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BOOK REVIEW

INCONSISTENCY AND INCOHERENCE IN THE AMENDED CONSTITUTION OF INDONESIA

Kaelan. (2017). Inkonsistensi dan Inkoherensi dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Hasil Amandemen (Kajian Filosofis - Yuridis), Jakarta: Paradigma.

At the beginning of the reform or *the Reformasi*, the amendment of the 1945 Constitution of Indonesia had been taken place for four years in a row spanning from 1999 to 2002, arranged by members of the People's Consultative Assembly (MPR) in *Senayan,* Jakarta. The amendments series are an integrated set of process proclaimed as a general agreement among the majority of the people concerning the ideal state-building, particularly in the formulation of the fundamental law of the Indonesian state. In the very essence, significant changes had been made at least to regulate the three most urgent matters.

The first issue is to limit the power of the organs of state, namely executive, legislative, and judicative. *Second*, it aims to manage relations among state institutions. *Third*, change is meant to regulate the power relations between state institutions and citizens.

For more than two decades after the constitutional reform passed, many studies on the Indonesian constitution and legal norms conducted by experts and scholars of both constitutional law and political science have recommended for the need of the fifth amendment to the 1945 Constitution. The recommendation is based on scientific research finding out that three fundamental principles contained in the 1945 constitution have lack of ideal qualities. Those comprise of; the principle of limiting power the organs of the state remain less than ideal as overlapping power frequently occurs; the relations among state institutions continuously involves sectoral egos; and power relations between state and society or public institution and citizens are still asymmetrical, distant, and difficult to reach.

The seminal work of Professor Kaelan has presented people or readers an important studying about inconsistencies and incoherence in the amendment of the 1945 Constitution. This book provides an in-depth analysis and relevant contribution to the existing studies in the 1945 Constitution of Indonesia. The changes to the constitution in the early 21st century had been made not merely based on political, but also theoretical consideration. The political agreement reached in *Senayan* to form a constitutional system can be explained based on theories and socio-cultural roots of Indonesian society.

Kaelan began the book by studying the Indonesian constitution and legal norms from a philosophical-juridical perspective. Various

views from prominent scholars and experts, such as Sudikno Mertokusumo, Soerjono Soekanto, Notonagoro, A. Hamid S. Attamimi, Hans Kelsen, Hans Nawiasky, Gustaf Radbruch, and K.C Where, are referred to elaborate a number of concepts namely the foundations of the legal system, the understanding of the Constitution and the Constitution, the Indonesian legal norm system, and the hierarchy of state legal norms. Of these views, Kaelan argues that the state of Indonesia is a state of law, meaning that each state's administration and implementation are regulated by law. Therefore, it can be said that all of the regulations in Indonesia are a system consisting of multiple elements and parts that are interconnected and hence, each of them must have a consistent relationship. Besides, the norms and rules contained in the legal system must also have a coherent relationship. The 1945 Constitution, as one element in the legal system in Indonesia, has an essential function as a basic norm.

In the second chapter, Kaelan discusses *Pancasila* (five principles) as the basis of the philosophy of the nation regarding coherence and consistency of the articles contained in the 1945 Constitution. As the prior chapter, Kaelan refers to the expert views on the *Pancasila* as the substance of *staats-fundamentalnorm* or fundamental state norms. Subsequently, he argues that *Pancasila* as *Philosifische Grondslag* in the Preamble of the 1945 Constitution essentially has the status of fundamental norms in the Indonesian legal order system and hence as a source for the formation of articles of the 1945 Constitution. Thus, *Pancasila*, as a legal order as a whole, has a systematic, consistent, and coherent relationship with the Constitution, MPR Decree, and Law.

In the third chapter, Kaelan discusses the opening of the 1945 Constitution as fundamental state norms is a source of consistency and coherence of the legal norms of the 1945 constitution. By citing the opinion of Hans Nawiasky, Kaelan argues that the nature of *staats-fundamentalnorm* laws is a pre-requisite for the application of the constitution in which it must be legally based on the Preamble of the 1945 Constitution.

