to transform authoritarian regimes by restricting power and empowering rulers to exercising power on behalf of public interest.

A governmental regime may employ a constitution without constitutionalism as a facade to justify its authoritarian rule. In historical experience, for instance, South African Apartheid policy from 1948 to 1994 was claimed formally legitimate according to the South African Constitution.¹⁷ During 1933-1934, Hitler used the constitution clause to create his totalitarian regime under Nazi, and it was constitutional at that time. In Chile, the Pinochet regime introduced the new 1980 constitution that gave more power to the president over the legislative body and the judiciary, legalizing the military’s role in politics and restricting freedom of speech and freedom of the press. As a recent example, President Nayib Bukele allegedly used the Constitution as a tool for authoritarian rule in El Salvador. Under the enactment of the State of Exception clause in the El Salvador Constitution, since 2022, the popular President Nayib Bukele has

¹⁴ Luís Roberto Barroso and Richard Albert, “The 2021 International Review of Constitutional Reform,” *Legal Studies Research Paper* 23, no. 1 (2021): 1–25.

¹⁵ Karjono et al., “Pancasila and the Long Shadow of Suharto’s Authoritarianism, 1966-1998,” *Paramita: Historical Studies Journal* 34, no. 2 (2024): 269–280.

¹⁶ Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum. A Socio-Legal Study* (Leiden University, 2023).

¹⁷ Théo Fournier, “The Constitutional Legitimation of Authoritarian Regimes – A Comparative Analysis of Apartheid South Africa and Communist Hungary,” *EUI Department of Law Research Paper* 10, no. 1 (2020): 1–31.

been suspending civil rights, the assurance of a fair trial process, freedom of assembly, and freedom of the press.¹⁸

Some scholars criticize constitutional practices in several countries as “constitutions without constitutionalism” or “sham constitutionalism” or “abusive constitutionalism”.^{19,20} H.W.O. Okoth-Ogendo explains that many African countries have adopted exquisite constitutions. Still, there is no guarantee of compliance with constitutionalism, reflecting the presence of constitutions without constitutionalism as an African political paradox. Acquiescent with Okoth-Ogendo, Atilio Borón states that formulating constitutions without constitutionalism is a political paradox that also occurs in Latin America. Randall Peerenboom discusses some views that the constitution of the People’s Republic of China is a constitution without constitutionalism, since “it is simply a sham, an ideological smokescreen to conceal the tyranny of personal rule or rule by a small clique.”²¹ David Landau defines abusive constitutionalism as a political practice that involves the use of the mechanism of constitutional change constitutional amendment and constitutional replacement to undermine democracy. He elucidated that the constitution amendment in Colombia, constitution replacement in Venezuela, and the combination of constitutional reform and constitution replacement in Hungary illustrate the threat of abusive constitutionalism.²²

In Satrio’s (2023) study titled “Restoring Indonesia’s (Un) Constitutional Constitution: Soepomo’s Authoritarian Constitution” concludes that the concept of the “integral state” designed by Soepomo in the original draft of the 1945 Constitution possesses fundamental totalitarian and fascist-oriented characteristics; thus, the elite’s discourse on returning to the original draft of the 1945 Constitution signals a resurgence of the tradition of authoritarian constitutionalism in Indonesia.²³ Furthermore, the study by Sibuea et al. (2020), titled “A Study on Authoritarian Regimes in Indonesia: The Perspective of the 1945 Constitution as a Democratic Constitution,” shows that the implementation of the 1945 Constitution prior to the reform era was empirically proven to have created authoritarian regimes (both Guided Democracy and the New Order) due to the absence of checks and balances and the lack of explicit guarantees of human rights within the text of the Constitution.²⁴

Power requires legitimacy, and so does authoritarianism. David Beetham asserts that power necessitates “legal validity” from the rules which have the status of valid source of authority,²⁵ And it refers to the constitution. When authoritarian regimes exploit these modes of constitutional legitimacy to justify their power, it poses a grave threat to democratic principles, the rule of law, and the protection of human rights. This threat is exacerbated when regimes manage to garner popular support through democratic

¹⁸ Tommie Sue Montgomery and Thomas Boerman, “Intentional Injustice : Destroying the Rule of Law in El Salvador,” *Cemeca’s Regional Expert Paper Series* 31, no. 12 (2024): 1–17.

¹⁹ David S. Law and Mila Versteeg, “Virginia Public Law and Legal Theory Research Paper,” *Sham Constitutions* 20, no. 55 (2013): 1–18.

²⁰ David Landau and Rosalind Dixon, “Abusive Judicial Review : Courts Against Democracy,” *Florida State University College of Law* 47, no. 1 (2013): 1313–1387.

²¹ Atilio A Boron, *Latin America: Constitutionalism and the Political Traditions of Liberalism and Socialism*, “*Dalam Constitutionalism and Democracy*, Ed. Oleh Douglas Greenberg Dkk. (New York: Oxford University Press, 1992).p.339

²² Andy Omara, “Preventing Abusive Constitutionalism in Indonesia,” *Constitutional Review* 11, no. 1 (2025): 92–117, <https://doi.org/10.31078/CONSREV1114>.

²³ Abdurrachman Satrio, “Restoring Indonesia’s (Un)Constitutional Constitution: Soepomo’s Authoritarian Constitution,” *German Law Journal* 24, no. 2 (2023): 402–416.

