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## BOOK REVIEW

HOW THE JUSTICE POWER POST  
CONSTITUTION AMENDMENT? A REVIEW  
BOOK "*POLITIK HUKUM KEKUASAAN  
KEHAKIMAN PASCA AMANDEMEN  
UNDANG-UNDANG DASAR 1945*",  
MA'SHUM AHMAD, TOTAL MEDIA  
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Andrew Mario Ernesto Ataupah<sup>ID</sup>  
Undergraduate Law Student, Universitas Negeri Semarang,  
Indonesia

✉ [rioernest2507@gmail.com](mailto:rioernest2507@gmail.com)

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## ABSTRACT

This book examines and describes the relationship between the rule of law, legal politics, and the legal political configuration of judicial

power, the functions and authorities of the Supreme Court, the functions and authorities of the Constitutional Court, the functions and authorities of the Judicial Commission. old, new and reform orders.

**Keywords:** Constitution Amendment, Justice, Power, State Authority



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## INTRODUCTION

The 1945 Constitution in the general explanation has been stated about the state government system expressly stating, "the Indonesian state is based on law (*machtsstaat*)". It was also stated in the Indonesian government "based on the basic constitutional system (basic law), not absolutism (unlimited power)". According to Hans Kelsen, the state constitution can also be called the "fundamental law" of the state, which is the basis of national legal system. Law is a political product so that the character of each legal product will be very determined or colored by the balance of political power or the configuration that gave birth to it. The political configuration of the 1945 Constitution is very influential on judicial power, so the position and function or role and likewise the degree of autonomy or independence of judicial power is largely determined by the model or type of political configuration on which to base it. In other words, the exercise of judicial power is inseparable from the factors of political development, including the applied political system.

Indonesia's constitutional journey since independence on August 17, 1945, has experienced ups and downs both in ideas, order, and its application. So that Indonesia cannot be separated from the historical

journey of the development of democracy itself, this is the history of democracy after independence, by experts divided into several times, namely the period of liberal democracy (1945-1959), guided democracy (1959-1966) and Pancasila democracy (1967 - until the fall of the New Order). Historically, the dynamics can be seen from the fact of its constitutional history, that in Indonesia several constitutions of the 1945 Constitution, the RIS Constitution, the 1950 Constitution, the 1945 Constitution and now the 1945 Constitution were amended by 1999-2002. In various constitutions that Indonesia has experienced a parliamentary system of government, guided democracy, and presidential government until now. The picture shows that the constitution has always been the basis of changes in the state administration.

In the beginning, the writer explains the background of the problem in the form of changes in the constitution in Indonesia for several periods. Also, various government systems have been used before, and the authors explain that the constitution has always been the basis for a change in state administration. In addition, each government system has its own characteristics.

## DEFINITION OF POLITICAL LAW

In the initial part of the author explains the notion of political politics, the origin of the word politics itself comes from the word "polis" which means "city state" with politics there is a special relationship between people who live together, in that relationship arises rules, authority, official behavior, legality of legitimacy, and finally power. Political activity is not first because of human social nature, but something that is sought. As Hannah Arendt said, politics is an art to perpetuate human beings.

Then the writer expresses his opinion that the definition or understanding of "legal politics" itself varies greatly, by believing that there are substantive similarities between the various notions that exist, legal politics includes: first, the development of law with the core of making and renewing legal materials to suit the needs; *secondly*, the implementation of legal provisions that have included an affirmation of the functions of the institution and guidance for law enforcement. From this understanding the politics of law encompasses the process of making and implementing that can show the nature and direction in which the law will be built and enforced.

In addition to the classic definition and understanding of legal politics, the author also conveys some definitions and understandings of legal politics according to several experts such as Padmo Wahjono, Soedarto, Satjipto Rahardjo, Abdul Hakim Garuda Nusantara, Imam Syaukani, and A. Ashin Thohari, and Sunaryati Hartono, despite the delivery. Hartono was not explicit about legal politics but was conveyed more implicitly in his opinion. Even the author himself thinks that the most comprehensive definition of legal politics among the definitions of legal politics presented by other experts is because it clearly explains the working area of legal politics, namely the territorial enactment of legal politics, and the process of reform and law making.

## TYPES OF LEGAL POLITICAL CONFIGURATION

In this section, the author explains the various political configurations of law. Starting with explaining the notion of configuration literally as a form or form to describe an object (according to the Big Indonesian Dictionary). Political configuration can simply be understood as a form of a decline in political power in a certain period.

The author also cites the understanding of legal political configuration according to Moh. Mahfud MD, namely as a dichotomous arrangement or constellation of political power. Then there are several other experts such as Bambang, and Raten Saragih, and Afan Gaffar.

The author also expresses his thoughts on the relationship between government and political configuration. In democratic various kinds of institutions are involved in the legal formation agenda. Community involvement is very high because of the recognition of political pluralism in which groups in the community whether they join political parties, including non-government organizations. Therefore, the legal product is populist in nature which is very different from elitist in undemocratic regimes.

Not only that, but the writer also sees that the history of political reality in Indonesia until now shows that there is always a change, or a pull between the democratic and authoritarian configurations. Political configuration in that period tends to be influenced by elements within each other which attract each other, in a political configuration, the outline will

be pursued into two poles. Namely democratic political configurations and authoritarian political configurations.

#### **A. Democratic Political Configuration**

Excerpt from Mr. Moh. Mahfud MD is used by the author, that is, the political configuration of a democratic law that is the arrangement of a political system that opens up opportunities (opportunities) for full people's participation to actively participate in determining public policy.

