

# ANALYSIS OF THE INDONESIAN PRESIDENTIAL SYSTEM BASED ON THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA

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## ABSTRACT

*This study aims at discussing the Indonesian system of government based on the 1945 Constitution. The implementation of a couple of post-independence constitutions (the constitution of 1949, 1950 and 1959) has resulted in the establishment of diver's political systems in Indonesia. The four amendments to the current constitution (the 1945 Constitution) that took place from 1999-2002 were intended to strengthen the presidential system by transforming both the legal and political landscapes in Indonesia. This is a socio-legal research drawing on qualitative data by using constructivism paradigm. The choice of constructivism paradigm allows for a better understanding of presidential system set forth in the Indonesian 1945 Constitution before and after its amendments. The study reveals that prior to the amendments, a rather distorted presidential system was used in Indonesia as both Presidents Sukarno and Suharto controlled both the legislative and the judiciary branches. The study also shows that despite bringing about positive changes, the reinstatement of the 1945 Constitution lacks legal basis as it was the result of a presidential decree rather than an act of parliament. Finally, the study found that even though elements of presidential system can be found in the 1945 Constitution, the government system in Indonesia remains also close to the parliamentary system as the law-making power is still shared between both the executive and the legislative.*

**Keywords:** Presidential System, Indonesian Government System, The 1945 Constitution of the Republic of Indonesia.

## INTRODUCTION

The doctrine of Separation of Powers or *Trias Politica* requires equal standing between the executive, the legislative and the judiciary. The system of government in a country that provides for this doctrine in its constitution is called presidential government system whereby the three branches of government hold equal powers and can check on one another to prevent one branch from becoming supreme. Numerous contradicting viewpoints regarding the type of government system implied in the 1945 Constitution have emerged over the past decades among politicians and academics. Some claim that the Indonesian government system is presidential while other believes it is parliamentary. This is due to the fact that 1945 Constitution contains both presidential and parliamentary elements according to Moh. Mohammad (1998), a former Chief Justice of the Indonesian Constitutional Court (2008-2013). The problems that arise in the Indonesian presidential government system can be seen through the relations between the President and the House of Representatives (DPR) as set forth in the 1945 Constitution in the

period between independence and the *Reformation Era*. Prior to its amendments, article 4 of the 1945 Constitution states that the powers of the People's Consultative Assembly, the People's Legislative Assembly, and the Supreme Advisory Council are exercised by the president with the assistance of a national committee. This provision shows how dependent the legislative was on the executive. Since the role of the Parliament in dealing with the president was very little and weak, the government system could not be classified as a parliamentary or presidential system of government. The presidential system during the Old Order period was not in accordance with the characteristics of the presidential government system.

### **The Bases of the Presidential System**

In an attempt to deal with issues related the implementation of a pure presidential system in Indonesia based on the 1945 Constitution, this paper uses the theory of Democracy, the Separation of Powers and Checks and Balances, and the theory of government system. A country can be said to democratic when at least the following elements are met: (1) freedom of expression; (2) freedom of association; (3) the right to vote; (4) equal opportunity to be elected or to hold various government or state positions; (5) the right for political activists to campaign for support or votes; (6) the existence of various sources of information; (7) free and fair elections; 8) all agencies tasked with formulating government policy must depend on the government's wishes.

These eight elements show how important the people are in democratic country. Jean Jacques Rousseau argues that the doctrine of *volonte generale*, as the supreme authority in a country, has two consequences (Rousseau, 1895):

1. The right of the people to replace their ruler as they see fit;
2. The idea that sovereignty is in the hands of the people

The sovereignty of the people based on the concept of Rousseau's *volonte generale*, manifested by the intermediary of the law, has four characteristics:

3. The people's right to govern and not to be governed is one. This can be seen through law making process and declaring war;
4. Absolute and indivisible sovereignty of the people;
5. Sovereignty may not be given away, sold, pawned or awarded (Muhammad, 1954).