²⁴ Hotma P. Sibuea, Asmak Ul Hosnah, and Clara L. Tobing, “A Study on Authoritarian Regime in Indonesia : Perspective of the 1945 Constitution as a Democratic Constitution,” *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 779–792.

²⁵ David Beetham, *The Legitimation of Power: Issues in Political Theory* (Basingstoke: New York: Palgrave Macmillan, 1991).p.16

instruments, such as general elections. This is where your understanding of the political paradox, as elucidated by Okoth-Ogendo in Africa and Atilio Borón in Latin America, becomes crucial in addressing this issue.

This study uses normative legal research or doctrinal methodology, with interpretation approaches.²⁶ Types of constitutional interpretation methods used include textualism, originalism of the original public meaning, historical, and living constitutionalism approach.²⁷ Research on the interpretation of the text of the 1945 Constitution of the Republic of Indonesia is a legal study that in addition to using a review of the science of law also uses approaches, theories and methods in philosophical science, political science and history. The data collection technique carried out is a literature study by prioritizing primary sources.²⁸ The primary sources used include the text of the 1945 Constitution along with the minutes of its discussion in 1945, and the text of the amended 1945 Constitution of the Republic of Indonesia along with the minutes of the discussion of the constitutional amendment 1999-2002. Furthermore, secondary sources in the form of books, journals, research results, international human rights legal documents will also be used to complete the study of primary sources. The data analysis technique employed in this research is qualitative, primarily utilizing content analysis and historical text analysis. This involves interpreting the legal and political meanings of the constitutional texts and their historical contexts, aiming to understand how the text of the Constitution has been used, interpreted, and applied over time.

2. ANALYSIS AND DISCUSSION

2.1. Indonesian Constitution Post Amendment and Demands to Return to the Original Version of

Not all constitutions contain the principles of constitutionalism. There are some constitutions fail to create constitutionalism. The phenomenon of ‘constitutions without constitutionalism’ refers to a situation in which a country has a constitution but does not apply constitutional principles such as the rule of law, separation of powers, and the protection of human rights. In this context, despite the existence of a constitution, the government may abide by the constitution’s text without implementing its spirit. This is often the case in countries where the constitution legitimizes the ruling elite’s power without providing an adequate checks and balances mechanism.²⁹

H.W.O. Okoth-Ogendo argues that there is a ‘political paradox’ in the existence of constitutions without constitutionalism in African countries.³⁰ He contends that constitutions have, in fact, been used to justify authoritarian regimes. There are two leading causes of this paradoxical source. The first is the colonial historical legacy that shapes the current political conditions in Africa. Second, a fragmented political culture and institutionalized conflict hinder the formation of a strong national identity, thereby hindering the healthy development of constitutionalism. Such phenomena also occur in

²⁶ David Gilchrist and Kylie Coulson, *8 Pragmatism, Black Letter Law and Australian Public Accounts Committees*, in *Making Governments Accountable: The Role of Public Accounts Committees and National Audit Offices* (London: Routledge, 2015).p.141

²⁷ Albert H. Y. Chen, “The Interpretation of the Basic Law,” *Hong Kong Law Journal* 30, no. 1 (2006): 380.

²⁸ Peter Muhamad Marzuki, *Penelitian Hukum, Cet.Ke-7* (Jakarta: Kencana Prenada Media Group, 2005).p.95

²⁹ Douglas Greenberg, *The American Council of Learned Societies, Ed., Constitutionalism and Democracy: Transitions in the Contemporary World: The American Council of Learned Societies Comparative Constitutionalism Papers* (New York: Oxford University Press, 1993).p. 358

³⁰ Okoth-Ogendo, *Constitutions without Constitutionalism*,” Ed. Oleh Greenberg et. AL (New York: Oxford University Press, 1992).p. 65-82

Latin American countries as revealed by Atilio A Boron, influenced by various factors, including colonialism, the struggle for independence, and foreign ideologies.³¹

The practice of constitution without constitutionalism in Indonesia might occur during the reign of President Sukarno and President Suharto while implementing the 1945 original Constitution. After the change of Suharto's New Order (Orde Baru) regime in 1998, the constitutional reform between 1999 and 2002 has brought significant transformations in the constitutional structure and aspects of democracy principles and human rights protection. These changes include strengthening state institutions, limiting power, and affirming the rule of law. This step is an essential foundation towards realizing constitutionalism, where government is run under a constitution that guarantees human rights and the rule of law.

There are several important advances in the 1945 Constitution after the amendment. First, there is a shift from the supremacy of institutions paradigm to the supremacy of the constitution.³² Before amendment, the 1945 original Constitution stated as follows "Sovereignty shall be vested in the hands of the people and shall be exercised in full by the the People's Consultative Assembly - MPR.³³ After amendment the norm was changed to be: "Sovereignty shall be vested in the hands of the people and be executed to the Constitution".³⁴ Furthermore, the amendment of constitution clarifies each states institutions' authorities in the constitution, so that the interpretation of the task and limit of authority is no longer submitted to each institutions.

