

The Role of the People in the Amendment of the 1945 Constitution Based on Democratic Constitution Making: Future Prospects

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Abstract

The amendments to the 1945 Constitution allegedly are not in line with the expectations of a democratic constitution. In fact, the role of the people in four amendments to the 1945 Constitution was very limited. The people who were involved in the amendment processes represented limited number of groups. Incidentally, only people with important and dominant powers were involved. The people were also not involved from the beginning of the amendment processes. Therefore, the role of the people in the amendments had not been carried out optimally. The results of the study show that the role of the people directly and actively in the amendment could increase transparency and public trust towards the government. The people are expected to be more responsive, accommodating, aspirational, and participatory to give rise to a match between the will of the people and the wishes of the government in the realization of the ideals of the Indonesian nation. The direct and active role of the people can be realized through conventional media, print media, and electronic media in a structured and systematic manner. It is expected that the people's role will be able to strengthen the Indonesian constitutional system and economic, political, social, and cultural stability, as well as the defense and security of the Republic of Indonesia. In addition, the direct involvement of the people is expected to be in line with the optimization of the role of the Constitutional Court as the 'guardian of the constitution' to maintain the purity of the 1945 Constitution.

Keywords: 1945 constitution of the republic of indonesia, democratic constitution making, future prospects.

Peran Rakyat dalam Perubahan Undang-Undang Dasar 1945 Berdasarkan Democratic Constitution Making: Prospek Masa Depan

Abstrak

Perubahan UUD 1945 yang telah dilakukan disinyalir masih jauh dari ekspektasi suatu pembentukan konstitusi yang demokratis. Faktanya, peran rakyat dalam 4 (empat) kali perubahan UUD 1945 sangatlah terbatas. Rakyat yang terlibat dalam proses amandemen hanya mewakili golongan tertentu saja dan notabene mempunyai kekuatan yang penting

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dan dominan. Rakyat juga tidak dilibatkan dari awal proses perubahan UUD 1945, sehingga peran rakyat dalam perubahan UUD 1945 secara aktif belum terlaksana secara optimal. Hasil penelitian menunjukkan bahwa peran rakyat secara langsung dan aktif dalam perubahan UUD 1945 dapat meningkatkan transparansi dan kepercayaan publik terhadap pemerintah. Rakyat diharapkan lebih responsif, akomodatif, aspiratif dan partisipatif sehingga akan terwujud kesesuaian antara kehendak rakyat dan keinginan pemerintah dalam mewujudkan cita-cita bangsa Indonesia. Peran rakyat secara langsung dan aktif dapat diwujudkan melalui media konvensional, media cetak bahkan media elektronik yang dilakukan secara terstruktur dan sistematis. Diharapkan dengan peran rakyat ini akan mampu memperkuat sistem ketatanegaraan Indonesia, stabilitas ekonomi, politik, sosial, dan budaya serta pertahanan dan keamanan NKRI. Sebagai tambahan, pelibatan peran rakyat secara langsung ini diharapkan akan sejalan dengan optimalisasi peran Mahkamah Konstitusi sebagai institusi “pengawal konstitusi” guna tetap menjaga kemurnian UUD 1945.

Kata kunci: democratic constitution making, prospek masa depan, uud nkri 1945.

A. Introduction

The 1945 Constitution of the Republic of Indonesia (the 1945 Constitution) is a very essential for Indonesia. It contains basic rules of state administration to enable the administration of the state running well and achieving the objectives. The role of the people is needed in the amendment of the constitution to be more democratic. The people's participation is recognized as democratic constitution making. Democratic constitution making is seen as a vital instrument to achieve other objectives. It is argued that popular participation in the constitution making process is essential to ensure that a constitution is effective and that the population endorses the principles. In other words, to ensure that it is seen as legitimate by the citizens.¹ Thus, democratic constitution making involves people's active role in order to achieve a more democratic process and produce the actual payload of the constitution of matter itself. In fact, Indonesia already has a constitution that has been amended four times.

According to Wheare, in Manan, the Amendment of the 1945 Constitution is divided into four parts:²

- (1) *“some primary forces made by the majority of the people as an influential or dominant force, strong groups, or forces that determine in society;*
- (2) *formal amendments are changes made in accordance with the methods stipulated in the constitution itself or the constitution to be amended or the laws and regulations in force;*

¹ Cherly Saunders, “Constitution Making in the 21st Century”, *International Review of Law*, Vol. 4, Issue 630, 2012, p. 10.

² Bagir Manan, *Teori dan Politik Konstitusi*, Yogyakarta: FH UII Press, 2013, p. 30.

- (3) *judicial interpretation is a change based on law through interpretation, which is carried out according to the provisions of the applicable laws and regulations; and*
- (4) *usages and conventions are changes that occur in circumstances without resulting in changes to the words written in the constitution which occur only renewal of meaning, both through formal changes, judges' decisions, customary law, and conventions."*

The changes are modification to the constitution through a formal amendment process. According to Manan, formal amendments can be done through four possibilities:

"(1) the constitution can be changed by the body authorized for that, either through special procedures or ordinary procedures; (2) the constitution can be changed by a special body, that is a body whose authority only changes the constitution; (3) the constitution is amended by a number of states with special procedures; and (4) the constitution can be amended in a referendum."³

Observing the above description, the amendment to the 1945 Constitution in the process of developing democracy should be able to involve the people actively, because democratic constitution-making is an instrument to achieve other objectives.⁴ Democratic constitutional ideas are part of the basic agreement of the people that contribute to the rules for regulating the people in the life of the nation and state.

The role of the people in making or changing constitutions is the subject of ongoing debate. Despite there is no true consensus on this, there seems to be an original trend towards a more democratic form of constitution making. Opinions emerge that a democratic constitution is determined not only by the government, but it should be made in a democratic process. The improvement of roles of peoples are seen as essential factor for creating the constitution nowadays. The active role of the people in the making of constitution is an intrinsic value for democratic people.⁵

The role of the people in democratic constitutional change is a concrete manifestation of democracy. The role of the people in making a constitution democratically was important to ensure that the constitution was effective to carry out so that it could have an effect on the actual material content contained in the constitution. A more democratic process in making a constitution will produce a

³ *Ibid.*

⁴ Cherly Saunders, *op,cit.*, p. 10.