The government system in a country depends on the organization of powers that exist in that country. As argued earlier, presidential system is a government system based on the theory of *Trias Politica*-a separation of powers or power-sharing idea that imposes limits on government's authority to protect the basic rights of the citizens (Mukhtie, 2004). John Locke's idea of separation of powers implies that each of the three branches of the government must be autonomous and distinct from each other (Suri, 1993). This concept is known as the presidential government system applied today in many countries including the United States of America where the separation of powers is a fundamental constitutional principle. Articles I through III of the Constitution of the United States place each of the basic powers of government in a separate branch. The legislative power is vested in Congress, the executive power in the president, and the

judicial power in the Supreme Court and other federal courts. An important aspect of the separation of powers is that the power of one branch should not be exercised by anyone who also holds a position in another branch. Locke and Montesquieu saw the concept of separation of powers as a way to reduce or eliminate the arbitrary power of unchecked rulers. Separation of powers thus became associated with the closely related concept of checks and balances—the notion that government power should be controlled by overlapping authority within the government and by giving citizens the rights to criticize state action and remove officials from office. In addition to presidential government system, there is also in some countries a system in which political powers are combined (fusion of powers) between the executive and the legislative. This system is often referred to as the parliamentary system of government. Because government powers are shared between the executive and the legislative both often intertwined with another, this system can also be referred to as a soft separation of powers. The system of government based on the relationship between the legislative and the judiciary is the system of the worker's body. This system of government is held in Switzerland. Saldi Isra, an Indonesian Constitutional Law scholar, defines this system as a mixed government system based on a flexible dual authority structure, a bicephalous executive whose 'first head' change as the majority of combinations change (Saldi, 2010). The implementation of the Indonesian system of government is based on the 1945 Constitution. However, from independence on 17 August 1945 up to now, Indonesian has known four constitutions, namely the 1945 Constitution, the Constitution of the Republic of Indonesia issued in 1949 and the 1950 Provisional Constitution (Law, 1945). These constitutions were enacted in two periods: first from 17 August 1945 to 17 December 1949, (the early period of independence), and second, the re-establishment of the 1945 Constitution in 1959 through the Presidential Decree of 5 July (Law, 1959). The basis of this constitution is the philosophical theory of the Indonesian state: the concept of *Pancasila* which encompasses the belief in the "one and only God", a just and civilized humanity, a unified Indonesia, a democracy, led by the wisdom of the representatives of the People and a social justice for all Indonesians. The enactment of various constitutions has resulted in the birth of various political systems in Indonesia. According to Mohammad (1993), the enactment of the 1945 Constitution gave birth to authoritarian political systems with a concentration of political powers and government agenda in the hands of the president. As argued earlier, the four amendments to the 1945 Constitution (from 1999-2002) were intended to strengthen the presidential government system in Indonesia. In reality however, this goal has not been achieved so far and it is time for a new constitutional mechanism that would enable the implementation of the following twelve characteristics of a pure presidential government system: (1) president as Head of State as well as Head of Government; (2) the President is elected directly by the people; (3) fixed term of office for the President; (4) a cabinet or council of ministers formed by the President; (5) the President is not accountable to the legislature; (6) the President cannot dissolve the legislative body; (7) ministers should not be members of the legislature; (8) ministers are accountable to the President; (9) minister's terms depend on the President's trust; (10) the role of the executive and legislature is made in balance with the system of checks and balances; (11) legislation by the legislative without the interference of the executive; (12) president's right to veto laws made by the legislature. These elements must be met for a pure presidential system to take place in Indonesia.

## **Presidential Government System Based on 1945 Constitution**

### **The Period between 18 August 1945-27 December 1949**

In the early days of independence, Indonesia did not have complete infra-politics and state institutions despite the existence of the People's Consultative Assembly or *Majelis Permusyawaratan Rakyat* (MPR), the People's Representative Council or *Dewan Perwakilan Rakyat* (DPR), the Supreme Advisory Council, the Supreme Court, the Supreme Audit Agency under the 1945 Constitution. All these institutions could not play any significant role within the Indonesian government system as they were strongly controlled by the president who had all the government powers concentrated in his hands, as stipulated in Article 4 of the 1945 Constitution.