The second is the birth of a mechanism for democracy and for sharing and limiting power in the state structure. The amendment of Constitution limits the presidency's term of elected period, from unlimited to be maximum two times election period. The President and Vice-President can only serve for five years in one term and could be re-elected only for one subsequent term. The amendment also rules the direct election, one person one vote, to elect President and Vice-President. The People's Consultative Assembly after amendment consists of member of House or Representatives (DPR) and member of Regional Representative Council (DPD), all are elected position through the general election. Different from the original version of 1945 Constitution, The People's Consultative Assembly consisted of member of House of Representatives (elected members from political party and appointed members represent military) and non-elected representative (appointed) of Regional Delegation (Utusan Daerah) and Groups Delegation (Utusan Golongan). The amendment also establishes new state institutions such as Regional Representative Council (DPD), Judicial Commission, and Constitutional Court, and repositions the authority of state institutions on the basis of sharing and separation of power.

The third is the adoption of human rights provisions. The second stage of amendment in 2000 inserted Human Rights list or bill of rights in a special chapter on human rights in the constitution as one of the demands of reform agenda. This section deals with civil and political rights, economic, social and cultural rights, and the state's obligation to protect and fulfill those rights.

³¹ Boron, "Latin America." 339,."

³² Joko Widodo et al., "The Implications of a Change in Authority of People's Consultative Assembly against the MPR Decree Law Product," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 21, no. 8 (2016): 107-15, <https://doi.org/10.9790/0837-210807107115>.

³³ "Art. 1 Point (2) The 1945 Constitution of Indonesia, (Department of Information, 1993)."

³⁴ "Art. 1 Point (2) The Constitution of the State of The Republic of Indonesia of The Year 1945, (The Constitutional Court of The Republic of Indonesia, 2015).,."

The fourth is the establishment of the Constitutional Court to uphold the rule of law. The Constitutional Court was fostered as the guardian of the constitution.³⁵ It creates the judicial mechanism to protect the constitutional rights, democracy and the rule of law by reviewing laws, deciding the disputes between constitutional state institutions, adjudicating the dissolution of a political party, resolving the general election disputes, and rendering a decision on the opinion of the House of Representatives regarding an alleged violation by the President and/or Vice-President according the Constitution.³⁶ Thus, the results of the amendment have been aligned and led to the realization of *constitutionalism*, not only by limiting executive power but also by affirming the protection of human rights and ensuring that all powers are subject to the Constitution as the supreme law.

However, there has been struggling situation for the amended constitution to be full accepted fully as “our law”.³⁷ The concept of democracy and human rights are still considered as imported values from the West and not comply with the Indonesian culture. In recent years, there are pressures from some conservative groups, several public figures, academicians, and retired-military generals to return the 1945 Constitution to its original version because it was considered more in line with the fundamental values of the Indonesian nation. This is stated through popular discourse, namely, the Fifth Amendment. As explained by Bambang Soesatyo, Chairperson of MPR RI 2019-2024, the demand to reverse to the original version of 1945 Constitution is one of the public aspirations to MPR RI.

There are two main reasons the demand of back to 1945 original Constitution. First argumentation says that the amendments of 1999 to 2002 are considered “overrated” because they change the substance of the original 1945 Constitution which is based on the values of spirit of familism or state integralism as discussed by the Framers of the Constitution. The second reason is that the amendment is considered invalid because it deviates from the original purpose of the 1945 Constitution. After all, a doctrine says that any attempt to replace these values must be regarded as a form of replacement, not an amendment.³⁸

However, it should be noted that the original constitution, designed by Soepomo - one of the prominent Constitution Framers, carried the concept of integralism, in which the government was considered to be “a wise father for his children, who knows the best interests of his children”. Therefore, in this idea, according to Pranoto Iskandar, it is justified that the State can act freely without constitutional limits in terms of maintaining public order.³⁹ In this view, the power of the government is absolute, and human rights are not the main focus. Therefore, the original 1945 Constitution did not contain of explicit human rights norm, did not limit the President’s term of office, had no *checks and balances* mechanism, and had no legal challenge system.⁴⁰

³⁵ Simon Butt, *The Constitutional Court and Democracy in Indonesia* (Brill: Leiden, 2013).p.70

³⁶ I Dewa Gede Palguna, Saldi Isra, and Mohamad Faiz, *The Constitutional Court and Human Rights Protection in Indonesia* (Jakarta: Rajawali Press, 2022).p.35

³⁷ Jack M. Balkin, *Living Originalism* (Cambridge: The Belknap Press of Harvard University Press, 2011).p. 60-61

³⁸ Denny Indrayana, “In Search For A Democratic Constitution : Indonesian Constitutional Reform 1999 - 2002,” *Jurnal Media Hukum* 17, no. 1 (2010): 115–131.

³⁹ Pranoto Iskandar, “Indigenizing Constitutionalism : A Critical Reading of ‘ Asian Constitutionalism ,’” *Iskandar, Pranoto, Oxford U Comparative L Forum* 2, 22, no. 1 (2017): 1–19, <https://doi.org/http://dx.doi.org/10.2139/ssrn.3093076>.

⁴⁰ Leli Tibaka and Rosdian Rosdian, “The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia,” *FIAT JUSTISIA:jurnal Ilmu Hukum* 11, no. 3 (2018): 266–88, <https://doi.org/10.25041/fiatjustisia.v11no3.1141>.