⁵ Christopher Zurn, "Democratic Constitutional Change: Assessing Institutional Possibilities", [http:// papers.ssrn.com/sol3/papers.cfm?abstract_id=2630363](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2630363), accessed on December 2019.

more democratic constitution because it recognizes fundamental rights of its citizens and provides a better path for its citizens to contribute to public policy.⁶ In order to meet these expectations, the constitution-making process must not be inclusive but it must create mutual trust between the government and the people.

The purpose of making a democratic constitution must not only be carried out by representative institutions but it should be able to adapt and equip representative institutions to make democratic constitutions to be more open and accessible to citizens, as well as shifting focus away from political short-term interests towards long-term interests of the state. In short, it is open the path for the public voice⁷, in this case the role of the people in changing the 1945 Constitution based on democratic constitution making as a prospect for the future of Indonesia.

Indonesia has practiced four amendments to the constitution. Unfortunately, it has not been able to optimize the role of the people directly and actively as required by Article 37 of the 1945 Constitution. The People's Consultative Assembly (MPR) carried out the amendment. This means that the changes to the 1945 Constitution can only involve representative institutions without the people's role in the process. Moreover, the implementation that took place in the 1999 amendment only involved the views of experts. In the second amendment 2000 it involved the view of the MPR Factions at the Ad Hoc Committee Meeting (PAH) I, the views of experts, the views of universities, the views of State Institutions/The government, the views of religious organizations, and the views of non-governmental organizations. In third amendment 2001, it involved the views of the MPR Factions and the MPR Workers' Expert Team I. Lastly, in the fourth amendment 2002, it only involved the general views of the factions, the state institutions, non-governmental organizations, scholars/humanists, universities, and experts. Only the representatives in each field that are considered to have important and dominant forces related to the agenda represent the involvement of the people. They do not involve from the beginning of the process. Therefore, the people's active role has not yet implemented optimally.

Based on the description above, this paper elaborates two important questions. First, should the amendments to the 1945 Constitution must involve the role of the people directly and actively. Second, what should be the role of the people in the amendment to the 1945 Constitution as a prospect for Indonesia's future?

⁶ Ronald Van Crombrugge, "Belgium and Democratic Constitution-Making: Prospects for The Future?", *Netherlands Journal of Legal Philosophy*, Vol. 46, Issue 1, 2017, p. 14.

⁷ James Fishkin, "Deliberation by the People Themselves: Entry Points for the Public Voice", *Election Law Journal*, Vol. 12, Issue 503, 2013, p. 7.

B. Stages of the Constitution Making in the Implementation of Amendments of the 1945 Constitution

For the first part, the paper explains the stages of constitution making. The aim is to reveal the stages in making a constitution. In this case, the focus of the discussion is the amendment of the constitution. Constitution making and democratic constitution making are two different things, although they are inseparable and always related. According to Saunders, in Soedarsono, there are three important stages of constitutional formation in amending the constitutional text as follows:⁸

1. Setting of Agenda

This stage discusses the elements that will be included in the new constitutional text. It also discusses the principles and bodies of the old constitutional text that may even formulate and determine new bodies of the new constitutional text. This stage is simply a joint agreement to determine the scope of the formulation of the amendment to the 1945 Constitution. Therefore, the formulators of the amendment to the 1945 Constitution, after going through lobbying between faction representatives in Ad Hoc Committee III, five agreements were agreed in making changes to the 1945 Constitution.⁹

- a. *“First, it does not change the Preamble of the 1945 Constitution because there is a philosophical and normative basis that underlies all articles of the constitution. In addition, the Preamble of the 1945 Constitution contains the establishment, the purpose, and the basis of the state.*
- b. *Second, the constitution maintains the Unitary State-Republic of Indonesia. The agreement to maintain the form is based on the consideration that unitary state is a form that was determined from the beginning of the establishment of the Indonesian state. The unitary state is also seen as the most appropriate way to accommodate the idea of unity of a pluralistic nation.*
- c. *Third, it reinforces the presidential government system. Presidential system is seen as more suitable for Indonesia because, once, Indonesia implemented a parliamentary system and it was not suitable to form stable governance. In addition, other considerations are based on the choice of the founding founders who set a democratic state with a parliamentary system of government.*
- d. *Fourth, it negates the elucidation of the 1945 Constitution by bringing up normative matters into articles. The addition of the*

⁸ Cheryl Saunders on Soedarsono, *Putusan Mahkamah Konstitusi Tanpa Mufakat Bulat*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2008, p. 47.

⁹ Mahkamah Konstitusi Republik Indonesia, *op. cit.*, pp. 159-160.

articles of the 1945 Constitution automatically changed the Elucidation and the explanation was deemed unnecessary.

- e. *Fifth, it makes changes in an addendum manner. The addendum was chosen to maintain the authenticity of the 1945 Constitution. Thus, the original manuscript of the 1945 Constitution and its elucidation, which is contained in State Gazette Number 75 of 1959 because of the Presidential Decree of July 5, 1959, is attached inherently to the text of the amended 1945 Constitution. The MPR factions also agreed that the state had a system of separation of powers and a system of checks and balances."*

In the conception of Cheryl Saunders, the result of the basic agreement is an element that becomes an agreement of the parties involved in the amendment to include the element into the new 1945 Constitution. The agreement turns into the basis or basics of the new 1945 Constitution. The amendment occurred in four stage. They include the formation of new institutions other than those already existing and re-stipulated in the amended 1945 Constitution.

2. Design and Development

This stage is considered as the most difficult stage because it determined institutions that are authorized to form constitutional texts in which they can combine a number of constitutional issues along with a number of legal, political and community interests. Amendment of the 1945 Constitution did not result in a significant debate regarding institutions authorized to amend the 1945 Constitution, either existing institution like MPR or independent Ad Hoc committee. This issue was not raised in the discussion process. Changes to the 1945 Constitution conducted in four stages from 1999 to 2002.

Referring to Saunders's view, design and development in the stages of the amendment to the 1945 Constitution are in the hand of the MPR as regulated in Article 3 of the original 1945 Constitution. An independent body called the Constitutional Commission was a subject of debate, but it processed the amendment. It was not an independent institution authorized to change the 1945 Constitution. Finally, in the plenary session of the MPR decided the formation of a Constitutional Commission (The debate and discussion stage for the Constitutional Commission is in the General View of the Factions in the Level II Talk stage and approved in the Level IV Talks in the Third Amendment Session). Furthermore, the MPR established the MPR Workers' Body, which consisted of several Ad Hoc Committees that had different duties and authorities in the formulation and amendment of the 1945 Constitution.¹⁰

¹⁰ Majelis Permusyawaratan Rakyat, *Bahan Tayang Materi Sosialisasi Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Sekretariat Jenderal MPR RI, 2006, pp. 30-31.

