

UNAMENDABLE CLAUSES IN CONSTITUTIONAL DYNAMICS: A COMPARATIVE STUDY BETWEEN INDONESIA, FRANCE, AND GERMANY

Istikhomah¹, Gembongseto Hendro Soedagoeng²

Abstract

Unamendable provisions, or eternity clauses, have been extensively studied in comparative constitutional law, predominantly through the German model. However, existing scholarship largely focuses on consolidated democracies and assumes that textual entrenchment ensures effective constitutional constraint. This leaves a research gap regarding how unamendability operates in transitional constitutional systems. This article offers a functional comparison of unamendable provisions in Indonesia, Germany, and France by analysing their source (textual or judicial), scope of protection, and enforcement mechanisms. The Indonesian case provides a distinctive contribution by revealing a disconnect between explicit textual unamendability under Article 37(5) of the 1945 Constitution and the absence of a judicial doctrine of unconstitutional constitutional amendment. Moreover, the constitutional status of Pancasila illustrates a critical distinction between legal and political unamendability. The study's originality lies in reconceptualising unamendability as an institutional practice rather than a purely textual safeguard, demonstrating that its effectiveness depends on judicial enforcement and constitutional culture rather than formal entrenchment alone.

Keywords: constitutional amendment; constitutional court; constitutional identity; eternity clause; France; Germany; Indonesia; unamendable provisions

Abstrak

Ketentuan yang tidak dapat diubah telah banyak dikaji dalam hukum tata negara perbandingan, terutama melalui model Jerman. Namun, kajian yang ada cenderung berfokus pada demokrasi yang telah terkonsolidasi dan mengasumsikan bahwa penguncian tekstual secara otomatis menghasilkan pembatasan konstitusional yang efektif. Hal ini menimbulkan kesenjangan penelitian mengenai unamendability dalam konteks demokrasi transisional. Artikel ini membandingkan Indonesia, Jerman, dan Prancis melalui pendekatan fungsional dengan menelaah sumber unamendability, ruang lingkup perlindungan, dan mekanisme penegakannya. Konteks Indonesia menawarkan kontribusi unik dengan menunjukkan ketegangan antara unamendability tekstual Pasal 37 ayat (5) UUD 1945 dan ketiadaan doktrin unconstitutional constitutional amendment. Selain itu, Pancasila memperlihatkan perbedaan penting antara unamendability yang bersifat hukum dan politik. Kebaruan penelitian ini terletak pada pemahaman unamendability sebagai praktik institusional, bukan sekadar teknik perumusan konstitusi.

¹ Fakultas Hukum, Universitas Airlangga, Jln. Dharmawangsa Dalam Selatan, 60222, Jawa Timur, Indonesia, email: istikhomah-2024@fh.unair.ac.id, Tel./Fax. 085732110122..

² Fakultas Hukum, Universitas Airlangga, Jln. Dharmawangsa Dalam Selatan, 60222, Jawa Timur, Indonesia, email: dinta.febriawanti-2024@fh.unair.ac.id, Tel./Fax. 085732110122

Kata kunci: eternity clause; identitas konstitusi; Indonesia; Jerman; mahkamah konstitusi; perubahan konstitusi; Prancis; unamendable provision

I. Introduction

The constitution is understood as a form of social contract as proposed by Rousseau. This interpretation must also be seen in the context of a written constitution. Rousseau emphasised that the constitution functions as a meeting point between the government's will and citizens, formulated in the form of a written document or agreement. Meanwhile, K.C. Wheare in his work *Modern Constitution* states that the constitution is nothing more than "*the desire to make a fresh start*". On the other hand, C.F. Strong defines a constitution as "*a set of principles governing the powers of government, the rights of citizens, and the relationship between the two*".³

Along with its development, the constitution in various countries has undergone many changes triggered by urgent needs, thus demanding amendments and updates in the constitutional system.⁴ Quoting Bagir Manan's opinion, the constitution cannot always be used as the main guide for several reasons. Firstly, although power is obtained through the constitution, its implementation is not always by the existing rules. For example, Adolf Hitler obtained and exercised his power in an authoritarian manner, even though the Weimar Constitution at the time was democratic. Secondly, constitutions are often only applied textually without considering their substantial meaning. This was seen in the Soeharto era, where he kept getting re-elected by adhering to a literal interpretation of the Constitution. Thirdly, constitutions can suffer from internal contradictions, such as the 1950 UUDS, which supported a multiparty system but led to government instability. Fourth, constitutions are often interpreted incorrectly, which has the potential to lead to irregularities in constitutional practice.⁵ In addition, the *durability* of a constitution is also a consideration in making changes. The constitution is made to maintain the stability and continuity of the political system, but it must still be flexible in order to adjust to the changes that occur. Thus, the desire to adapt to political, legal, social, cultural, and historical dynamics plays an important role in the process and outcome of constitutional amendments.

Many modern constitutions contain *entrenchment clauses*, which are provisions

³ Rishan, I. (2024) *Teori dan Hukum Konstitusi*. Jakarta: Sinar Grafika, p. 59.

⁴ Azizah, F.N. (2022) 'A Comparison of the Constitutional Amendment Systems in America, France and Indonesia'. *Adalah: Buletin Hukum dan Keadilan*, 6(2), p. 9.

⁵ Manan, B. (2024) *Mencari Konstitusi Tidak Tertulis Indonesia Sebagai Bagian Constitutional Repair in A Thematic Discussion of Departement HTN Faculty of Law*. Bandung: Padjadjaran University.

that make the amendment process more complex than a simple change of law.⁶ These clauses do not appear without reason. Their existence is influenced by various factors, one of which is the evolving political and social dynamics, as well as the structure and characteristics of the newly established constitutional system. The main purpose of this strengthening clause is to ensure that constitutional changes are not made haphazardly or for the sake of momentary interests, but through careful consideration and in accordance with the fundamental principles of the state.⁷

In addition, historical legacies have greatly contributed to the codification of entrenchment clauses in constitutions, which aim to limit or even prohibit changes to certain provisions. The existence of these clauses reflects the historical path dependencies and procedural decisions that have been taken during the constitution-making process. By establishing stricter rules for changing fundamental aspects of the constitution, the state seeks to safeguard fundamental principles that are considered essential. In addition, this clause also serves as a protective mechanism to prevent changes that could potentially threaten stability and constitutional order.⁸

Constitutional changes are often made in response to political and institutional interests, aiming to adapt the country's basic rules to evolving social dynamics. However, in some cases, these reforms do not always represent the will of the people directly.⁹ From the perspective of the law itself, constitutional amendments reflect a form of constitutionalism, whereby a country's constitution changes over time to adapt to ideological, legal, social, political, and economic developments. These changes allow the constitutional system to remain relevant to the evolving dynamics of society.¹⁰ However, in practice, not all parts of the Constitution can be freely amended. Some countries impose **restrictions on constitutional amendments**, including through the doctrine that certain *unamendable provisions* exist. This restriction aims to safeguard fundamental values of the state, such as the form of government, the principle of popular sovereignty, or human rights, from being altered by short-term political interests. With this restriction, the process of constitutional change remains within the corridors

⁶ Hein, M. (2019) 'Impeding Constitutional Amendments: Why Are Entrenchment Clauses Codified in Contemporary Constitutions?', *Acta Política*, 54(2), p. 196.

⁷ Abramowitz, B., Shapiro, E., and Talmon, N. (2021) 'How to Amend a Constitution? Models, Axioms, and Supermajority Rules', *Proceedings of the International Joint Conference on Autonomous Agents and Multiagent Systems, AAMAS*, 3, p. 1431.

⁸ Andrade, E., Proaño, T., and Cárdenas, J. (2022) 'Social Perception Of The Abuse Of The Constitutional Reforms Of The Ecuadorian State (Percepción Social Del Abuso De Las Reformas Constitucionales Del Estado Ecuatoriano)', *Universidad y Sociedad*, 14(6), p. 458.

⁹ *Ibid.*

¹⁰ Ibrahim, M. (2017) 'The Limits of Constitutional Amendment Power: The Limits of Constitutional Practice in Several Countries and Their Relevance in Indonesia', *Constitution*, 17(3), p. 560.

that maintain the stability and integrity of a country's legal system.¹¹

As has been explained regarding the factors that encourage a country to change its constitution, if we examine this more deeply and relate it to the current condition of the constitution in Indonesia, there is a tendency for loopholes in the written constitution to be unbalanced **with the application of constitutional ethics**. This reflects the **declining adherence to ethical principles and the diminishing self-restraint in the actions of state and government officials**.¹² Based on this explanation, there is no denying the existence of an amendment to the Indonesian constitution.