Soepomo described the concept of integralist state in his speech in the meeting of Investigation Committee for Preparatory Work for Independence (Dokuritsu Zyunbi Tyoosakai – BPUPK) on 31 May 1945, as follows:

*The state is an integral order of society, all groups, all parts, all members are closely related to each other and constitute an organic social union. The most important thing for integralist state is the whole nation life. The state does not take side on the strongest or the largest group, or the interest of the individuals, but it guarantees the safety of nation's life as in indivisible unity.*⁴¹

According to him, the idea of the integralist state is based on the philosophical concept of Hegel, Spinoza, and Adam Muller. Soepomo also rejected the proposal to insert the declaration of rights or the list of fundamental rights into the text of Constitution. The debate over the fundamental rights which later become known as human rights in the meeting of BPUPK involved two differing views. On the one side, Muhammad Yamin, Mohammad Hatta, and Maria Ulfah Santoso proposed to include the list of rights in the constitution. On the other side, Soepomo and Soekarno against the idea by arguing that the idea of fundamental rights comes from Western values, based on individualism, and it contradicts with the concept of integralist state and concept of kinship.

The conceptualization of integralist and kinship state has significantly constrained the public's understanding of Indonesian constitution. The implementation of this theoretical framework within the body or articles of the original 1945 Constitution, alongside with its interpretation, indeed put the state with a position of formidable strength. On the other hand, as integral part of the state, the people do not serve as the determinants of power but rather as supporter of and controlled by the power. During the enactment of the 1950 Provisional Constitution, President Sukarno along with some groups who rejected liberal democracy, such as military and conservative groups, raised the concept of Guided Democracy and urged the Konstituante to decide to return to the 1945 original Constitution. Likewise, after Constitutional Reform in 1999-2002 as response to 1998 reform movement, which resulted Indonesia as Constitutional democratic state based on the rule of law, the demands to return the state to a totalitarian state, as per Soepomo's concept, reappeared in the form of the urge to return to the 1945 original constitution.

2.2. Authoritarian Constitution: Indonesia's Experience

The history showed that Indonesia was under authoritarian rule while the original 1945 Constitution reenacted in 1959 until the political reform in 1998. During 1959 to 1966, President Sukarno put forward the concept of "Guided Democracy" to lead the country according to his vision, ambition and idea, while President Suharto emphasized "Pancasila Democracy" under his regime since 1967-1998 to maintain political stability for development.⁴² In both regimes, the authoritarianism happened in the time when the 1945 original Constitution was applied. Jakob Tobing, in his doctoral dissertation in

⁴¹ Saafroedin Bahar, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) [Minute of Meetings of Investigation Committee for Preparatory Work for Independence and Preparatory Committee on Indon]* (Jakarta: State Secretariat of Republic of Indonesia, 1998), p. 287

⁴² Norbertus - Jegalus, "Reading Political Integralism Using Eclectic and Dialectic Methods: A Study of Supomo's Reception of Spinoza, Adam Muller, and Hegel," *JURNAL LEDALERO* 23, no. 2 (2024): 126, <https://doi.org/10.31385/jl.v23i2.584.126-148>.

Leiden University, states that “whenever the 1945 Constitution is exercised purely and consistently, it will build an authoritarian system of government.”⁴³

Since independence, there are several constitutional periods in Indonesia. The first is the independence revolution period, 18 August 1945 to 27 December 1949, when the 1945 original Constitution was being into force. Second is the federal period, with the Federal Constitution of the Republic of the United States of Indonesia of 1949 (27 December 1949–17 August 1950). Third is the liberal democracy period, with the Provisional Constitution of 1950 (17 August 1950–5 July 1959). Fourth is Guided Democracy period, returning to the 1945 original version of Constitution with additional Stipulation (5 July 1959–21 May 1998). Fifth is transition period from the change of regime to the beginning of constitutional amendment (21 May 1998–19 October 1999). Six is the amendment process period with four stages of amendment (1999–2002). And seventh is the period of 1945 amended Constitution after 2002.

Even though during the independence revolution period (1945–1949) Indonesia enforced the 1945 original Constitution, conversely no authoritarian practice taken place in this time of period. The reason is, first, because at that time there was dynamic political situation such as the revolution war and the process of negotiation between the Indonesian government and the Netherland on behalf the recognition of independence. Second, the 1945 Constitution was not effectively functioned as a constitution. Even from the beginning, there existed constitutional infringement characterized by the establishment of a parliamentary system which included the designation of a prime minister, despite the fact that the 1945 Constitution embraced adopted a presidential system.

The Framers designed the 1945 original Constitution as a temporary constitution. In the Meeting of Preparatory Committee on Indonesian Independence (PPKI) on 18 August 1945, Sukarno as a chief person of the Committee said that the constitution that they were making was a temporary constitution. Furthermore, he asserted it, as follows:

*“This is a flash Constitution. Later, when we have a state in a more peaceful atmosphere, we will certainly reconvene the People’s Consultative Assembly which can make a more complete and more perfect Constitution. You gentlemen certainly understand that this is just a temporary Constitution, a flash Constitution, that perhaps it can also be said, this is the revolutie grondwet. Later we will make a more complete and perfect Constitution.”*⁴⁴

The Annotation of 1945 Constitution recognized itself as the concise and flexible constitution and explicated it as follows: “It is made up of only 37 articles. The clauses merely refer to transitional and additional aspects. Thus, this draft constitution is very brief if compared, for example, with the constitution of the Philippines.”⁴⁵ The annotation also noted that “it is adequate if the constitution only contains the fundamental provisions and guidelines.” This kind of format is suitable for Indonesia at that time as “a new and young country”.

