



THE LEGAL ISOMORPHISM IN INDONESIAN CONSTITUTIONAL AMENDMENT: INTERPLAY BETWEEN FOREIGN INFLUENCE AND NATIONAL IDENTITY

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ABSTRACT

The post-authoritarian reform era in Indonesia (starting in 1998) was characterized by a push to democratize the state system, leading to the adoption of several foreign, democratic, or "globalized" constitutional concepts. This process demonstrates legal isomorphism where Indonesia aligned its constitutional framework with prevailing international democratic standards. This article analyses the patterns of legal isomorphism in the Indonesian constitutional amendment by examining the dynamic interplay between foreign influence and national identity. For that reason, the research aims to determine a legal isomorphism that can harmonize and balance both foreign influences and the desire for a national identity in the constitutional amendment in Indonesia. To achieve these objectives, the study employed a qualitative research method with a socio-legal and comparative law approach. The research finds three distinct patterns of coercive legal isomorphism concerning the constitutional amendment process in Indonesia. Meanwhile, comparatively, a mimetic isomorphism regarding unamendable provisions of basic structure can be considered for harmonizing and making a balance between foreign influences and national identity in the constitutional amendment. The novelty of this research lies in its identification and classification of legal isomorphism patterns within Indonesia's constitutional amendments, providing a new perspective on how external legal influences interact with national identity. This study contributes to the broader discourse on constitutional development by offering a framework for analysing the complex relationship between global legal trends and domestic constitutional transformations.

1. Introduction

The adoption of globally recognized standards for democracy, human rights, and the rule of law. The amendments introduced significant changes like clearer separation of powers, the establishment of a Constitutional Court, and explicit human rights guarantees, reflecting international constitutional trends. The incorporation of institutions or principles borrowed from other established democracies, such as the direct election of the president, limitations on presidential terms, and a stronger legislative body (DPR/People's Representative Council). International Organizations: Pressure or influence from international bodies or donors following the 1998 reform era to align Indonesia's legal and political system with global democratic standards.

The amendment to the 1945 Constitution of the Republic of Indonesia, hereinafter referred to the 1945 Constitution, was occurred four times on 1999, 2000, 2001, and 2003. The constitutional amendment has transformed the constitutional system to be more democratic. However, the amendment has been criticized due to caused incoherence and contradiction both normatively and practically ¹. The main issue is the transformation of the government system from parliamentary to presidential, which viewed as a form of foreign influence in the process of amending the 1945 Constitution, particularly the influence of the United States that injecting a pure presidential system into the Indonesian government system ².

Theoretically, the foreign influence is a phenomenon of legal isomorphism which refers to forms of pressure either through force, persuasion, or simply invitations from other countries which are seen as more dominant ³. In this case, pressure to implement a presidential system which is considered "best practice" or "to be taken-for-granted practice" in the process of amendment of the 1945 Constitution. Legal isomorphism itself is a common phenomenon in interactions between countries, especially in the current era of globalization ⁴. In constitutional legal studies, legal isomorphism has been used to explain the development of the Constitution of the United States in relation to the isomorphism of the Federal Constitution to the sub-national constitution in the states of the United States ⁵. In addition, there are studies that specifically

1 Aidul Fitriciada Azhari., *UUD 1945 Sebagai Revolutiegrondwet: Tafsir Postkolonial Atas Gagasan-Gagasan Revolusioner Dalam Wacana Konstitusi Indonesia*, 1st ed., Yogyakarta: Jalasutra, 2011; Also see, Aidul Fitriciada Azhari., *Isomorfisme Dalam Perkembangan Ketatanegaraan Indonesia*, Paradigma Hukum Ketatanegaraan Indonesia, ed. Eka NAM Sihombing, 1st ed. Medan: Enam Media, 2020, page. 68–82.

2 Aidul Fitriciada Azhari., *Dekolonisasi Dan Demokratisasi Dalam Konstitusionalisme Indonesia: Tafsir Poskolonial Terhadap Pancasila Dan UUD NRI Tahun 1945*, 1st ed., Surakarta: Muhammadiyah University Press, 2016.

3 Aidul Fitriciada Azhari., *Isomorfisme Dalam Perkembangan Ketatanegaraan Indonesia*, Paradigma Hukum Ketatanegaraan Indonesia, ed. Eka NAM Sihombing, 1st ed. Medan: Enam Media, 2020, page. 68–82.

4 Sungjoon Cho and Jürgen Kurtz., The Limits of Isomorphism: Global Investment Law and the ASEAN Investment Regime, *Nijhoff International Investment Law Series*, Vol.9 No.2, 2018;

5 James A Gardner., Autonomy and Isomorphism: The Unfulfilled Promise of Structural Autonomy in American State Constitutions, *Wayne Law Review*, Vol.60 No.31, 2014, page. 31–67.

explain the symptoms of acceptance of constitutional review institutions that occurred in many countries in the world which increased from 38% in 1951 to 83% in 2011. This shows that the constitutional review institution that originally developed in the United States has become common in the world constitutional system ⁶.

