

# Strengthening Presidentialism in Indonesia After the Amendment to the 1945 Constitution of the Republic of Indonesia

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**Abstract:- Constitutional discourses and debates since the constituent assembly by the nation's leaders and founders, until now in scientific forums about and around what kind of state government system is more appropriate and effective for the design of Indonesia's constitutional structure are still emerging, and are always attractive both in academic dialectics as well as public discourse. The formulation of the problem is how is the arrangement of the concept that forms the basis of the presidency in Indonesia in the constitution and statutory regulations. This research is included in the field of legal research based on the literature study, and analyzed qualitatively. Indonesian Presidentialism or presidential system, is none other than a system of state government that is held or led by a President who is more dominant in a government directly elected by the people through elections. This also applies to Indonesian Presidentialism which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia as the fundamental state norm of the Indonesian nation – and is based on constitutional supremacy.**

**Keywords:-** *Constitution; Government; Indonesia; Pancasila Presidentialism;*

## I. INTRODUCTION

Constitutional discourses and debates since the constituent assembly by the nation's leaders and founders, until now in scientific forums about and around what kind of state government system is more appropriate and effective for the design of Indonesia's constitutional structure are still emerging, and are always attractive both in academic dialectics as well as public discourse. All of this took place in the nuances of freedom of expression, opinion, and democratic maturity in the spirit of deliberation for consensus. This is in line with the spirit of religious teachings (Islam) which says: "Their affairs (decided) by deliberation between them" (Q.S. As-Syura, Chapter 42, verse: 38) and ... "Consult them in this matter" (QS. Ali Imran, Chapter 3, verse 159) [1].

Of course, the basis of the Shari'a contains a national moral message that is in harmony with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia, which according to Constitutional Law experts function as filosofische grondslag and common platforms or sentences of sawa among fellow citizens in the context of state life. This

is understandable, because in addition to dealing with very fundamental material on the system of government of the Indonesian state, it is also carried out in an atmosphere of academic freedom that is objectively argumentative, and forums for freedom of expression that respect one another, as a manifestation of the principles of human rights (HAM) [2], and foundation of a constitutional democratic state in Indonesia. This phenomenon is in accordance with the attitude of constitutionality and the vision of the 1945 Constitution since its ratification on August 18, 1945, until the amendments in the reform era which emphasized that the state.

Indonesia is a unitary state in the form of a republic [3]. Furthermore, it was formulated, "Sovereignty is in the hands of the people and implemented according to the 1945 Constitution [4]. The State of Indonesia is a state of law [5].

Observing the spirit of Article 1 paragraph (1) of the 1945 Republic of Indonesia Constitution concerning the form of state and government, then as chairman of the PAH III BP MPR RI Meeting (as the representative of the PKB faction) Slamet Effendy Yusuf, said that almost all members of the meeting wanted the article not to change. While also emphasizing, this Unitary State is a democratic country because the republic means republic, that is, it returns to the people and is based on law, meaning that whatever has to be done places the law as something supreme [6].

In order to refresh the dialectic in analyzing the above constitutional norms, Zainal Arifin Hoesein explained, "The existence of Article 1 paragraph (2) of the 1945 Republic of Indonesia Constitution contains three important things. First, Sovereignty exists and originates from the people; Second, the sovereignty of the people is carried out in accordance with the provisions of the 1945 Constitution; Third, the institution appointed as the executor of people's sovereignty is not limited to the MPR, but all state institutions are direct or indirect actors of power originating from the people [7].

Even in the context of the state government system, which adheres to presidential (presidential system of government), it is also regulated in Chapter III concerning Powers of State Administration, which among other things stipulates: The President of the Republic of Indonesia holds government power according to the 1945 Constitution [8]. To elaborate it more broadly, then according to Adnan Buyung

Nasutio in Zainal Arifin Hoesein, the constitutional system as stipulated in the 1945 Constitution of the Republic of Indonesia still contains many weaknesses and problems or at least there are two main problems, namely:

First, a paradigmatic weakness, namely the unclear concept of state (stateside) to be used, whether a constitutional democratic state or whether the concept of an integralist state is still to be maintained. For example, one party the MPR was abolished, but on the other hand, the MPR was positioned as the highest institution in giving the final decision on the results of the Constitutional Court (MK) decision on the impeachment proposal from the DPR. Second, there are inconsistencies in a number of ways, including (a) using a presidential system as a government system, but at the same time, the president is not given a veto right in making laws. (b) The construction and structure of the legislature is unclear, namely the DPR gets a larger portion of power than the DPD, even though members of the two institutions are exercised the same, namely through direct elections [9].

