

THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA: THE BASIS OF THE HIGHEST NORMATIVE ARRANGEMENT OF MASS ORGANIZATIONS IN INDONESIA

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ABSTRACT

Indonesia is a state based on law. The highest law in Indonesia is the constitution, namely the 1945 Constitution of the Republic of Indonesia. Based on this fact, it means Indonesia embraces constitutional supremacy.

The 1945 Constitution of the Republic of Indonesia contains the values, the legal norms and also the moral norms (ethics) of the Indonesian Nation. Furthermore, as the highest normative arrangement, the 1945 Constitution of the Republic of Indonesia must be used as a reference, both by the Government of the Republic of Indonesia and also by all of the Indonesian citizens.

Therefore in the mass organizations, the 1945 Constitution of the Republic of Indonesia must be implemented and elaborated in the articles of association as the constitution or the basis for the establishment of the organization.

Keywords: constitutional supremacy, the highest normative arrangement, mass organizations.

INTRODUCTION

Starting from the desire to limit the State power, so that the State does not abuse its power, which can violate the rights of the people and in turn will harm the interests of the people, a constitution is made. Thus as an organization of power, the State always has a constitution which is an official legal document with a very special position, because it contains the agreements on the basic principles of organization and the State power, and also the efforts to limit the State power. This is consistent with the opinion of Brian Thompson, who defined the constitution: "... a constitution is a document which contains the rules for the operation of an organization".⁴ According to Padmo Wahjono, constitution (*grund-gezets*) is "the pattern that forms group life in the form of a state, and is the highest law or grundnorm, and at the same time the source norm (ursprungnorms) for all applicable laws".⁵

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⁴ Brian Thompson, *Textbook on Constitutional and Administrative Law*, Edisi ke 3, (London: Blackstone Press Ltd., 1997), p. 3 as cited in Jimly Asshiddiqie, "Aktualisasi dan Perbandingan Ideologi" in Jimly Asshiddiqie, *Menuju Negara Hukum Yang Demokratis*, First Edition, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), p. 5.

⁵ Padmo Wahjono, "Undang-Undang Dasar 1945", in Padmo Wahjono, *Membudayakan Undang-Undang Dasar 1945*, (Jakarta: Penerbit IND-HILL-CO, 1991), p. 1.

The basic law of the Republic of Indonesia is the 1945 Constitution (UUD 1945) which passed by BPUPKI on August 18, 1945 and re-enacted by Presidential Decree on July 5, 1959. As with the constitution of other countries which have an opening section, the 1945 Constitution also has an opening section/a preamble. The Preamble of the 1945 Constitution contains the Aims of the Republic of Indonesia and the main ideas that underlying the constitutional life of the Republic of Indonesia. The Aims of the Republic of Indonesia (the National Aims) are: (1) to protect the whole Indonesian nation and the entire native land of Indonesia; (2) to advance the public welfare; (3) to educate the life of the nation; and (4) to participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice.

The main ideas underlying the constitutional life of the Republic of Indonesia were Pancasila, contained in Paragraph IV of the Preamble of the 1945 Constitution. Pancasila as the basis of this State, is then elaborated in the 1945 Constitution. The 1945 Constitution contains basic rules in the administration of the state. Thus Pancasila contained in the Preamble of the 1945 Constitution of the Republic of Indonesia is an integral part of the 1945 Constitution.

After Suharto's resignation from his position as President on May 21, 1998, a demand to make changes in the 1945 Constitution emerged because it was realized that the 1945 Constitution had a number of weaknesses which led to the emergence of authoritarian government in Indonesia. In accordance with the basic agreement of all factions in the MPR, the Preamble of the 1945 Constitution was not changed. Thus the Pancasila as the basis of the State still exists.

All systems of legal norms and ethical norms in the life of society, state and nation are integrated in the 1945 Constitution of the Republic of Indonesia.⁶ The 1945 Constitution of the Republic of Indonesia, which is a basic law, must be implemented by all state institutions and citizens in accordance with their respective functions based on the principle of checks and balances.

Based on the background as previously described, this paper intends to find out the implementation of the 1945 Constitution of the Republic of Indonesia by mass organizations in Indonesia, because the constitution must not only be understood but must be implemented in the daily life.

The Position and the Functions of the 1945 Constitution of the Republic of Indonesia

Indonesia is a state based on law. The highest law in Indonesia is the constitution, namely the 1945 Constitution of the Republic of Indonesia (further referred to as the 1945 Constitution). Based on this fact, it means Indonesia embraces constitutional supremacy.

With the adoption of the Principle of constitutional supremacy, all actions taken by state administrators and all citizens must be based and should not contradict with the 1945 Constitution. The 1945 Constitution (including the Pancasila in the Preamble of the 1945 Constitution) must be the highest normative reference for state administrators and all citizens. Pancasila and the 1945 Constitution are the spirit and soul of the people of Indonesia, which contains ideas and values of morality that live in society. Pancasila and the 1945 Constitution are not only the sources of constitutional law, but also the sources of constitutional ethics and morals, which are not enough to understand and live the content of their meanings and messages only by reading the texts, words and the semicolon, but must live the ideas, and the moral and ethical values contained therein.⁷

⁶ Jimly Asshidiqie, "Pengantar: Konstitusi Bernegara", in Jimly Asshidiqie, *Konstitusi Bernegara: Praksis Kenegaraan Bermartabat dan Demokratis*, (Malang: Setara Press, 2015), p. ix.

