

## THE IMPLEMENTATION OF THE GOVERNMENT SYSTEM IN INDONESIA DURING THE REFORMATION ERA ACCORDING TO 1945 CONSTITUTION

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### Abstract

The purpose of this research is to deeply examine and analyze the implementation of the government system during the reformation era based on the 1945 Constitution. As stated in fourth paragraph of the Preamble of the 1945 Constitution, the National Independence of Indonesia is composed in a Constitution of the State of Indonesia which is structured in a form of Republic of Indonesia, governed with people sovereignty. The sovereignty of the people is the highest power and it determines the leaders in the Indonesian government. This is confirmed in Article 1 paragraph (2) of the 1945 Constitution. The subject regarding the government is stated in Article 1 paragraph (1) of the 1945 Constitution; Indonesia is a unitary state in the form of a republic. Based on these facts, it can be concluded that the form of the Indonesian state is unitary, while the form of government is a republic. The President of the Republic of Indonesia holds the power as the head of state and the head of government, as stated in Article 4 paragraph (1) that "The President of the Republic of Indonesia holds the power of government according to the Constitution." Therefore, the government system in Indonesia adheres to a presidential system.

**Keywords:** government system, form of state, form of government

### INTRODUCTION

Interaction between government and the people to achieve the goals of government and the state is always positioned in various ways, such as the relationship between government and the governed or the relationship between officials and the people. In this concept, the government's power acts not only as an executive, but also includes a broad scope of legislative and judicative powers.

Within the study of power of state and government, the president is the holder of power carrying out the function as the head of state and the head of government, both at the same time. In performing these functions, the president teamed with the House of Representatives in proposing law draft. In the other hand, in carrying out judicial functions, the president is able to grant amnesty and abolition, which included in the function of the judiciary.

The pattern of relations between the government and the House of Representatives, which determines the profile of the government, is acknowledged as the presidential government system. The presidential system can be recognized from several things, namely:

- a. The division of power between the president as the head of government and the House of Representatives as legislators.
- b. The president does not have the power to dissolve the House of Representatives, therefore the standing of the president and the House of Representatives are equal.

- c. The president continues to run the government until the end of his term of office, as stipulated in the legislation, even though he does not have a majority vote in the House of Representatives.
- d. In running the government, the president is assisted by ministers who are appointed and dismissed by the president, as it is the president's prerogative right.

The power of the president of the Republic of Indonesia is the most comprehensive when compared to the other institutions. It can be observed from the president's personification that is a "single fighter", a single player, while other institutions tend to be collective. As for the powers of the president in constitutional law, as set forth in the provisions of the articles in the 1945 Constitution, includes the powers, obligations, and rights of the president.

Based on the provisions of the 1945 Constitution, the principal powers of the president are:

1. Diplomatic power, a power related to foreign affairs (Article 11, Article 12, and Article 13 in the 1945 Constitution).
2. Administrative power, this power is related to the implementation of laws and state administration (Article 4 paragraph (1), Article 5 paragraph (2) and Article 15 in the 1945 Constitution)
3. Military power, related to the organization of the armed forces and the execution of war (Article 10, Article 11 paragraph (1) and Article 12 of the 1945 Constitution)
4. Judicative power, concerning the granting of remissions, suspension of sentences for convicts and criminals (Article 14 of the 1945 Constitution)
5. Legislative power, related to drafting laws and regulating the process of ratification of laws (Article 5 paragraph (1), Article 22 paragraph (1) of the 1945 Constitution)

In general, the president's power according to his positions is as follows:

1. Holds government power according to the 1945 Constitution, which is a consequence of the president's position as the head of state and the head of government. The 1945 Constitution system states that the president not only has the position as head of government, but also acts as the head of state, which represents the highest position in Indonesia. As the head of state, the presidential institution reflects the authority, honor, and existence of the state.
2. Holds supreme power over the Indonesian national army (army, navy, air force) is a reflection of the president's position as the head of government, who is the highest ranking person in the country as supreme commander of the three armed forces. Besides, the president also holds the highest authority over the Republic of Indonesia's state police.
3. The president can submit a draft law to the House of Representatives; the president discusses and gives approval to the draft law with the House of Representatives, and ratifies the draft law into law. This reflects the check-and-balance pattern of the power of the House of Representatives, which is controlled by the president.
4. Stipulates or designs a Government Regulation in Lieu of Law (Perppu) which is made in circumstances of compelling interest.
5. Stipulates a Government Regulation, whether it is to implement the law directly or implementing the law as an authority of the president to carry out the law, as it should be.