Sukarno’s regime and Suharto’s New Order benefited from the concise and flexible nature of the 1945 Constitution to perpetuate the power they had. According to Denny

⁴³ Norbertus Jegalus, “Reading Political Integralism Using Eclectic and Dialectic Methods: A Study of Supomo’s Reception of Spinoza, Adam Muller, and Hegel,” *Jurnal Ledalero* 23, no. 2 (2024): 1–26, <https://doi.org/https://doi.org/10.31385/jl.v23i2.584.126-148>.

⁴⁴ RM. A.B. Kusuma, “Lahirnya UUD 1945 : Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha-Oesaha Persiapan Kemerdekaan” (Fakultas Hukum, Universitas Indonesia, 2004).p.47

⁴⁵ Rosa Ristawati, *Modelling Executive Powers in the Indonesian Constitution* (Maastricht University, 2017), <https://doi.org/https://doi.org/10.26481/dis.20171208rr>.

Indrayana, the shortcomings in the 1945 original Constitution contributed to the creation of authoritarianism.⁴⁶ He gave two examples of how Sukarno intentionally breached the Constitution: firstly, when Sukarno dissolved the parliament for rejecting a draft budget proposed by him in 1960; and secondly, when Sukarno intervened the judicial power by adopting the Law No 19 of 1964 on Judicial Power, which in the article 19 of the law stipulated that “[f]or the sake of revolutionary interest, national and state dignity, or society’s interests which are paramount, a President may become involved in or intervene in judiciary cases.⁴⁷ He explains that those breaches might occur there were no explicit prohibition on dissolving the parliament and principle of independent judiciary in the body of the 1945 Constitution, they had only appeared in the annotation or elucidation of the 1945 Constitution. Jakob Tobing points out that Elucidation of Constitution gave the “Constitution’s vagueness” and gave the opportunity for the authority “to manipulate the constitution.⁴⁸ Further, Indrayana gave another example on how Sukarno exploited the vagueness of the 1945 Constitution by arranging his appointment as “President for life” through MPRS Decree of 1963. It was possible because the 1945 original Constitution only stipulated that the President shall hold the presidency for a term of five years and shall be permitted to pursue re-election yet failed to delineate the number of re-elections attempts a President may undertake.⁴⁹

Moreover, Indrayana explicates that Suharto also exploited the shortcomings of the 1945 original Constitution, by using the concept of Pancasila Democracy. He refers to Hans Antlov’s view that Pancasila Democracy was authoritarian. According to Antlov, there were some characteristic features of Pancasila Democracy, inter alia, emphasizing consensus in decision making so that there is no need for opposition, placing national unity and order above the issue of pluralism and accountability, and the existence of a paternalistic culture that upholds political stability, economic prosperity and social harmony.⁵⁰ Fundamental democratic principles, grounded in guarantees of freedom of expression and active public participation, increasingly collide with regulations that are frequently perceived as restricting these basic rights. Instead of bolstering an inclusive public sphere, the formulation of such rules is often manipulated under the pretext of preserving public order and political stability.⁵¹ Indrayana explains that Suharto used these features to manage his power by controlling party system, executive, legislative and judiciary, and also using military to involve in social and political life as well as government administration.⁵²

Jakob Tobing argues that the authoritarian nature of the 1945 original Constitution came from the original design of the 1945 Constitution. The structure of power in the 1945 Constitution was influenced by the integralist state concept proposed by Soepomo. It was based on the foundation that the society is cohesively unified and interconnected

⁴⁶ Denny Indrayana, *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution Making in Transition* (Jakarta: Kompas Media Nusantara, 2008).p.111

⁴⁷ Andi Muhammad Asrun, “Political Effects on Justice in Indonesia : A Case Study of the Suharto Era , 1966 – 1998,” *International Journal of Multicultural and Multireligious Understanding* 10, no. 10 (2020): 274–290.

⁴⁸ Siti Hasanah and Firzhal Arzhi Jiwantara, “Non-Formal Legitimacy of Constitutional Change and Public Perception in The Reform of the 1945 Constitution Through Constitutional Court Decisions,” *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (2025): 622–637.

⁴⁹ Indrayana, “In Search For A Democratic Constitution : Indonesian Constitutional Reform 1999 - 2002.”

⁵⁰ Hans Antlov, *Demokrasi Pancasila and the Future Ideology in Indonesia* in *The Cultural Construction of Politics in Asia* (New York: St. Martin’s Press, 2000).p.205

⁵¹ Zainal Arifin, Zico Junius Fernando, and Emi Puasa Handayani, “Legal Implications of The Second Amendment to *The Electronic Information and Transactions Law* : Balancing Freedom of Expression and Public Participation in Digital Democracy,” *Jurnal LITIGASI* 26, no. 1 (2025): 192–227.

