

AMENDMENT URGENCY OF ARTICLE 7 STATE LAW OF THE REPUBLIC OF REPUBLIC OF INDONESIA OF 1945: TOWARDS 3 TERM PRESIDENTIAL RULE

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-ABSTRAC-

Based on article 7 UUD RI 1945 the result of the first change reads: The President and Vice President hold office for 5 (five years) and afterwards can be re-elected in the same office for only 1 (one) term of office, this article was one of the major changes in the Indonesian Constitutional Reform that could only be made after President Suharto resigned from his term of office. Discourse to increase the President's term of office from 2 (two) times to 3 (three) times (a period of strengthening after a proposal from the Deputy Chair Majelis Permusyawaratan Rakyat (MPR) from the United Development Party (P3) proposed to be 3 (three) times a period (3x5 years) this will provide an opportunity for President Jokowi to be elected for the 3rd (third) time. Therefore Article 7 UUD RI Tahun 1945 there must be an Amendment that proposes that the term of office of the President is only 1 (one) period but for 8 (eight) years (1x8 years).
Key passowrd : Amandement,Article,UUD RI 1945

PRELIMINARY

A. Background

The Unitary State of the Republic of Indonesia was formed based on its constitution, namely the 1945 Constitution on August 18, 1945 the day after the Proclamation of Independence. In the 1945 Constitution stated about the purpose of the country. The purpose of the country is contained in the Preamble to the 1945 Constitution which, after four amendments, most recently in 2002, was given the full name of the 1945 Constitution of the Republic of Indonesia, the purpose of the state remained unchanged. The purpose of the state is the main interest rather than the order of a country. Organizing a country starts from the formation of law as a rule that regulates order in the life of the nation and state..

The aim of the Indonesian state is to protect the entire nation of Indonesia and all of Indonesia's blood spill, promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice. The purpose of this country is then set out in the contents or body of the 1945 Constitution of the Republic of Indonesia.

Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia NRI resulting from the Third Amendment reads

"President and Vice President are elected in a pair directly by the people". This article is one of the fundamental changes in constitutional reform in Indonesia. With this amendment to the provisions of the constitution, the people are given the opportunity to exercise their sovereignty directly in the form of electing a pair of President and Vice President in the election. This provision changed drastically and radically the presidential and vice presidential election system that was previously carried out by the MPR.¹

In the era when the MPR had the authority to elect the President and Vice President according to the provisions of Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia before being amended, there had been a lot of spotlight and sharp criticism from various groups against the system. The essence of the criticism is that the election through the MPR is believed to be less democratic because it does not involve all the people who have the right to vote, but only become the affairs and authority of MPR members. In other words, the affairs of electing the President and Vice President are the affairs of the elite. Though not necessarily the choice of the political elite will be in accordance with

¹ Patrialis Akbar, *Lembaga-Lembaga Negara According to UUD NRI years1945*, Jakarta: Sinar Grafika, 2015, page 124.

the choice of the majority of the people. These highlights and criticisms get a moment when the reform era comes. Changes to the constitution are also contained within the President's term limits.

Article 7 of the 1945 Constitution of the Republic of Indonesia resulting from the First Amendment reads "The President and Vice President shall hold office for five years, after which they may be re-elected in the same office, for only one term."²This article is one of the major changes in Indonesia's constitutional reform that can only be made after President Soeharto resigns from his position..

During Soeharto's term as president, he used Article 7 of the 1945 Constitution of the Republic of Indonesia before being amended as a legal basis to continue serving as president. It must be admitted Article 7 of the 1945 Constitution of the Republic of Indonesia before being amended can be given a different meaning because it is multi-interpreted. For those who expect the President to serve more than twice, the article is interpreted as such. For those who want to limit the term of office of the President only twice, given the meaning of the term of office of the President only twice. As a result there is no certainty that can be held by all parties and the people regarding the term of office of the President of Indonesia.

The existence of this constitutional provision, then in the future it will not be possible to repeat a president who has served more than two terms. These constitutional provisions are designed to prevent the development of authoritarian powers from a President and Vice President. Problems arise when there is a discourse to amend the 1945 Constitution of the State of the Republic of Indonesia, specifically related to the proposal to extend the term of office of the President to three periods.