In relation to the amendment of the 1945 Constitution, legal isomorphism can be viewed as part of the third democratization wave which following the collapse of communism regimes in Eastern Europe in the end of twentieth century. The third wave democratization was global phenomena which changed landscape of constitutional system of many countries in the world to be more liberal, included Indonesia ⁷. Authoritarian regime of Soeharto that ruled more than thirty years in Indonesia finally collapsed following democratization movement in 1998 which famous as reformation movement ⁸. Democratization also pushed constitutional amendment which carried out after general election 1999. In this context, the amendment of the 1945 Constitution pointed out a foreign influence to the development of constitutional system in Indonesia ⁹.

However, the foreign influence must challenge some challenges from internal forces which ideologically observe that the amendment of the 1945 in some aspects were contradictory to the national identity ¹⁰. In this context, the amendment of the 1945 Constitution can be viewed as a legal isomorphism which refers to the interplay between foreign influences and national ideology. It shows the fact that foreign influence cannot be avoided, but on the other side the national identity ideologically must be preserved.

There are several previous researches concerning constitutional amendment in Indonesia, such as research by Subekti, which studied the amendment of the 1945 Constitution from a political perspective.¹¹ In addition, the research by Indrayana concluded that the amendment of the 1945 Constitution has crucial problem with the identity and survival of the country that is related to the rejection of an Islamic state and the imposition of Pancasila as the state ideology.¹² Meanwhile, research by Tobing found that the essentiality of the

6 David S Law and Mila Versteeg., *The Evolution and Ideology of Global Constitutionalism*, *California Law Review*, Vol.99 No.5, March 26, 2011, page. 1163–1257; Also see, Tom Ginsburg and Mila Versteeg., *Why Do Countries Adopt Constitutional Review?*, *Journal of Law, Economics, and Organization*, Vol.30 No.3, 2014, page. 587–622

7 Francis Fukuyama., *The End of History and The Last Man*, 2nd ed., Penguin, 2020; Also see, Samuel P Huntington, *Democracy's Third Wave*, *Journal of Democracy*, Vol.2 No.2, 1991, page. 12–34.

8 D. F. Anwar., *The Fall of Suharto: Understanding the Politics of the Global*, Southeast Asian Responses to Globalization: Restructuring Governance and Deepening Democracy (ISEAS–Yusof Ishak Institute, 2005, page. 201–230.

9 Valina Singka Subekti., *Menyusun Konstitusi Transisi Pergulatan Kepentingan Dan Pemikiran Dalam Proses Perubahan UUD 1945*, 1st ed., Jakarta: Rajawali Press, 2008.

10 Azhari., *Dekolonisasi Dan Demokratisasi Dalam Konstitusionalisme Indonesia: Tafsir Poskolonial Terhadap Pancasila Dan UUD NRI Tahun 1945*.

11 Subekti., *Menyusun Konstitusi Transisi Pergulatan Kepentingan Dan Pemikiran Dalam Proses Perubahan UUD 1945*.

12 D Indrayana., *In Search for a Democratic Constitution: Indonesian Constitutional Reform 1999-2002*, *Jurnal Media Hukum*, Vol.17 No.1, 2010, page. 115–31.

amendment of the 1945 Constitution that purposed to strengthen the rule of law.¹³ Another research by Kawamura concluded that the amendment of the 1945 Constitution has resulted in the institutionalisation of political competition and participation.¹⁴

This article has a different perspective. First, this article emphasizes analysing the interplay between foreign influence and desire for national identity in the constitutional amendment. In this context, Subekti found that constitutional amendment has been influenced by foreign interest. However, she analysed it from a political aspect and did not identify specifically its interplay with desire for national identity.¹⁵ On the other side, Indrayana concluded that identity is a crucial problem in the constitutional amendment. However, he tends to see it as an ideological desire of most nationalists – not in relation with the foreign influence.¹⁶ The second thing this article did was use legal isomorphism as a theory to figure out how foreign influence and the desire to protect national identity affected the constitutional amendment. There is no previous research concerning the constitutional amendment in Indonesia that uses particularly legal isomorphism as a theory for analysis.

According to the reason, the main objective of this research is to map and assess legal isomorphism, which seeks to both offset and integrate foreign influences and national identity within the context of Indonesia's constitutional amendments. With the rapid advance of globalization, the evolution of constitutions is ever more impacted by the presence of competing value systems and legal cultures, such as democracy, which frequently clashes with indigenous historical traditions and legal philosophy. Through an examination of legal isomorphism of adoption practices, including the acceptance of universal principles of democracy through the imposition and eclectic adoption of foreign constitutions, the research seeks to answer how Indonesia balances external identity and its internal identity.

2. Research Methods

To achieve the research objectives, a qualitative research method will be used with a socio-legal and comparative law approach. The socio-legal approach is used to find determinant factors which determine legal isomorphism in the process of amending the Constitution. Meanwhile, the comparative law approach is used to find patterns of legal isomorphism in the legal systems of other countries in the process of amending their constitutions.

In accordance with the socio-legal approach, the research procedure begins with data collection carried out both through literature to identify and find legal rules which are relevant to the research topic and through data collection in the

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

14 Koichi Kawamura., *Politics of the 1945 Constitution: Democratization and Its Impact on Political Institutions in Indonesia*, *IDE Research Paper*, Vol.9, 2003

15 Subekti., *Menyusun Konstitusi Transisi Pergulatan Kepentingan Dan Pemikiran Dalam Proses Perubahan UUD 1945*.

16 D Indrayana., *In Search for a Democratic Constitution: Indonesian Constitutional Reform 1999-2002*, *Jurnal Media Hukum*, Vol.17 No.1, 2010, page. 115–31.

field through interviews and focus group discussions (FGD). In line with the comparative law approach, library and field data collection was also carried out in Malaysia to identify rules and practices related to isomorphism symptoms in their constitutional system.