3. Approval

In the final stage, the admission process is conducted by choosing one of two ways: (1) by the people or (2) representatives. In this stage, the role of the people is demanded either directly or indirectly (represented), which, in turn, may affect the sense of ownership of a constitution.¹¹ Of course, as one of the ways to implement formal democracy directly in this stage, the people must play a direct and active role in accepting the results of the constitutional text that will be changed. The role of the people directly and actively can be made in several ways through either conventional media, print media, or electronic media in a structured, systematic, and massive manner.

The role of the people is “direct and active”. Direct refers to the condition of direct information from the government to the people of Indonesia. The information should be from the stages of setting, design, development, up to approval. Active means that there is reciprocity from both the government and the people. Structured means that, at the design and development stage, the determination of the authorized institution to make changes to the 1945 Constitution has been determined based on the Indonesian constitutional structure. In this case, it refers to Article 37 of the 1945 Constitution. Systematic means that at the agenda has been agreed mutually by the government and the people. Massive is a continuation of the two stages in order to be elaborated and carried out gradually and extensively by the government by involving the role of the people. It also means that the people can know in full and comprehensive both in the stages of the agenda setting set by the government and in the stages of design and development. Indeed, the people are involved directly and actively in the approval stage. Therefore, the government and the people mutually desire the content of the amendment.

The practice will certainly require a relatively long time. However, time does not matter to produce high-quality constitution that is able to accommodate existing material loads, current needs, and events. In the future, the 1945 Constitution does not have to experience many changes (amendments). These three stages will be elaborated with a number of concepts and theories that will be further elaborated for the involvement of the role of the people directly and actively based on democratic constitution making as an effort to prospect Indonesia’s future.

C. Democratic Constitution Making as a Direct Formal Democratic Initiative

Based on the stages of constitution making, there is a clear difference between the constitution and the laws that are formed from the beginning (new) and that have been amended. The duration of the constitution is expected to be longer with the role of the people in the process of making the constitution. Then, the government

¹¹ Cipto Prayitno, “Pembatasan *Perubahan* Bentuk Negara Kesatuan dalam Undang-Undang Dasar 1945 dalam Perspektif Constitution Making”, *Jurnal Konstitusi*, Vol. 15, Issue 4, 2018, p. 743.

does not only see the people as subjects but also as co-authors of the constitution. Hutchinson and Colón-Rios say¹²,

“From a democratist standpoint, the merit of a constitution is to be found not so much in its longevity and its force towards stability, but in its capacity for both democratic participation and constitutional transformation. (...) [T]here must be adequate mechanisms and processes in place to maximize these opportunities.”

The point is that, in the process, the democratic constitution making does not reject or prevent changes. Rather, it has the mechanism to maintain the legitimacy and commitment to respect all changes that will occur. Of course, it involves the people's role directly and actively. Democratic constitution making can assess that the extent to which the people play an active role in the process of changing the constitution is an important factor to legitimize the constitution because in the end the people will determine the effectiveness of the material content that can be understood as a commitment to implement it.

The direct and active role of the people in democratic constitution making is a part of democracy. According to Soemantri, democracy can be elaborated from two aspects: formal and material. Material democracy is based on the philosophy or ideology of a nation or state; and formal democracy is a way of carrying out democracy itself. There are two ways: direct and indirect democracy (representative democracy).¹³

The implementation of democracy is unique in every state. In this case, the difference occurs not only in formal or material democracy. It is also related to the proportion of portions that openly exist the role of the state through representative institutions or the role of the people actively in the sense of formal democracy directly.¹⁴ If the idea of formal direct democracy has a double meaning in practice, then the principles of the rule of law in the process of implementation will always develop along with developments that occur in society and the state.

In Indonesia, democratic constitution making can be carried out constitutionally. Mahfud MD states that all the constitutions that have been implemented in Indonesia stating explicitly that democracy is one of the most fundamental principles of the state.¹⁵ In general, democracy is a modern, most well-developed political system that is accepted by most states of the world. According to Mahfud MD, aside from the principle of fundamental principle,

¹² Hutchinson and Joël I. Colón-Rios, “Democracy and Constitutional Change,” *Theoria: A Journal of Social and Political Theory*, Vol. 58, Issue 127, 2011, p. 57.

¹³ Sri Soemantri Martosoewignjo dalam King Faisal Sulaiman, *Sistem Bikameral dalam Spektrum Lembaga Parlemen Indonesia*, Yogyakarta: Universitas Islam Indonesia Press, 2013, p. 10.

¹⁴ Moh. Mahfud M.D, *Hukum dan Pilar-pilar Demokrasi*, Yogyakarta: Gama Media, 1999, p. 9.

¹⁵ Moh. Mahfud M.D, *Demokrasi dan Konstitusi di Indonesia: Studi Tentang Interaksi Politik dan Kehidupan Ketatanegaraan*, Cetakan Ketiga, Yogyakarta: Rineka Cipta, 2003, p. 138.

democracy is used as a principle of state, which essentially has given direction to the role of the people to organize the state as its highest organization.¹⁶

Etymologically, democracy comes from Greek. It consists of two words, *demos* and *cratein*. *Demos* means people or residents of a place; and *cratein* or *cratos* means power and sovereignty. Democracy (*demos cratein* or *demos cratos*) means a state with a sovereign government system in the hands of the people; and the highest power is in the joint decisions of the people. The people are in power. They hold and energizes government.¹⁷ Schemer says,

*“democracy is an institutional plan to reach political decisions in which individuals gain the power to decide the way of competitive struggle over the voice of the people”.*¹⁸

Based on the focal point, democracy is divided into three types as follows.¹⁹

1. Formal democracy is a democratic system that upholds equality in the political field without accompanied by efforts to eliminate or reduce inequalities in the economic field. Formal democracy is also called liberal democracy or western-style democracy. In addition, formal democracy states that all people are considered to have the same degree and rights without the slightest difference.
2. Material democracy is a system of democracy that focuses on efforts to eliminate differences in the economic field. The equality in the political field is less noticed and sometimes even eliminated. The ruling party on behalf of the state, where everything as state property and private property tends not to be recognized, does reducing differences in the economic field.
3. Combined democracy is a democratic system that combines strengths and removes the weaknesses of formal and material democracy. It recognizes equality and rights and all activities of people are restricted. Solely, the government does this for the welfare of the people and upholding human rights.