However, it goes back to the doctrine of *unamendable provisions*. The doctrine of *unamendable provisions*, also known as *constitutional entrenchment* or *eternity clauses*, refers to the existence of certain provisions in the constitution that cannot be amended or removed. The concept has received considerable attention in comparative constitutional law studies and is applied in various ways in different legal systems. Some countries apply the **doctrine of unamendable provisions** to safeguard fundamental principles of the state. For example, **Ukraine** prohibits amendments related to sovereignty, territorial integrity, and fundamental principles of democracy. **Brazil** stipulates that the republican form, the federation system, individual rights, and the separation of powers cannot be amended. **Germany**, through **Article 79(3) of the Grundgesetz**, prohibits changes to human rights, democracy, the rule of law, and the federal structure. Similarly, Brazil, Ukraine, Lithuania, and France impose limits on constitutional changes to protect foundational state values.

In addition to these countries, France is also interesting to analyse in the context of the application of the doctrine of *unamendable provisions*. **The French Constitution of 1958** allows for amendments through **Article 89**, which requires the approval of both houses of Parliament, as well as ratification through a national referendum or a joint session of the National Assembly and the Senate. However, this Article also sets one major limitation, namely that the **republican form of government cannot be changed**. As such, France cannot switch to a monarchy or a non-republican system through a constitutional amendment. This restriction is similar to **eternity clauses** or constitutional entrenchments in other countries.

Several scholars have analysed unamendable provisions from theoretical and

¹¹ Abdellaoui, S. (2023) 'Constitutional Amendments in Algeria: Getting Through the Bottleneck', *Manchester Journal of Transnational Islamic Law and Practice*, 19(3), p. 152.

¹² Harijanti, S. (2024) *Mencari Konstitusi Tidak Tertulis Indonesia Sebagai Bagian Constitutional Repair in A Thematic Discussion of Department HTN Faculty of Law*. Bandung: Padjadjaran University.

comparative perspectives. Yaniv Roznai (2017), among others, views this clause as protecting the identity of the constitution and as a limitation on majority rule. David Landau (2013) criticises that while this provision maintains stability, it may limit the people's right to democratic constitutional reform. Some other researchers have also noted the heavy judicial involvement in overseeing these clauses, which could lead to judicial domination of the political process. Despite the widespread discourse on unamendable provisions in comparative law literature, there has not been much research comparing the effectiveness and oversight mechanisms of these clauses in countries with different legal system characteristics, particularly between civil law countries such as France and Indonesia.

Recent scholarship on constitutional design increasingly focuses on the concept of unamendability as a strategic response to democratic backsliding and authoritarian constitutionalism. Roznai (2022) and Albert (2022) argue that unamendable provisions function as "militant democratic tools" that seek to preserve a constitution's fundamental identity from subversion through formal amendments. Suteu (2024) critically examines this view by highlighting how authoritarian regimes may also co-opt unamendability doctrines for illiberal ends, as seen in Hungary and India, thus challenging assumptions about their protective capacity.

In the German context, constitutional identity has long been upheld through Article 79(3) of the Basic Law (Grundgesetz), which secures the fundamental elements of democracy, federalism, and human dignity. Polzin (2022) and Baer (2023) have examined how German courts interpret these unamendable norms not only as textual prohibitions but as normative commitments deeply rooted in the constitutional tradition.

In France, although the text of the 1958 Constitution does not contain as many entrenched clauses as Germany, scholars such as Tusseau (2023) observe that the republican form of government enjoys *de facto* unamendability via constitutional interpretation by the Conseil Constitutionnel. This suggests that unamendability can be judicially constructed even in the absence of explicit eternity clauses.

Indonesia presents a unique case. Satrio (2017) analyzes the discourse seeking to restore the authoritarian character of the original 1945 Constitution, and contends that the post-1999 amendments represent a legitimate constitutional dismemberment that reorients the Indonesian state toward liberal democracy. However, Pratiwi (2024) warns of emerging threats to the Constitutional Court's independence, which may jeopardize the capacity of the judiciary to defend these unamendable constitutional commitments. Thus, the development of both textual and implied unamendability

alongside judicial mechanisms to enforce them has become central in debates about the resilience of constitutional democracies. These studies offer a comparative lens for understanding how Germany, France, and Indonesia navigate the balance between constitutional rigidity and political flexibility.

The doctrine of **unamendable provisions** is a fascinating foundation for analysing the constitutional amendment systems in various countries. Based on this doctrine, the author is interested in exploring the mechanism of constitutional change applied in **Indonesia, Germany, and France**. These countries have different approaches to regulating their constitutions. This analysis will dig deeper into how the two countries adjust their constitutions to the existence of the doctrine of unamendable provisions. This study investigates the identification and classification of unamendable provisions, both implicit and explicit, within the constitutions of Germany, France, and Indonesia. It further explores the theoretical foundations that justify the existence of such entrenchments and examines the mechanisms in place to monitor and enforce these constitutional limitations. The research aims to assess the effectiveness of these mechanisms in safeguarding the fundamental principles of each state. The significance of this research lies in its contribution to the discourse on constitutional design and amendment theory, particularly in highlighting the importance of balancing flexibility with institutional safeguards to preserve the core values and identity of a state.

II. Method

This research is a normative legal research conducted through a literature study approach. The focus of the study lies on examining legal documents and scientific literature in order to construct a conceptual and theoretical understanding of unamendable provisions within the framework of the constitutional system. This approach allows for in-depth analysis of the basic principles of the constitution as well as the constitutional practices that have developed in various countries.

The comparison between Indonesia and Germany is grounded not merely in the presence of unamendable constitutional provisions, but in their shared historical experience as post-authoritarian constitutional orders. Both constitutions were redesigned following periods of authoritarian governance, with constitutional amendment rules serving as instruments to prevent democratic regression. Germany's Basic Law of 1949 emerged as a response to the collapse of the Weimar Republic and the Nazi regime, embedding Article 79(3) as a permanent safeguard for democracy, human dignity, and the rule of law within a consolidated constitutional

democracy. Indonesia's post-1998 constitutional amendments similarly sought to dismantle authoritarian legacies of the New Order regime. Article 37(5) of the 1945 Constitution, which entrenches the unitary state, reflects a preventive logic aimed at preserving constitutional stability and national unity in a transitional democratic context.

The methodological value of this comparison lies in the functional equivalence of unamendability as a response to authoritarian experience, combined with a structural divergence in democratic consolidation and judicial enforcement. Germany represents a mature system with a well-developed doctrine of constitutional identity and judicial review of amendments, while Indonesia illustrates the operation of unamendable provisions in a transitional democracy lacking an established doctrine of unconstitutional constitutional amendments. This contrast allows the study to assess how unamendable clauses function across different stages of democratic consolidation, moving beyond textual comparison toward an evaluation of their institutional effectiveness and normative significance.

III. Analysis and Discussion

A. The Urgency of Unamendable Provision in the Constitution

Unamendable provisions, also known as *eternity clauses*, are an important part of modern constitutional drafting. These provisions are designed to protect a country's fundamental principles, values, or structures from changes that could jeopardise constitutional integrity and identity. In general, the existence of unamendable provisions serves as a commitment device to maintain the stability of basic state norms from temporary political dynamics.¹³ They also act as a bulwark against democratic backsliding and the potential rise of authoritarianism by preventing changes to fundamental democratic principles.¹⁴ In some contexts, these provisions even serve to safeguard national identity, as in the Romanian Constitution, which protects the concept of the "national state."¹⁵

However, the existence of unamendable provisions is not without its challenges and criticisms. One of the main criticisms is its undemocratic nature as it limits the

¹³ Michel, S. and Cofone, I. (2018). 'Credible Commitment or Paternalism? The Case of Unamendability' in Albert, R and Oder, B. (eds.) *An Unamendable Constitution?*. Cham: Springer International Publishing, p. 125.

¹⁴ Suteu, S. (2024) 'Friends or Foes: Is Unamendability the Answer to Democratic Backsliding?', *Hague Journal on the Rule of Law*, 16, p. 315.