⁵² Denny Indrayana, *Indonesian Constitutional Reform 1999-2002 : An Evaluation of Constitution Making in Transition* (Jakarta: Kompas Media Nusantara, 2008).p. 112-123

through familial bond, and it instituted in the concept of People's Consultative Assembly as the highest state institution that representing as well as fully exercising people's sovereignty. The Constitution also inherently assumed the existence of a one-party political system. In this concept, the leader of the state must have fully control on politics to create stability. It necessitates the President to maintain control over the majority of the MPR's constituents via a single-party framework or a singularly dominant political entity. Conversely, if the President governs the preeminent political party that exercises control over the MPR, the highest authority resides within the President's dominion. Therefore, this leads a situation where the key concept of separation of powers, checks and balances, and the rule of law become less effective.⁵³

2.3. Constitutionalism as A Basis of Eliminating the Feudalistic Socio-political System

As one of the world's largest democracies, Indonesia relies on political parties designed to optimize key democratic functions, including interest aggregation, elite circulation, conflict resolution, and public communication. Within this institutional framework, political parties serve as training grounds for political elites, aiming to cultivate strong and authoritative leaders who can command legitimacy not only among their immediate constituents but across all social strata and the broader nation.⁵⁴ Prior to the U.S. Declaration of Independence 1776, the ratification of the U.S. Constitution 1787, and the beginning of the French Revolution 1789, which awakened the collective awareness on constitutionalism, the feudalistic socio-political structure was a predominant framework within the political realm globally. The sovereign was regarded as the upper echelon of society, while the populace was deemed the object of authority, possessing no rights to engage in political affairs. The emergence of written constitutions in the end of 18th Century, based on the concept of John Locke's Social Contract Theory, markedly changed this situation. Locke's theory asserts that the political power originates from the people through a social contract. Before that, the individuals lived in a state of nature in the condition of perfect freedom and of equality. Therefore, when the individuals agree to create a government among themselves, the primary purpose is to protect their natural rights: life, liberty, estates, as well equality and dignity as human beings. In later phases, the social contract takes shape as a documented constitution, while natural rights interpret as human rights. This embodies the fundamental nature of constitutionalism.

Constitutionalism is fundamental in the evolution of socio-political systems, guiding the transition from feudalism towards equality and from oppressive governance to democratic practices. The constitution stands as the core and the highest legal framework of a country, needing to effectively develop the principles of constitutionalism. However, in actual application, there are many constitutions without constitutionalism, or categorized as shame constitutionalism. This phenomenon is frequently accompanied by the practice of "autocratic legalism," which refers to the manner in which leaders maintain the facade of democratic governance while consolidating their own authority through the manipulation of legal and constitutional frameworks.⁵⁵

⁵³ Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum. A Socio-Legal Study* (Netherlands: University Leiden, 2023).p.77

⁵⁴ Muhammad Mutawalli Mukhlis et al., "Democratization or Extra-Constitutionalism : Ideas for Limiting the Term of Office for Chairmen of Political Parties in Indonesia," *Jambura Law Review* 6, no. 2 (2024): 367-402.

⁵⁵ Kim Lane Scheppele, "Autocratic Legalism," *University of Chicago Law Review* 85, no. 2 (2018): 545.

2.4. Political Paradox in Reenactment of Authoritarian Constitution in Indonesia

This dynamic generates a systemic paradox in which freedom of expression a fundamental prerequisite for a thriving and participatory democracy is instead constructed as a threat to national stability and economic order. Under this autocratic rationale, state authorities prioritize regime survival and market predictability over constitutional liberties, effectively criminalizing public critique. Consequently, the protection of fundamental rights is subjugated to political expediency, dismantling the very discursive foundations required for genuine democratic accountability.⁵⁶ Referring to the ‘political paradox’ observed in African and Latin American countries on the phenomenon of ‘constitution without constitutionalism’, Indonesia’s constitutional experience shares similar pattern. Okoth-Ogendi argues there are several factors that leads to this ‘political paradox’ in African countries that could be traced back to the complex historical dynamics, fragmented political culture, and economic structures. Correspondingly, Atilio A Boron identifies a similar ‘political paradox’ in Latin American countries, where the constitution serves the elite rather than establishing a strong democratic system. He argues there are several factors contribute to this condition. First, the political legacy of oligarchy, where Latin American oligarchies used the rhetoric of economic liberalism and democracy to maintain their power, while civil and political rights were often ignored. Second, the Iberian political and cultural legacy, as Atilio contends that Latin American countries did not experience the intellectual revolutions of the 18th century. This leads to a weaker foundation for democracy and constitutionalism, favoring fanaticism over rationalism and tolerance. Third is the Iberian economic legacy, in which capitalism in Latin America developed without a bourgeois revolution. According to Atilio, this phenomenon culminated in a sociopolitical system that integrates capitalist principles with semi-feudal structures what Gramsci terms a ‘passive revolution,’ a form of change that does not dismantle the old system.

In Indonesia, it is undeniable that the integralist state concept initiated by Soepomo has played a very broad role in constructing the constitution structure. This concept contributes to the authoritarianism nature of 1945 original Constitution and the continuously desire of some groups to revive it by demanding to return back to the original version 1945 Constitution. There are three reasons why this happens that can be related to ‘political paradox’ phenomenon. First, the integralist state concept derives from the original pre-independence Indonesian culture which is feudalistic and paternalistic. Therefore, it does not comply with democracy, the concept based on individualism. Second, this concept is well-liked by the authoritarian leader or oligarch groups because the concept needs strong and even “sacrosanct” government with totalitarian nature. Thus, the 1945 original Constitution is the fertile soil for authoritarianism. Third, Indonesian people are impounded by the historical fact that some prominent founding parents rejected to adopt the declaration of rights into the constitution. On the other hand, the Framers of the Constitution accepted the concept of integralist state based on kinship which was claimed as the original values of the Indonesian people.

