



STRATEGIC ISSUES OF THE POSITION OF THE PRESIDENT 3 PERIOD IN THE PERSPECTIVE OF STATE CONSTITUTIONAL LAW IN THE RESTRICTION OF POWER

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Article Info :

Received : May, 27th 2022

Approved : June, 8th 2022

Published : June, 15th 2022

ABSTRACT

Keywords:

President's Term,
Presidensill,
Pragmatic Legal
Politics,
Limitation of
Power, Abuse of
Power

The subject of extending the presidential term to three terms is one that all of us are concerned about. In this example, in the contestation of the dynamics of government and politics in Indonesia, the discourse of the desire to change the 1945 Constitution aims to homogenize the discourse views of the interests of power, making this an intriguing subject to research. As a concept of preventing the authoritarian pendulum in a country, it is required to limit the power held by a head of state and head of government, particularly the president. The term of office for presidential candidates in Indonesia is controlled by the country's presidential system of government. Like the current dynamics in the Indonesian government, that dilemmas and conflicts of interest stemming from pragmatic reasons for legal politics in Indonesia appear to want to smoothen the constitution, namely Article 7 of the 1945 Constitution, which has limitedly affirmed the limits of positions held by a president, namely two terms. by using the provisions of the original intense article 37 of the 1945 Constitution to delegate to three terms. In essence, the presidential term restriction is intended to prevent abuse of power.

INTRODUCTION

The constitutional foundation of the Unitary State of the Republic of Indonesia, namely the Constitution of the Republic of Indonesia, in its dimensions has explicitly explained the procedures for carrying out the government system carried out by government organs which are branches in carrying out all matters relating to the duties and functions of state institutions both be it executive, legislative or judicial (Alfath, Pudjiastuti, & Sunyowati, 2019). Indonesia is a country that runs a constitutional democracy that regulates the course of government by emphasizing the balance of mechanisms in the Indonesian government which emphasizes the limitation of power so that the nuances and dignity of the people's sovereignty can be realized in accordance with the legal corridors and legal certainty that apply in Indonesia (Fudin, 2021). Historically, when we talk about the 1945 Constitution, we cannot turn a blind eye and we all know that the constitution has

been amended four times. In accordance with the author's study and discussion that relates to the term of office of the president, if you look at and explore the nature and meaning of the original intense which is contained in Article 7 of the 1945 Constitution which has undergone amendments, it is stated that "The President and Vice President hold office for five years, and thereafter". Can be re-elected in the same office, only for one term. It is clear that the provisions of the constitution have limited it in a limitative manner, namely a maximum of 2 terms in two terms of office which is a representation of the main principles of embodiment of the presidential system adopted by Indonesia.

So that in fact countries in the world, including Indonesia itself, which upholds constitutional democracy with the argument of the Constitution having a role in eliminating arbitrary power as a consequence of limiting government power, thus the dignity of the people's sovereignty and people's rights (Regilme Jr, 2019). Able to be maintained and guaranteed in the constitution regarding its protection as stated in his journal entitled "Presidential Term Limit Contravention", that if we look at a country that also adheres to a part of constitutional democracy, namely the United States, it is emphasized that George Washington as president of the United States rejects the existence of a three-term office through a policy an unwritten law that was made by him in 1796 so that this created a limitation in the presidency, namely two terms in the United States which was later embodied in the provisions of constitutional law through the 22nd amendment in 1951 (Albert, 2019). Given to the president in holding office for a time span that exceeds the constitution, what is feared is related to the impact of the problems that will be faced by the president himself which could make him tend to abuse of power (Brown & Keller, 2018).

As we all know that the Indonesian government is currently led by Jokowi Widodo as the president of the Republic of Indonesia, namely the second period for 2019-2024. however, in terms of the issue of political dynamics in Indonesia, there is a discourse to bring back Joko Widodo as president of Indonesia for a third term, according to The author's interpretation, of course, this has the consequence of reducing the spirit of the formulation of the constitution through amendments which had originally been set for the presidential term of office, which was only two terms (Fournier, 2019). As reported "President's term of office for 3 periods, is it possible?" that this discourse is a proposal from the Executive Director of Indo Barometer, namely Muhammad Qodari. If we look at what is stated in the provisions of Article 37 of the 1945 Constitution that the proposed amendment to the Constitution through amendments is the authority given to the People's Consultative Assembly (Siburian, 2022). Through these changes, there was an issue that said that the People's Consultative Assembly approved Joko Widodo's proposal for the presidency, namely three terms through the 5th amendment, where in fact the three-term presidential term was unconstitutional and contrary to the 1945 Constitution. The question is whether the spirit of the proposal considers an extension (Tino, Cacciapuoti, Capozziello, Lambiase, & Sorrentino, 2020). President's term of office is the will and desire of the people? Or is this only the will of the ruling political elites for the sake of political pragmatism? It is necessary to straighten out the understanding that as a country that adheres to constitutional democracy with all forms of policies and directions for national development, it is based on constitutional values as the fundamental basis of the state (Voronov, Kobzar-Frolova, Redkous, & Gogolev, 2019). So that related to the strategic issue of extending the term of office of President Jokowi Widodo and the dynamics of politics in Indonesia, it is very interesting to study in more depth through the writing of this scientific paper from the perspective of constitutional law that intersects with the limitation of authority.