Furthermore, it is said, that there are other constitutional facts that show changes in the constitutional system after the changes to the 1945 Constitution which give considerable meaning to these changes. The fundamental change is to place law as a foundation as well as an instrument in solving problems between citizens and citizens and authority between state institutions [10].

The phenomenon of debate about the constitutionality of the system of government in force in Indonesia, whether it is presidential or parliamentarians, or the best mix of elements of the two, is a dynamic of political and constitutional law which always and continues to process in the dialectics of nationhood and statehood in Indonesia from time to time.

Based on this background, which has been described above, the formulation of the problem is how is the arrangement of the concept that forms the basis of the presidency in Indonesia in the constitution and statutory regulations?

## II. METHODOLOGY

This research is included in the field of legal research based on the literature study, and analyzed qualitatively.

## III. DISCUSSION

### A. *Limitations and Scope of Government System*

Conceptually, in an effort to provide a definition, meaning or definition as well as to formulate a scope of study regarding government systems, and Presidentialism (Presidential government system), then several scientific references as references are a commonplace scientific activity to be traced in the study of relevant legal and political documents, and proven accuracy.

Through his dissertation, said A. Hamid S. Attamimi [11], citing Weinberg's opinion which put forward, the meaning of a system with a set of objects together, with an

inseparable relationship between its parts "(a set of objects together with a relationship between the object and between the their attributes). So in the words "state government system" there are parts of the state government, each of which has its own duties and functions, but as a whole these parts form a unified whole and work rationally. He said, although not in a material (material) sense the 1945 Constitution recognizes the separation of powers in a formal (or formal) sense.

He also emphasized that [12] Jakarta separating materially or formally dividing the power of the State of the Republic of Indonesia into Executive, Legislative and Judiciary powers has always been based on Montesquieu's thoughts and teachings, known as his trias politica. The word "government" in Indonesian means "the power that governs a country or a state territory", or "the highest power in a country". And government means "deeds or ways or matters of governing". Meanwhile, the main word for government is "order", "word that intends to order something to be done". Some say, government in a broad sense includes all state functions or activities in the case of the Republic of Indonesia, in addition to covering the functions of the President, it also includes the functions of the MPR, DPR, MA, BPK, (DPA before the amendment to the 1945 Constitution), while the government in a narrow sense, is the function of the President only, not including the functions of the highest, and higher state institutions. Apart from that, there are also those who are of the view that governance in a broad sense includes all matters carried out by the state in carrying out the welfare of the people and the interests of the state itself, while in a narrow sense it only carries out executive duties.

In the context of the implementation of the State Government system, Padmo Wahyono [13] is of the view that there are basic rules of the game in state organizations which are formulated by the State Government system. Where theoretically, the main points of the rules of this game are:

- There must be legal provisions governing it for the sake of legal certainty;
- There must be rights and obligations granted by the law;
- There must be an implementation procedure; and
- There must be a penalty.

Of these four aspects, in the period before the amendment to the 1945 Constitution was reflected in the system of state administration as formulated as seven main rules in the elucidation of the 1945 Constitution.

From a normative juridical perspective, since 2014, Indonesia has regulated government affairs through a law-level regulation, namely Law Number 30 of 2014 concerning Government Administration, which was enacted on October 17, 2014, in the State Gazette of 2014, Number 292. The a quo law explains, what is meant by Government Administration is the procedure in making decisions and or actions by Government bodies and/or Officials. The function of government is the function of carrying out Government Administration which includes the functions of regulation, service, development, empowerment, and protection. Government authority is the power of government bodies

and/or officials or other state administrators to act in the realm of public law.