Data analysis was conducted inductively, starting with data collection, followed by data reduction, and then categorizing or classifying data which is relevant to the research theme. The next step is data analysis to find isomorphism patterns in the amendment of the 1945 Constitution. In the final stage, conclusions are drawn from the results of the data analysis.

3. Results And Discussion

3.1. Legal Isomorphism

Isomorphism is a general concept which is often used in mathematics. The word isomorphism is derived from the Ancient Greek: ἴσος *isos* "equal", and μορφή *morphe* "form" or "shape" ¹⁷. The Encyclopaedia of Britannica defines isomorphism in algebraic mathematics as: "a one-to-one correspondence (mapping) between two sets which preserves binary relationships between elements of the sets" ¹⁸. In essence, isomorphism is a form of correspondence between two sets or groups which preserves binary relationships between the parts of the two sets or groups.

In social-humanities studies, the concept of isomorphism is used to explain the forms of correspondence between two organizations characterized by similarities in the structure and processes of one organization to another. The concept of isomorphism was first used in sociological analysis by Paul DiMaggio and Walter Powell which explain concerning three types of institutional isomorphism, namely: 1) coercive isomorphism which originated from political influence and legitimacy issues; 2) mimetic isomorphism which resulted from standard responses to uncertainty; and 3) normative isomorphism which related to professionalization ¹⁹.

DiMaggio & Powell explain further concerning coercive isomorphism as follows:

results from both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society within which organizations function. Such pressures may be felt as force, as persuasion, or as invitations to join in collusion ²⁰.

The coercive isomorphism can be found in various pressures by various intergovernmental organizations (IGOs), such as the IMF and the World Bank which directly influence policies through the terms of loan provisions. Other mechanisms can also be carried out by what are known as "dominant actors"

17 Eric W. Weisstein., *Isomorphism*, Wolfram Research, Inc, accessed October 2, 2024, <https://mathworld.wolfram.com/Isomorphism.html>.

18 William L. Hosch, *Isomorphism*, Encyclopaedia Britannica, accessed October 2, 2024, <https://www.britannica.com/science/isomorphism-mathematics>.

19 Paul J DiMaggio and Walter W Powell., The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields, *American Sociological Review*, Vol.48 No.2, March 26, 1983, page. 147–160

20 *Ibid*.

which can be economically more advanced countries, intergovernmental organizations, or multinational/transnational companies (MNCs/TNCs) which promote policies by “indirect coercion” based on the assumption that there is a “best practice” or “to be taken-for-granted practice” found in “dominant actors” which must be followed²¹.

In the meantime, it is worth noting that uncertainty, whether caused by technological changes that are not yet fully understood, economic shifts that can be confusing, or strategic environmental changes that require new adjustments, can lead to mimetic isomorphism. In such cases, it may be helpful to consider models that can be imitated from other organizations or countries. In this case, modelling is a standard response to uncertainty ²².

The most obvious and dramatic example of mimetic isomorphism was the modernization carried out by Japan in the late 19th century by taking models from Western countries which were considered more successful. At that time, the Japanese government sent envoys to gain insight into the legal, military, and police systems in Germany and France, the naval and postal systems in England, and banking and education in the United States. By taking models from Western countries which were already advanced at that time, Japan voluntarily and selectively applied from the countries which were used as models, both in structure, institutions, and procedures, even including ceremonies²³. The process of mimetic isomorphism proved successful in making Japan arise as an advanced industrial country.

Finally, normative isomorphism arises from the need for professionalization. DiMaggio and Powell interpret professionalization as, “the collective struggle of members of an occupation to define the conditions and methods of their work, to control ‘the production of producers’, and to establish a cognitive base and legitimacy for their occupational autonomy” ²⁴ There are two aspects of professionalization which are important as sources of normative isomorphism. First, the strengthening of the foundation for formal education and the legitimization of the cognitive base produced by college specialization. Second, the growth and elaboration of professional networks and new models that are rapidly diffusing. Colleges and professional training institutions are the main centres for the development of organizational norms among professionals. Likewise, professional associations are used to design and institutionalize normative rules for organizational and professional behaviour. These mechanisms create a place for the exchange of individuals from colleges or professional associations who have the same norms and orientations towards policies or institutions, so that the need for homogeneity of structures, institutions or procedures between two or more organizations or countries

21 Unal Sosay, Gül and Zenginobuz., *Independent Regulatory Agencies in Emerging Economies*, Budapest, 2005.

22 Paul J DiMaggio and Walter W Powell., The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields, *American Sociological Review*, Vol.48 No.2, March 26, 1983, page. 147–160

23 *Ibid*

24 *Ibid*

arises ²⁵.