### **From 5 July 1959-11 March 1966**

On 5 July 1959, President Sukarno took a decree reinstating the 1945 Constitution of the Republic of Indonesia. Since then, this constitution has become once again the basic law in Indonesia. However, it is interesting to note that the reinstatement of the 1945 Constitution through President Sukarno's decree had no legal basic as it was the product of the executive instead of the legislative. President Sukarno's decree acts as a revolutionary legal product without legal basic. This decree violated the 1950 Provisional Constitution. In fact, by the time the decree was promulgated 1959, the 1950 Provisional Constitution was still in force and yet President Sukarno chose not only to disregard it but also to act as a lawmaker. Furthermore, despite lacking legal basic, this presidential decree has no benefits for the Indonesian people in general. In fact, the reinstatement the 1945 Constitution paved the way for the establishment of two authoritarian regimes never witnessed by the Indonesian people.

## **Presidential System during the Transition from Previous Constitutions to the Current Constitution**

The Indonesian State administration entered a series of transitions after the collapse of the *Orde Baru* regime in 1998. It was during that period that amendments were made to the 1945 Constitution that was intended to boost the implementation of democracy in Indonesia. This has made presidential elections more democratic than ever before, because members of the MPR exercised their right to vote for the President of their choice. During the reign of Abdurrahman Wahid, there was a power-sharing effort between the President and Vice-President through Presidential Decree No.121/2000 (Law, 2000). Politically it can be said that the President deliberately allocated some of his powers to his vice president without any pressure from the MPR. The action is constitutional since what President Abdurrahman Wahid did was to share some of his powers with his vice president (Huda, 2003).

## **Construction of the Presidential System in the 1945 Constitution of the Republic of Indonesia**

### **The Legislative**

The amendments to the 1945 Constitution have resulted in increasing the powers of the parliament. The most perceived strengthening of the DPR is the shift in the law-making process. Article 5 Paragraph (1) of the 1945 Constitution stipulates that

*“The President holds the power to make law”.*

This was revoked by the 1945 Constitution in its Article 5 Paragraph (1) which says that

*“The President has the right to file a draft law to DPR”.*

To further strengthen the presidential government system, there should also be a veto for the President in drafting legislation, in order to balance the strength of the legislative process. It is at this stage that one of the major parts of the presidential system occurs. Strengthening the legislative is also seen through the House of Representative's rights to interpellation, rights to question and the rights to express its opinions as set forth in the 1945 Constitution.

### **The Role of MPR within 1945 Constitution**

After the amendment of the 1945 Constitution, MPR lost much of its power. Since amendments to constitution allow for the President and Vice-President to be elected directly by the people of Indonesia, MPR's power has dramatically been reduced. It no longer is the highest governing body but stands on equal terms with the DPR, BPK, the Supreme Court, and the Constitutional Court. In dealing with the President and Vice-President, MPR is only responsible for the inauguration ceremony and, should the occasion call for it, the impeachment of the President or Vice-President, or both. MPR would elect a President and Vice-President only if both positions were vacant. These basis functions of MPR are furthered by the Law No. 17/2014 on MPR, DPR, DPD and DPRD which stipulates that the tasks of MPR include nothing more than: (1) publicizing MPR decrees; (2) promoting Pancasila, the 1945 Constitution, and the Unity in Diversity; (3) reviewing the constitutional system, the 1945 Constitution of the Republic of Indonesia and its implementation; (4) absorbing the people's aspirations with regard to the implementation of the Constitution (Law, 2014). The abolition of the state's supreme institutional system is a logical attempt to break away from ambiguous governance to allow for checks and balances mechanism among state institutions.