Then in the history of Indonesia, the authors suggest that from the history of political configuration in Indonesia, we can see how the configuration itself, in the liberal period, for example, was the Declaration of Government on November 3, 1945. The advantage of a democratic political configuration is the creation of a fair political atmosphere because of the large political opportunities for the people to participate in it. But there are also weaknesses, which are expensive and complex in achieving a policy towards the public.

#### **B. Authoritarian Political Configuration**

The author also describes the configuration of authoritarian politics. An authoritarian political configuration is an arrangement of a political system that prioritizes the state in the form of being very active in taking all initiatives in state policy making. This configuration is marked by the drive of the power elite to impose unity, abolition, open opposition, the dominance of the state leadership to determine state policy and the domination of political power by the eternal political elite and behind it there is a doctrine that justifies the concentration of power.

This means that the political configuration that places the government in a very dominant position with an interventional nature, so that the role of the people's representative bodies and political parties is not going well. There are also consequences that occur that are political goals to be achieved by the government can be implemented and run well without significant disruption, but the freedom and participation of the people in politics do not exist, people only get the role of accepting policies without being able to provide input to the government, and the government becomes very strong and dominant.

Even people's representative bodies and political parties do not have a role as big as the government in the political wheel in Indonesia. This has happened precisely during the new order of President Soeharto's

administration which lasted for 32 years, which led to many developments in this country, but also various gaps even rampant corruption, collusion, and nepotism which seemed to be a new culture in Indonesia at that time.

## POLITICAL CONFIGURATION RELATION TO BASIC LAWS

The birth of a political configuration is not absolutely dependent on the constitution or applicable law. The enactment of the constitution can show different political configurations at different periods. The 1945 Constitution which took effect in 1945-1955 turned out to give birth to a democratic political configuration. Whereas after 1966, the 1945 Constitution gave birth to an authoritarian political configuration. It is also evident that although three different configurations have been used namely the 1945 Constitution, the RIS Constitution, the Provisional Constitution of 1945 but the political configuration that was born was the same, namely a democratic political configuration.

## EFFECT OF AMENDMENTS TO THE 1945 CONSTITUTION ON THE JUDICIARY

The author says that Amendments or Amendments to the 1945 Constitution also affect the power or authority of the Judiciary in Indonesia, or in short, the power of judges in court. For example, at the beginning of independence / at the beginning of the 1945 Constitution or in the old order, the justice department stood next to the supreme court without the existence of a particular organizational structure and adheres to the principle of free independence. Then in the old order, before the amendment to the 1945 Constitution judicial authority or judicial functions consisted only of judicial bodies culminating in the Supreme Court. And also, before the amendment there are several articles that limit the authority of the Judiciary, as Article 24 states:

- (1) Judicial power is exercised by a Supreme Court and other judicial bodies according to the law.
- (2) The composition and power of the judicial bodies are regulated by law.

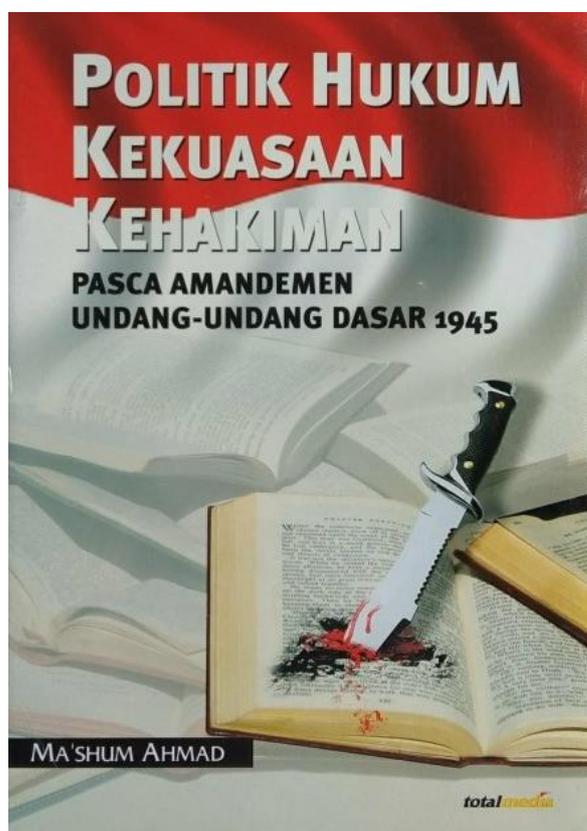
In the aforementioned provisions it is not explicitly stated that judicial power is an independent power. The weak legal umbrella for the independence and impartiality of judicial power institutions in the New Order era has caused these judicial power institutions to be easily intervened by institutions outside the judiciary. Therefore, an amendment to the article took place. The statement of an independent and independent judicial authority is one of the results of the amendment to the 1945 Constitution, in particular Article 24 which, after being completely amended, reads:

- (1) Judicial power is an independent power to administer justice in order to enforce law and justice.
- (2) Judicial power shall be exercised by a Supreme Court and the judiciary below it in the general court, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.
- (3) Other bodies whose functions are related to judicial power are regulated in the law.

This article is the basis for an independent and independent judicial authority. Independent in the sense that the Supreme Court and the Constitutional Court are the actors of judicial power.

## CONCLUDING REMARKS

Then the contents of this book are the authors try to explain the influence of the 1945 Constitution Amendments on the power of the judiciary, where after the Amendment, the judicial power becomes more independent and independent and has an organized body and structure. In addition, the author also voiced how the political characteristics of the judicial power of law in three regimes namely, the old order, the new order and reform. With attractive delivery and accurate and appropriate sources.



### DATA of BOOK

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