3.2. Patterns of Legal Isomorphism in Indonesia

Legislation serves as a subsystem within the national legal framework²⁶, isomorphism has been occurred particularly by coercive isomorphism which started since the early of the New Order regime through Law No. 1 of 1967 concerning Foreign Investment. Isomorphism during New Order which ruled between 1966-1998 was happened as consequence of qualification for getting loan from IMF and World Bank which created dependency to the IMF and World Bank. Consequently, economic policy during New Order was direct influenced by IMF and World Bank and developed to be liberal ²⁷.

However, coercive isomorphism did not exert a significant influence within the context of constitutional discourse. Rather than embracing a democratic governmental system, the New Order exhibited a tendency to resist the process of democratization. Consequently, the New Order regime rejected the proposition of amending the 1945 Constitution, thereby reinforcing its commitment to the constitution. New Order regime developed a discourse of ideology which created from idea of Soepomo, who was one of founding father of Indonesia, concerning "*Negara Integralistik*" (Integralistic State). Idea of *Negara Integralistik* rejected individualism and viewed that the state interests must above interest of all communities. Soepomo claimed that idea of *Negara Integralistik* was originated from Indonesian tradition, particularly Javanese tradition concerning mysticism of *Manunggaling Kawula Gusti* which view all people must be integrated to the leader. However, idea of *Negara Integralistik* was claimed also in line with the modern state ideas that practiced by fascism in German under NAZI and Japan Imperial before World War II ²⁸.

Based on the idea of *Negara Integralistik*, the New Order claimed that the 1945 Constitution has a national identity with the collectivistic character which contradictory to western democracy system. New Order regime rejected for amending the 1945 Constitution in line with agenda of IMF and World Bank in economic affairs. New Order government realized that agenda of IMF and World Bank comprised liberal individualism values that contradictory with the idea of *Negara Integralistik*. For that reason, New Order rejected amendment of the 1945.

²⁵ *Ibid*

²⁶ Widayati, W., Winanto, W., Laksana, A. W., Huda, M. N., & Fareha, N. (2025). The Challenges of Using the Omnibus Law Method in Indonesia's Legal System. *Volksggeist: Jurnal Ilmu Hukum Dan Konstitusi*, 8(2), 459–477. <https://doi.org/10.24090/volksggeist.v8i2.13382>

²⁷ Richard Robison and Andrew Rosser., Contesting Reform: Indonesia's New Order and the IMF, *World Development*, Vol.26 No.8, 1998, page. 1593–1609

²⁸ Aidul Fitriciada Azhari., Philosophy of Manunggaling Kawula Gusti: From Javanese Mysticism to the Indonesian State Ideology, Eastern Mediterranean Academic Reserach Center (DAKAM) Istanbul: The Internasional History of Philosophy Conference / PHILHIST 15, 2015, <http://www.philhistconference.org/>; Also see, RM A.B. Kusuma., *Lahir Undang-Undang Dasar 1945*, 1st ed., Jakarta: Fakultas Hukum Universitas Indonesia, 2009; Also see, Marsilam Simandjuntak, *Pandangan Negara Integralistik: Sumber Unsur dan Riwayatnya Dalam Persiapan UUD 1945*, 3th ed. Jakarta: Grafiti, 2003.

Situation has changed when reformation of 1998 carried democratization agenda which demanded constitutional amendment. Started with the Asian monetary crisis in 1997 and role the of IMF through Letter of Intent on 13 November 1998 ²⁹, the reformation movement in Indonesia had encouraged the wave of democratization which occurred since the collapse of communism in Eastern Europe in the 1990s. The amendment of the 1945 Constitution was inevitable because the Constitution was perceived as a primary contributor to the authoritarianism of the New Order.

Those factors indicated that the amendment of the 1945 Constitution was influenced by a coercive power which globally controlled by IMF. It means Indonesia more dependent to the IMF and World Bank and for the first time the IMF dan World Bank influenced simultaneously both economic and politic through constitutional amendment. The coercive isomorphism was occurred not only in economy affairs, but also in constitutional discourse.

In this context, the explanation of Henisz, Zelner, and Guillen become relevant, that:

the intervention of an outsider or third party tilt the balance of power toward the group (or groups) favouring reform by providing that group with more resources, legitimacy, or rhetorical arguments, and by prompting various groups to join in the pro-reform coalition ³⁰.

The consequence of the coercive isomorphism is happened when policy and institutional changes cannot be agreed upon through the dynamics of the domestic political process, efforts is made to make them easier by involving pressure from external actors who advocate similar changes in policy and institutions ³¹. The amendment of the 1945 Constitution was subject to external pressure from foreign actors due to the inherent complexities of the domestic political process. This resulted in a lack of consensus on proposed changes to policy and institutional structures.

There are three patterns of coercive isomorphism in the amendment of the 1945 Constitution. The first pattern, pressure in general from global wave democratization which strengthened by role of the various intergovernmental organizations (IGOs) such as the IMF and the World Bank ³². This is displayed in The First and Second Amendment of the 1945 which pointed out the adoption of universal values of democracy and rule of law to meet the demand of democratization. The primary objective of the First Amendment is to regulate

29 Stanley Fischer., The Asian Crisis and the Changing Role of the IMF, *International Monetary Fund*, Vol.35, 1998; Also see, *International Monetary Fund, Letter of Intent of the Government of Indonesia*, 1998.