Meanwhile, in the General Explanation of the Government Administration Law (UU AP) it is emphasized that the government's task is to realize the goals of the state, as formulated in the preamble to the 1945 Republic of Indonesia Constitution and this task is a very broad task. The scope of Government Administration tasks is so broad that regulations are needed that can direct government administration to be more in line with the expectations and needs of the community (citizen friendly), in order to provide a foundation and guidelines for government agencies and/or officials in carrying out the tasks of administering government.

In the norms of Article 10 of the AP Law, it is regulated that there are General Principles of Good Governance (AUPB) which are principles used as a reference for the use of authority for Government Officials in issuing decisions and/or actions in the Administration. The principles in question include the principles of legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest, and good service.

If you pay close attention to the conception of the state as a government in a broad sense, it is necessary to examine other compatible legal norms as reinforcement. According to M. Taufik Makarao and Sarman, based on Law no. 32 of 2004 concerning Regional Government, the first part regulates the administration of government, Article 19 explains that the Administrator is the President assisted by (one) Vice President and by the Minister of State. While the organizers of Regional Government are the Regional Government and DPRD. He further explained that based on the a quo Law, Article 20 outlines the general principles of governance guided by the general principles of state administration, which consist of:

- the principle of legal certainty;
- the principle of orderly administration of the state;
- the principle of public interest;
- openness principle;
- proportionality principle;
- d. accountability principle;
- efficiency principle;
- the principle of professionalism;
- accountability principle;
- efficiency principle; and
- principle of effectiveness.

Theoretically and normatively, the study of the system of state administration and its strategic implementation is an endeavor in state practice, so that the government, both central and regional within the framework of the Unitary State of the Republic of Indonesia (NKRI), always has the character and profile of a stable, strong, effective government. , efficient, reliable, and prime in serving the public in a fair manner, without discrimination. This is in line with the in-depth analysis of M. Ryaas Rasid [14], in a scientific oration he said, the nomenclature of effective government (effective government) is academically congruent with the nomenclature of good governance (Good Governance) which refers to the ability of a government to carry out its duties to realize the

goals of establishing the country itself. Nominally, good governance includes the dimensions of leadership, management, and program prioritization which are the commitment of a government.m

This narrative and discourse are strengthened by the views of M.Solly Lubis [15], who said that various recent references to good governance are sometimes translated as good administration (English), or *Behoorlijk Bestur* (Dutch) or good governance, governance or governance itself can be interpreted as a system or mechanism or process of exercising power or authority within the framework of the life of the state which sees all components, both from the political superstructure and the political infrastructure.

The next analysis, said Solly Lubis, the components in the superstructure include all institutions and officials in the Executive, Legislative, Judiciary and Consultative, Accountative paths, at the center and in the regions. Meanwhile, in the political infrastructure, they are those, organizations and individuals, who play a role in political parties, in mass organizations (NGOs, Non-Governmental Organizations), both on a national and regional scale.

If we take a closer look at the constitutionality of the government, it can be examined from the provisions of the 1945 Republic of Indonesia Constitution, in the norms of Article 27 paragraph (10) in conjunction with Article 28 D paragraph (1) and paragraph (2). Article 27 paragraph (1) says: "All citizens have the same position in law and government and are obliged to uphold that law and government without exception". Article 28D paragraph (1): "Every person has the right to recognition, guarantees of protection, and certainty of a just law and equal treatment before the law." Paragraph (3): "Every citizen has the right to equal opportunities in government."

The interpretation of the spirit of the constitution, according to Bagir Manan's analysis [16], basically demands equality before the law is part of the demand for the relationship between the rulers (the rulers) and the people (the ruled), so it is impossible to separate equality before the law and equality before the law before the government. The core of equality before the government includes equality of legal treatment, equality of opportunity (participating in government), and other similarities. An interesting thing, according to Bagir Manan, Article 27 not only regulates the rights of citizens, but is also obliged to uphold the law and government.