In this democratic constitution making, the democracy in question is formal direct democracy. Efforts to achieve democratic constitution making from various constitutional amendment processes have advantages and disadvantages in each implementation but they are still used by existing states of the world and are seen as the best way. It is essential that the role of the people in democracy involves all people. President Abraham Lincoln's Speech on November 19, 1863 in Gettysburg, Pennsylvania mentions that democracy is defined as government of the people, by the people, and for the people. The role of the people in the amendment to the 1945 Constitution is an effort of implementing formal direct democracy. This

¹⁶ Mahmuzar, *Sistem Pemerintahan Indonesia*, Bandung: Nusa Media, 2013, p. 47.

¹⁷ A. Ubaedilah, *Pendidikan Kewarganegaraan (Civic Education) Pancasila, Demokrasi dan Pencegahan Korupsi*, Jakarta: Prenada Media Group, 2015, p. 131.

¹⁸ Gregorius Sahdan, *Jalan Transisi Demokrasi Pasca Soeharto*, Yogyakarta: Pondok Edukasi, 2004, p. 12.

¹⁹ Dwi Sulisworo, dkk., *Demokrasi: Bahan Ajar*, Pusat Studi Pendidikan Kewarganegaraan, 2012, pp. 14-15.

means that the people are actively involved from the beginning to the end in the process with the role of the people directly in charge of the material in accordance with the needs of the people in order to support the implementation of national and state life.

D. Comparison of the Democratic Constitution Making Process in Several Countries

Prior to the discussion of the nature of democratic constitution making as an effort to formal direct democracy, a comparison of the process of democratic constitution making in several states will be presented to confirm that democratic constitution making can be implemented optimally. It will be discussed starting from the context, the process, to the results of changes the constitution. Three states are used as a reference.

1. Switzerland

The constitution amendment system in Switzerland initially used the category of constitutional reform. The term is revised. In 1999, the Swiss Federal Constitution of 1874 was replaced by the New Constitution (effective January 1, 2000) integrating around 150 (one hundred and fifty) minor revisions into a new and consolidated text without radically changing the structure of the Swiss Federation. The 1999 Swiss Constitution has continued to change until now by including new materials. This is a renewal of the old text into a new one by adding material to the changes in the Constitution.²⁰

The people's role in the process of changing the constitution based on democratic constitution making that occurred in Switzerland is as follows:

- a. Context: Switzerland is a country that includes legal provisions to regulate constitutional changes through its constitution.²¹
- b. Process: Amendments to the Swiss federal state constitution are rigid as stipulated in Articles 138 and 139 of the Swiss Constitution. The changes are made with the approval of the majority of people who are directly and actively involved in the process of amending the constitution.
- c. Results: Changes to the constitution in Switzerland can be done in part or in whole. Partial changes can be made with the usual initiative through filing requests by one hundred thousand Swiss citizens who have voting rights, while total changes must be made based on the provisions of the federal law proposed by some members of the session of the federal council or by one hundred thousand Swiss citizens who have the vote right.²²

²⁰ Nita Ariyani, "Perbandingan Konstitusi Negara Indonesia Dengan Negara Swiss Berdasarkan Prosedur Perubahan Konstitusi, Bentuk Pemerintahan, Bentuk Negara Serta Sistem Pemerintahan", *Jurnal Kosmik Hukum*, Vol. 17, Issue 2, 2014, p. 121.

²¹ *Ibid.*

²² Taufiqurrohman Syahuri, *Hukum Konstitusi: Proses dan Prosedur Perubahan UUD di Indonesia 1945-2002 serta Perbandingannya dengan Konstitusi Negara Lain di Dunia*, Bogor: Yudhistira Ghalia Indonesia, 2004, p. 76.

The approval of the majority of the people after the submission of requests by one hundred thousand Swiss citizens who have vote rights is a democratic constitution making process that involves the people's role directly and actively as listed in Articles 138 and 139 of the Swiss Constitution. This has proven that the Swiss is able to involve the people's role directly and actively in changing its constitution to optimize democratic constitution making.

2. Iceland

The Icelandic Constitution is known as the State Law of Iceland. It is the highest law in Iceland. The original Icelandic Constitution was promulgated on June 17, 1944. It has been amended for seven times. It is necessary to know the role of the Icelandic people in the process of changing their constitution to measure people's involvement. The democratic constitution making process in Iceland can be described as follows.²³

- a. Context: The constitution-making process that was established in Iceland in 2012 was a direct result of the 2008 global financial crisis and protests known as the "Pots and Pans Revolution". Demonstrators see a new constitution as an important step to recover from the crisis, putting down the values of "New Iceland". However, widespread distrust of the political class (considered responsible for the chaos of the state) led to a demand that a new constitution drafted in a participatory process.
- b. Process: The drafting of a new constitution began with the organization of the "National Gathering" consisting of 950 (nine hundred and fifty) randomly selected quasi-citizens held for one day to discuss in small groups. Values must be reflected in the new constitution. The results of this meeting were then collected in eight different themes. Although most of the participants evaluated the short duration and the aggregative methodology was not deliberative. The results of the "National Gathering" formed the Constitutional Assembly, which was replaced by the Constitutional Council. The Constitutional Council invites the public to get involved and provide advice through the council's website and through social media. Other people can then comment this suggestion on. However, it should be noted that the actual involvement of the people is still limited. Only 3,600 (three thousand six hundred) comments were made by the public. Finally, the Constitutional Council approved the final text adopted by consensus. Although decision making by consensus was not a formal requirement, the councilors took it upon themselves to present the "united vision of the Icelandic people", which still had to formally adopt the constitution.
- c. Results: The proposal of the Constitutional Council was sent to the parliament, together with recommendations to submit to a draft that was mutually agreed

²³ Ronald Van Crombrugge, *op. cit.*, pp. 22-26.

between parliament and the people. Direct and active involvement of the people took place on 20 October 2012 and the draft constitution guarantees a very broad agreement (2/3 of the vote), despite the fact that more efforts were made by political parties to explain the draft to voters. It had been less linked to its content, which is quite progressive but mostly to the fact that people want to voice their support for the open drafting process. Furthermore, the draft was again brought to parliament for mutual approval. The acceptance of the draft constitution by parliament is made even more difficult because there is no general consensus on the consequences that must be implemented. Some politicians emphasize that the results of textual changes must only depend on the technical direct and active involvement of the people.