30 Witold J Henisz et al., The Worldwide Diffusion of Market-Oriented Infrastructure Reform , 1977-1999, *American Sociological Review*, Vol.70 No.6, 2008, page. 871–97.

31 Unal Sosay, Gül and Zenginobuz., *Independent Regulatory Agencies in Emerging Economies*, Budapest, 2005

32 Azhari., *Dekolonisasi Dan Demokratisasi Dalam Konstitusionalisme Indonesia: Tafsir Poskolonial Terhadap Pancasila Dan UUD NRI Tahun 1945*; Also see, Subekti., *Menyusun Konstitusi Transisi Pergulatan Kepentingan Dan Pemikiran Dalam Proses Perubahan UUD 1945*.

the terms of the presidency, limiting them to two terms, and to reinforce the role of the House of Representatives as the legislative body. The amendment pertains to the overarching tenet of constitutionalism, which necessitates the restriction and segregation of authority. In the original 1945 Constitution, this principle was not explicitly delineated.

Meanwhile, the Second Amendment of the 1945 Constitution regulates several provisions concerning strengthening of local autonomy, House of Representatives authority, territory of the State, citizenship, and human rights. In addition, amendment also regulates provisions concerning separation between defence and security function, and particularly concerning national flag, language, and anthem and symbol of the State. Those amendments obviously refer to universal values of democracy and rule of law ³³, particularly concerning human rights which adopts the International Bills of Human Rights, which indicates that the amendment of the 1945 Constitution was influenced by the globally democratization waves.

The second pattern, the amendment of the 1945 Constitution, was significantly shaped by the US constitutional system. A report from the National Democratic Institute (NDI), an American non-governmental organization, delineates the manner in which the United States of America exerted direct influence over the amendment of the 1945 Constitution.

The National Democratic Institute for International Affairs (NDI) has been working in Indonesia since 1996 and more intensively since the democratic transition began in 1998. Since late 1999, NDI has also conducted a program on constitutional reform as part of a larger set of interrelated issues, including electoral reform and regional autonomy. One aspect of the constitutional reform program has consisted of technical support to members of PAH I. NDI has monitored PAH I's plenary sessions and has responded to requests from MPR members for comparative information about a range of constitutional issues. NDI also hosted the leadership of PAH I on its visit to the United States in May 2000 to learn more about the American Constitution in theory and practice. Another aspect of the program has consisted of technical and financial support to one of the leading Indonesian NGOs examining constitutional reform issues, the Centre for Electoral Reform (CETRO). Finally, NDI has also supported several seminars and conferences held in Indonesia on the topic of constitutional reform. NDI intends to continue to support this process over the coming years ³⁴.

Referring to the NDI report, there was a process of coercive isomorphism carried out by the NDI funded by the USAID in the amendment of the 1945 Constitution³⁵. As mentioned by DiMaggio and Powell, the form of coercion or pressure does not need to be carried out by force, but can also be carried out

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

34 National Democratic Institute., *Indonesia's Road to Constitutional Reform: The 2000 MPR Annual Session*, National Democratic Institute for International Affairs, 2000, https://www.ndi.org/sites/default/files/1077_id_constireform_5.pdf.

35 *Ibid*.

in the form of persuasion or invitations to join in a conspiracy (as force, persuasion, or invitations to join in collusion). All of activities as reported by the NDI clearly shows the process of coercive isomorphism in the process of amending the 1945 Constitution.

The United States exerted considerable influence on the transformation of the Indonesian government system from a parliamentary system to a presidential system, as enshrined in the Third and Fourth Amendments to the Constitution of 1945. The 1945 Constitution initially established a hybrid governmental system, wherein the president served as the head of government and was elected by and responsible to the People's Consultative Assembly of the Republic of Indonesia, which constituted the supreme body of the state. The Third Amendment introduces a new provision that establishes a direct popular election of the President. This is indicative of the US presidential system, which has resulted in a significant structural transformation of the Indonesian constitutional system.³⁶ Accordingly, the president should not be responsible to the People's Consultative Assembly anymore and the position all the state organs to be equal. In addition, the existence of the Guidelines of State Policy as an instrument for development planning has no relevant anymore due to policy and development is depend on the winner of presidential election.³⁷

The transformation of government system also implies to alteration of the people's sovereignty principle which was previously "fully held by the People's Consultative Assembly" to people's sovereignty which is implemented "according to the Constitution" (Art. 1(2) of the 1945 Constitution). In an interview (23 July 2024), Hamdan Zoelva, former Head of Constitutional Court and member of People's Consultative Assembly 1999-2004 who participated in the constitutional amendment, stated that the change of article concerning principle of people sovereignty from "fully held by the People's Consultative Assembly" to be "according to the Constitution" was proposed by Dr. Harjono, a lecturer from Airlangga University and member of Expert Committee of the People's Consultative Assembly, as a consequence the adoption of the US presidential system in the Third amendment of the 1945 Constitution.

It means the structural transformation changes the principle, not the principle determines the structural transformation. In addition, the transformation of government system cannot be viewed as part of democratization due to democracy is not depended on the system of government. The presidential or the parliamentary system do not determine a country to democratic or

36 Luis Roberto Barroso., The Americanization of Constitutional Law and Its Paradoxes: Constitutional Theory and Constitutional Jurisdiction in The Contemporary World, *ILSA Journal of International & Comparative Law*, Vol.16 No.3, 2010, page. 580–625.