### *B. Theoretical Aspects of Presidentialism*

In examining the previous narrative, as explained by Hamdan Zoelva [17], that during the period of the first amendment to the 1945 Constitution, two important principles related to the government system had been agreed upon. These two principles became the direction and basis for further changes, namely strengthening the presidential system and raising important norms in explanations to be included in the articles. The Articles referred to include: Article 1 paragraph (2) of the 1945 Constitution, regarding the notion of democracy, and Article 1 paragraph (3) of the 1945

Constitution regarding the notion of democracy (principle of the rule of law). Presidentialism (Presidential Government system) [18] is also known as the congressional system nomenclature, namely a system of government adopted by a country with a republican form of government, executive power, and legislature, which are directly elected through general elections (elections).

Presidentialism is a system of government that is most widely adopted by modern countries in the world. Because this system is considered quite ideal for democratic countries because the Head of State (President) does not have absolute rights over his power. Thus it can be easy to prevent dictatorship, despotism, absolutism and the like.

Although both theoretically and practically, the two branches of power, namely the Executive and the Legislature are directly elected through elections, the Executive and the Legislature have independent or unrelated powers and positions as in a Parliamentary system. In this independence, each of these bodies has different authorities and powers.

The format of narrative and dialectics related to the three branches of state power, namely the Executive, Legislative and Judiciary, becomes very inherent and compatible when examined from the perspective of the theory of power or the theory of trias politica by John Locke, as well as by Montesquieu as a falsification of the *toeri a quo*. The theory of Trias politica is one of the theories that serves as an analytical knife that the writer uses in this dissertation research, in addition to the rule of law theory and constitutionalism theory.

From a historical perspective, according to T. Sri Soemantri Mertosuwignyo's notes, the Presidential system was adopted and implemented for the first time in the United States. That is why this system of government is also named the American pattern of government system (Maurice Duverger). In English literature, this system of government is called "Presidential Government" (SL. Witman & JJ Wuest and "the fixed executive" (CF. Strong) cannot be imposed by Parliament or the Legislature.

### C. Presidentialism and the Concept of a Unitary State

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It has been understood that the Republic of Indonesia according to the constitution (UUD 1945) is a country with an organizational structure in the form of a unitary state (eenheidstaat) in accordance with the ideas of the founding fathers of the nation at that time. In terms of theoretical concepts and scientific doctrines of law and politics, there are several types of forms of state organization that are generally known (universal).

According to Jimly Asshiddiqie [19], in today's world, there are four types of state organizational structures, namely:

- Unitary State (Unitary State, Eenheidstaat);

- United States or Federal (Federal State, Bondsstaat);
- Confederate States (Confederation, Statenbond);
- Superstructural countries (superstates), such as the European Union. However, for the needs of this research and writing, the writer/researcher only analyzes one concept of the form of state organizational structure, namely the Unitary State (Unitaris).

At the constitutional level in the Indonesian constitutional system, the nation's political choices have been determined in the form of the organizational structure of the Indonesian state, namely a unitary state and not a federal state. Indonesian presidentialism has a coherent position and is compatible with the choice of the nation's founders for the form of government, namely a republic, not a monarchy. The choice of form of government for Indonesia in the future is a republic. This is the result of democratic political aspirations. According to Harun Al Rasyid, with its composition, it was: 55 votes for the Republic, 5 votes for the Kingdom, and 3 abstentions, in a session chaired by BPUPK, July 10, 1945 [20].

Then the agreement on the form of state and government (Unitary State and Republican State) is processed through formal institutionalization in the constitution. This is stated explicitly in the 1945 Constitution of the Republic of Indonesia, both before and after the amendment, which reads "The State of Indonesia is a Unitary State in the form of a Republic." . In the elucidation of the 1945 Constitution before the amendment to the Constitution, Supomo said that in relation to the form and sovereignty of the state, establishing the form of a unitary state and republican government contained the main content of the idea of people's sovereignty. So it is increasingly clear that other concepts other than the concept of a unitary state are the concept of sovereignty, in the Indonesian context is people's sovereignty (democracy) and rule of law (rule of law, or democracy).