¹⁵ Suteu, S. (2017) 'The Multinational State That Wasn't: The Constitutional Definition of Romania as a National State', *ICL Journal*, 11, p. 413.

people's right to adapt the constitution to the times.¹⁶ These provisions also have the potential for judicial domination, as their implementation often involves a large role for the judiciary in overseeing and interpreting constitutional changes.¹⁷ In addition, there is a risk of abuse by political actors or authoritarian regimes seeking to perpetuate power through permanent constitutional restrictions. Different countries have applied this concept with different approaches.¹⁸

From a theoretical point of view, *unamendable provisions* are often seen as a form of paternalism from the framers of the Constitution, who sought to protect future generations from the potential abuse of power by the momentary majority.¹⁹ In addition, the concept of *constitutional* identity is the main justification for the existence of these provisions, as the principles and values they protect are considered part of the inviolable identity of the state.²⁰

B. The Concept of Unamendable Provision

The concept of unamendable provisions, also known as *eternity clauses*, refers to certain constitutional principles or norms that cannot be amended or repealed. These clauses are designed to permanently preserve fundamental values and principles, thereby preventing amendments that could potentially alter or weaken the basic identity of the constitution.²¹ This provision serves as a protective mechanism to ensure that the fundamental principles of the Constitution are preserved from change through future amendments. This provision aims to maintain the integrity and continuity of the constitutional order.²² In general, unamendable provisions can be categorised into three main forms, namely **explicit provisions, implicit provisions, and procedural and temporal or supra-constitutional restrictions**.²³

First, unamendable provisions are explicitly contained in the form of *eternity clauses* and *substantive limitations*. Eternity clauses are constitutional provisions that expressly state that certain principles or rules cannot be changed through the amendment process. For example, the German Basic Law (*Grundgesetz*) contains a

¹⁶ Roznai, Y. (2018). 'Necrocracy or Democracy?' in Albert, R. and Oder, B. (eds.) *An Unamendable Constitution?*. Cham: Springer International Publishing, p. 33.

¹⁷ *Ibid.*

¹⁸ Suteu, S., *loc.cit.*

¹⁹ Michel and Cofone, *loc.cit.*

²⁰ Chmielarz-Grochal, A. (2023) 'The Limits to Constitutional Amendments and the Question of Constitutional Identity and Citizens' Consciousness (the Polish Case)' in Žalimienė, S. and Wojciechowski, B. (eds.) *Constitutional Consciousness*, Berlin: Peter Lang, p. 177.

²¹ Preuss, O. (2016) 'The Eternity Clause as a Smart Instrument - Lessons from the Czech Case Law', *Hungarian Journal of Legal Studies*, 57(3), p. 292.

²² Michel and Cofone, *loc.cit.*

²³ Herlambang, U. (2022) 'The Doctrine Of Unconstitutional Constitutional Amendments'. *Al Wasath Jurnal Ilmu Hukum*, 3(1), p. 69.

permanence clause that protects the basic principles of democracy and human rights from possible change. In addition, some constitutions also explicitly limit amendments to certain aspects, such as basic principles of government, state symbols, or institutional structures. Examples of these restrictions can be found in the constitutions of Cuba, Haiti, and the Dominican Republic, which prohibit changes to the system of government and fundamental principles of the state.²⁴

Second, there are implicitly unamendable provisions, which generally occur through *judicial interpretation* and *constitutional conventions*. In some legal systems, courts have a role in interpreting certain constitutional principles as unamendable, even if they are not explicitly stated in the constitutional text. In countries such as Brazil and Turkey, courts have invalidated amendments deemed to be contrary to the basic principles of the constitution. Moreover, in some countries, the impossibility of amendment is enforced through political and judicial practice in the absence of explicit provisions. This can be found in the UK and the Netherlands, where the fundamental principles of the constitution are defended through institutional practices and political conventions.²⁵

Third, there are restrictions on amendments in the form of procedural requirements and temporal restrictions. Some constitutions impose strict procedural requirements on the amendment process, such as the need for a supermajority in parliament or several stages of discussion before an amendment can be passed. These procedural barriers essentially serve to limit the possibility of too easy changes to the constitution. In addition, some constitutions also impose temporal restrictions, which prohibit amendments under certain conditions, such as during a state of emergency or within a certain period of time after the constitution is adopted. These restrictions aim to maintain constitutional stability and prevent changes that are driven by volatile political circumstances.²⁶

Referring to the explanation above, it can be concluded that restrictions on constitutional amendments can be explicit or implicit, either through provisions in the constitutional text or through legal practices that develop in a state administration system. The existence of unamendable provisions indicates an effort to maintain identity, fundamental values, and legal and political stability in a country. However, in this research analysis, the author's main focus on *unamendable provisions* will be on

²⁴ Roznai, Y. (2020). 'Constitutional Unamendability in the Region' in Albert, R., O'Brien, D., and Wheatle, S. (eds). *The Oxford Handbook of Caribbean Constitutions*. Online edn: Oxford Academic, p. 110.

²⁵ *Ibid.*

²⁶ *Ibid.*

the explicit and implicit types to understand the application of the doctrine in the Indonesian, German, and French constitutions.

C. The Irreversible Articles of the French, German, and Indonesian Constitutions

The French Constitution does not expressly apply the doctrine of unamendable provisions. Overall, the French Constitution, particularly the Constitution of the Fifth Republic adopted in 1958, is a fundamental legal document governing the structure and principles of state governance. The changes in this constitution were influenced by a constitutional tradition rooted in revolutionary ideals, with various amendments reflecting the evolving political dynamics. While the initial post-Revolution constitution emphasised universal values, its approach has undergone significant development over time,²⁷ reflecting a blend of revolutionary character and stable republican principles.²⁸

Historically, the French Constitution has faced significant constitutional instability, caused by repeated constitutional changes. This was fuelled by the strong ideological linkages in each constitution, leading to political conflicts and changes in the system of government.²⁹ The current constitution was heavily influenced by General de Gaulle and affirms the dominance of executive power under the leadership of the president, often analogous to the presidential monarchy model.³⁰

Modern developments have resulted in major changes in the French constitutional system, including important reforms in 2008 and 2010, which have strengthened the role of the Constitutional Council and adopted new principles in budgetary governance and state accounting.³¹ In addition, these reforms have expanded judicial review powers and strengthened guarantees for the protection of constitutional rights for citizens.³² Structurally, the French constitution adopts the

²⁷ Lucien, A. and Marrani, D. (2011). 'The sans papiers in France' in Sawyer, C and Blitz B.K. (eds.), *Statelessness in the European Union: Displaced, Undocumented, Unwanted*. Cambridge: Cambridge University Press, p. 253.

²⁸ Paris, M. L. (2024) *Principles of French Constitutional Law*. London: Routledge, p. 20.

²⁹ Tusseau, G. (2023). 'The Evolution and Gestalt of the French Constitution' in Bogdandy, Huber, P., and Grabenwarter, C. (eds.) *The Max Planck Handbooks in European Public Law*. Oxford: Oxford University Press, p. 109.

³⁰ Baranger, D. (2019). 'French Constitutional Law' in Masterman, R. and Schütze, R. (eds). *The Cambridge Companion to Comparative Constitutional Law*. Cambridge Companions to Law. Cambridge: Cambridge University Press, p. 92-112.

³¹ Oliva, E. (2022) 'Towards New Constitutional Budgetary Principles (Vers De Nouveaux Principes Constitutionnels Du Droit Des Finances Publiques?)', *Revue Francaise d'Administration Publique*, 182(2), p. 457.

³² Hunter-Henin, M. (2011) 'Constitutional Developments and Human Rights in France: One Step Forward, Two Steps Back', *International and Comparative Law Quarterly*, 60(1), p. 169.

principle of separation of powers as a mechanism to prevent authoritarianism and ensure a system of *checks and balances*. This principle plays a crucial role in ensuring the accountability and effectiveness of the government. In addition, the Constitution affirms the sovereignty of the people and emphasises the principles of human rights by guaranteeing equality before the law and participation in the political process.³³

The French Constitution itself affirms that France is an indivisible, secular, democratic, and social welfare-oriented Republic. In addition, the Constitution also guarantees the equality of all citizens before the law without discrimination based on origin, race, or religion. Although based on republican principles, the Constitution of the Fifth Republic still contains elements that resemble a monarchical system, especially in terms of the dominance of presidential power. In addition, the Constitution establishes French as the main language, although there is recognition of regional languages. However, this recognition has limitations in terms of regulation, which is often a topic of debate.³⁴

Looking at the explanation above, about the doctrine of *unamendable provisions*, the French Constitution contains provisions that cannot be amended, either explicitly in the form of an eternity clause or implicitly as a result of court interpretation of the constitutional text. Explicitly, this provision can be seen in Article 89-5 which states, "*The republican form of government shall not be the object of any amendment*".³⁵ The French Constitution expressly prohibits any amendment that could change the republican form of government. This provision is a clear example of an *unamendable provision*, which aims to preserve the fundamental character of the French Republic.³⁶ At its inception in 1875, the Constitution of the Third Republic consisted of three special laws known as the Constitutional Laws. At that time, the republican form of government had not been expressly established as an *unamendable provision*. The prohibition on changes to the republican form was only formally enacted in 1884, when the French Parliament passed the Act of 14 August 1884, which revised parts of the Constitutional Act. This revision was made through an amendment to the Law on the Organisation of Public Powers, which was adopted on 25 February 1875 and is one of the sections of the Constitutional Law.³⁷ Subsequently, in 1962, President de Gaulle attempted to amend

³³ Lucien and Marrani, *loc.cit.*

³⁴ Baranger, *loc.cit.*

³⁵ See Article 89 of France's Constitution of 1958 with Amendments through 2008.

