

Controlling The Amendment of The Nri Constitution and The Necessary of The President's Service for Three Periods

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Abstract

The constitution in Indonesia has undergone several changes since Indonesia's independence. In this dynamic, Indonesia is in the phase of finding its identity and the right government system in accordance with the conditions of the Indonesian nation. Changes to the constitution repeatedly, namely in the Post-Independence period, the 1945 KRIS, the 1950 Constitution, the New Order, the Old Order, and the Reformation. Article 7 of the 1945 Constitution of the Republic of Indonesia states that the President governs for a term of five years and can be re-elected in the election of the head of state. However, until the New Order era, the presidential term limit was not determined. Resulting in abuse of power and political chaos. The post-amendment reform era changed Article 7 by limiting the president's power to only two terms. The amendment to Article 7 is referred to as the embodiment of reform and is in accordance with the opinion of the Indonesian people so that power regeneration can occur. The discourse on the third amendment in Article 7 is pro and contra because it is planned that there will be a change in the limitation of the presidential term of office to three periods. This discourse is not in accordance with the spirit of Article 7 of the 1945 Constitution of the Republic of Indonesia and the controversy among the Indonesian people. The Indonesian people hope that the abuse of power will not repeat itself as in the pre-reform era and stick to the mandate of Article 7 of the 1945 Constitution of the Republic of Indonesia that the president is limited to two terms.

I. Introduction

The President, as the leader of the state, has the duty and responsibility to implement the 1945 Constitution (UUD NRI 1945). The provisions regarding the President's authority are contained in the 1945 Constitution of the Republic of Indonesia, CHAPTER III concerning Government Powers. Strictly speaking, in Article 4 of the 1945 Constitution of the Republic of Indonesia, paragraph (1), the President of the Republic of Indonesia holds governmental power according to the Constitution. The article becomes a guideline for the president, together with a vice president, to run the government based on the constitution. The term of office of the Indonesian president is also regulated in the 1945 Constitution of the Republic of Indonesia, namely Article 7, which states that the President and Vice President can hold office for five years and can be re-elected in the next period with one term of office. This means that the President and Vice President can run for re-election to become President and Vice President, but are only valid for one term after being elected in the next presidential election. The President and Vice President are limited to being able to serve as President and Vice President for two terms of office (Panggabean, 2022). The provisions regarding the positions of President and Vice President in Article 7 of the Constitution, of course, did not necessarily form after Indonesia's independence on August 17, 1945. Indonesia has experienced the amendment of the 1945 Constitution of the Republic of Indonesia four times, namely in 1999, 2000, 2001, and 2002. Amendments were made to the 1945 Constitution of the Republic of Indonesia as a response to the condition of the Indonesian government, which had experienced chaos. Especially in the post-independence period until before the reform period (Kusnadi, 2020). The long journey of the 1945 Constitution of the Republic of Indonesia to find policies regarding the term of office of the President that have been used so far can certainly be used as a benchmark that Article 7 of the 1945 Constitution of the Republic of Indonesia is considered fair for all Indonesian people. Article 7 can be called a solution to the problem of constitutionalism that occurred during the Old Order and the New Order. Likewise with the amendments that have gone through a period of amendments repeatedly, the 1945 Constitution of the Republic of Indonesia, which has come into force now, can be referred to as the 1945 Constitution of the Republic of Indonesia in its best version for the continuation of the life of the Indonesian nation and

state.

However, recently, rumors have emerged that the amendment is being revamped. Especially on the point of provisions regarding the term of office of the President. The issue that exists in the community states that the position of President can be carried out for up to three (three) terms. Of course, the discourse brought out a wave of pros and cons in society. Likewise with the 1945 Constitution of the Republic of Indonesia and the perspective of justice in the past before the provisions for the presidential term of office for two terms were enforced until now (Pahlawan et al., 2020).

II. Research Method

The approach used in this research is descriptive-qualitative. Qualitative descriptive methods are used to describe phenomena and identify problems related to the control of the 1945 amendments to the 1945 Constitution and the need for the president to serve three terms. The type of data used is called secondary data. It includes research materials from libraries as well as primary, secondary, and tertiary legal materials. Then, the data was collected through a literature review of library books on the problem under study. The data analysis used refers to the concepts of Miles and Huberman, namely, data collection, data reduction, data presentation, and drawing conclusions.