However, this approach is often understood through the lens of a thick feudal and paternalistic culture, where the relationship of power and authority is intertwined in

⁵⁶ Siti Fatimah, Jamal Wiwoho, and Isharyanto, “Global Perspectives on Freedom of Expression in Environmental Governance : Legal Implications and Challenges,” *Jambe Law Journal* 7, no. 2 (2024): 481–507, <https://doi.org/10.22437/home.v7i2.456>.

a strong hierarchical structure. When Soepomo introduced this concept, he referred to Germany's totalitarian school of thought and Japan's kinship model.⁵⁷

Feudal culture in the context of an integralist state can be seen from a perspective that places the ruler as a figure who must be respected and obeyed. The rigid social structure causes the people to tend to rely on leaders or rulers in decision-making. This results in a lack of public participation in the political process, where the people's voice becomes subordinated, and the control of power is in the hands of a few elites. This feudal integralist pattern ultimately results in the people's reluctance to criticize the rulers even when there is real injustice in front of them. There is a reluctance to question the policies of the ruler because of his position as a respected person. Citizen participation frequently serves as a mere formal procedure rather than an essential component in shaping legislative norms, giving rise to symbolic inclusion where the public is given a platform to engage yet remains virtually powerless in shaping final policy outcomes. Consequently, this superficial engagement generates a deceptive illusion of democratic legitimacy while keeping effective decision-making authority firmly restricted to political elites.⁵⁸

As a form of paternalistic culture, the idea of an integralist state also creates space for rulers to behave like parents who are responsible for the welfare of their people. The conceptualization of *manunggaling kawula gusti* (the union of servants) described by Soepomo aims to illustrate that despite the divergence between the people and the government, they nonetheless exist as a cohesive unity. However, this conception gives rise to the perception that the people are not fully capable of taking care of themselves, so the rulers feel the need to lead and nurture.⁵⁹ This paternalism in turn deprives individuals of initiative and results in society's dependence on decisions taken by rulers.

The relationship between feudalism and paternalism in the concept of an integralist state results in the way the government maintains social stability and order. With full control over society, the government can enforce laws and policies without much challenge. This approach will produce a state without the principle of people's sovereignty. The pretext of stability and social order in the integralist model ultimately leads to violations of individual rights, where collective interests are used as an excuse to suppress criticism and resistance from society.

In Soepomo's view, the integralist state functions as an entity that integrates the various interests of society to achieve common goals. Therefore, there should be no dualism between the state and society. The state is not only a political institution, but also a forum that unites various elements of society, including various ethnicities, religions, and cultures. Soepomo proposed that the state should function as a protector that maintains a balance between individual and collective interests. The values of mutual cooperation and togetherness are put forward in the spirit of an integralist state.

Harmony between the ruler and the powerful, or between the government and the people, was believed by Soepomo to run smoothly and build unity that is the hallmark of the Indonesian nation. Evidence of this harmony between rulers and ruled, Supomo said, could be found in Indonesian village life, where village heads "always consulted with their people" to "preserve the spiritual bonds between the leaders and the people

⁵⁷ Jegalus, "Reading Political Integralism Using Eclectic and Dialectic Methods: A Study of Supomo's Reception of Spinoza, Adam Muller, and Hegel."p.130

⁵⁸ Syafri Hariansah, "Algorithmic Governance And Democratic Legitimacy: Rethinking Digital Co-Creation in Constitutional Law-Making," *Al-Risalah Forum Kajian Hukum Dan Sosial Kemasyarakatan* 26, no. 1 (2026): 199–216, <https://doi.org/10.30631/alrisalah.v26i1.2285>.

⁵⁹ Iskandar, "Indigenizing Constitutionalism : A Critical Reading of ' Asian Constitutionalism '"p. 1-17

as a whole". In this atmosphere of unity, "all groups in society are encompassed by the spirit of *gotong royong* (mutual aid) and the family state principle". On the basis of this evidence, Supomo concluded that if the committee was to establish a state in tune with the Indonesian national character and social structure, integralism was the only valid philosophical basis for it.⁶⁰ Soepomo also emphasized that because there is unity between the government and the people, there is no need for regulations on Human Rights to protect the public from the abuse of power by the government.⁶¹ He asserted that we do not need any basic rights or human rights for individuals to the state, because individuals are an organic part of the state, each of which has its own position and responsibility to contribute to the glory of the state.⁶²

The authoritarian leaders would indulge in the concept of integralist state because it would facilitate their ambition to establish totalitarianism supported by constitution. Even, if traced to Soepomo's speech on 31 May 1945 in BPUPK, Soepomo used the term totalitarian to describe integralist state concept. Soepomo said:

"This is the idea of totalitarianism, the Indonesian integralism idea, which also manifested in its original structure of the state.

Therefore, I recommend and agree with the stance of the establishment of a united national state in the sense of totalitarianism as I described earlier, that is, a state that will not unite itself only with the largest group, but that overcomes all groups and will heed and respect the privileges of all large and small groups. ...