6. Appoints and dismisses ministers, as assistants to the president, who have power in their respective ministry institutions. Although normatively the appointment and dismissal of ministers is the president's prerogative rights, in reality it is a reflection of political power.
7. Declares war as well as makes truce and agreements with other countries with the approval of the House of Representatives. This is a consequence of the president's position as the head of state in international relations and it is known as a free and active foreign policy.
8. Composes international agreements with the approval of the House of Representatives as a reflection of the president's position as the head of state who interacts and communicates with the international world.
9. Declares a state of danger in an urgent situation. In an abrupt event that suddenly comes from within or outside the country, the president as the head of state can declare a state of emergency.
10. Appoints ambassadors and consuls. In appointing ambassadors, the president has to consider the House of Representatives' consideration. The assignation of ambassadors and consuls is the president's prerogative rights.
11. Accepts the assigned ambassadors and consuls by taking the considerations of the House of Representatives into account. In reality, the House of Representatives has never rejected the appointed ambassadors and consuls from other countries in Indonesia.
12. In giving clemency and rehabilitation, the president always asks for consideration from the Supreme Court. As the head of state, the president asserts control to the judicative institution.
13. Grants amnesty and abolition by taking the reasoning from the House of Representatives. The president as the head of state pays attention to political considerations.
14. Grants titles, merits, and honors as regulated by law so as not to become a personal-oriented authority.
15. Inaugurates the members of the Audit Board who are elected by the House of Representatives with considering the Regional Representatives Council opinions.
16. Stipulates a Supreme Court Judge who is nominated by the Judicial Commission and approved by the House of Representatives, as the president's legitimacy as the head of state in the administrative aspect.
17. Stipulates Constitutional Judge from candidates proposed by the president, House of Representatives, and the Supreme Court.
18. Appoints and dismisses members of the Judicial Commission with the approval of the House of Representatives, which is a constitutional order to assign the Judicial Commission as a judicial supervisory institution.

## **STATEMENT OF PROBLEM**

In the course of time, there is a growing understanding that the government system in Indonesia cannot be separated from powers. Thus, there are two emerging comprehension: first, about people who gain power and second, comprehension of people who are controlled or subject to power. That power will affect the government system in Indonesia in each period of each elected president.

Furthermore, a problem of "How is the implementation of the government system in Indonesia during the reformation era?" would be questioned. Based on this problem, an empirical normative study and analysis will be carried out to clearly understand the government system run by a president who is authorized to run a government and state.

## DISCUSSION

### 1. President as the Highest Authority of State

In Indonesia, the president whose function is to be the head the state and government occupies the highest position of state. Before becoming a president, presidential candidates will be elected through general elections; conducted every 5 years. This opinion is stated in Article 4 paragraph (1) of the 1945 Constitution, which says that the system of government in Indonesia is indeed led by a president: "The President of the Republic of Indonesia holds the power of government according to the Constitution."

Although the president holds the highest position in the Indonesian government system, there are methods used by other component to supervise the president's performance. Currently, the People's Consultative Assembly (MPR) and the House of Representatives (DPR) carry out the supervisory task. This practice, that seems to limit the president's authority, has a background and history in the past. The president in Indonesia was once a very powerful single position during the Old Order era under President Sukarno, who had implemented a presidential system, and also during the New Order era under President Suharto. After Suharto was forced to step down in 1998 and Indonesia entered a reformation era, a constitutional government system emerged along with the amendments to the 1945 Constitution. The amendment was carried out four times, specifically in 1999, 2000, 2001, and 2002.

The Indonesian government system in the 1945 Constitution and its innovations since the reformation era:

- a. The form of the country is a unitary state with the principle of broad regional autonomy. The country's territory is divided into provinces.
- b. The form of government is a republic, while the system of government is presidential.
- c. The president is the head of state and head of government. The people directly elect the president and vice president in the same group.
- d. The cabinet or ministers are appointed by the president and are responsible to the president.
- e. The parliament consists of two parts (bicameral): the House of Representatives (DPR) and the Regional Representatives Council (DPD).
- f. The members of the council are members of the People's Consultative Assembly. The House of Representatives has legislative power and the power to oversee the running of the government.
- g. The Supreme Court and the judiciary under the court conduct Judicative power.