³⁶ Charpy, C. (2007) 'The Status of (Secondary) Community Law in the French Internal Order: The Conseil Constitutionnel and the Conseil d'Etat', *European Constitutional Law Review*, 3(3), p. 436.

³⁷ Satrio, A. (2017) 'The Existence Of The Unamendable Provision Of The Unitary State Of The Republic Of Indonesia: The Role Of The Constitutional Court', *Comparative Constitutional Law and*

the Constitution by using Article 11, which allowed for the holding of referendums on the "organisation of public power", thus bypassing the amendment mechanism provided for in Article 89. Most scholars deemed this move procedurally invalid as the constitutional amendment was deemed to be outside the scope of Article 11. However, the *Conseil constitutionnel* rejected the challenge to the measure, stating that it was inadmissible.³⁸

To date, the provision on the republican form of government in the French Constitution remains an *unamendable provision*. Although France has undergone two constitutional changes since the provision was first established, namely through the Constitution of the Fourth Republic of 1946 and the Constitution of the Fifth Republic of 1958 (hereinafter "the 1958 Constitution"), the prohibition against changing the republican form remains a fundamental principle in the French constitutional system.³⁹

In addition to explicitly unamendable provisions, some principles in the French Constitution can be considered implicitly unamendable based on judicial interpretation. That is, these restrictions stem from the interpretation of constitutional principles by judicial bodies, such as the *Conseil constitutionnel* (Constitutional Council) and the *Conseil d'État* (Council of State). For example, the Conseil constitutionnel confirmed that France's constitutional identity limits obligations in the application of Community law, indicating an implicit protection of fundamental principles in the constitution.⁴⁰ Whereas Article 88-1 establishes an obligation to implement Community law, which is tested by the Constitutional Council to ensure that parliamentary acts do not violate the unconditional and clearly formulated provisions of Community law. However, this obligation is limited by France's constitutional identity, which suggests an element of unamendability in relation to the supremacy of the Constitution.⁴¹

Furthermore, the principle of the Indivisibility of the Republic (Article 1) establishes that *France shall be an indivisible, secular, democratic, and social republic (République indivisible, laïque, démocratique et sociale) (France shall be an indivisible, secular, democratic, and social Republic....)*.⁴² Although there is no explicit clause stating this principle as an unamendable provision, it has been interpreted as one of the

Administrative Law Quarterly, 3(4), p. 18.

³⁸ Daly, E. (2019) 'Translating Popular Sovereignty as Unfettered Constitutional Amendability', *European Constitutional Law Review*, 15(4), p. 619.

³⁹ Satrio, *loc.cit.*

⁴⁰ Charpy, *loc.cit.*

⁴¹ *Ibid.*

⁴² See article 1 of France's Constitution of 1958 with Amendments through 2008.

fundamental foundations that cannot be changed easily. This interpretation is reinforced by historical and legal precedents that emphasise the importance of national unity and centralisation.

Having examined the application of the doctrine of *unamendable provisions* in the French Constitution, it is interesting to analyse how the doctrine is applied in the Indonesian Constitution. A number of amendments to the 1945 Constitution of the Republic of Indonesia have brought about significant changes, strengthening the principle of democratic rule of law and integrating fundamental rights, including human rights and the principle of *checks and balances*.⁴³ In addition, constitutional amendments have resulted in the establishment of a number of new institutions, such as the Constitutional Court and the Judicial Commission, in order to strengthen the constitutional system.⁴⁴

In the Indonesian context, an unalterable constitutional provision has two dimensions of meaning. Firstly, the norm clearly establishes a prohibition on change, thereby establishing a substantial obstacle that cannot be interpreted in any other way. Secondly, despite the existence of significant obstacles, there are no procedural constraints that prevent changes to the fixed norm.⁴⁵

Based on the history of constitutional change in Indonesia, there is no explicit provision in the 1945 Constitution that expressly prohibits changes to the form of the Unitary State of the Republic of Indonesia, so there is no normative basis that allows the application of the doctrine in the Indonesian constitutional system.⁴⁶ However, the 1945 Constitution of the Republic of Indonesia Post Amendment is the first constitution that explicitly stipulates the existence of provisions that cannot be changed.⁴⁷

The provision is contained in Article 37, paragraph (5) of the 1945 Constitution in Chapter XVI on Constitutional Amendments, which states that "Specifically regarding the form of the Unitary State of the Republic of Indonesia (NKRI), no changes can be made." The framers of the amended Constitution established Article 37, paragraph (5) as an effort to prevent changes to the form of the Unitary State of the Republic of Indonesia. This decision was influenced by historical experiences with separatism and

⁴³ Asshiddiqie, J. (2023) 'Building a Constitutional Awareness Culture To Create a Democratic Law State', *Petita: Journal of Law and Sharia Studies*, 8(1), p. 1.

⁴⁴ Eddyono, L. (2016) 'The Unamendable Articles of the 1945 Constitution', *Constitutional Review*, 2(2), p. 252.

⁴⁵ *Ibid.*

⁴⁶ Satrio, *loc.cit.*

⁴⁷ Kurniawati, I. (2022) 'The Existence of Unamendable Provisions as Constitutional Identity', *Lex Renaissance Journal*, 7(2), p. 226.

federalism in the 1950s, which had threatened national unity.⁴⁸ It is interesting that Indonesia once experienced a change in the form of the state from unitary to federal. However, in its journey, the federal form of state received a lot of rejection. Historical aspects and debates at the beginning of the formulation of the 1945 Constitution in the early days of independence, especially regarding the choice of the Unitary State of the Republic of Indonesia, which was supported by several *founding fathers*, became one of the main reasons for maintaining NKRI as the form of the Indonesian state.⁴⁹

Thus, the 1945 Constitution of the Republic of Indonesia affirms the form of the Republic of Indonesia as something that is sacred and cannot be the object of change.⁵⁰ This provision also ensures that Indonesia cannot be transformed into a federal state or any other form other than the National Republic of Indonesia. In addition, this provision was introduced as a preventive measure against future efforts that could potentially change the fundamental structure of the state, in line with the constitutional framers' concerns about the threat of separatism based on historical experience. This is in line with Yaniv Roznai's opinion, "the irreversibility provision links the past, present, and future, and has an important expressive function as a symbol in policy."⁵¹

Implicitly, the *unamendable provision* is reflected in the Preamble of the Constitution, which contains the values and basic principles of the Indonesian state and is considered an unamendable provision. This provision aims to ensure that fundamental ideologies, such as Pancasila, are maintained and continue to be the foundation for the country's legal and political systems.⁵² In line with Jimly Asshiddiqie, who argues that Pancasila is one of the constitutional identities in the life of the nation and state in Indonesia.⁵³ Furthermore, Garry Jacobsohn explains that "a constitution acquires its identity through experience, whose identity is not just as a separate object of creation or as an essence buried in the culture of society, which only needs to be discovered. Rather, identity emerges dialogically and is a mixture of political aspirations and commitments that reflect a nation's past, as well as the determination of those in society to transcend that past."⁵⁴

⁴⁸ Eddyono, *loc.cit.*

⁴⁹ Kurniawati, *loc.cit.*

⁵⁰ *Ibid.*

⁵¹ Eddyono, *loc.cit.*

⁵² Nagara, A., Hartiwiningsih, and Isharyanto (2020) 'The Indonesian Legal Policy On National Security Law In The 1945 Constitution', *International Journal of Advanced Science and Technology*, 29(4), p. 842.

⁵³ Kurniawati, *loc.cit.*

⁵⁴ Rizaldi, M. and Ramadani, R. (2020) 'Pancasila as Constitutional Identity', *Procceding: Call for*

In the context of **unamendable provisions**, this means that important parts of the constitution that cannot be changed, such as the form of the state or the fundamental principles of the state, are part of the state's identity that has been formed through the history and political struggles of a nation. This clause serves to protect values that reflect a country's past and future hopes. With this clause, the basic principles that make up the state's identity are maintained and cannot be changed despite changes in political dynamics or pressure from the current majority.