III. Results and Discussion

The Dynamics of the Presidential Term: Post-Independence to the Reformation Period

Since independence in 1945 until now, Indonesia has experienced several changes of president or head of state. Indonesia, after its independence, did not necessarily have a good and standard governance structure. Indonesia, as a former colony and independent country with its own determination, still needs a lot of adjustments so that a good government system is actually formed. If the total number of presidents who have ruled in Indonesia is seven, then the total number of presidents is seven and the total number of vice presidents is thirteen. These presidents include Ir. Soekarno, H.M. Suharto, B.J. Habibie, Abdurrahman Wahid, Megawati Soekarno Putri, Susilo Bambang Yudhoyono, and Ir. Joko Widodo. If today

the Indonesian people know that the Head of State is elected by the Indonesian people through the General Election process, But in the beginning, general elections had never been held, precisely when the first and second presidents of Indonesia were elected (Panggabean, 2022). Ir. Soekarno and

H.M. Suharto were not elected through simultaneous general elections. Ir. Soekarno was officially inaugurated as president not long after the proclamation of independence was read by him and Moh. Hatta. Then, with the approval of the Indonesian people, Ir. Soekarno and Moh. Hatta, the proclaimers of independence, were sworn in as the first President and Vice President of Indonesia at that time. This happens because Indonesia, which is still young and has just proclaimed its independence, does not yet have political stability and does not yet have the basics of government in accordance with the conditions of the Indonesian nation itself. Likewise with the conditions in 1965, when H.M. Suharto became the second President of Indonesia. At that time, Indonesia was in a precarious condition after the September 30th Movement (G30S/PKI) disrupted its political stability. The Indonesian people assume that the movement is expanding and destabilizing the country due to the intervention of President Soekarno (Kusnadi, 2020). The community demands that President Ir. Soekarno immediately step down from his position as president so that the country will return to stability and there will be no more rebel movements like the G30S and PKI. So that in this emergency condition, the Indonesian people think that H.M. Suharto, as Commander of the TNI at that time to replace Ir. Sukarno, became Head of State. The constitution at this time changed several times, including the post-independence constitution, the 1949 KRIS, and the 1950 Constitution. In Article 7 of the NRI Constitution, there was no limit on how long the president could be in office. President H.M. Suharto is the longest-serving president in the history of the administration of presidents in Indonesia. At this time, the 1945 Constitution of the Republic of Indonesia has not determined the term of office of the president, which is only limited to two periods. Not much different from the previous president, this unlimited term of government interprets the contents of the law that the president can rule for life. The Republic of Indonesia's weak Constitution from 1945 makes it easy for people to abuse their authority and power. This happened during the reign of H.M. Suharto. The absence of a presidential term limit resulted in President Suharto being elected in every head of state election. The

constitution in force at this time is the constitution of the Old and New Orders. The limitation of the presidential term of office is not specified in Article 7 of the 1945 Constitution of the Republic of Indonesia. Following the issuance of MPRS Decree Number 3/MPRS/1963, the President can be appointed for life without any limitation on the term of office. so that the president can be re-elected in every head of state election (Yusa & Hermanto, 2017).

In fact, the indefinite term of office really puts the Indonesian government under authoritarian rule. Unlimited power made President Suharto's position very strong. In fact, when President Suharto ruled both during the New Order and the Old Order, corruption, collusion, and nepotism grew stronger. Although at that time Indonesia became a prosperous country, with prosperity in almost all aspects of people's lives, the visible strength on the outside was only a "wrap" for weaknesses and depravity that were well covered. Towards the end of President Soeharto's term in office, the Indonesian people sensed that the practice of KKN was getting stronger. Plus, corruption is everywhere. The boredom of the Indonesian people under President Suharto's unlimited rule resulted in the masses starting to demonstrate that they wanted President Soeharto to step down. After a wave of demonstrations and a monetary crisis, in 1998, President Suharto officially resigned from his position as the second President of Indonesia (Yusa & Hermanto, 2017). The New Order period then ended and was replaced by a period of reform. During this time, President B.J. Habibie was inaugurated as president in a state of emergency to replace President Suharto. The election of the head of state has not been held again because the power vacuum does not provide an opportunity to prepare for the election any longer. Indonesia's condition is in chaos. However, the third President of Indonesia is considered unable to fix the chaos. The legacy of chaos during the New Order administration has created many threats of regional divisions in several regions of Indonesia. such as Aceh and Timor Leste, which are trying to escape from the territory of the Indonesian government and establish their own country. As a result of this state of power, President B.J. Habibie officially resigned in 1999 (Mugeni, 2015). The power vacuum has returned. However, the election of the head of state is carried out through voting conducted by the People's Consultative Assembly. By the time President B.J. Habibie resigned, the presidential candidates consisted of Abdurrahman Wahid and Megawati Soekarno Putri. The vote competition was quite tight, but at the end of the vote count, KH.