The People's Consultative Assembly (MPR) with the notion from the House of Representatives may dismiss the president anytime.

- a. The president needs the House of Representatives' consideration or approval to appoint state officials.
- b. The president needs the House of Representatives' consideration or approval in issuing certain policies.
- c. Parliament is given greater powers in terms of legislating laws and budgetary rights.

The implementation of the government system in Indonesia since 1945 until recently has been divided into several periods, namely:

- 1. The government system from 1945 to 1949
- 2. The government system from 1949 to 1950
- 3. The government system from 1950 to 1959
- 4. The government system from 1959 to 1966
- 5. The government system from 1966 to 1998
- 6. The government system 1966 until present.

The course of the government system can be summarized into four periods of time, specifically:

- 1. The government system during 1945–1949, it was carried out based on the 1945 Constitution
- 2. The government system during 1949–1950, it was carried out based on the RIS Constitution
- 3. The government system during 1950–1959, it was carried out based on the 1950 Provisional Constitution
- 4. The government system during 1959–1966, it was carried out based on the 1945 Constitution
- 5. The government system during 1966–1998, it was carried out based on the 1945 Constitution
- 6. The government system during 1998–now is based on the 1945 Constitution that has been amended.

## **2. Understanding the Government System**

The term government system comes from the combination of two words: system and government. The word system is an English word which means arrangement, order, network, or method, while the government comes from the word govern which means command or order. Furthermore, they can also mean:

- a. Command; is telling to do something.
- b. Government; is the power that governs a territory, area, or state.
- c. Government; is an action, method, matter, affairs in governing.

In a broad sense, government is an act of ordering which is carried out by the legislative, executive, and judicative bodies in a country in order to achieve the objectives of state administration. In a narrow sense, governance is an act of governing carried out by the executive body and its staff in order to achieve the objectives of state administration. The government system is defined as a complete order consisting of various components of

government that work interdependently and influence each other to achieve the goals and functions of government.

The Indonesian Government System in the Preamble of the 1945 Constitution, Paragraph IV, states that the independence of Indonesia shall be formulated into a Constitution of the Republic of Indonesia which shall be built into a sovereign nation of the people. Based on Article 1 paragraph (1) of the 1945 Constitution, the state of Indonesia is a unitary state in the form of a republic. Based on these facts, it can be concluded that the form of the Indonesian state is unitary, while the form of government is a republic.

In addition to the unitary state and a republic, the President of the Republic of Indonesia holds power as both the head of state and the head of government. This is based on Article 4 Paragraph 1 that reads, "The President of the Republic of Indonesia holds the power of government according to the Constitution." Therefore, the government system in Indonesia adheres to a presidential system of government.

According to Montesquieu, power in a country is classified into three; executive power which means the power to run the law or the power to run the government; legislative power which means the power to make laws; and judicative power which means the power to adjudicate against violations of the law. These components broadly include executive, legislative, and judicative institutions. Therefore, the government system describes the existence of the state's institutions, the relationship between state's institutions, and their duty to achieve the goals of the government.

The purpose of state government is generally based on the ideals or goals of the state. For example, the purpose of the Indonesian government is to protect the entire Indonesian nation and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice. Institutions that are in one Indonesian government system work together and support each other to realize the goals of Indonesian government.

In a country with a republican form of government, the president is the head of state and is obliged to form departments that will implement executive power and enforce laws. A minister will lead each department. If a prime minister coordinates all the ministers, then it can be called a council of ministers/cabinet. Cabinets can take the form of presidential and ministerial cabinets.

### **3. The Indonesian State Government System Based on The 1945 Constitution Before The Amendment**

The principles of the Indonesian government system based on the 1945 Constitution before being amended are contained in the Elucidation of the 1945 Constitution concerning the seven main keys of the state government system as follows:

1. Indonesia is a country based on law (*rechtsstaat*).
2. Constitutional System.
3. The highest state power is in the hands of the People's Consultative Assembly.
4. The president is the highest state government administrator under the People's Consultative Assembly.
5. The President does not answer to the House of Representatives.