The discourse is the addition of the president's tenure period to three recent strengthening periods. Current President term a maximum of two periode, proposed to be three periods in line with the proposed amendments to the 1945 Constitution of the Republic of Indonesia which was being deliberated by the People's Consultative Assembly (MPR). If it becomes amended, the

change in the term of office of the president allows President Joko Widodo to serve one more period, from the initial rules that limit only two periods. Deputy Chair of the MPR from the United Development Party (PPP), Arsul Sani, conveyed the existence of the discourse at the MPR. Arsul said in addition to a 3x5 year period, there were also those who proposed a 1x8 year change.

Arsul said this proposal emerged from members of the House of Representatives (DPR) from the NasDem Faction. The proposed change in discourse is actually not just crowded lately. Early last October, MPR Chairperson of the Democratic National Party (NasDem) Johnny G. Plate, had issued this discourse. He said the extension of the term of office was aimed at the consistency of development.

Based on the description above, the author is interested in analyzing in depth, the results of which are set forth in the form of research with the title **AMENDMENT URGENCY OF ARTICLE 7 STATE LAW OF THE REPUBLIC OF INDONESIA OF 1945: TOWARDS 3 TERM PRESIDENTIAL RULE.**

B. Statement of the problem

Based on the above background, the problem in this study is how urgent the amendment to Article 7 of the Act is The State of the Republic of Indonesia in 1945 towards the term of office of the President into three periods?

C. Research Objectives and Benefits

The purpose of this study is to analyze the urgency of amending Article 7 of the 1945 Constitution of the Republic of Indonesia towards the term of office of the President into three periods.

RESEARCH METHODS

In In this study in accordance with the issues raised, the author uses the type of normative juridical research, the authors only examine based on library research or library research only.

Analysis of the data used is a qualitative analysis of research procedures that

² Article7 Undang-Undang Dasar Negara Republik Indonesia year 1945 First Amendment results..

produce descriptive / analytical data, that is stated by respondents in writing or verbally and their behavior is real. where the data that has been obtained is then compiled systematically for further analysis.

DISCUSSION

Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia resulting from the Third Amendment reads "Presidential Candidates and Vice Presidential Candidates must be Indonesian citizens from their birth and have never received any other citizenship of their own volition, have never betrayed the country, and are able to be spiritually and physically able to carry out tasks and obligations as President and Vice President. " Initially the formulation of this article before changing very briefly, namely "The President is a native Indonesian."

Roeslan Abdulgani said the word "authentic" in the article was not Japanese. When discussing changes to the 1945 Constitution of the Republic of Indonesia in PAH III / I BP MPR, the words "original" became a matter of lengthy debate because it was very difficult to make the definition of the word "original" and there were no parameters to determine whether or not Indonesian humans were genuine. As a result it is very difficult to get native Indonesians. Along with that the word refers to the occurrence of discrimination and violations of the rights of Indonesian citizens who are considered non-native to become President. In the development of discussions on this article finally led to a new formulation of the requirements to become President and Vice President that is very much different from the formula before the change.

The existence of clear, strict, and limitative requirements is very important to ensure that the President and Vice President are able to carry out their duties and responsibilities as well as possible. Along with that the requirements are to prevent abuse of the power of the President and Vice President for the benefit of foreign parties or other countries. Likewise, this article was prepared to prevent the election of President and / or Vice President who turned out to be spiritually incapable and physical, so that the implementation of their duties becomes stagnant, not optimal, and can even be manipulated by other parties who are in the

circle of power of the President and / or Vice President for their own interests.

The existence of these requirements does not constitute discrimination and human rights violations considering that each position and occupation usually has certain requirements so that the position and work can be carried out optimally. Especially for the positions of President and Vice President, of course, requirements that are much higher and difficult are needed considering that the position is very strategic because it really determines the direction and journey as well as the condition of the nation and state. These strict requirements also apply in relation to the term limits of the President's office.

Article 7 of the 1945 Constitution of the Republic of Indonesia NRI as a result of the First Amendment reads "The President and Vice President shall hold office for five years, after which they can be re-elected in the same office, for only one term." This article is one of the major changes in Indonesia's constitutional reform that can only be made after President Soeharto resigns from his position.

During Soeharto's term as president, he used Article 7 of the 1945 Constitution of the Republic of Indonesia before being amended as a legal basis to continue serving as president. It must be admitted Article 7 of the 1945 Constitution of the Republic of Indonesia before being amended can be given a different meaning because it is multi-interpreted. For those who expect the President to serve more than twice, the article is interpreted as such. For those who wish limiting the term of office of the President only twice, given the meaning of the term of office of the President only twice. As a result there is no certainty that can be held by all parties and the people regarding the term of office of the President of Indonesia.