37 Yessi Anggraini., Perbandingan Perencanaan Pembangunan Nasional Sebelum Dan Sesudah Amandemen UUD 1945, *Junal Ilmu Hukum*, Vol.9 No.1, 2015, page. 74–88; Also see, Azhari., *UUD 1945 Sebagai Revolutiegrondwet: Tafsir Postkolonial Atas Gagasan-Gagasan Revolusioner Dalam Wacana Konstitusi Indonesia*; Ade Reza Hariyadi, *Dinamika Kebijakan Perencanaan Pembangunan Nasional Indonesia*, *JDKP Jurnal Desentralisasi Dan Kebijakan Publik*, Vol.2 No.2, 2021, page. 259–76; Yong Shik Lee., General Theory of Law and Development: An Overview, *Cornell International Law Journal*, Vol.50 No.3, 2017, page. 417–71

autocratic. Some countries with the presidential system develop as democratic state, but not a few countries with the presidential system fall into autocratic state ³⁸.

The People's Consultative Assembly can be said to be the "biggest victim" of the coercive isomorphism in the amendment of the 1945 Constitution. The People's Consultative Assembly was basically the most authentic state institution because it was formed by the founders of the state without precedent from the government system that applies in the world. The introduction of a coercive isomorphism during the amendment of the 1945 Constitution resulted in the People's Consultative Assembly becoming increasingly irrelevant, particularly following the adoption of the US presidential system in the 1945 Constitution. It is noteworthy that, in contrast to the United States, the People's Consultative Assembly did not undergo a complete transformation into a Congress. This ultimately resulted in the People's Consultative Assembly becoming a relatively weak and powerless institution.

The third pattern, the amendment of the 1945 was influenced eclectically by various constitutional system. In addition to the dominant influence from the US, the Third and Fourth Amendments also show that there are several provisions and institutions taken from several countries. One of the most obvious is the arrangement of the Constitutional Court which is taken from the model of the Constitutional Court in South Korea. However, although refers to South Korea, the institution of judicial review is basically from the United States ³⁹. In addition, the arrangement of independent central bank refers to several established constitutional systems in Europe such as Germany, Sweden, and Finland which have experience to fulfil a certainty in the independence of central bank and some new constitutional systems such as Azerbaijan, Bosnia-Herzegovina, and Czech which necessary the independence of central bank to recover and maintain inflation and monetary ⁴⁰. However, reference to various constitutional system was happened basically under pressure of the IMF and the World Bank ⁴¹.

The introduction of coercive isomorphism into the constitutional amendment process gave rise to a certain degree of tension within the constitutional system. This was because the new structures, which were influenced by external pressure, did not always consider the responses of domestic forces in a

38 Thomas Sedelius., *Beyond Presidentialism and Parliamentarism: Democratic Design and the Separation of Powers, Democratization*, Vol.29, 2022; Also see, Juan J Linz., *The Perils of Presidentialism*, *Journal*, Vol.1 No.1, 1990, page.51–69; Also see, George Tsebelis et al., *Review Symposium: Beyond Presidentialism and Parliamentarism*, *European Political Science*, Vol.23 No.1, 2023, page. 86–105

39 Barroso., *The Americanization of Constitutional Law and Its Paradoxes: Constitutional Theory and Constitutional Jurisdiction in The Contemporary World*; Also see, Ginsburg and Versteeg., *Why Do Countries Adopt Constitutional Review?*; Also see, Law and Versteeg., *The Evolution and Ideology of Global Constitutionalism*.

40 Makdir Ismail., *Bank Indonesia Dalam Tata Pemerintahan Indonesia*, *Jurnal Hukum Ius Quia Iustum*, Vol.17 No.3, 2010, page. 337–362.

41 Mahkamah Konstitusi RI., *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Buku VII*, ed. Jacob Tobing, 2th ed. Jakarta, 2010.

balanced manner. However, external intervention created an imbalance of power because external forces tended to provide technical and financial support and rhetorical arguments to groups which were in line with the interests of external reform ⁴².

The domestic responses originated from groups that sought to preserve national identity within the context of the 1945 Constitution. In some instances, the endeavours to preserve national identity were successful, albeit in a modest manner. These include provisions pertaining to economic matters, human rights, and the structure of a unitary state. Regarding the economy, resistance to foreign influence gave rise to the term "economic democracy" as a form of rejection of the free market ideology (Art. 33(4) of the 1945 Constitution). Meanwhile, in human rights, the addition of the word "religion values" to the rules on universal human rights restrictions shows a rejection of secularism while also an affirmation of particularity of human rights in Indonesia (Art. 28(2) of the 1945 Constitution). The provisions of Article 29 of the Universal Declaration of Human Rights only refer to restrictions based on moral considerations without specifically mentioning religion. Regarding a unitary state, domestic forces have succeeded to create an unamendable provision concerning the Unitary State of the Republic of Indonesia ⁴³. It can be said that the unamenable provision on the Unitary State of the Republic of Indonesia is an ideological victory against foreign influence. Hamdan Zoelva, in an interview (23 July 2024, stated that a regulation of unamendable provision concerning basic structure was rejected by most members of the People's Consultative Assembly due to if there was unamendable provision, there not necessary the amendment at all. However, nationalist, and military faction in the Assembly eventually succeeded incorporated the unamendable provision of the unitary state in the Fourth Amendment.

