



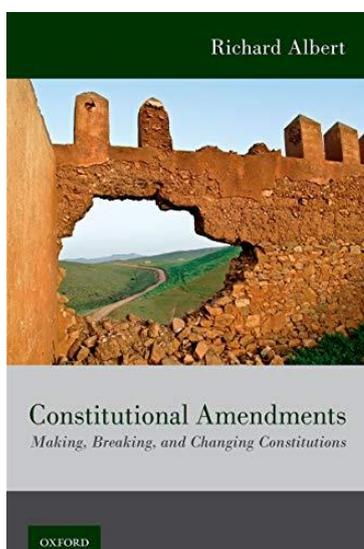
BOOK REVIEW

CONSTITUTIONAL AMENDMENTS:
MAKING, BREAKING AND CHANGING
CONSTITUTIONS (2019). OXFORD:
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When a constitutional judge willing to spend his time to give a review to a book, it is a great sign that the book has some appeals to offer. Yet, the book that is currently will be reviewed is not only discussed by one but two constitutional judges. At the end of November 2019, two constitutional judges, Saldi Isra and I Dewa Gede Palguna, discussed a book entitled “Constitutional Amendment: Making, Breaking and Changing Constitutions” written by Richard Albert. The author also has the opportunity to join the discussion that was held in the Constitutional Court. The journey to Indonesia was part of Albert’s roadshows to introduce his recent book.

The attention to the book did not only appear in Indonesia. In the author’s origin, North America, the book received great acknowledgment from a wide range of legal and political scholars whom people often used to reference their works. Distinguished names like Bruce Ackerman, Tom Ginsburg, Ran Hirschl, Vicki Jackson and Mark Tushnet, encourage audiences to have a close examination of this recent Richard Albert’s publication. Richard Albert, himself, is not a foreign name to political science communities, as well as constitutional law academics. Albert is one of the founders and editors of the International Journal of Constitutional Law (ICON).

The book born from Albert’s endeavor to tackle the issue of constitutional amendments for the past four years. Starting from his assignment as Associate Professor at Yale University, in the 2015-2016 academic year, Richard Albert began to install the core part of this book. The work consists of a series of intellectual labor. It is not a single product that happens overnight. Albert repeatedly tested his theses by publishing them separately in several journals. There are, at least, five articles that were

published in peer-reviewed journals which became the foundation for each chapter of the book. He, then, develops the ideas and adds cases for comparative examples in the book.

The book offers two distinct novelty as its strength. First, the book raised a very important issue in the constitutional discourse but rarely been discussed. The author has a precise expression of the issue where he called it as an uncharted terrain. A written constitution is almost a must in current modern states. Even if it is not written, every entity that declares itself as a state must have a constitution, written or unwritten. Each constitution incorporates rules on its amendment process. Constitutionalism holds that the constitution is a supreme law that limits power and governs people's lives. Therefore, amendment rules in the constitution are the rules that changing the rule of the games. The paramount of the issue on constitutional amendment did not go inline with the interest of the scholars and the number of research that studies it. Although its limited, Richard Albert is not alone. Earlier, Yaniv Roznai has published a book titled "Unconstitutional Constitutional Amendments: The Limits of Amendment Powers" (2017). Roznai takes a different path from Albert where he focused more on the issue of unamendable articles in the constitution. Albert's book, on the other hand, explores constitutional amendment provisions stipulated in each constitution. Nonetheless, Albert also alludes to the classification that can be made against the unamendable articles, in chapter four of his book. To research a subject that only a few have steps in needs a strong and critical attitude. The constitutional amendment rules are a sine qua non provision in every constitution. It is an avant-garde avenue that can be taken in terms of adapting to changes in society. Nonetheless, no one has ever ventured to approach it as a theory.

The hefty obstacle face to create a theory on the constitutional amendment is that each constitution has unique rules of amendment provision.