The experience of President Soeharto as a president for more than 30 years in seven terms of office led to one of the focuses of changes to the 1945 Constitution of the Republic of Indonesia was the limitation of the term of office of the president and vice president. The term limit is considered very important considering that it has become a character of power if the longer it is pursued, the more it will grow, harden and strengthen. The next stage of such power opens up opportunities for the development of authoritarian powers that will threaten democracy and human rights.

Before the amendment to Article 7 of the 1945 Constitution of the Republic of Indonesia in 1999, in its session, the MPR had made an MPR Decree containing restrictions on the terms of office of the president and vice president at the beginning of the reform. The contents of the MPR decree were later adopted by PAH III / I BP MPR to be included in Article 7 of the 1945 Constitution of the Republic of Indonesia as a substitute for the old formula which reads "The President and Vice President hold their positions for five years and afterwards can be reelected."

During the discussion at the BP MPR PAH III meetings forum (1999), the members of the PAH III BP MPR gave the understanding that the provisions were applied not only to the President and Vice President who served respectively, but also to the President and Vice President who served not in a row. It is unlikely that there will be a President or Vice President who will take office in a row, but if that rare happens, the constitution has arranged it, so that it is expected not to cause sharp differences and conflicts of understanding.

The existence of this constitutional provision, then in the future it will not be possible to repeat a president who has served more than two terms. These constitutional provisions are designed to prevent the development of authoritarian powers from a President and Vice President. However, there is currently a discourse to amend the 1945 Constitution of the State of the Republic of Indonesia, specifically related to the proposal to extend the term of office of the President to three periods as explained by the author in the background.

The author is of the opinion that the urgency of amending the 1945 Constitution of the Republic of Indonesia, particularly in relation to proposals to extend the term of office of the President to three periods, is not urgent. That is because the extension of the President's term of office to three periods does not meet the elements of certainty, justice and expediency as the Author describes the following:

1. Elements of Legal Certainty

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and that decisions can be implemented. Although

legal certainty is closely related to justice, law is not synonymous with justice. Laws are general, binding on everyone, generalizing, while justice is subjective, individualistic, and not leveling.'

It is known that Indonesia is a country that adopts a civil law system which means that the most important law is written law in order to create legal certainty. This is as stated by L.J. van Apeldoorn that legal certainty is the certainty of a law. However, legal certainty can also be realized in laws that have accommodated the value of justice and the law can be implemented.

The author is of the opinion that the discourse of extending the term of office of the President to three periods is a difficult thing to realize. That is because so many rejections from various parties, including President Joko Widodo himself who from the beginning did have fears that the amendment to the 1945 Constitution which took place in the People's Consultative Assembly would widen. That concern has now become reality. Jokowi was suspicious of those who proposed an extension of the presidential term to three terms. Jokowi, who has now entered the second period of his leadership, actually assessed the proposal will harm him. The same rejection was also expressed by the Prosperous Justice Party and also from community groups such as Indonesian Corruption Watch.

According to the author, the existence of various rejection of the extension of the term of office of the President to three periods both from the government and from the community, proves that the amendment to the 1945 Constitution of the Republic of Indonesia, especially with regard to proposals to extend the term of office of the President to three periods will be in vain and ultimately lead to legal uncertainty.

That is because certainty is interpreted as clarity of norms, so that it can be used as guidelines for people who are subject to this regulation. Understanding certainty can be interpreted that there is clarity and firmness of the enactment of law in society. This is not to cause a lot of misinterpretation. Legal certainty, namely the clarity of behavior scenarios that are general and binding on all members of the community including the legal consequences. Legal certainty can also mean things that can be determined by the law in concrete matters.

2. Elements of Justice

As the main purpose of the law, justice is often the main focus of any discussion about the law. Unfortunately, because justice is a very abstract concept, so that throughout history humanity has never gotten a definite picture of the true meaning and meaning of justice, but has always been influenced by the understanding or flow adopted at that time.

Based on this, the amendment to the 1945 Constitution of the Republic of Indonesia, specifically related to the proposal to extend the term of office of the President to three periods causing injustice to the community, especially the same opportunity to become President in order to advance the welfare of the people. This is in accordance with distributive justice from Aristotle which states that distributive justice is justice that regulates the distribution of goods and rewards to each person according to his position in society, and requires equal treatment for those who are equal in accordance with the law. The existence of an extension of the President's term of office to three periods provides an opportunity for the creation of authoritarian power due to too long in power.