The Preamble of the 1945 Constitution is a form of constitutional identity in the first concept, namely as a national identity. This is because its substance contains a statement of Indonesian independence, so it is considered a collective value that unites the nation and state. In this context, the Preamble of the 1945 Constitution acts as a state contract that strengthens Indonesian unity.⁵⁵ Another implicit provision is the principle of popular sovereignty contained in the Preamble and Article 1, paragraph 2, which is often seen as a crucial element in Indonesia's constitutional identity. This principle is implemented through the People's Consultative Assembly (MPR), which has historically held supreme power as a manifestation of popular sovereignty.⁵⁶

Furthermore, the provision of Article 1 paragraph (3) which states "The State of Indonesia is a state of law", according to the author's wisdom, can be understood as part of the Indonesian constitution that cannot be changed through amendments. The author argues that although not explicitly mentioned, this provision implicitly has the position of an unchangeable norm. Article 1(3) of the 1945 Constitution establishes Indonesia as a state based on law, known as a "*Rechtsstaat*".⁵⁷ This principle is the foundation of the Indonesian system of government and is considered an unalterable provision, as it reflects an important role in maintaining the integrity and stability of the state. In addition, it ensures that every state action is based on the law, protects human rights, and maintains the independence of the judiciary. ⁵⁸Although faced with challenges such as conflicts of authority and religious populism, especially groups advocating conservative interpretations of Islam and seeking to implement Islamic law

Paper National Conference For Law Studies: Legal Development Towards the Digital Society Era, p. 978.

⁵⁵ Kurniawati, *loc.cit.*

⁵⁶ Marzuki and Sitompul, R. (2020) 'The Existence of People's Consultative Assembly in Indonesian State System in the Pancasila Democracy Perspective', *Journal of Advanced Research in Law and Economics*, 11(3), p. 947.

⁵⁷ Nuer, K., Yuliandri, Hasan, F., and Suharizal (2021) 'Regulation Of Opposed Parties In A Conflict Of Authority Between State Institutions And The Constitutional Court Of Indonesia', *Journal of Legal, Ethical and Regulatory*, 24(2), p.1.

⁵⁸ Pratiwi, C. (2024) 'Threat to Indonesia's Constitutional Court Independence Posed by Religious Populist Movements and Its Implication Towards Human Rights', *Constitutional Review*, 10(2), p. 307.

have gained significant influence, posing a threat to democracy and the rule of law in the country, the institutional framework, including the Constitutional Court and the Supreme Court, endeavours to maintain this fundamental principle.

Furthermore, the author argues that the human rights provisions in Chapter XA of the 1945 Constitution are considered basic norms that should not be eliminated and should be treated as immutable provisions. Indonesia's 1945 Constitution contains detailed provisions on human rights, particularly in Chapter XA, which includes Articles 28A to 28J. These articles cover a wide range of human rights, including the right to life, freedom from torture, and the right to a healthy environment.⁵⁹ In addition, Indonesia's commitment to international human rights standards, such as those contained in the United Nations Universal Declaration of Human Rights, further strengthens the argument that these provisions are fundamental and should remain unalterable.⁶⁰

Indonesia's constitutional framework presents a markedly different configuration. Article 37(5) of the 1945 Constitution explicitly declares that the form of the Unitary State of the Republic of Indonesia (NKRI) "cannot be amended." This provision constitutes the only explicitly textual unamendable clause in the Indonesian Constitution. Unlike Germany, however, the scope of protection is narrow and structurally limited.

The manuscript's earlier reference to Pancasila as an unamendable norm requires a critical clarification. From a doctrinal standpoint, Pancasila is not legally unamendable, as it is not protected by an explicit eternity clause within the constitutional text. Instead, its status is best described as politically or ideologically unamendable. Its entrenchment operates through historical legitimacy, constitutional convention, and political taboo rather than enforceable constitutional law.

This distinction is crucial. Legal unamendability implies the existence of a normatively binding rule that can be judicially enforced, potentially through the invalidation of unconstitutional constitutional amendments. Political unamendability, by contrast, relies on consensus and symbolic authority, but lacks formal justiciability. In Indonesia, no constitutional provision grants the Constitutional Court explicit authority to review constitutional amendments, nor has the Court developed a doctrine of unconstitutional constitutional amendment.

⁵⁹ Chaidir, E. and Fudika, M. (2019) 'Green Constitution as an Effort to Strengthen Environmental Legal Norms in Indonesia', *International Journal of Innovation, Creativity, and Change*, 10(2), p. 156.

⁶⁰ Yusliwidaka, A., Roisah, K., and Setiyono, J. (2022) 'The Development of National Law in the Context of the Implementation of International Humanitarian Law', *Croatian International Relations Review*, 28(89), p. 286.

As a result, Article 37(5) functions primarily as a parliamentary self-restraint clause, enforced politically by the People's Consultative Assembly (MPR), rather than as a judicially enforceable constitutional limit. The absence of judicial gatekeeping renders Indonesia's unamendability framework fragile, particularly in the face of shifting political coalitions or populist constitutional agendas. Therefore, while Indonesia formally recognises unamendability, its constitutional design lacks the institutional mechanisms necessary to transform symbolic permanence into effective constitutional constraint.

The German system of constitutional law, which distinguishes between amendable and unamendable *constitutional* norms, is generally based on the doctrine of *constitutional identity* and the provisions of Article 79(3) of the *Grundgesetz* (German Basic Law), widely known as the *eternity clause*. These core provisions are seen as representing the fundamental and inviolable identity of the constitution. Since the German Constitutional Court's decision in Lisbon, the concept of *constitutional identity* has been increasingly used as an argumentative basis for setting constitutional limits to the EU integration process, the application of EU law at the national level, and the implementation of international legal obligations.⁶¹ Article 79(3) of the *Grundgesetz* explicitly states that "amendments to this Basic Law that affect the division of the Federation into Länder, the participation of the Länder in legislation, or the principles listed in Articles 1 and 20, shall not be permitted." Thus, there are three groups of norms that expressly cannot be changed through the amendment process:

Firstly, Article 1 affirms that human dignity is inviolable (*Die Würde des Menschen ist unantastbar*) and that human rights are the basis of world peace and justice. *Secondly, Article 20*, which covers the basic principles of the state such as democracy, the rule of law (*Rechtsstaat*), popular sovereignty, and the right of citizens to resist anyone who seeks to abolish the constitutional order (Article 20 paragraph 4). *Thirdly*, the provisions regarding the **structure of federalism**, including the participation of the Länder in national legislation through the Bundesrat, are also absolutely protected from possible changes.

This concept of *unamendable clauses* in the German Constitution, particularly in the *Basic Law* (*Grundgesetz*), is rooted in the post-World War II historical context. The *Basic Law* was drafted in 1949 as a response to the atrocities of the Nazi regime and the devastation of war, reflecting a commitment to prevent the recurrence of

⁶¹ Polzin, M. (2016) 'Constitutional Identity, Unconstitutional Amendments and the Idea of Constituent Power: The Development of the Doctrine of Constitutional Identity in German Constitutional Law', *International Journal of Constitutional Law*, 14(2), p. 413.

totalitarianism and to protect the principles of democracy and human rights.⁶² Furthermore, it is based on the development of the concept of *constitutional identity* in German *constitutional* history since 1871, the year the first national constitution was enacted in Germany. This historical approach aims to show the theoretical framework and historical context in which the idea of constitutional identity was born and developed, and to provide a clearer understanding of the legal concept.⁶³

At the time of the 1871 Constitution of the German Empire, the concept of *constitutional identity* was essentially unknown. However, in the discourse on the possibility of implicit limitations on constitutional amendments, especially in relation to the federal structure, similar arguments are found. The concept of *constitutional identity* was explicitly introduced during the Weimar Constitution of 1919, in 1928, by two prominent legal thinkers, Carl Schmitt and Carl Bilfinger. Both developed different theories to justify the implicit limitations on constitutional change at that time. In the process of formulating the *Grundgesetz*, this concept was not explicitly mentioned, although substantive restrictions on constitutional amendments began to be formulated explicitly. The notion of *constitutional identity* only re-emerged after the *Grundgesetz* was enacted, and has since played an important role in formulating constitutional limits to European integration.⁶⁴

While implicitly, it can be seen in the provisions in several Articles as follows: Firstly, **Article 19 paragraph (2)** states that "in no case shall the essence of a fundamental right be violated" (*In keinem Falle darf ein Grundrecht in seinem Wesensgehalt angetastet werden*), which reinforces the principle of *core rights protection* and becomes an instrument to protect the integrity of human rights. Secondly, **Article 18**, which authorises the Federal Constitutional Court to revoke the fundamental rights of a person who abuses them to attack the democratic order, is a manifestation of the concept of *streitbare Demokratie* or *militant democracy*, namely democracy that defends itself from internal threats. Third, **Article 21(2)**, which allows for the dissolution of political parties that aim to destroy the democratic order, is complementary to the protection of democracy as formulated in Article 20. Fourth, **Article 23(1)** stipulates that Germany's participation in the European Union is only possible if the institution guarantees the protection of basic rights equal to those guaranteed by the *Grundgesetz*, which is an application of the values in Article 1. Fifth,

⁶² Hein, M. (2020) 'Do Constitutional Entrenchment Clauses Matter? Constitutional Review of Constitutional Amendments in Europe', *International Journal of Constitutional Law*, 18(1), p. 78.