⁷ Jimly Asshidiqie, "Wacana Konstitusi Sosial", in Jimly Asshidiqie, *Gagasan Konstitusi Sosial: Institusionalisasi dan Konstitusionalisasi Kehidupan Sosial Masyarakat Madani*, (Jakarta: Pustaka LP3ES,

In the Indonesian Legal System, the making of laws and regulations must be based, sourced, and must not contradict to Pancasila, as the source of all sources of law (see Article 2 of Law No. 12 of 2011 on the Establishment of Legislation or P3 Law), and the 1945 Constitution as the basic law (see Article 3 paragraph (1) of the P3 Law). Thus the establishment of legislation in Indonesia must be compliant to Pancasila and the 1945 Constitution.⁸ The 1945 Constitution is the highest normative foundation that must be used as the guideline and reference in the making of the legislation thus the legislation made has legitimacy.

Refers to the *Stufenbautheorie* from Hans Kelsen and *die Theorie vom Stufenordnung der Rechtsnormen* from Hans Nawiasky, Pancasila is the *grundnorm* or *staatsfundamentalnorm*, whereas the 1945 Constitution is the *staatsgrundgesetz* or Basic Rules/Principles of the State. Lawmaking is a concretization process in which abstract norms are translated into positive norms (generallorm) then individualized into concrete norms (concretenorm).⁹

The Character of the 1945 Constitution of the Republic of Indonesia

The founding fathers who want Indonesia to be fully sovereign both in the political, economic field, and social field and thus mean the national aims aspired has been achieved, has created the 1945 Constitution which not only regulates the activities of the state but also regulates economic activities and activities of civil society in community life at once.¹⁰ Related to this, according to Jimly Asshiddiqie, the 1945 Constitution is the political constitution, as well as the economic constitution and the social constitution of Indonesia. As the political constitution, the 1945 Constitution must be used as the reference in organizing government. As the economic constitution, the 1945 Constitution regulates how the national economic system should be arranged and developed to achieve people's welfare. And as the social constitution, the 1945 Constitution regulates the social life of the people of Indonesia.¹¹

As the political constitution, the 1945 Constitution regulates the state institutions that are given the task of organizing the governance, complete with the authorities, duties, functions, and relations between the state's institutions, as well as the relations between the state's institutions and the citizens. This is regulated in Chapter I concerning Forms and Sovereignty (Article 1), Chapter II concerning the People's Consultative Assembly (Article 2 and Article 3), Chapter III concerning the Governing Powers of the State (Article 5, Article 6, Article 6A, Article 7, Article 7A, Article 7B, Article 7C, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, and Article 16), Chapter V about the State Ministries (Article 17), Chapter VII concerning Regional Governments (Article 18, Article 18A, Article 18B), Chapter VII concerning the People's Representative Council (Article 19, Article 20, Article 20A, Article 21, Article 22, Article 22A, and Article 22B), Chapter VIIA concerning the Regional Representative Council (Article 22C and Article 22D),

2015), p. 47 and 49. For more details read: Kaelan, "Kedudukan dan Fungsi Pancasila", in Kaelan, *Negara Kebangsaan Pancasila: Kultural, Historis, Filosofis, Yuridis, dan Aktualisasinya*, First Edition, (Yogyakarta: Penerbit Paradigma, 2013), p. 39-75.

⁸ Tundjung Herning Sitabuana, "Warga Negara dan Kewarganegaraan", in Tundjung Herning Sitabuana, *Penyelesaian Masalah Diskriminasi Terhadap Etnis Cina: Studi tentang Perkembangan Politik Hukum di Bidang Kewarganegaraan Republik Indonesia*, (Jakarta: Penerbit Konpress, 2015), p. 37-39.

⁹ For more details read: *ibid.*

¹⁰ Jimly Asshiddiqie, "Implikasi Perubahan UUD 1945 Terhadap Sistem Hukum Nasional", in Jimly Asshiddiqie, *Menuju ...*, *op. cit.*, p. 176-178.

¹¹ Jimly Asshiddiqie, "Perubahan UUD 1945 dan Pembangunan Hukum Nasional", in Jimly Asshiddiqie, *Menuju ...*, *op.cit.*, p. 326-327.

Chapter VIIIA concerning the Financial Audit Board (Article 23E, Article 23F and Article 23G), and Chapter IX concerning Judicial Power (Article 24, Article 24A, Article 24B, and Article 24C).

As the economic constitution, the 1945 Constitution regulates how the national economic system should be arranged and developed to achieve people's welfare. This is regulated in Chapter XIV concerning National Economy and Social Justice. Chapter XIV consists of two articles, namely Article 33 and Article 34, but only Article 33 that related to the character of the 1945 Constitution as an economic constitution.