So, in a totalitarian or integralist state, the state will remember all circumstances, the law of the state will give attention to all the privileges of the various groups that exist in our homeland."⁶³

However, the reason behind the acceptance of the family state concept by majority Framers is inseparably linked to their position under Japanese occupation and the promise to grant Independence to Indonesia.⁶⁴ Japan invasion to the Dutch Indies and defeated the Netherland Colonizer in March 1942 had been responded in two ways among the elites, cooperative and non-cooperative. Most of the framers of the constitution were from the cooperative group. It is also important to bear in mind that the forum to discuss the draft of Constitution (*Dokuritsu Zyunbi Tyoosakai* – BPUPK) was created by and under supervision of Japanese Military Authority. Accordingly, in his dissertation Jakob Tobing notes that most of 1945 original Constitution "was tainted with fascist WWII Japanese ideas of integralism and of the hegemonic Greater East Asia Co-Prosperity Sphere project", except the preamble (Jakarta Charter) which drafted in reses time out of BPUPK's official meeting.⁶⁵

The debate in the BPUPK became the historical fact in Indonesia original constitutional making. The fact that at that time the Framers accepted the integralist state concept

⁶⁰ Ryan Muthiara Wasti, "Mekanisme Impeachment Di Negara Dengan Sistem Presidensial : Studi Perbandingan Mekanisme Impeachment," *Mimbar Hukum* 31, no. 2 (2019): 237–251.

⁶¹ Abdurrachman Satrio, "A Battle Between Two Populists : The 2019 Presidential Election and the Resurgence of Indonesia 's Authoritarian Constitutional Tradition," *Australian Journal of Asian Law* 9, no. 2 (2019): 175–195.

⁶² RM. A.B. Kusuma, "Lahirnya UUD 1945 : Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha-Oesaha Persiapan Kemerdekaan".p.127

⁶³ RM. A.B. Kusuma.123-133

⁶⁴ Abdurrachman Satrio Pratomo, "Constitutionalizing The Family State Ideology In Southeast Asia: The Case Of Indonesia And Singapore," *Central European University Private University*, 2021.p.1-53

⁶⁵ Jakob Tobing, "The Essence of the 1999-2002 Constitutional Reform in Indonesia : Remaking the Negara Hukum . A Socio-Legal Study" (Leiden University, 2023).p.18.

based on Germany totalitarian school of thought and Japanese fascism should be viewed as the context of time. The discussion happened in 1945, during World War II, under the supervision of Japan authority. Furthermore, after the Indonesian independence there was constitutional dynamic marked by the adoption of 1949 the United States of Republic of Indonesia and 1950 Provisional Constitution which more liberal, democratic and recognizing human rights norms.

The Annotation of 1945 original Constitution recognized itself as the 'living constitution' by describing it as a concise and flexible constitution. When adopting the Indonesian Constitution on 18 August 1945, Sukarno asserted that the (original version of) 1945 Constitution was just a temporary Constitution, a flash Constitution, or *revolutie grondwet* (revolution constitution), and the Indonesian people later will make a more complete and perfect Constitution. The amendment of the constitution in 1999-2002 which established the democratic system, check and balances, as well as human rights norm recognition, should be viewed as the means to achieve the better constitution, which is constitution with constitutionalism.

The country's long experience of having an authoritarian constitution is a reminder that this country must not repeat the same mistakes. The demand for a return to the original text of the 1945 Constitution through the Fifth Amendment will greatly allow the authoritarian regime to re-emerge. Because the original text of the 1945 Constitution did not regulate the separation of powers and the regulation of human rights. This is a setback and a serious threat in the course of Indonesia's post-reform democracy.

3. CONCLUSION

Authoritarian regimes frequently seek constitutional legitimacy to generate an illusion of legal governance, using constitutions as tools for maintaining control. The phenomena of "constitutions without constitutionalism" and "false constitutionalism" illustrate a political paradox where constitutions are manipulated or disregarded, which undermines their original intent. This inconsistency is not merely a product of legal frameworks but is influenced by cultural factors and the historical context in which these constitutions operate. In Indonesia, the original 1945 Constitution served as a key instrument for the Soekarno and Soeharto governments to legitimize their rule, bypassing democratic values and human rights in favor of authoritarianism. The study contributes significantly to understanding the mechanisms through which constitutions can serve as legitimizing tools for autocratic regimes, specifically in the context of Indonesia. It also sheds light on the political and cultural influences that shape the evolution of constitutional frameworks, particularly in post-colonial societies. Following the political reforms of 1998, Indonesia underwent a significant transformation with the 1999-2002 amendments to the Constitution, which resulted in a more democratic framework. These amendments were crucial in promoting greater human rights protections, democratic values, and political inclusivity. However, the ongoing calls to reinstate the original 1945 Constitution highlight the lingering threat to the democratic principles established after the reforms. To effectively address this issue, Indonesia must properly position its amended Constitution as an unyielding supreme norm embedded with genuine constitutionalism rather than a flexible tool for political expediency. This positioning underscores the critical urgency of safeguarding post-reform democratic architecture against retrogressive legal maneuvers. This study underscores the delicate balance between constitutional legitimacy and democratic governance, illustrating the

role of constitutional amendments in shaping a more open society. Further research could include comparative studies with other countries that have undergone similar political transitions exploring how democratic consolidation can be maintained against calls for reverting to more authoritarian frameworks.

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