The above description has shown that based on the context, process and results that the democratic constitution making process in Iceland properly involves the role of the people in changing the constitution, even though the existence of parliamentary politicization is still carried out accordingly in order to reach mutual agreement in making changes to the constitution.

3. South Africa

The process of democratic constitution making in Switzerland and Iceland is not much different in both context, process, and change. Another state that is comprehensively able to involve the role of the people directly, actively, and massively in the process of changing its constitution is South Africa. Regarding the process of democratic constitution making in South Africa can be described as follows.²⁴

- a. Context: An example of the democratic constitution making process, which is more open and inclusive of traditional norms, is the process that led to the amendment of the 1996 South African constitution. However, negotiation of parties initially favored a different means of constitution-making, based on the party's substantive aims and future conceptions of South Africa's constitutional identity.
- b. Process: During the first stage of the negotiation process, there was still very much under the control of different parties. However, citizens still participated to some degree in the form of mass actions, demonstrations, and petitions. People's participation is thus informal and external to self-negotiation. The public was also invited to participate through a broad "outreach program" that was utilized by various forms of mass media such as the press, radio, and television. This information campaign has a dual purpose, namely, to educate people in democracy and constitutionalism that is easy to understand and to solicit public opinion. In total, the assembly constitution received more than two

²⁴ Ronald Van Crombrugge, *op. cit.*, pp. 26-29.

million submissions, which were copied, sorted, and sent to the relevant committee. In addition, major efforts were made to reach people living in rural areas by holding local public hearings and were often attended by members of the Constitutional Assembly.

- c. Results: In the end, even though negotiations were sometimes difficult, the Constitutional Assembly approved the final constitution of the people's vote. This is not the end of the process but, due to the compatibility of the constitution with constitutional principles, the Constitutional Court must still certify it. The first Constitutional Court refused to ratify the constitution but finally it was ratified after the Constitutional Assembly amended it. President Mandela finally signed the constitution into law on December 10, 1996.

Some of the dynamics occurred in the process of democratic constitution making in South Africa. Some experts consider South Africa as one of the countries that has succeeded in implementing democratic constitution making, evidenced by extensive and massive outreach programs in various ways to involve the role of the people actively. The current constitution is the fifth constitution in the history of South Africa. The constitution is officially titled "Constitution of the Republic of South Africa 1996".

E. Restoring Sovereignty to the People

The urgency of a constitution in a state according to its historical roots in the Western World is to determine the limits of the authority, guarantee the rights of the people, and regulate the course of government. Therefore, constitution of a state is known for its existence, both the form of sovereignty and the system of government. State and constitution are two things that cannot be separated but certainly can be distinguished.²⁵ This also causes no state in the world that does not have a constitution or the Basic Law and mostly has experienced amendments.²⁶

Amendments to the 1945 Constitution have provided demands for reforms that occurred in 1998. As for the background to this, including the highest power during the New Order, the facts were in the hands of the MPR, not in the hands of the people. Then the existence of a very large power is in the President, then there are articles that are too flexible so that it can easily lead to multiple interpretations, the spirit of state administrators has not been supported sufficiently in the provisions of the 1945 Constitution. The purpose of the amendment to the 1945 Constitution is none other than to complete the basic rules regarding the administration of the state, human rights, sovereignty of the people, and ways to organize the state and the limits for the administrators of the state. In addition, the implementation of the amendment to the 1945 Constitution is to change the Preamble to the 1945 Constitution. It also maintains the form of a Unitary State of the Republic of

²⁵ Sri Soemantri Martosoewignjo, *Prosedur dan Sistem Perubahan Konstitusi*, Edisi Revisi, Bandung: Alumn, 2006, pp. 1-2.

²⁶ *Ibid*, p. 2.

Indonesia, reinforce the presidential system of government. In addition, it nulled the elucidation of the 1945 Constitution by bringing up normative matters into articles and made changes in an addendum.²⁷

Manan expresses that the constitution is a group of provisions governing state organization and composition of government.²⁸ The constitution is considered important because it is a basic rule of state administration. In Indonesia, the constitution is the 1945 Constitution. The 1945 Constitution is a state constitution that is formally the highest source of law in Indonesia. It has chosen the concept of popular sovereignty in the administration of Indonesian state life, as stated in Article 1, paragraph (2).

Article 1, paragraph (2), of the 1945 Constitution before the amendment states that,

“Sovereignty is in the hands of the people and fully exercised by the People’s Consultative Assembly”.

Later in the elucidation, Chapter II the MPR, Article 2 states that,

“The purpose is to have all people, all classes, all constituencies in the Assembly so that the Assembly can truly be regarded as the embodiment of the people”.

The MPR was made the supreme institution of the constitution of the 1945 Constitution also referred to as the supreme institution of the people who exercised full sovereignty. It is explicitly said that the MPR was the embodiment of the people of Indonesia. This, of course, creates confusion between the concept of sovereignty and integrative understanding between the state of the law and the state of power.²⁹

The nature of people’s sovereignty before the change in the 1945 Constitution seems to be unclear. If the exercise of sovereignty is still left to other parties, it means that it violates independence from sovereignty itself, even if the MPR is considered to be the incarnation of all Indonesian people, automatically negating the existence of the Indonesian people themselves. The existence and role of the people based on the pre-amended 1945 Constitution was unclear. The authority and the power were absolutely given to the MPR, while the accountability of the MPR was not clear since the membership before the amendment to the 1945 Constitution still came from the Regional Envoy and the KPU who chose members of the MPR group delegates.³⁰

The Indonesian people have placed the people’s sovereignty (*democratie*) and the rule of law (*nomocratie*) in the same position and must go hand in hand. This means that a democratic state (*democratische rechtsstaat*) as well as a democratic

²⁷ Mahkamah Konstitusi Republik Indonesia, *op. cit.*, pp. 159-160.

²⁸ Bagir Manan dalam A. Mukti Arto, *Konsepsi Ideal Mahkamah Agung*, Yogyakarta: Pustaka Belajar, 2001, p. 10.

²⁹ Adnan Buyung Nasution yang dikutip oleh Abdul Mukhtie Fadjar, *Hukum Konstitusi dan Mahkamah Konstitusi*, Jakarta: Konstitusi Press, 2006, p. 10.