The response of national identity issues against coercive isomorphism shows that the 1945 Constitution has no a basic structure which cannot be amended as an expression of national identity. Whereas national identity is "the unique spirit of the people—the first truly modern form of collective identity—provided the cultural basis for the constitutional state" ⁴⁴. In the absence of stipulations pertaining to the fundamental structure, the constitutional amendment is susceptible to influence from external actors, which can give rise to tensions and contradictions, both in terms of norms and in practice.

3.3. The Basic Structure: A Comparison

In comparison, the Malaysian constitutional system regulates several basic structures which cannot be amended, such as: (a) supremacy of the Constitution; (b) constitutional monarchy; (c) that the religion of the Federation shall be Islam and that other religions may be practiced in harmony; (d)

42 Henisz et al., *The Worldwide Diffusion of Market-Oriented Infrastructure Reform*, 1977-1999."

43 Luthfi Widagdo Eddyono., The Unamendable Articles of the 1945 Constitution, *Constitutional Review*, Vol.2 No.2, 2017, page. 252–269,

44 Jurgen Habermas., *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran Cronin, Cambridge: The MIT Press, 1998.

separation of the powers of the three branches of Government; and (e) the federal character of the Constitution⁴⁵. Similarly, the Indian Constitution contains several provisions concerning basic structures, even more complete than the Malaysian constitution.⁴⁶ The basic structure in the Indian constitution is not only concerning the structure of government, but also concerning "the mandate to build a welfare state contained in the Directive Principles of State Policy"⁴⁷, which equal to the Guidelines of State Policy in the 1945 Constitution. Meanwhile, the Australian Constitution has the constituent power concept which implicitly can be interpreted as basic structure or unamendable provision that related with constitutional identity.⁴⁸ At this point, basic structure also can be related with unconstitutional constitutional amendment doctrine which used by populist leader to strengthen autocracy through manipulation of national identity.⁴⁹

The basic structure is related with unamendable provision or unconstitutional constitutional amendment that applied and develop in several constitutions.⁵⁰ In

45 N. A. Hamid et al., The Doctrine of Basic Structure of the Malaysian Constitution: A Study of Framework, *Pertanika Journal of Social Sciences and Humanities*, Vol.25, October 2017, page. 163–70; Also see, Joshua Wu Kai-Ming., The Rise and Fall of The Basic Structure Doctrine in Malaysia, *Legal Foxes Law Times*, Vol.II No.III, 2010; Also see, Wilson Tze Vern Tay., Basic Structure Revisited: The Case of Semeniyh Jaya and the Defence of Fundamental Constitutional Principles in Malaysia, *Asian Journal of Comparative Law*, Vol.14 No.1, 2019, page.113–45; Also see, Mohd Hishamuddin Yunus., The Malaysian Constitution and The Basic Structure Doctrine, Vol. 159, 2018.

46 Matthew J. Nelson., Indian Basic Structure Jurisprudence in the Islamic Republic of Pakistan: Reconfiguring the Constitutional Politics of Religion, *Asian Journal of Comparative Law*, Vol.13 No.2, 2018, page.333–357; Also see, Maharaja Agrasen and Shiksha Kunj., Basic Structure of Indian Constitution: A Synoptic Study, *International Journal of Civil Law and Legal Research*, Vol.3 No.2, 2023, page.40–43; Also see, Aditi Sharma., Basic Structure Doctrine of Indian Constitution, *Indian Journal of Law and Legal Research*, Vol.V No.IV, 2023, page.1–14; Also see, Virendra Kumar., Basic Structure of The Indian Constitution: Doctrine of Constitutionally Controlled Governance (From Kesavananda Bharati to I.R. Coelho), *Journal of the Indian Law Institute*, Vol.49 No.3, March 6, 2007, page.365–398.

47 Justice M N Venkatachalaiah., *The Basic Structure of the Indian Constitution*, 1973, page1–10.

48 Adrienne Stone., Unconstitutional Constitutional Amendments: Between Contradiction and Necessity, *Vienna Journal on International Constitutional Law*, Vol.12 No.3, n.d., page. 357–368; Also see, Rosalind Dixon., Amending Constituting Identity, *Cardozo Law Review*, Vol.33, page.1–13; Also see, George P Fletcher., Constitutional Identity, *Cardozo Law Review*, Vol.14 1993, page. 737–746.

49 Yaniv Roznai and Tamar Hostovsky Brandes., Democratic Erosion, Populist Constitutionalism, and the Unconstitutional Constitutional Amendments Doctrine, *Law and Ethics of Human Rights*, Vol.14 No.1, 2020, page. 19–48.