Based on the theoretical analysis of the earlier chapters, Kaelan points out that articles of the 1945 Constitution were inconsistent and incoherent with the basic principles of the state, due to Pancasila as the scientifically philosophical basis of coherence for statutory regulations. For instance, the form of a republican unitary state, the political foundation of the state or democracy, people's sovereignty, and the purpose of the state as the Preamble to the 1945 Constitution,

Some instances explain how inconsistency and incoherence occur in the amendment of the 1945 Constitution, along with the Preamble and *Pancasila*. *First*, people's sovereignty in the MPR is only based on the principle of cameralism-federalism and the principle of checks and balances as applied in the United States of America. MPR, as a high state institution, is only a joint session between the DPR and DPD. The people's sovereignty in the MPR was eliminated, so that the MPR's power was merely ceremonial, namely inaugurating the President and Vice President. This inconsistency and incoherence with the principle of consultative-representation as contained in the Preamble of the 1945 Constitution.

Second, the DPD formulated in the amended 1945 Constitution is only the complementary body for DPR, which does not have original power. The DPD does not have power at the state level, namely: a) legislative power, b) budgetary power, c) supervisory power, and d) judgmental power. The DPD as legislative body that originates from regional representatives is elected directly by the people such as the DPR. It does also contradict and inconsistent with the principle of a unitary state, Unity in Diversity or *Bhinneka Tunggal Ika*, as the Preamble stated.

Third, Article 33 paragraph (1), (2), (3) of the 1945 Constitution emphasizes the principle of the Indonesian economic system following the principle of togetherness and kinship. Instead, paragraph (4) emphasizes that the national economy is on the basis of economic democracy in which the practice arguably tends to adopt the principle of (neo)liberal-capitalist ideology. Such finding is also inconsistent and incoherent

with the state's objectives in the Preamble to the 1945 Constitution and *Pancasila*. Based on the basic principle of the *Pancasila's* philosophy, the state has to realize social justice for all Indonesian people. The presence of capitalists must be put in the paradigm that the economy is for the people, not for corporate and vested interests. The land, water, and any kind of natural resources contained in the earth of Indonesia must not be controlled and handed over by the capitalists with the principle of competition. Normatively everything must be controlled and handed over to the government managed with a positive synergy for the prosperity of the people. Therefore, for Kaelan, article 33 is inconsistent and not in accordance with the objectives of the state in the Preamble to the 1945 Constitution of Indonesia

This argument is probably following the opinion of Mahfud MD in his book titled "*Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*" within which he stressed that the amendment of the 1945 Constitution still leaves some dissatisfaction, despite the four-times changes made very carefully. As the trajectory of the 1945 Constitution amendment is about political struggles between academic truth and political choice, not all ideas of the amendments derived from academic works can be accepted in the political process. Many valuable ideas had been proposed as the articles for the amendment of the 1945 Constitution but were not accepted in such political choice, such as bicameralism. Therefore, it implies that academic truth is not always in line and even often contrary to political choice. What is academically right is not necessarily politically correct.

Such dissatisfaction may also be consistent with the opinion of Kenneth Wheare in his book "Modern Constitutions." He stated that the constitution as a political agreement follows particular needs and situations. In this sense, amendment of the 1945 Constitution at the beginning of the reform were probably being made on the basis of specific needs or situations of that time. Moreover, it is also important to note Friedman's view contending that law does not only consist of norms or values, but also is determined by procedures and structures built based on culture of the nation.

In conclusion, from both theoretical and juridical viewpoints, this book has presented issues that are considered necessary as a reason for making changes to the fifth 1945 Constitution. However, the discussion in this book has not reviewed contemporary issues of political reality which plays an essential role in determining whether or not the fifth amendment to the 1945 Constitution was achieved as K. Wheare. He argued that the change in the law or the 1945 Constitution in this context was a compromise among many of political interests of certain actors. It means that politicians in *Senayan* determined the fifth amendment to the 1945 Constitution. Nonetheless, this book is suitable for discussion material for academics, researchers, students interested in studies of constitutional law, politics, and democracy.

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