Abdurrahman Wahid managed to get the most votes and was officially inaugurated as the Fourth President of Indonesia. At that time, the problems with the legacy of the New Order had not been fully resolved. This was followed by many policy controversies issued by President Abdurrahman Wahid, such as his attempt to freeze the DPR and MPR, which was deemed unconstitutional. So, at the deliberation of members of the DPR and MPR, President Abdurrahman Wahid was impeached from his position as president (Azed, 2017).

After President Abdurrahman Wahid was officially impeached in 2001, the MPR held a special session that resulted in the decision that the next President to be inaugurated as Head of State was Megawati Soekarno Putri. During the reign of President Megawati, she is called the President who has succeeded in pouring out several achievements, including the success of strengthening the democratic system in Indonesia, issuing the Corruption Law, and strengthening the political system in Indonesia. President Megawati ran for the election of Head of State in 2004, but she lost badly to another presidential candidate, Susilo Bambang Yudhoyono, in the second round. So that in that year President Megawati officially ended her presidential term and was replaced by the sixth President, Susilo Bambang Yudhoyono (Siboy, 2021). The last amendment occurred in 2002, and the official position of the president as stated in Article 7 of the 1945 Constitution of the Republic of Indonesia states that the president can nominate himself again in one term of office. There is no longer a lifelong power that tends to be monarchy. President Megawati's success in strengthening the democratic system in Indonesia has, in fact, lasted until now. Voting is carried out with a fair and transparent system, namely one that is direct, public, free, confidential, honest, and fair. Democracy is the principle of governance in Indonesia. Initially, the Indonesian government system tended to be parliamentary because the MPR was in a stronger position than the executive branch. Now the government system has been running on the principle of presidential government. In the principle of presidential government, state power is divided into three types: executive, legislative, and judicial (Siboy, 2021).

The division of power in the principle of presidential government requires that there be no superiority between the legislative, executive, and judicial powers. The executive power is responsible to the MPR; the executive power cannot dissolve the DPR; the executive can dissolve or reshuffle the cabinet;

the legislature and the executive cannot dissolve the judiciary; and the judiciary is not responsible to the executive or legislature. However, the judiciary is the supervisor of the executive and legislative processes. The presidential system of government is carried out in a balanced manner without the authorization of one of the powers. This is what makes the government system said to have been running in the fairest way possible.

According to Mahfud MD (Efriza, 2018), the presidential government system is as follows:

1. Executive agency as head of government;
2. The government is not accountable to the parliament (DPR);
3. The positions of the government and parliament are equal;
4. The President appoints and inaugurates the ministers in a cabinet;
5. The executive and legislative positions are equally strong.

In a democracy, sovereignty belongs to the people. so that the implementation of elections must be carried out fairly and fairly based on the constitution. This has in fact been running until now, where elections have been held several times in every election for Heads of State, members of the DPR and DPRD, Governors, and Regional Heads, both mayors and regents. Elections have been going well until the reign of Ir. Joko Widodo. It is proven that during the reign of Susilo Bambang Yudhoyono, he ruled for 2 terms, with 1 period of running for office and being re-elected by the people of Indonesia. Likewise, during the administration of President Ir. Joko Widodo, He ruled for two terms, with one period of running for and being re-elected by the people (Roza, 2021).

Briefly, Darmini Roza (Roza, 2021) summarizes the constitutional changes that have occurred in Indonesia, including the following:

1. The constitution in the post-independence period Period I, from August 18, 1945, to December 27, 1949; and Period II, from July 1959 to October 1999. Article 7 states that the President and Vice President shall rule for a term of five years, and after that they can be re-elected by the people without limitation on the term of office.
2. The constitution during the 1949 KRIS period It took place on 27 December 1949 until 17 August 1950. The arrangement for the term of office of the

President was not regulated in the constitution, and the position of the Vice President was abolished in the 1949 KRIS.