50 Yaniv Roznai., Unconstitutional Constitutional Amendments: A Study of the Nature and Limits of Constitutional Amendment Powers, *Department of Law of the London School of Economic*, 2014; Also see, R George Wright., Could a Constitutional Amendment Be Unconstitutional?, *Loyola University Chicago Law Journal*, Vol.22 No.4, 1991, page. 741–64; Also see, Mikael Ruotsi., A Doctrinal Approach to Unconstitutional Constitutional Amendments: Judicial Review of Constitutional Amendments in Sweden, *European Constitutional Law Review*, Vol.20, 2024, page. 247–81; Also see, Rehan and Yaniv Roznai Abeyratne., Interpreting Unconstitutional Constitutional Amendments., *Research Handbook on Constitutional Interpretation*, ed. Carlos Bernal & Sujit Choudhry Catherine O'Regan, 1st ed. (Edward Elgar Publishing, 2023), 1–23; Also see, Gürkan Çapar, *Balancing*

general, the basic structure refers to some provisions which cannot be amended with purpose to protect and preserve the fundamental principle and norm of the constitution. Historically, the basic structure has its origins in India jurisprudence, namely the case of *Kesavananda Bharati v. State of Kerala* ('*Kesavananda Bharati*'), and was subsequently accepted in some countries such as Pakistan, Bangladesh, Malaysia, Norway, and the United States.⁵¹

Regarding the constitutional amendment of Indonesia, before the First Amendment of the 1945 Constitution, there were five agreements concerning the amendment, namely (1) the Preamble of the 1945 Constitution should not be amended; (2) preserving the Unitary State of the Republic of Indonesia; (3) strengthening the presidential government system; (4) the Annotation of the 1945 Constitution concerning normative aspects would be incorporated in the articles of the constitution; and (5) the amendment would be carried out by addendum style.⁵²

Nevertheless, the agreements are incapable of impeding a radical transformation of the governmental system into a pure presidential system which refers to the US presidential system. The agreement to reinforce the presidential system was not interpreted as a means of reinforcing the original structure as stipulated in the origin of the 1945 Constitution. Conversely, the agreement to reinforce the presidential system was even interpreted as a transformation of the governmental system, which was perceived as contradictory to the national identity. It shows that the agreement concerning the Preamble of the 1945 Constitution which contains the national identity cannot sufficient to prevent the amendment from the foreign influence which contradictory to a national identity. For that reason, a regulation concerning the basic structure in the 1945 Constitution is necessary to defend the national identity in the process of constitutional amendment. It also means the basic structure is not necessary to strengthen autocracy, but for protect and prevent several norms and principles which originally intended by the founders as national identity.⁵³

Essentially, the regulation concerning basic structure is also a form of isomorphism, but not in the sense of coercive isomorphism. The regulation of

Unconstitutional Constitutional Amendments, 1st ed., Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG, 2024; Also see, Emmet MacFarlane., The Unconstitutionality of Unconstitutional Constitutional Amendments, *Manitoba Law Journal*, Vol.45 No.1, 2023, page. 21

51 Mohd Hishamuddin Yunus., The Malaysian Constitution and The Basic Structure Doctrine, Vol. 159, 2018

52 Aidul Fitriadi Azhari., The Essential of the 1945 Constitution and the Agreement of the Amendment of the 1945 Constitution: A Comparison of the Constitutional, *Jurnal Hukum Ius Quia Iustum*, Vol.18 No.3, 2011, page. 305–319; Also see, Sekretariat Jenderal MPR, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 10th ed. Jakarta: 2011.

53 Rehan and Yaniv Roznai Abeyratne., Interpreting Unconstitutional Constitutional Amendments., *Research Handbook on Constitutional Interpretation*, ed. Carlos Bernal & Sujit Choudhry Catherine O'Regan, 1st ed. (Edward Elgar Publishing, 2023), 1–23; Roznai and Hostovsky Brandes, Democratic Erosion, Populist Constitutionalism, and the Unconstitutional Constitutional Amendments Doctrine; Also see, Dixon., Amending Constituting Identity.

basic structure is more a mimetic isomorphism which voluntarily adopted from the foreign countries to maintain the national identity in the process of constitutional amendment. Accordingly, isomorphism in the constitutional amendment can be carried out in a balanced manner between foreign influence and national identity so as to be normatively able to create a coherence in the amendment of the 1945 which more and less can prevent tension in constitutional practice.

4. Conclusion

Based on all analysis above, it can be concluded that: the first, the amendment of the 1945 Constitution was occurred under influence of a global democratization wave in the end of twentieth century which created a phenomenon of coercive isomorphism. There are three patterns of coercive isomorphism in the amendment of the 1945 Constitution, namely: (1) the general influence from the global democratization wave to adopt the universal values democracy and rule of law; (2) the directly influence from the United States constitutional system which coercively and systematically injecting the presidential system into the government system in the 1945 Constitution; (3) the eclectic influence from various constitutional system in several particular arrangement of institution, such the Constitutional Court which referred to South Korea and the independence of central bank which referred to various constitutional system, such as Germany, Sweden, Azerbaijan, and Czech. However, the eclectic pattern was happened basically under a landscape of dominance foreign power both from the US and intergovernmental organization such as the IMF and the World Bank. Second, the coercive isomorphism has challenged by a domestic interest which viewed foreign influence was not in line with the national identity. It created the arrangement of several provisions concerning economic democracy, limitation of human rights by religious values, and an unamendable provision concerning the unitary state. In that context, a mimetic isomorphism can be carried out to establish several unamendable provisions concerning basic structure of the constitution which necessary to uphold the national identity and to create a balanced manner between national identity and foreign influence in the process of amendment of the 1945 Constitution.

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