³⁰ Lindra Darnela, “Perubahan Undang-Undang Dasar 1945: Sebuah Keniscayaan”, *De Jure: Jurnal Syariah dan Hukum*, Vol. 2, Issue 2, 2010, p. 136.

state based on law (constitutional democracy) cannot be separated. Thus, true democracy is not only used as a slogan, but it should be clearly stated in the state constitution.³¹

Amendments to the 1945 Constitution make the MPR no longer the highest state institution and the people's sovereignty no longer represented by the MPR. The MPR only has the authority to amend and stipulate the 1945 Constitution. Article 1 paragraph (2) of the 1945 Constitution after the amendment reads, "in the hands of the people and implemented according to the Basic Law".

Sovereignty in French is called "souverainet". In Italian it comes from the word "sovrano" that is derived from Latin word *suprenus*, which means supreme.³² Therefore, sovereignty is the highest power to determine the law in a state. Sovereignty is a system of power that requires the highest power to be held by the people. In addition, people's sovereignty is one way to solve problems based on a system that fulfills the public will, even in practice it does not apply to the administration of government and judicial powers but also the power in the formation of regulations made by the administrators of government and judicial powers.³³

One of the objectives of the formation of the state is to guarantee the freedom of the will of the people and enforce the law to its citizens. Of course, the freedom is within the limits of the provisions of laws because the implementation of laws is the embodiment of the will the people. It is true that only the people represent the highest or sovereign power in a state. Indonesia adheres to the concept of democracy that is sovereign based on the will of the people as stipulated in Article 1 paragraph (2) of the 1945 Constitution. The article is constitutionally and fundamentally meaning that Indonesia is a democratic country. It means that the words "populist" and "sovereignty are in the hands of the people" are the principles of democracy. The total power is in the people.³⁴

The sovereignty of the people is one of the best teachings practiced by many modern nations to handle their nationality and government. Moreover, the sovereignty lies on people. All rules and powers are run by the state and cannot be contrary to the will of the people. Indonesian sovereignty is based on the Constitution Law and; therefore, the preserver of sovereignty or power is the people, based on the will of the people.

Article 1 paragraph (2) of the 1945 Constitution after the amendment is a legal basis for the people's role in the 1945 Constitution amendment based on

³¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta: Mahkamah Konstitusi dan Pusat Studi Hukum Tata Negara Universitas Indonesia, 2004, p. 57.

³² Mohamad Faisal Ridho, "Kedaulatan Rakyat Sebagai Perwujudan Demokrasi Indonesia", *Jurnal Cita Hukum*, Vol. 1, Issue 8, 2017, p. 79.

³³ Setyo Nugroho, "Demokrasi dan Tata Pemerintahan Dalam Konsep Desa dan Kelurahan", *Jurnal Cita Hukum*, Vol. 1, Issue 2, 2013, p. 250.

³⁴ Nur Rohim Yunus, "Aktualisasi Demokrasi Pancasila Dalam Kehidupan Berbangsa dan Bernegara", *Jurnal Sosio Didaktika: Social Science Education Journal*, Vol. 2, Issue 2, 2015, p. 162.

democratic constitution making as the future prospect of Indonesia, as an implementation of direct democracy. The amendment to the 1945 Constitution requires active involvement of the people from the beginning of the process. It is intended for the content and material load of the 1945 Constitution, in line with the expectations of the people needed in everyday life in order to support people's religious and nationality.

F. Conception of the Role of the People in Changes to the 1945 Constitution

The role of the people is a series of activities in the form of demands and resistance to government policies carried out by the state in a structured, systematic, and massive manner. It aims to influence and provide innovation as well as solutions to the formation or change of policy. It is an effort to convey the interests of the people to the authorities. Contextualization of the role of the people can be channeled through various media, either conventional, print, and electronic media. It is guaranteed by the constitution as a respect for human rights of Indonesian people.³⁵

Understanding the importance of the role of the people, the content of the 1945 Constitution will be more favorable to the interests of the people. The misuse of material content means that the authorities may deny the existence of the 1945 Constitution. The enactment of the 1945 Constitution that is not in favor of the interests of the people will be a problem for the continuation of the life of society, nation, and state. All parties, both from the constitutional structure and the non-structural, should be involved in the amendment to the 1945 Constitution. It should include the role of the people who can initiate the idea of amending the 1945 Constitution.

Amendments to the 1945 Constitution are considered democratic, if the process pay attention and involve the people's role directly and actively. According to Raharjo, a law is aspirational and participatory, if it can produce regulations that have the following characteristics.³⁶

1. It is general and comprehensive, which is thus a kindness and special and limited traits.
2. It is universal, because laws are formed to deal with future events. Therefore, laws cannot be formulated to deal with certain events only.
3. It has the power to correct and improve himself. It is normal for a regulation to include a clause that contains the possibility of a review, in this case that is experiencing a change.

The role of the people can increase legitimacy, transparency, and responsibility and is expected to bring about an accommodative change in the 1945 Constitution to the wishes and expectation of the people. If the process of changing the

³⁵ Joko Riskiyono, "Partisipasi Masyarakat Dalam Pembentukan Perundang-undangan Untuk Mewujudkan Kesejahteraan", *Jurnal Aspirasi*, Vol. 6, Issue 2, 2015, p. 107.

³⁶ Satjipto Rahardjo, *Hukum dan Masyarakat*, Bandung: Angkasa, 1986, p. 114.

Constitution of 1945 does not involve the role of the people, it can raise suspicion about the criteria for determining agenda setting and design, development, and approval.³⁷ On the other hand, if the process of change of the Constitution of 1945 involved the active role of the people in an open manner with sufficient information received by the people, it would give the impression that there was nothing to hide. The legitimacy of the policy towards the process of change of the Constitution of 1945, which has been taken into consideration, will increase in the hopes and wishes of the people.³⁸

The role of the people in the era of democracy is the process of the aspirations of non-governmental elements, especially from citizens for the common people's interests. Aside from the MPR as a representation of the people, the people themselves are sovereign to play a direct role in the process of changing the 1945 Constitution. However, of the four amendments to the 1945 Constitution that have taken place, none has involved the people's role directly and actively. This certainly reduces the hopes of the Indonesian people to have an ideal constitution based on Pancasila. It has not yet become apparent or in accordance with the wishes and expectations of the people.³⁹

Some experts of State Administration Law mention that the amendments to 1945 Constitution are not optimal. That is because the changes that occur are only adjusted to the tastes of the government in power at the time and tend not to involve the role of the people directly and actively in the process. Maas⁴⁰ states that in making a comprehensive change, the process must involve broad participation of the people in order to produce an emancipatory solution. Four amendments to the 1945 Constitution is more likely to emphasize the normative aspects of short-term interests with forgetting the sociological and philosophical aspects. To be ideal, a comprehensive change to the 1945 Constitution should contain three very basic positive values, namely a new paradigm, a new substance containing a framework for improving the rule of law and democracy, and a checks and balances paradigm for the need for public accountability in creating good governance.