3. Element of Benefit

Utilization is a legal objective that has a legal role during the adjudication process by excluding justice and legal certainty. He said that good law is when the application of legal norms gives good benefits to the community and creates prosperity for other communities. For this reason, law enforcers can implement environmental laws and regulations by prioritizing the people and paying attention to the environment and other components as well as possible.

According to Montesquieu, the legislators in shaping the law must be like a physician who diagnoses the patient's illness and then prescribes. Legislators must diagnose in the community what needs or elements can be implemented when the legislation is implemented. The existence of the law aims to provide security and order and ensure the welfare of the people obtained from the State as a social umbrella. Rule of law in addition to human interests against the dangers that threaten it, it also regulates relations between humans. Identification of each problem is the duty of the law to guarantee legal certainty. Society develops rapidly in the world community or in the state, this influenced by

the times, so the needs must be met according to the times.

This behavior has no direct relevance to legal certainty, because the law will be static without any adjustments between the law and the behavior of contemporary society or legal turmoil. For this reason, contextual law is needed, in the sense that it can accommodate social practices in society by being regulated by legal norms. The teachings of law that can be applied, according to Johnson, in order to create a correlation between law and society, namely social law that is stronger and more advanced than the teachings created by individual law. Therefore, the purpose of the law must be useful for society.

Based on this, the amendment to the 1945 Constitution of the Republic of Indonesia, especially related to the proposal to extend the term of office of the President to three periods, does not cause benefits to the public. That is because looking at experiences in the era of President Soeharto, the purpose of limiting the term of office of the President to 2 (two) periods is considered to be very important considering that it has become a character of power if the longer it is held, the more it will grow, harden and strengthen. The next stage of such power opens up opportunities for the development of authoritarian powers that will threaten democracy and human rights.

CONCLUSION

The urgency of amending the 1945 Constitution of the State of the Republic of Indonesia, particularly in relation to the proposal to extend the term of office of the President to three periods is not urgent. That is because the extension of the President's term of office to three periods does not meet the elements of legal certainty, justice and expediency. Seeing the experience in the era of President Soeharto, the purpose of limiting the term of office of the President to 2 (two) periods is considered to be very important considering that it has become a character of power if the longer it is held, the more it will grow, harden and strengthen. The next stage of such power opens up opportunities for the development of authoritarian powers that will threaten democracy and human rights.

COMPARISON TO UNITED STATES AND INDIA

Elections United States is held every two years in November even years. Elections always fall on Tuesday which falls after the first Monday of the month.

Even though it is held every 2 years, only every 2 years the election is used for the election of members of the House of Representatives and some members of the senators and every 4 years the position of US President is contested, and this election is the one that generally attracts the attention of the world, for example the 2000 US election and the US election 2004.

In the 2002 US Elections, which did not contest the position of President, did not attract much attention from the outside world. Elections such as these are also called midterm elections, because they occur exactly in half the term of office of the President in power, and the results can be interpreted as evaluating, supporting, or rejecting the people over the President's policies.

Whereas in India, the President is the head of state and the number one citizen of India. The President is also the Chief Commander of the Indian Armed Forces. Although the president holds power in the Indian Constitution, the post is largely a ceremonial role and his de facto executive power is devolved to the Prime Minister. The post of President is referred to in Hindi as Rashtrapati, a Sanskrit neologism which means "regional leader". The president is elected by the Electoral College which consists of elected members from parliamentary councils, Lok Sabha and Rajya Sabha, and also members of Vidhan Sabha, the state legislative assembly.

There have been 14 presidents since the introduction of the post in 1950 (the current tenure is 5 years from the Indian president's term). The post was formed when India was declared a republic with the adoption of the Indian constitution. In addition to the thirteen people, three executors of the presidential office also served in the short term. Varahagiri Venkata Giri became Acting President of India in 1969 after the death of Zakir Husain, who died while in office. Giri was elected President a few months later. He is still the only person who holds a presidential position as well as executor of the presidential office. Giri is the only person chosen as an independent

candidate. The President is still in office for a five-year term, in accordance with article 56, section V, of the Indian Constitution. In cases where the president's term is suspended or in the absence of the president, the vice president takes over the position. According to article 70, section V, the parliament decides how to transfer the functions of the current president is not possible, or in other undesirable circumstances. Rajendra Prasad, the first President of India, was the only person who held the position for two terms.

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