3. The 1950 Constitution of the Republic of Indonesia from 17 August 1950 to 5 July 1959 The Head of Government is led by the President and the Vice President, but the term of office of the president is not regulated.
4. The 1945 Constitution of the Republic of Indonesia during the Old Order and New Order periods from 1959 to 1999 The term of office of the president lasts for five years and he can be re-elected without period limitation.
5. The 1945 Constitution of the Republic of Indonesia during the reformation period, 1999–present. The President and Vice President serve for five years and can be re-elected for one term.

Setting the Future of the President's Term

The long history of the formation of the 1945 Constitution of the Republic of Indonesia after several amendments is a major lesson as well as an important view of the ups and downs of the political system in Indonesia. However, it is possible that the 1945 Constitution of the Republic of Indonesia will be amended again for the fifth time. The issue of the proposed amendment to the 1945 Constitution of the Republic of Indonesia had previously been raised and had been discussed by the MPR. Especially on the issue of the presidential term of office, which will be changed to three terms of office or periods (Hero et al., 2020). In fact, the issue of a three-term presidential term existed during the reign of Susilo Bambang Yudhoyono. However, the issue just disappeared without any implementation until the actual amendment process was planned. This discourse re-emerged in the era of Joko Widodo's administration. Automatically, this conversation brings up pros and cons in the community, and most people in the community are very against the plan to change the way the president's office works.

The Necessity of the President's Term of Office Three Times According to the 1945 Constitution of the Republic of Indonesia

In President Joko Widodo's statement regarding his opinion of serving for three terms, he explicitly replied that President Joko Widodo refused to serve as President for three terms. However, it is possible that he will be able

to return to power if the fifth amendment is realized. An amendment to the 1945 Constitution of the Republic of Indonesia is not a necessity that must be realized. This is a form of response in which the Constitution of the State can also undergo changes according to the needs of the State and its development. This principle was referred to during the amendment to the 1945 Constitution of the Republic of Indonesia, which was carried out for the purpose of achieving political stability and stability of the state from various aspects. In fact, the political stability that has lasted since the reign of President Megawati was obtained from the amendment process to the 1945 Constitution of the Republic of Indonesia (Aryani & Hermanto, 2018).

However, what is now a consideration regarding the plan to amend the 1945 Constitution of the Republic of Indonesia lies in the consistency of the government in implementing the 1945 Constitution of the Republic of Indonesia. Article 7 regarding the limitation of presidential positions is obtained from the state, which has "learned" from the experiences of previous presidents. Where chaos has occurred because of the unlimited power of the head of state, the limitation of the term of office of the president is an agreement of the entire Indonesian people and has complied with Article 37 of the 1945 Constitution of the Republic of Indonesia. Article 37 of the 1945 Constitution of the Republic of Indonesia states that the Constitution can be amended with certain conditions, namely the approval of the majority of members of the MPR. The approval of the MPR members is of course also based on the majority opinion of the Indonesian people as the holders of the highest sovereignty in Indonesia (Luthfy, 2019).

Basically, the desire for a presidential term of office of up to three terms was motivated by development plans during the administration of Ir. Joko Widodo, who was hampered by the COVID-19 pandemic. Most people agree if President Joko Widodo resumes his power for one more term after the election of the head of state in 2024. Development projects must be completed, and completed first, because it is feared that if the head of state is replaced, there will be policy discontinuity, causing the development project to be unfinished. good (Supardi, 2018).

On the other hand, it is feared that the president's 3rd term in office will re-create political chaos, such as the abuse of power that occurred during the Old and New Order. The three-term term of office is also feared to be accompanied by political interests that are detrimental to the Indonesian people. Most of the state officials can take advantage of the three-term

presidential term to maintain their positions without any disturbance when the head of state ends. Of course, the most advantageous position in this case is the existence of political parties. In the long term, it is feared that certain political parties will dominate.