⁶³ Polzin, *loc.cit.*

⁶⁴ *Ibid.*

Article 1(3), which states that fundamental rights are directly binding on the legislature, executive, and judiciary as directly applicable law, is a pillar of the supremacy of human rights in the structure of the German rule of law. These provisions are not directly mentioned in Article 79(3), but their substance and function make any attempt to abolish or amend them a violation of the eternal values of the constitution.

Article 79(3) of the German Basic Law is widely recognised as the most robust textual model of constitutional unamendability. It explicitly shields human dignity, democratic principles, the rule of law, and federalism from constitutional amendment. However, the practical significance of the eternity clause cannot be fully understood without examining the jurisprudence of the Federal Constitutional Court (Bundesverfassungsgericht), particularly in relation to European integration.

The *Solange* doctrine marks a critical phase in this development. In *Solange I* (1974), the Court held that as long as European Community law did not provide a level of fundamental rights protection equivalent to the Basic Law, it retained the authority to review European acts against German constitutional standards. This position was softened in *Solange II* (1986), where the Court accepted the primacy of EU law so long as adequate human rights protection was maintained at the European level. Crucially, this conditional acceptance never displaced Article 79(3); rather, it reaffirmed that constitutional openness to supranational integration is structurally limited by the eternity clause.

This logic was further consolidated in the *Lisbon Treaty* judgment (2009), where the Court articulated the doctrine of constitutional identity review. The Court explicitly held that European integration cannot encroach upon the core principles protected by Article 79(3), regardless of democratic consent at the EU level. More recent decisions, including the *PSPP* judgment (2020), reaffirm this stance by asserting the Court's role as the ultimate guardian of constitutional identity against ultra vires acts of EU institutions. Thus, in Germany, unamendability operates not merely as a static textual prohibition but as a living judicial doctrine actively enforced by the Constitutional Court. The eternity clause functions as a substantive limit on both domestic constitutional change and external legal integration, with the Court acting as the constitutional gatekeeper.

To move beyond siloed analysis, the comparison between Germany and Indonesia reveals that unamendability is not a binary concept but a variable constitutional technique shaped by text, doctrine, and institutional enforcement.

Table 1
Comparison Between Germany & Indonesia

Variable	Germany	Indonesia
Source of Unamendability	Textual (Art. 79(3)) + Judicial doctrine	Textual (Art. 37(5)) + Political convention
Scope of Protection	Substantive (human dignity, democracy, rule of law, federalism)	Narrowly substantive (unitary state form only)
Gatekeeper Institution	Federal Constitutional Court	Parliament (MPR)
Judicial Review of Amendments	Explicitly exercised	Absent
Extension to External Integration	Yes (EU identity review)	No

Data source: Researchers' processed data

This synthesis demonstrates that the effectiveness of unamendable provisions depends less on their textual existence and more on who enforces them and how broadly they are interpreted. Germany exemplifies a model of judicially enforced substantive unamendability, while Indonesia reflects a model of politically enforced symbolic unamendability. The comparison thus highlights a core normative insight: unamendable clauses without judicial guardianship risk becoming declaratory rather than constraining. In transitional democracies such as Indonesia, the challenge lies not in articulating constitutional permanence, but in institutionalising mechanisms capable of defending it.

D. Theoretical Foundations of Restrictions on Constitutional Amendment

The doctrine of **unamendable provisions** is a fascinating foundation for analysing the constitutional amendment systems in various countries. Based on this doctrine, the author is interested in exploring the mechanism of constitutional change applied in **Indonesia, Germany, and France**. These countries have different approaches to regulating their constitutions. This analysis will dig deeper into how the two countries adjust their constitutions to the existence of the doctrine of *unamendable provisions*. This study investigates the identification and classification of unamendable provisions both implicit and explicit within the constitutions of Germany, France, and Indonesia. It further explores the theoretical foundations that justify the existence of

such entrenchments and examines the mechanisms in place to monitor and enforce these constitutional limitations. The research aims to assess the effectiveness of these mechanisms in safeguarding the fundamental principles of each state. The significance of this research lies in its contribution to the discourse on constitutional design and amendment theory, particularly in highlighting the importance of balancing flexibility with institutional safeguards to preserve the core values and identity of a state.

According to the author's wisdom, several theories support the existence of immutability clauses or unalterable provisions in the Indonesian and French constitutions, among others: first, Constitutional Sovereignty Theory. The theory of constitutional sovereignty is a fundamental concept in constitutional law that emphasises the supreme and absolute power of the state. This theory plays an important role in understanding the structure and function of state power within a constitutional framework. Concerning both external and internal sovereignty.⁶⁵

The theory of constitutional sovereignty states that the constitution is the supreme law governing all state institutions, including the amendment process. This concept is in line with the principle of constitutional supremacy, where the constitution has a higher position than other laws and regulations and binds all parties, including the government and the legislature. For example, in the Indonesian context, legal sovereignty refers to the constitution as the supreme law that must be respected and upheld by all state institutions and citizens in general.⁶⁶ This theory is the basis for the existence of unamendable provisions in the constitution, especially to protect fundamental aspects such as the form of the state or democratic principles. Where *unamendable provisions* are constitutional clauses that are explicitly or implicitly protected from amendment, they serve as a mechanism to protect fundamental principles and values.⁶⁷

Second, the Theory of Constitutional Democracy emphasises that the constitution not only shapes the structure of government but also protects the fundamental principles that guarantee the democratic process and prevent abuse of power. In this context, unamendable provisions play an important role as a mechanism to preserve core democratic values and maintain the stability of the system of government. Yaniv Roznai argues that unamendable provisions in constitutions serve to protect fundamental values and prevent threats to democracy, ensuring that basic

⁶⁵ Troper, M. (2012) 'Sovereignty' in Sajó, A. and Rosenfeld, M. (eds.) *The Oxford Handbook of Comparative Constitutional Law*. New York: Oxford University Press, p. 335.

⁶⁶ Setiawan, Z. (2024) 'The Role of the Constitutional Court in Maintaining Legal Stability in Indonesia', *Smart Law Journal*, 2(2), p. 23.

⁶⁷ Roznai, *loc.cit.*

principles are preserved even though they may not be approved by a temporary majority.⁶⁸ Furthermore, he argues that unamendable constitutional provisions are democratic because they reflect the preferences of the people at the time the constitution was drafted and prevent representatives from changing those preferences without popular consent. This approach seeks to strike a balance between the principles of democracy and constitutionalism.⁶⁹ Richard Albert, on the other hand, emphasises that these clauses limit the power of the democratic majority to protect the fundamental principles of the state. These restrictions are considered essential to maintain the integrity of the constitutional system and prevent the abuse of majority rule that could undermine the foundations of democracy itself.⁷⁰

E. Oversight Mechanisms for *Unamendable Provisions* and Their Effectiveness in the Constitutions of Indonesia, France, and Germany

The most common constitutional change is through formal amendments to the provisions of the constitution, which are carried out by a body or institution that has the authority to amend the constitution by following established procedures. Almost all constitutions in the world regulate the mechanism for amending the constitution, which is often referred to as the amendment clause. The amendment clause consists of two main components, namely the institution that has the authority to amend the constitution and the method used to implement the amendment.⁷¹

The power to amend the constitution and the existence of *unamendable provisions* must be understood in a context that involves constitutional drafting and the role of judges. According to Roznai, provisions relating to fundamental principles of the constitution should only be amended through a more participatory, time-consuming, deliberative, and inclusive process. Meanwhile, principles that are not fundamental should be amended through simpler procedures. For judges, Roznai proposes that the authority to test amendments should be adjusted proportionally, where the more rigid the amendment process, the greater the role of judges in overseeing and testing the changes.⁷²

However, there is a question regarding the oversight mechanism of unamendable provisions, considering that these provisions are very important to maintain the stability

⁶⁸ Hein, *loc.cit.*

⁶⁹ Albert, R. and Oder, B. (2018) 'The Forms of Unamendability', *Ius Gentium: Comparative Perspectives on Law and Justice*, 68, p. 8.

⁷⁰ Hein, *loc.cit.*

⁷¹ Kurniawati, *loc.cit.*

⁷² Herlambang, *loc.cit.*

and constitutional identity of a country. Indonesia and France have different approaches in dealing with such provisions, although both emphasise the protection of the country's fundamental principles that cannot be changed.