The direct and active role of the people in the amendment to the 1945 Constitution is an attempt at a new idea in the Indonesian constitutional system, in addition to proposing the addition of the authority of the Constitutional Court to examine the amendments to the 1945 Constitution before they are determined (judicial review)⁴¹ by the MPR. This is done by no other hope that the 1945

³⁷ See also Cipto Prayitno, "Pembatasan Perubahan Bentuk Negara Kesatuan dalam Undang-Undang Dasar 1945 dalam Perspektif Constitution Making", *Jurnal Konstitusi*, Vol. 15, Issue 4, 2018, pp. 734-743.

³⁸ Bavitri Susanti, *Catatan PSHK tentang Kinerja Legislasi DPR 2005*, Jakarta: Pusat Studi Hukum dan Kebijakan (PSHK), 2006, p. 52.

³⁹ Nur Rohim Yunus, *op. cit.*, p. 160.

⁴⁰ Marwan Maas, "Menggagas Perubahan Kelima Undang-Undang Dasar 1945", *Jurnal Hukum PRIORIS*, Vol. 3, Issue 1, 2012, p. 9.

⁴¹ Judicial preview by the Constitutional Court in Indonesia is used as an alternative solution to verify the constitutionality of a draft. As for the political reality and legal implementation, the judicial preview

Constitution results of the latest changes are not laden with political interests. It is expected to be thick with the interests of the nation, namely the interests of the livelihoods of many Indonesian people, considering that the public's trust in the MPR has been reduced due to the polemic that occurred in it.⁴²

Kurniawan, quoting Anand⁴³, states that the current of the reform movement succeeded in overthrowing the sacralization of the 1945 Constitution. There are also many demands from the undercurrent to improve the Constitution so that it would be able to build a democratic political system and state administration. This idea has a very strong urgency, considering that in the three periods of the political system it turns out that Indonesia has no democratic political system. It leads to corruption in various fields of life.

In fact, there are changes to the 1945 Constitution that have been carried out by the MPR consisting of Members of the DPR and DPD, both political institutions. Of course, the substance of the changes tends to be more politicized and far from the expectations of the people's wishes. Therefore, the conception of the role of the people in the amendment to the 1945 Constitution is nothing but to involve the role of the people in changing the 1945 Constitution in a frame of constitution making that is good and right.⁴⁴ The results are expected to be in line with the ideals and identity of the nation, one of which is as much as possible for the people of Indonesia.

A constitution of a state is certainly the property of all people. Therefore, the amendment to the 1945 Constitution should further involve the people's role directly and actively in the process. Of course, the involvement of the people must remain focused in accordance with the needs and wishes of the people who are able to strengthen the Indonesian constitutional system, economic, political, social, and cultural stability as well as defense and security. In addition, it can also involve the role of the Constitutional Court to optimize the maintenance of constitution function since it is the final interpreter of the constitution, the guardian of democracy, the protector of the constitutional rights of citizens, and the protectors of human rights.⁴⁵ They maintain the purity of the 1945 Constitution as the highest norm in statutory regulations in Indonesia.

mechanism is an extension of the authority of the Constitutional Court. This is certainly in line with the existence of the Constitutional Court of the Republic of Indonesia, which is not only as an interpreter of the constitution but also as a guardian of the constitution towards persistent democratization. See Alek Karci Kurniawan, *"Judicial Preview Sebagai Mekanisme Verifikasi Konstitusionalitas Suatu Rancangan Undang-Undang"*, *Jurnal Konstitusi*, Vol. 11, Issue 4, 2014, p. 647.

⁴² Alek Karci Kurniawan, *"Judicial Preview Sebagai Mekanisme Verifikasi Konstitusionalitas Suatu Rancangan Undang-Undang"*, *Jurnal Konstitusi*, Vol. 11, Issue 4, Desember 2014, pp. 25-26.

⁴³ Zulqordi Anand, *"Implikasi Perubahan Undang-Undang Dasar 1945 Terhadap Sistem Ketatanegaraan Indonesia"*, *Fiat Justia Jurnal Ilmu Hukum*, Vol. 7, Issue 1, 2013, p. 277.

⁴⁴ There is an agenda setting, *design and development*, also *approval*. See also Cipto Prayitno, *op. cit.*, pp. 734-743.

⁴⁵ Alek Karci Kurniawan, *op. cit.*, p. 26.

Only if the process of amendment to the 1945 Constitution produces clauses that are contrary to Pancasila and the needs and desires of the will of the people, then the Constitutional Court is able to attend to resolve the issue through a judicial review. Therefore, the amendments to the 1945 Constitution do not damage the nature of the actual constitution. It is in line with the Soemantri's opinion that the process of amending the 1945 Constitution is indeed incomplete so that it still has many shortcomings, even though four amendments have been carried out. The authority given to the Constitutional Court to optimize the judicial preview of changes in the 1945 Constitution is an attempt to complete the series of changes. Therefore, the results of the 1945 amendment are in accordance with the principles of Pancasila's, Humanism, and Democracy.⁴⁶ In this case, there is the role of the people involved directly and actively in the amendment process.

G. Future Prospects in Indonesia

Since the independence of Indonesia, the founding fathers designed the 1945 Constitution as a temporary constitution because the material content was not optimal as a written constitution. This was stated by Sukarno as one of the core members of the Indonesian Independence Preparatory Agency for Investigation (BPUPKI) and the central figure of the Indonesian Independence Preparatory Committee (PPKI) who drafted and then passed the 1945 Constitution. In his speech, on August 18, 1945, Soekarno⁴⁷ stated that,

"...the current constitution is a temporary constitution or in other sentence is being called as 'quick constitution'. Later, if we have served in a more peaceful atmosphere, we will certainly reassemble the House of Representatives that can make the Constitution more complete and perfect. You, of course, understand that this is just a temporary constitution, a quick constitution, that perhaps it may be said, this is "revolutiegrondwet". Please do remember, gentlemen, so that we can finish today with this Constitution."