According to the researcher Needdem, Fadhli Ramadhanil, amending the constitution for the fifth time opens a wide opportunity for the amendment of Article 7 of the 1945 Constitution of the Republic of Indonesia. However, if the change is true, it is contrary to the spirit of reform. Because basically, the reform requires a limitation on the presidential term of office from the initial lifetime to two terms of office. Director of the Center for Constitutional Studies, Faculty of Law, Andalas University, Padang, Feri Amsari, stated that the discourse on the presidential term and amendments to the 1945 Constitution of the Republic of Indonesia could also open up opportunities for an authoritarian government. Article 7 of the 1945 Constitution of the Republic of Indonesia is the heart of the reform that must be properly enforced. The reason the president is considered good is not the right reason to want a constitutional amendment again (Roza, 2021).

The background of the president, who is considered good, is also not a strong reason for another amendment. When referring to the provisions in Article 37 of the 1945 Constitution of the Republic of Indonesia, amendments are made with the following provisions:

1. The People's Consultative Assembly puts proposed changes to the Constitution on the agenda for the session. At least one-third of the MPR's members must be on the list of people who want to make changes.
2. Members of the People's Consultative Assembly who propose amendments to the 1945 Constitution of the Republic of Indonesia can do so in writing or indicate which part they want to change;
3. Amendments to the Constitution must be implemented through a session attended by at least 2/3 of the total members of the MPR.
4. Amendments to articles of the Constitution must be made with the approval of at least fifty percent (50%) of the total members of the MPR.
5. Changes cannot be made to the form of the Republic of Indonesia.

Provisions regarding amendments to the 1945 Constitution of the Republic of Indonesia are confirmed by MPR Decree No. I/MPR/2002 concerning the establishment of a Constitutional Commission. However, the

Constitutional Commission is not authorized to amend the 1945 Constitution of the Republic of Indonesia. At the request of the public, the Constitutional Commission can be set up if the 1945 Constitution of the Republic of Indonesia needs to be changed in a way that doesn't come from the assembly (Efriza, 2018).

Based on Article 7 and Article 37 of the 1945 Constitution of the Republic of Indonesia, it can be concluded that changes to the 1945 Constitution of the Republic of Indonesia cannot necessarily be carried out by state institutions, both executive and legislative. The 1945 Constitution of the Republic of Indonesia, as the highest constitution in Indonesia, cannot be changed according to the will of the government. The 1945 Constitution of the Republic of Indonesia is carried out on the basis of the interests of the nation and state. If the President's reason for needing additional time to complete the development program that he is currently running is not an emergency reason, that can be used as the basis for an amendment to the 1945 Constitution of the Republic of Indonesia, especially at the point where the term of office of the president was not in accordance with the goals of reform.

IV. Conclusion

The Constitution of the Republic of Indonesia is the highest constitution used to run the Indonesian government. The constitution during this reformation period was not immediately implemented and became a unitary constitution that was instantaneous but went through a long history after Indonesia proclaimed its independence. Indonesia, as an independent and independent country with its own strengths, requires a long process to find the right form of constitution for the condition of the nation and state of Indonesia.

If Indonesia was formerly a former Dutch colony, then it did not necessarily use the government system of the rest of the Dutch government. Culturally, the Netherlands and Indonesia are countries with different socio-cultural backgrounds. The wealth owned by Indonesia gave birth to Pancasila and the Constitution of the Republic of Indonesia to accommodate Indonesia's diversity. Democracy and presidential government systems are considered to be some of the most appropriate forms of government implemented in Indonesia. Because Indonesia was built on struggle and

bloodshed, its people deserve to be involved in every decision and policy of the state.

Likewise with the constitutional considerations of the state, in which the 1945 Constitution of the Republic of Indonesia is the basis for running the government. So the principle of justice based on Pancasila and deliberation must be carried out in accordance with the spirit of the people's sovereignty. The long history of the formation of the term of office of the President of Indonesia in Article 7 is a form of the success of the reform era in changing the authorization that once colored Indonesia's leadership model into a system of government that is as fair as possible. The aim is to prevent the re-authorization and abuse of authority that occurred during the Old Order and New Order administrations. If Article 7 of the 1945 Constitution of the Republic of Indonesia is a form of the spirit and heart of reform, then the fifth amendment and changes to the presidential term of office to three terms are a form of necessity that occurred in the reform era. People certainly hope that the weaknesses that occurred in the past and the emergence of chaos will not occur again in the current era, so it is not appropriate if the discourse on changes or amendments to the 1945 Constitution of the Republic of Indonesia occurs again, especially in the Article regarding changes to the presidential term of office for three periods.

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