### **The Powers of the President**

One of the significant steps toward the construction of a pure presidential system is the ability given to the people of Indonesia to express their sovereign right by electing directly the president of the republic in accordance with provisions of the amended 1945 Constitution. The election of the President and Vice-President directly by the people creates a balance between the various powers in the administration of the state, especially in creating checks and balances,

between the President and other representatives of institutions because they are equally elected by the people. This also gives more legitimacy to the power and mandate of the president. The fact that the president is elected through a direct mandate makes the president's authority more legitimate as he is elected directly by the people as oppose to being appointed indirectly. This also brings some political stability as presidents are usually elected to fixed terms. As for the impeachment of the President and Vice President, amendments to the 1945 Constitution of the Republic of Indonesia prescribe that the president can be impeached and removed from office. If the president is viewed to be unfit to perform his duties and has committed crimes such as corruption or betraying the nation, the DPR can appeal to the Supreme Court to try the president. This is a process referred to as *previlegiatun* by Mohammad (2007). Furthermore, the DPR can ask the Constitutional Court to look into the matter, during which it has 90 days to make a decision. With the decision made, the DPR can motion for the MPR to convene. The president would then be given one last chance to defend himself before the MPR makes the decision whether or not the president should be impeached. The hearing that leads to the impeachment must be attended by 3/4 MPR members and the verdict must be approved at least 2/3 of the members present. These methods further comply with the principle of legal certainty and checks and balances, also show the efficiency of the presidential system as it makes no room for political motive as a precondition of the dismissal of the President and/or Vice President (Bambang, Saldi & Marwan, 2002).

### **The Judiciary**

The amendments to the 1945 Constitution have also brought about an independent judicial power as it is not only in the hands-off the Supreme Court but also in the hands of other lower courts such General Courts, Religious Court, Military Courts, Administrative Courts and the Constitutional Court (Law, 2009).

### **Construction of a Pure Presidential System**

The fact that the amendments to the 1945 Constitution strengthen and limit the powers of both the executive and the legislative at the same time, makes it hard to ascertain that the government system in Indonesia is either presidential or parliamentary or the combination of both, as argued at the outset of this paper. With these changes, there is indeed a strengthening of the presidential system, but there are also aspects of the parliamentary system. This can be referred to a soft separation of powers. If presidential system is to be desired, then both the executive and legislative must be granted authority accordingly. Based on Montesquieu's *Trias Politica*, for democracy to work there must be a separation of government powers. This is the core foundation of a pure presidential system. The 1945 Constitution of the Republic of Indonesia has not yet provided for the separation of powers as one of the core principles of a pure presidential system. This is because the law in Indonesia can be submitted either by the President as of Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, while in Article 20 paragraph (1) of the same constitution says that the House of Representatives holds the power to make laws. Other provisions stipulate that the drafting of the law should be discussed by the Parliament together with the President to obtain mutual consent (article 20, paragraph (2)). Article 20 paragraph (5) states that

*“If the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.”*

These two provisions are ambiguous and controversial because they place both the executive and the legislature on equal standing when it comes to law-making process, on the one hand, on the other, these constitutional provisions lead to the abuse of power on the part of the DPR to by proposing draft laws to the President and, somehow, compel him to ratify the proposed bill. In the end the President has no right to approve or reject the bill approved the DPR. Until the elements of a pure presidential system, as put forward by both John Locke and Baron de Montesquieu, are met within the 1945 Constitution, pure presidential system will not be implemented in Indonesia (Baron, 1989).

## CONCLUSION

The implementation of the presidential system of government based on the 1945 Constitution from the beginning of independence to the transitional period has shown inconsistency, which resulted in wrong and misleading interpretations of the provisions of the constitution by two authoritarian regimes that ruled Indonesia for nearly a century. However, the changes brought about by the amendments to 1945 Constitution of the Republic of Indonesia have paved the way for the implementation of the presidential government system. It is important to note that despite bringing about positive changes, the reinstatement of the 1945 Constitution lacks legal basis as it is the result of a presidential decree rather than an act of parliament. Even though elements of presidential system, such as the separation of powers among the executive, the legislative and the judiciary branches of government, direct election of the President and Vice-President by the people, can be found in the 1945 Constitution of the Republic of Indonesia, the government system in Indonesia remains also attached to the parliamentary system as the law-making power is still shared between both the executive and the legislative. Given the fact that Indonesia has a president, it is clear that parliamentary system was not intended by the framers of the 1945 Constitution of the Republic of Indonesia. If presidential system is what was intended, then the boundary between the executive and the legislative must be clearly be defined as per the law-making power. There should be a clear separation of powers between these two branches of government.

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