The meaning of the word "temporary" is also supported in the Additional Provisions of the pre-amended 1945 Constitution as follows.⁴⁸

- (1) *"In the six months after the end of the Great East Asia war, the President of Indonesia regulates and organizes all matters stipulated in this Constitution."*
- (2) *"Within six months after the People's Consultative Assembly was formed, the assembly convened to establish the constitution."*

There are a number of things that can be taken in the process of amendments to the 1945 Constitution as a prospect for Indonesia's future. The constitution

⁴⁶ *Ibid.*

⁴⁷ Moh. Mahfud M.D, *op. cit.*, p. 139.

⁴⁸ *Ibid*, pp. 139-140.

designers overcome the open and transparent drafting process, which involves the role of the people, as being very important as a constitutional legitimacy produced. First, transparency and the existence of a broad popular role help to regulate the problem of politicization in the process of amendments. A number of examples, the Swiss constitution involve the role of the people through the approval of the majority of the people as an effort of democratic constitution making. Then Iceland, although there is still a politicization of parliament, does not forget the direct and active role of the people. Furthermore, South Africa is also considered successful in implementing democratic constitution making that the process of changing the constitution really involves the role of the people directly and actively through an extensive and massive outreach program.

Second, the inductive nature of public is a more comprehensive reflection effort. This is exercised in the process of amendment, starting from the agenda setting stage and even through the approval stage. Negotiator interaction between the government and the people is needed so that it can be used as an effort to optimize democratic constitution making in Indonesia.

Third, the role of the people is an absolute requirement of legitimate legitimacy to changes in the 1945 Constitution. The process of democratic constitution making from various states, either Switzerland, Iceland, and South Africa optimize the role of the people starting from the context, process, and results. It is to get the best constitution and it can be used as a prospect for the future of social, national, and state life, especially Indonesia.

Fourth, it is possible for Indonesia to experience from the democratic constitution making process in Switzerland, Iceland, and South Africa. Indonesia can elaborate on some of the positive aspects, then correct and complete the deficiencies that occur in the process of changing the constitution. A harmony between the government and the people in making changes to the constitution can ensure the constitution to be in accordance with the will of the people.

Fifth, few things become hindering factors in law reform efforts, including constitution. One of them is an objective that is contrary to people's interests. Certainly, a state has a goal to expect its constitution in line with people's aspirations. For instance, the ideals of the Indonesian people are to protect the whole citizen, to promote public welfare, and to engage in world order. All elements of the nation should be able to uphold the same interests so that the content is able to realize the ideals of the Indonesian people. It must be designed both by the government as the organizer of the state and the people as the holder of sovereignty.

Sixth, the role of the people directly and actively in the amendment of the 1945 Constitution is one of the absolute things as an effort of legitimacy towards the legitimate formation of the 1945 Constitution for the Republic of Indonesia. The legitimacy of the role of the people is an important point, because with the people's direct and active involvement in the change, the automatic

implementation of the contents of the listed material can be desired and carried out as it should. In addition, the rights and obligations between the government and the people can be fulfilled with each other.

Seventh, democratic constitution making is a manifestation of the implementation of formal direct democracy. It requires all parties to be involved in the process. The parties are both the existing constitutional structure and non-structural parties. In this case, the role of the people must also be able to initiate ideas towards changes to the 1945 Constitution. It also means that the role of the people directly and actively greatly influences and determines the contents to be in accordance with the needs of the people themselves.

Eighth, understanding the nature of constitutional changes that can involve the people's role directly and actively based on democratic constitution making is the future prospect of Indonesia. In short, accommodating the people's role can increase transparency and public trust in the government. People can be responsive to obey the law. The legitimacy is higher when the people are involved. The 1945 Constitution can be more accommodating, aspirational, and participatory to be in accordance with the expectations of both the people and the government for the realization of objectives and interests of Indonesia. Surely, this must be done in a structured, systematic, and massive way through conventional, print, and electronic media.

Ninth, Article 37 of the 1945 Constitution regulates legal basis for modifying the constitution. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia constitutes a juridical basis for the people to play a direct and active role in changing the 1945 Constitution as a logical consequence of a democratic state. It is an implementation of the people's sovereignty, which is entirely in the hands of the Indonesian people. Philosophically, to achieve a common will, it must be done together by the government and the people. Furthermore, sociologically, the people should be directly and actively involved in the amendment of the 1945 Constitution to implement formal democracy directly based on democratic constitution making.

Tenth, the role of the people to participate in the amendment of the 1945 Constitution must lead to the order and values of democracy that uphold human rights and legal equality between the government and the people. The practice can also involve the role of the Constitutional Court as an effort to maintain the nature of purity of the 1945 Constitution.

H. Conclusion

For a modern state in the 21st Century, amendment of constitution is not just a tradition, but also an innovation. The constitution made in the formal democratic process is directly a form of people's morals to participate carried out by the people towards the state. In this case, the amendment to the 1945 Constitution

certainly must be carried out in accordance with democratic norms. Democratic procedural norms, transparency, and accountability have been applied in daily political decision-making, which can also be practiced in the process of amendment. The process of amendment becomes important to supplement some of the deficiencies in the previous four amendments.

Indonesia is able to take steps to open the role of the people in the process of amendment based on democratic constitution making. It is the future prospect of Indonesia. This means that the role of the people in making a constitution has become one of the criteria of a legitimate process of the constitution. Developments in various modern states have optimized democratic constitution making as a textual authority, which greatly strengthens the status of its implementation. The role of the people in the constitutional change logically is one of the fulfillments of human rights. It is upheld and must be owned by every citizen of Indonesia. It is stipulated in Article 28D paragraph (3) of the 1945 Constitution, namely the right to equal opportunity in government. A good citizen certainly plays a direct role in public.

Based on the description above, it can be concluded that the people who have full sovereignty should have played a direct and active role in the amendment process based on needs and expectations of the people. It is to strengthen the state administration system, economic, political, social, and cultural stability as well as defense and security as the future prospect of Indonesia. It is especially in the approval stage through by the people that demands the people's role directly and actively. These efforts must be carried out in a structured, systematic, and massive manner to produce a high-quality constitution. Then, in practice, it can also involve several functions of the Constitutional Court to maintain the purity of the 1945 Constitution, even in the process. Of course, all of these processes have been guaranteed by Article 37 and Article 1 paragraph (2) of the 1945 Constitution.

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