First, in Indonesia, it should be understood that the 1945 Constitution stipulates that changes to the constitution can only be made with the approval of the People's Consultative Assembly (MPR) by following very strict procedures, thus preventing uncontrolled changes. Some provisions in the 1945 Constitution, such as Pancasila as the basis of the state and the form of the Republic of Indonesia, are considered unchangeable. Therefore, an ideal mechanism is required by institutions with integrity. In the author's view, the existence of unamendable provisions raises questions about the potential role of the Constitutional Court in overseeing such amendments.⁷³

To date, the Indonesian Constitutional Court has never applied the doctrine of **unconstitutional constitutional amendment or unamendable constitution**. The non-application of this doctrine can be explained by two main factors. Firstly, the last amendment to the 1945 Constitution took place in the 1999-2002 period, prior to the establishment of the Constitutional Court, so there is no judicial precedent regarding the constitutionality of amendments.⁷⁴ However, the Post-Amendment 1945 NRI Constitution is the first constitution to explicitly stipulate the existence of unamendable provisions. This provision opens up the possibility for the Indonesian Constitutional Court to adopt the view that there are limits to constitutional amendment in Indonesia, especially in the case of amendments to provisions that are deemed unamendable. This may affect the application of the doctrine in the Indonesian constitutional system.

The Constitutional Court should apply the doctrine of unconstitutional constitutional amendments as a last resort to declare that constitutional amendments that change the form of the unitary state are unconstitutional and not binding. This view is based on several key reasons. First, the Unitary State of the Republic of Indonesia has a fundamental position in the 1945 Constitution, symbolising the struggle for independence and the rejection of colonialism. Second, rejecting the doctrine could result in an abuse of power as the power to amend the constitution becomes unlimited. Third, the application of this doctrine is in line with the practice in other countries such as Germany and Turkey.⁷⁵

However, the author argues that the Indonesian Constitutional Court plays a very important role in overseeing the constitutional amendment process. The Constitutional

⁷³ Ibrahim, *loc.cit.*

⁷⁴ Satrio, *loc.cit.*

⁷⁵ Ibrahim, *loc.cit.*

Court has the authority to assess proposed amendments and cancel changes that contradict the basic principles of the country that cannot be changed. Thus, the Constitutional Court functions as an institution that keeps the constitution in line with the underlying basic values.

In the French Constitution, there is an oversight mechanism for unamendable provisions, primarily through the role of the Conseil Constitutionnel (Constitutional Council). The Constitutional Council has an important role in protecting the principles contained in the French Constitution by ensuring that any amendments or legislative acts do not contradict fundamental aspects of the constitution.⁷⁶ Thus, in simple terms, this mechanism ensures that constitutional amendments do not violate the fundamental principles that have been established. However, in the case of **unamendable provisions**, the Council's role is more limited. The French Constitutional Council has generally avoided exercising its power to review constitutional amendments. In several judgments, including in 1962, 1992, and 2003, the Constitutional Council stated that it had no jurisdiction to assess the constitutionality of an amendment.⁷⁷

The existence of an explicitly *unamendable provision* in the French Constitution, coupled with the Constitutional Council's consistent stance of rejecting the power to review amendments, has led to the view that the constitution does not set strict material limits on the amendment process.⁷⁸ **The Conseil d'État** also plays an important role in ensuring that **administrative acts** comply with constitutional principles. However, its effectiveness can be hampered by the existence of **intermediary legislation**, which can serve as a **barrier** between administrative action and direct constitutional review, thus limiting the scope of judicial oversight.⁷⁹

Then, the 2008 Reform introduced the **Question Prioritaire de Constitutionnalité (QPC)**, which allows for the review of the constitutionality of laws after they are enacted.⁸⁰ The introduction of the QPC allows for judicial review of the constitutionality of laws after they have been enacted, which, in theory, increases oversight, although it does not directly relate to immutable provisions.⁸¹ However, the

⁷⁶ Chmielarz-Grochal, *loc.cit.*

⁷⁷ Favoreu, L. (1994) 'Révision de La Constitution et Justice Constitutionnelle (France)', *Annuaire International de Justice Constitutionnelle*, 10, p. 105.

⁷⁸ Roznai, Y. (2015) 'Towards a Theory of Unamendability', *NYU School of Law, Public Law Research Paper*, p. 15-21.

⁷⁹ Irarrázaval, L. (2006) 'El Control de Constitucionalidad de Los Actos Administrativos En Francia y El Control Indirecto de Constitucionalidad de La Ley: La Teoría de La Ley Pantalla', *Ius et Praxis*, 12(2), p. 201.

⁸⁰ Serrand, P. (2014) 'The Priority Question of Constitutionality (La Question Prioritaire de Constitutionnalité)', *Giornale di Storia Costituzionale*, 27, p. 165.

⁸¹ *Ibid.*

French Constitutional Council has a role in overseeing that amendments conform to the basic principles of the constitution, including those that cannot be amended. Although it cannot invalidate the amendments, the Constitutional Council remains important in assessing the compatibility of the changes with the existing constitution.

The German Federal Constitutional Court plays an important role in enforcing these immutable clauses. The court has the power to review constitutional amendments and has invalidated amendments that violate the principles guaranteed in the *Bill of Rights*. This judicial oversight ensures that any changes to the constitution do not compromise its fundamental values.⁸² In addition, ordinary judges can also exercise *constitutional* oversight through the application of *diffuse constitutionality review*, i.e. the power to declare a law inconsistent with the *Basic Law* where inconsistencies are found. This decentralised approach complements the centralised review conducted by the Federal Constitutional Court, thereby strengthening the system of protection of basic constitutional norms. Furthermore, as a result of the Federal Constitutional Court's judgement, the legislature and the executive are obliged to comply with the Federal Constitutional Court's judgement, so that irreversible provisions are respected. This compliance is important to maintain the integrity of the Constitution.

IV. Conclusion

This study addressed the central research questions of how unamendable provisions are conceptualised, the scope of constitutional values they protect, and which institutions function as their enforcers in Indonesia, Germany, and France. Through a functional comparative approach, the analysis demonstrates that unamendability operates not as a uniform doctrine, but as a constitutionally contingent mechanism shaped by historical experience and institutional design.

The comparative findings show that the effectiveness of unamendable provisions depends on three interrelated variables: source, scope, and gatekeeper. Germany represents a model of judicially enforced substantive unamendability, where Article 79(3) is actively upheld by the Federal Constitutional Court, including in the context of European integration. France reflects a textually limited and politically enforced model, while Indonesia illustrates a narrowly textual but weakly institutionalised form of unamendability, with enforcement resting primarily on parliamentary self-restraint

⁸² Baer, S. (2023) 'The Evolution and Gestalt of the German Constitution' in Bogdandy, A. Huber, P. and Ragone, S. (eds). *The Max Planck Handbooks in European Public Law: Volume II: Constitutional Foundations*. Online edn: Oxford Academic, p. 23.

rather than judicial review.

The study's novelty lies in reframing unamendability as an institutional practice rather than a textual attribute, demonstrating that constitutional permanence is meaningful only when accompanied by an effective enforcement mechanism. By comparing a transitional democracy with consolidated constitutional systems, this research contributes to comparative constitutional law by highlighting how unamendable clauses function differently across stages of democratic consolidation. For Indonesia, the findings reveal a critical gap between formal constitutional entrenchment and practical enforceability. Article 37(5) protects only the unitary state form, while foundational principles such as Pancasila remain politically but not legally unamendable. This distinction exposes Indonesian constitutionalism to potential erosion through formal amendment processes lacking judicial oversight.

Accordingly, this study recommends the adoption of a limited and exceptional doctrine of unconstitutional constitutional amendments by the Constitutional Court, confined to the protection of explicitly entrenched provisions and core constitutional identity. Such a development would strengthen constitutional resilience without undermining democratic legitimacy. In conclusion, the sustainability of Indonesia's constitutional democracy depends not on expanding unamendable clauses, but on institutionalising credible mechanisms to enforce them, ensuring that constitutional identity functions as a legal constraint rather than a symbolic assertion.

Bibliography

Books:

Paris, M. L. (2024) *Principles of French Constitutional Law*. London: Routledge.

Rishan, I. (2024) *Teori dan Hukum Konstitusi*. Jakarta: Sinar Grafika.

Chapter in edited books:

Baer, S. (2023) 'The Evolution and Gestalt of the German Constitution' in Bogdandy, A. Huber, P. and Ragone, S. (eds). *The Max Planck Handbooks in European Public Law: Volume II: Constitutional Foundations*. Online edn: Oxford Academic, p. 23.

Baranger, D. (2019). 'French Constitutional Law' in Masterman, R. and Schütze, R. (eds). *The Cambridge Companion to Comparative Constitutional Law*. Cambridge Companions to Law. Cambridge: Cambridge University Press.