In regards to the above, the second strength of Albert's works is his mastery in capturing the constitutional amendment process in many countries around the globe and mapping them as well as structuring their similarities. The author does not explicitly mention the total number of countries for which he is studying. However, in the introduction, the author mentions the countries which are subject to his study in each chapter. Unfortunately, the author does not disclose his reasons behind the selection. It is far beyond imagination the efforts must be made by the author assuming that the research has to have a consistent same number of states as its objects in each part of the book. Besides, the author also seems to put more emphasis on the context of mapping the amendment practices rather than take a comparative approach.

In his research, Albert concluded that there is a deviation in the practices of the constitutional amendment. The deviation that he coined the term "constitutional dismemberment". The purpose of changing constitutional provision can be either in the context of corrective, elaborative, reformative or restorative. Dismemberment is when the amendment goes beyond the scope of these objectives.

Albert argues that there are three types of constitutional dismemberment. First, the type of constitutional amendment that aims to advance the goals of liberal democracy or to weaken it. An example of the type of abate liberal democracy is the amendment of the Turkish Constitution in 2017 which changed the nature of the state from democratic to an authoritarian regime. Second, constitutional dismemberment in the framework of bridging the gap from the old constitutional rules to the new constitution. The actual constitution is completely a brand new constitution

but the constitutional actors frame it as an amendment. This serves to seek a middle ground of transition from the former constitutional rules. Third, include in dismemberment is an alteration in the basic features in the constitution. The addition or exclusion of the fundamental rights, modification in the political structure and changes in the constitutional identity are examples of the third type of dismemberment. It is important to note that although a deviation, constitutional dismemberment is never been an unsound practice. State practices also show a successful end to the constitutional dismemberment.

In 1999-2002, Indonesia amended its constitution. The crucial agenda of this amendment is to limit the president's power. Numerous provisions changed or added to set presidential term in office, shifting the executive power to make laws to the Parliament and also incorporate a new chapter on the protection of fundamental rights. A substantial change also occurs in the political structure. The People's Consultative Assembly (Majelis Permusyawaratan Rakyat) no longer regard as the highest state institution. The parliament adopts a bicameral with the establishment of the Regional Representative Council (Dewan Perwakilan Daerah). Reflecting on Albert's theory, the practice of this type of amendment may be classified as dismemberment. In addition, the constitutional amendment actors have a mutual agreement to retain the 1945 Constitution as its title despite massive changes to the previous constitution. The reason behind the agreement to keep the title is its effort to maintain continuity between the old constitutional order and changes in the new constitution. Was this effort to consider a successful arrangement?

Currently, there is a constitutional discourse in Indonesia to have another change to the constitution. One issue for the amendment is to restore the People's Consultative Assembly's power to determine the

direction of the state. Looking back at the dismemberment theory, the desire to change the constitution by returning to the old rules is one indication of the failure to maintain the continuity of constitutional changes. The new rules contained in the amendment to the Constitution are deemed incompatible so it is necessary to return to the old constitutional rules. However, this is still a new developing issue. The phenomenon also may be captured as how the work of Richard Albert gaining its importance to understand further on constitutional amendment

One thing is certain, the issuance of this publication has succeeded Richard Albert in establishing himself as a leading scholar in the field of constitutional amendment. The mapping he did through this book has become a groundbreaking theory. Many people will refer to this book as an academic reference as well as a guide for the political actors in their attempt to amend the constitution.

ABOUT AUTHOR

Bisariyadi is Researcher at Constitutional Court of Republic of Indonesia. He obtained his Bachelor of Law degree from University of Indonesia and Master of Laws (LLM) degree from The University of Melbourne Australia. As a researcher, Author has been involved in many research projects concerning legal studies especially on Constitutional Law, Comparative Law, and Human Rights Law. In addition, some of his thoughts have been widely published in various legal journals both national and international and also presented in various scientific forums and conferences. The author also actively publishes his thoughts through online media at <https://bisariyadi.wordpress.com>