6. The minister of state is an assistant to the president, the minister of state does not answer to the House of Representatives.

7. The power of the head of state is limited.

Based on the seven main keys of government system, the Indonesian government system according to the 1945 Constitution adheres to a presidential government system. This government system was administered during the New Order government under the leadership of President Suharto. The characteristic of the government system at that time was the existence of enormous power in the presidential institution. Almost all the powers owned by the president, which were originally regulated according to the 1945 Constitution, were carried out without listening to the opinion or approval of House of Representatives as people's representatives. Due to the absence of supervision and approval of the House of Representatives, the president's power was enormous and tends to be abused. Despite the weakness, the enormous power of the president also had a positive impact, for instance the president can control the entire government administration to create a compact and solid government.

The government system was more stable and not easy to collapse or change. Conflicts between state officials could be avoided. However, in the practice of the course of the government system in Indonesia, it turns out that the great power of the president is more detrimental to the nation and state than the benefits the state could acquire.

#### **4. The Government System of Indonesia is based on the 1945 Constitution after the Amendment.**

Currently, the government system in Indonesia is still in transition. Prior to the enactment of a new government system based on the 1945 Constitution as a result of the fourth amendment in 2002, the Indonesian government system was still based on the 1945 Constitution with several changes in line with the transition to a new government system. The new government system is expected to run in 2004 after the 2004 general election.

Entering this Reformation Era, the Indonesian people are determined to create a democratic government system. For this reason, it is necessary to formulate a constitutional government or a government based on the constitution. A constitutional government is characterized by the fact that the country's constitution contains:

1. restrictions for government or executive powers,
2. guarantee of human rights and the rights of citizens.

Based on these, the reformation that must be carried out is to make changes or amendments to the 1945 Constitution. By amending the 1945 Constitution to be a constitutional constitution, it is expected that a better government system will be formed than the previous one. The People's Consultative Assembly has made four amendments to the 1945 Constitution, specifically in 1999, 2000, 2001, and 2002. The newly amended 1945 Constitution then becomes the guideline for the current Indonesian government system.

Prior to the amendment of the 1945 Constitution, as a written constitution the 1945 Constitution provided an article that specifically regulates how to amend the Constitution, namely Article 37, which states:

- a. To amend the Constitution, at least 2/3 of the total members of the People's Consultative Assembly must be present.

b. Decisions are taken with the approval of at least 2/3 of the members present.

The amendments to the 1945 Constitution were implemented in stages, namely:

1. First Amendment (19 October 1999)
2. Second Amendment (18 August 2000)
3. Third Amendment (10 November 2001)
4. Fourth Amendment (10 August 2002)

Along with the amendments of the 1945 Constitution, several topics need to be considered in the government system in Indonesia, including:

a. Advantages of the Indonesian Government System

1. The House of Representatives cannot overthrow the president and ministers during their term of office.
2. The government has time to execute its programs without being overshadowed with a cabinet crisis.
3. The president cannot freeze and or dissolve the House of Representatives.

b. Weaknesses of the Indonesian Government System

1. There is a tendency that the president's authority and power concentration becomes too strong
2. Frequent changes of officials due to the president's prerogative rights.
3. People's supervision of the government is less influential.
4. The influence of the people on political policy has received less attention.

Thus, new changes in the Indonesian government system are needed to improve the old presidential system. The new changes include direct presidential elections by the people, a bicameral system, checks and balance mechanisms, and grant greater powers to parliament to supervise and perform budgeting functions.