As the social constitution, the 1945 Constitution regulates social life that can be used as a guide for all citizens in daily life. This is found in Chapter X concerning Citizens and Inhabitants (especially Article 27 and Article 28), Chapter XI concerning Human Rights (Article 28A - Article 28 J), Chapter XIII on Education and Culture (Article 31 and Article 32), and Chapter XIV concerning the National Economy and Social Justice (especially Article 34). Furthermore, in the term "social constitution" there are two dimensions, namely:¹²

- a. The social constitution contains norms that govern key policies regarding the social life of the community;
- b. The social constitution is and can be used as a normative common reference for every citizen in association with others in the society.

According to Jimly Asshiddiqie, "these provisions must always be elaborated consistently to achieve national aims, and to be able to anticipate and provide solutions to emerging development problems, in accordance with the principles of a democratic state based on law".¹³

The Implementation of the 1945 Constitution of the Republic of Indonesia in the Mass Organizations in Indonesia

Based on the provision of Article 28 of the 1945 Constitution which states that "The freedom to associate and to assemble, to express thought verbally and in writing and else shall be stipulated by laws" thus all Indonesian citizens have the constitutional rights to associate and gather in social life. Based on the constitutional rights, there are many non-state organizations formed in social life, which are commonly called mass organizations, whether in the forms of associations that have membership or foundations that do not have membership, as well as business organizations. In carrying out its activities all mass organizations and business organizations must use the 1945 Constitution which contains values, legal norms and ethical norms as the highest normative guidelines.

Other evidence that the 1945 Constitution is a "social constitution" is a constitutional confirmation of the status of indigenous peoples through Article 18B paragraph (2) of the 1945 Constitution which states that "The State shall recognize and respect entities of the *adat* law societies along with their traditional rights to the extent they still exist and are in accordance with the development of the society and the principle of the Unitary State of the Republic of Indonesia, which shall be regulated by laws". In addition, Article 28I paragraph (3) of the 1945 Constitution also confirms that: "The cultural identity and the right of traditional societies shall be respected in harmony with the development of the age and civilization". Units of indigenous community are legal subjects bearing constitutional rights and obligations.¹⁴

The right to associate and assemble is not only a constitutional right of Indonesian citizens, but also a human right. This is confirmed in Article 28E paragraph (3) of the 1945

¹² Jimly Asshiddiqie, *Gagasan Konstitusi Sosial ..., op. cit.*, p. 42.

¹³ *Ibid.*

¹⁴ Jimly Asshiddiqie, "Pendahuluan", in Jimly Asshiddiqie, *ibid.*, p. 1-26.

Constitution, which states that: “Every person shall be entitled to freedom to associate, to assemble, and of expression”. Related to this human rights, Article 28J Paragraph (1) of the 1945 Constitution orders that: “Every person shall respect human rights of the others in the order of life of the society, nation, and state”, because Article 28J Paragraph (2) confirms that: “In the exercise of his/her rights and freedom, every person shall abide by the limitations to be stipulated by the laws with the purpose of solely guaranteeing the recognition as well as respect for the rights and freedoms of the others and in order to comply with just demands in accordance with considerations for morality, religious values, security, and public order in a democratic society”. Rights and obligations must be balanced.

In the modern state system, the power system in a common life is in or distinguished in three different domains or domains, namely the state, the market, and society. Although the state is still a responsible actor, the three owners of power must be equally strong, go hand in hand, not interfere with each other, and control each other.¹⁵

Mass organizations and business organizations also have an obligation to work together with state organizations and all Indonesian people so that the National Aims can be realized. For this reason, mass organizations and business organizations must have a deep understanding of the 1945 Constitution because with that the two organizations will know the constitutional rights granted by the constitution so that they can participate to exercise control over the state administration. The values of Pancasila and the 1945 Constitution must be implemented and elaborated in the articles of association, which are the constitutions of mass organizations and business organizations what will guide their members to behave ideally in the social life. The articles of association, which constitute the constitution of mass organizations and business organizations, must be understood inseparably substantially from the 1945 Constitution. All citizens who join mass organizations and business organizations must be aware of the constitutions and then implement it.¹⁶

Conclusion

Based on the description above, it can be understood that Pancasila and the 1945 Constitution of the Republic of Indonesia are the philosophical basis for the implementation of state life, thus all actions of the state administrators and all citizens must be based and should not contradict with Pancasila and 1945 Constitution. Therefore freedom to associate, to assemble, and of expression both in verbal and written as stated in Article 28E of the 1945 Constitution, is also based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

One example of the implementation of constitutional rights as stipulated in Article 28 of the 1945 Constitution of the Republic of Indonesia is the establishment of non-state organizations commonly called as mass organizations and also business organizations. As constitutional rights as well as human rights, everyone must respect the human rights of others, and everyone must comply with the limitations set forth in the law. On the other hand, mass organizations and business organizations have the obligation to work together with state organizations and all Indonesian people in the realization of the Aims of the Republic of Indonesia.

¹⁵ *Ibid.*, h. 113-114.

¹⁶ Jimly Asshiddiqie, “Pendahuluan”, in Jimly Asshiddiqie, *op. cit.*, p. 1-26.

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