- Chmielarz-Grochal, A. (2023) 'The Limits to Constitutional Amendments and the Question of Constitutional Identity and Citizens' Consciousness (the Polish Case)' in Žalimienė, S. and Wojciechowski, B. (eds.) *Constitutional Consciousness*. Berlin: Peter Lang.
- Lucien, A. and Marrani, D. (2011). 'The sans papiers in France' in Sawyer, C and Blitz B.K. (eds.), *Statelessness in the European Union: Displaced, Undocumented, Unwanted*. Cambridge: Cambridge University Press.
- Michel, S. and Cofone, I. (2018). 'Credible Commitment or Paternalism? The Case of Unamendability' in Albert, R. and Oder, B. (eds.) *An Unamendable Constitution?*. Cham: Springer International Publishing.
- Roznai, Y. (2018) 'Necrocracy or Democracy?' in Albert, R. and Oder, B. (eds.) *An Unamendable Constitution?*. Cham: Springer International Publishing.
- Roznai, Y. (2020) 'Constitutional Unamendability in the Region' in Albert, R., O'Brien, D., and Wheatle, S. (eds). *The Oxford Handbook of Caribbean Constitutions*. Online edn: Oxford Academic, p. 110.
- Troper, M. (2012) 'Sovereignty' in Sajó, A. and Rosenfeld, M. (eds.) *The Oxford Handbook of Comparative Constitutional Law*. New York: Oxford University Press.
- Tusseau, G. (2023). 'The Evolution and Gestalt of the French Constitution' in Bogdandy, Huber, P., and Grabenwarter, C. (eds.) *The Max Planck Handbooks in European Public Law*. Oxford: Oxford University Press.

Journal articles:

- Abdellaoui, S. (2023) 'Constitutional Amendments in Algeria: Getting Through the Bottleneck', *Manchester Journal of Transnational Islamic Law and Practice*, 19(3), p. 152-164.
- Abramowitz, B., Shapiro, E., and Talmon, N. (2021) 'How to Amend a Constitution? Models, Axioms, and Supermajority Rules', *Proceedings of the International Joint Conference on Autonomous Agents and Multiagent Systems, AAMAS*, 3, p. 1431-1433.
- Albert, R. and Oder, B. (2018) 'The Forms of Unamendability', *Ius Gentium: Comparative Perspectives on Law and Justice*, 68, p. 1-26.
- Andrade, E., Proaño, T., and Cárdenas, J. (2022) 'Social Perception of the Abuse of the Constitutional Reforms of the Ecuadorian State (Percepción Social Del Abuso De Las Reformas Constitucionales Del Estado Ecuatoriano)', *Universidad y Sociedad*, 14(6), p. 458-465.

- Asshiddiqie, J. (2023) 'Building a Constitutional Awareness Culture To Create a Democratic Law State', *Petita: Journal of Law and Sharia Studies*, 8(1), p. 1-11.
- Azizah, F.N. (2022) 'A Comparison of the Constitutional Amendment Systems in America, France, and Indonesia'. *Adalah: Buletin Hukum dan Keadilan*, 6(2), p. 9-24.
- Chaidir, E., and Fudika, M. (2019) 'Green Constitution as an Effort to Strengthen Environmental Legal Norms in Indonesia', *International Journal of Innovation, Creativity, and Change*, 10(2), p. 156-68.
- Charpy, C. (2007) 'The Status of (Secondary) Community Law in the French Internal Order: The Conseil Constitutionnel and the Conseil d'Etat', *European Constitutional Law Review*, 3(3), p. 436-462.
- Daly, E. (2019) 'Translating Popular Sovereignty as Unfettered Constitutional Amendability', *European Constitutional Law Review*, 15(4), p. 619-643.
- Eddyono, L. (2016) 'The Unamendable Articles of the 1945 Constitution', *Constitutional Review*, 2(2), p. 252-269.
- Favoreu, L. (1994) 'Révision de La Constitution et Justice Constitutionnelle (France)', *Annuaire International de Justice Constitutionnelle*, 10.
- Hein, M. (2019) 'Impeding Constitutional Amendments: Why Are Entrenchment Clauses Codified in Contemporary Constitutions?', *Acta Politica*, 54(2), p. 196-224.
- Hein, M. (2020) 'Do Constitutional Entrenchment Clauses Matter? Constitutional Review of Constitutional Amendments in Europe', *International Journal of Constitutional Law*, 18(1), p. 78-110.
- Herlambang, U. (2022) 'The Doctrine Of Unconstitutional Constitutional Amendments'. *Al Wasath Jurnal Ilmu Hukum*, 3(1), p. 69-77.
- Hunter-Henin, M. (2011) 'Constitutional Developments and Human Rights in France: One Step Forward, Two Steps Back', *International and Comparative Law Quarterly*, 60(1), p. 167-188.
- Ibrahim, M. (2017) 'The Limits of Constitutional Amendment Power: The Limits of Constitutional Practice in Several Countries and Their Relevance in Indonesia', *Constitution*, 17(3), p. 558-581.
- Irrarázaval, L. (2006) 'El Control de Constitucionalidad de Los Actos Administrativos En Francia y El Control Indirecto de Constitucionalidad de La Ley: La Teoría de La Ley Pantalla', *Ius et Praxis*, 12(2), p. 201-219.

- Kurniawati, I. (2022) 'The Existence of Unamendable Provisions as Constitutional Identity', *Lex Renaissance Journal*, 7(2), p. 226-242.
- Marzuki and Sitompul, R. (2020) 'The Existence of People's Consultative Assembly in Indonesian State System in the Pancasila Democracy Perspective', *Journal of Advanced Research in Law and Economics*, 11(3), p. 947-950.
- Nagara, A., Hartiwiningsih, and Isharyanto (2020) 'The Indonesian Legal Policy on National Security Law in the 1945 Constitution', *International Journal of Advanced Science and Technology*, 29(4), p. 842-847.
- Nuer, K., Yuliandri, Hasan, F., and Suharizal (2021) 'Regulation Of Opposed Parties In A Conflict Of Authority Between State Institutions And The Constitutional Court Of Indonesia', *Journal of Legal, Ethical and Regulatory*, 24(2), p.1-9.
- Oliva, E. (2022) 'Towards New Constitutional Budgetary Principles (Vers De Nouveaux Principes Constitutionnels Du Droit Des Finances Publiques?)', *Revue Française d'Administration Publique*, 182(2), p. 457-473.
- Polzin, M. (2016) 'Constitutional Identity, Unconstitutional Amendments and the Idea of Constituent Power: The Development of the Doctrine of Constitutional Identity in German Constitutional Law', *International Journal of Constitutional Law*, 14(2), p. 411-438.
- Pratiwi, C. (2024) 'Threat to Indonesia's Constitutional Court Independence Posed by Religious Populist Movements and Its Implications towards Human Rights', *Constitutional Review*, 10(2), p. 307-339.
- Preuss, O. (2016) 'The Eternity Clause as a Smart Instrument - Lessons from the Czech Case Law', *Hungarian Journal of Legal Studies*, 57(3), p. 289-304.
- Rizaldi, M. and Ramadani, R. (2020) 'Pancasila as Constitutional Identity', *Proceeding: Call for Paper National Conference For Law Studies: Legal Development Towards the Digital Society Era*, p. 978-979.
- Roznai, Y. (2015) 'Towards a Theory of Unamendability', *NYU School of Law, Public Law Research Paper*, p. 15-21.
- Satrio, A. (2017) 'The Existence of the Unamendable Provision of the Unitary State of the Republic of Indonesia: The Role of the Constitutional Court', *Comparative Constitutional Law and Administrative Law Quarterly*, 3(4), p. 18-37.
- Serrand, P. (2014) 'The Priority Question of Constitutionality (La Question Prioritaire de Constitutionnalité)', *Giornale di Storia Costituzionale*, 27, p. 163-176.
- Setiawan, Z. (2024) 'The Role of the Constitutional Court in Maintaining Legal Stability in Indonesia', *Smart Law Journal*, 2(2), p. 19-25.

- Suteu, S. (2017) 'The Multinational State That Wasn't: The Constitutional Definition of Romania as a National State', *ICL Journal*, 11, p. 413.
- Suteu, S. (2024) 'Friends or Foes: Is Unamendability the Answer to Democratic Backsliding?', *Hague Journal on the Rule of Law*, 16, p. 315.
- Yusliwidaka, A., Roisah, K., and Setiyono, J. (2022) 'The Development of National Law in the Context of the Implementation of International Humanitarian Law', *Croatian International Relations Review*, 28(89), p. 286-302.

France Law:

France's Constitution of 1958 with Amendments through 2008.