The government system used by the Indonesian people is a presidential system. A presidential system is a state system led by a president. The president is head of state and head of government. The people through general elections (elections) directly elect the president and vice president. The government system is a system as a tool to regulate the course of government according to conditions of the state with the aim of maintaining state stability. The system consists of various components and becomes one inseparable unit. Each component establishes strong cooperation, has an attachment to one another that has one purpose and one function of government

The ministers, also known as the cabinet, are responsible to the president. The president in running his government is supervised by the parliament. There are two parliaments in Indonesia, namely the House of Representatives (DPR) and the Regional Representative Council (DPD). The people through the electoral system directly elect members of DPR and DPD. DPD members come from political parties, while DPD members who come from individual candidates with certain requirements representing the 1st or provincial level of

administration. Members of the DPR and DPD are members of the People's Consultative Assembly (MPR). The MPR is a high state institution which has the authority to amend and enact the constitution (UUD). The MPR is a high state institution that inaugurates the president and vice president. The MPR can also dismiss the president and/or vice president in office according to the constitution. The form of government in Indonesia is a republic. This form of government is a government in which the mandate of power comes from the people through an election mechanism and is usually led by a president. The characteristics of a presidential system of government, namely: the president as head of state as well as head of government. The people through an election process, not a parliament, directly elect the president. The president appoints ministers in the cabinet to help him/her perform the government duties. The president can also dismiss ministers. The ministers answer to the president. In history, Indonesia has used various government system. At the beginning of the government after the proclamation of independence on August 17, 1945, Indonesia used a presidential government system.

The system began to be implemented in 1945-1949. After that there was a change in the government system. The development of the Indonesian government system since independence until now is as follows: presidential system (19 August 1945-27 December 1949), pseudo-parliamentary system (27 December 1949-15 August 1950), parliamentary system (15 August 1950-5 July 1959), presidential system of the Old Order era (5 July 1959-22 February (1966), presidential system during the New Order era (22 February 1966-21 May 1998), presidential system (21 May 1998-present). Democratic system in Indonesia is a state in the form of a unitary state with broad regional autonomy principles. A unitary state is a sovereign state which is organized as a single entity. The unitary state places the central government as the highest authority while the administrative regions below it only hold the powers that are chosen by the central government to be delegated to them. The administrative area within the state of Indonesia is currently divided into 34 provinces.

## CONCLUSION

1. The government system of a state represents the existence of institutions that work and function interdependently to each other to achieve the objectives of state administration. State institutions in a political system include four main institutions, namely executive, bureaucratic, legislative, and judicative. Furthermore, there are other institutions or other elements such as parliament, elections, and the council of ministers.
2. The division of the modern state government system is divided into two, namely presidential and ministerial (parliamentary). The division of presidential and parliamentary government system is based on the relationship between executive and legislative powers.
3. In a parliamentary system, the legislative body directly supervises the executive body. On the other hand, if the executive body is outside the supervision of the legislative body, then the government system is presidential. In a republican government system, state institutions operate according to democratic mechanisms, while in a monarchical government system, these institutions work accordingly to different principles.
4. The system of government of a country is different from the system of government that is used in other countries. However, there are also some similarities between the country's government system. For instance, when two countries have the same type of government system. Changes in government in the country occur during critical times, namely when the

transfer of power or leadership in the country happens. Changes in government in Indonesia occurred between 1997 until 1999, due to the monetary crisis and economic crisis.

## **BIBLIOGRAPHY**

Amanwinata, Rukman dkk, 1985 “Kamus Istilah Tata Negara”, Jakarta PPPB. Depdikbud

Attamimi, A. Ha,id, D. 1990 “Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara”. Desertasi. Fakultas Pascasarjana UI. Jakarta FPS UI.

Asshiddiqie, Jumly. 1994 “Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia”. Jakarta, Ichtiar Baru Van Hoeve.

Herquanto, 1998 “Sejarah Perkembangan Parlemen, Kilas Balik Bagi Perkembangan Parlemen di Indonesia”, Bandung. Eresco

Kusnardi, Moh. (et.al) 1995, “ Ilmu Negara”, Jakarta, Gaya Media Pratama.

Kusumahaatmadja, Mochtar, 1990 “Fungsi & Perkembangan Hukum dalam Pembangunan Nasiona”. Bandung, Fakultas Hukum Universitas Padjajaran.

Kusuma, RM.AB, 2004 “Lahirnya Undang Undang Dasar 1945”. Jakarta, Badan Penerbit Fakultas Hukum Universitas Indonesia, 2004.

Mansoer, M. Tolchah 1978 “Hukum Tata Negara Sesudah Pemeilihan Umum 1971”. Jakarta. Pradnya Paramita.

Samsul Wahidin, 2014 “Distribusi Kekuasaan Negara Indonesia” Yogjakarta, Pustaka Pelajar.