Views and thoughts about the principles of the unitary state and republic in presidentialism in Indonesia are state concepts that support each other and do not conflict with each other, both in constitutional juridical aspects, philosophy, and empirical practice in Indonesian constitutional life. The three conceptions, namely a unitary state, republicanism, and presidentialism as a system of state government, are state concepts that are regulated synchronously, harmoniously, harmoniously and can be applied simultaneously in a forum for shared life, namely the Unitary State of the Republic of Indonesia (NKRI) according to the 1945 Constitution of the Republic of Indonesia. This is because it is impossible for a constitution in a country, in the case of the 1945 Constitution, to regulate and contain concepts, principles, principles and norms as a groundnorm (basic law) whose contents contradict each other or are counterproductive to one another.

According to Miriam Budiardjo, the essence of a unitary state is that its sovereignty is not divided, or in other words, the powers of the central government are not limited, because the constitution of a unitary state does not recognize any other legislative body, apart from that of the central legislature. So having the authority to make regulations for their own region



does not mean that the regional government is sovereign, because the highest control and authority still lies in the hands of the central government.

#### IV. CONCLUSION

Presidentialism or presidential system, is none other than a system of state government that is held or led by a President who is more dominant in a government directly elected by the people through elections. This also applies to Indonesian Presidentialism which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia as the fundamental state norm of the Indonesian nation – and is based on constitutional supremacy. Meanwhile, in the parliamentary system, the parliament is dominant over the executive power and is guided by parliamentary supremacy. The existence of Indonesian Presidentialism has a solid foundation of constitutionality, because apart from being the ideals of the founding fathers of the nation, in its implementation it is always illuminated and imbued with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia.

The state conception which forms the basis for the regulation and implementation of Presidentialism according to constitutional norms (the 1945 Constitution of the Republic of Indonesia), includes the concept of checks and balances, the concept of state theory, and the composition of state organizations, and the unitary concept or concept of a unitary state, the conception of state institutions, the conception of authority or authority. , and so forth. The constitutional conception has been transformed into the body (articles) of the 1945 Constitution of the Republic of Indonesia, including Article 4 Paragraph (1), Article 1, paragraph 1, paragraph 2, and 3), Article 7, Article 7A, Article 7B, Article 24C paragraph (2), Article 6A paragraph (1).

The concept of checks and balances (CB), as stipulated in the articles in the 1945 Constitution of the Republic of Indonesia, includes among others: Article 3 paragraph (1), Article 5 paragraph (1), Article 20, Article 20 paragraph (5) Article 20 paragraph (1), Article 20A, - Article 21, Article 22, Article 22D, Article 22E, Article 23E, Article 24B, Article 24C.

The purpose of strengthening presidential is that in the context of the state government system, it is clear that the government is stable, strong, and solid so that it is truly effective and efficient in the management and administration of state government in order to realize people's welfare in accordance with just and civilized humanity, based on the principle of justice for all Indonesian people. The results of the amendments (1999 – 2002) all reflect the fulfillment of the constitution to strengthen presidential according to the 1945 Constitution of the Republic of Indonesia. With the conception and construction of the constitutional system, the presidential system has been implemented in a real way as presidential in Indonesia, and not just set the direction towards a presidential system.

From 1999 to 2002, under the Government of President BJ Habibie, changes/amendments to the 1945 Constitution were made in four stages of change, namely from 1999 to 2002. With one of the national political consensuses and the response by the Indonesian MPR at that time, namely the amendment to the constitution with continue to maintain and strengthen (empowerment) the existence of the president as a system of state government which is regulated explicitly in the 1945 Constitution of the Republic of Indonesia, including the amended/amended Constitution.

The MPR's national commitment and legal politics regarding Presidential regulation in the 1945 Constitution of the Republic of Indonesia until now, in the Reformation era, presidential has been consistently maintained, both in terms of regulation and its application in Indonesian constitutional life. Although it still requires political will from all elements of the nation to further strengthen it, both juridically normative and empirically its application in the administration and management of the life of the state and government.

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