RESEARCH METHODS

The writing method used in writing this scientific paper is normative writing by going through literature that are relevant to the discussion and study based on the topic of the problem raised by the author. This writing study seeks to analyze studies that are legal in nature and material such as the rule of law, historical approaches that are relevant to discourses and issues as well as conceptual approaches according to the procedures for implementing the constitutional concept. By discussing the term of office of the president on the legal aspect, comparisons with other countries with similar case studies and the concept of state administration in the principle of implementing a presidential system of government regarding the limits of presidential office that lead to abuse of authority.

RESULTS AND DISCUSSION

The strategic issue of the presidential leadership position for three periods is very warm in the community. This seems to remind us again of the leadership of President Susilo Bambang Yudhoyono in the second period for the years 2009-2014 when the issue of extending his three terms of office at that time arose (Barton, 2021). Likewise with the leadership of President Jokowi. In my opinion, the author interprets that there are actually things that we need to understand and criticize regarding this emerging strategic issue which is related to the absence of a consistent consensus in the Republic of Indonesia (Hatherell & Welsh, 2020). It has been clearly explained through the amendments to the 1945 Constitution which is explained in article 7 which is the provision of limits on the term of office held by the president which has been mutually agreed upon (Darusman, 2018). The urgency of limiting the power of the president related to his term of office with the argument to try to prevent the occurrence of the president's arbitrariness in running the government. A similar statement was once expressed by Lord Acton, namely "Power tends to corrupt, and absolute power corrupts absolutely". What is meant by the nature of restrictions related to power through regulation of terms of office is oriented to eliminating and minimizing arbitrary actions and preventing acts of corruption within the internal government body (Martin, Miller, Milling, & Martin, 2022).

The Constitution of the Republic of Indonesia is the highest legal basis as a legal state based on a hierarchical level than Article 7 of Law no. 12 of 2011 concerning the Establishment of Legislation (Wardana, Sukardi, & Salman, 2021). This means that the constitutional basis of the 1945 Constitution is an understanding, agreement and a high consensus in a constitutional state as outlined in the amendments to the 1945 Constitution which should be guarded and maintained for dignity and existence in order to maintain the status of its legal state in force in order to uphold the consensus that has been made and agreed by the government. founder of the Indonesian nation (Ibrahim, 2022). However, what we also need to understand is that the 1945 Constitution actually does not rule out the possibility of an extension of the president's term of office, namely three periods in which the proposed amendments to the 1945 Constitution can be proposed, which is described in Article 37, explaining that the proposed amendments concerning the constitution can be submitted at least 1/3 of the total members of the People's Consultative Assembly which will then conduct a session to make amendments to the constitution which is attended by at least 2/3 of the members of the People's Consultative Assembly and when deciding on changes to the articles in the 1945 Constitution must be attended by at least 50% and added one vote member of the People's Consultative Assembly (Widodo, Budoyo, & Pratama, 2021).

By looking at the political map in Indonesia, that pragmatic law in the general election agenda is actually a political party which is a representation of the implementation of the sustainability of democracy with the argument of people's aspirations trying to make selections in the internal body in carrying candidate leaders to advance in democratic contestation which is a logical consequence of the implementation of the system. the presidential government adopted by Indonesia, and political parties have a strong influence when the president determines policies in parliament. This is in line with the issues currently circulating in Indonesia regarding the party's desire to re-elect Jokowi into the government's pendulum for three terms. Indeed, the agenda that is echoed is actually not unconstitutional. However, we need to see whether all of this is in accordance with the wishes of the people or the interests of the political elite. Apart from that, Jokowi also stated firmly that he did not want to continue the agenda of the spirit of leadership in running the wheels of government again in a three-term position. According to constitutional law expert, Bavitri Susanti, there is a supporting motive from the political elite, namely the existence of a cult towards the individual President Joko Widodo and does not want to face uncertainty if the leadership changes. In this case the author means that when the discourse on the agenda related to President Jokowi to sit in the seat of government for three periods will have implications for the wider community regarding the nature and meaning of the limitation of power that has been regulated in the constitution of the Republic of Indonesia. Three crucial problems when there is a change in the president's term of office :

1. The magnitude of the potential for abuse of power
2. Leadership regeneration potential will be hampered
3. The shackles of innovation and progress of the Indonesian Nation

The Spirit of Amendment to the 5th Amendment to the 1945 Constitution

The rulers and political elites in the interests of legal politics in Indonesia with pragmatic reasons in order to maintain the continuity of the nature of the implementation of democracy want a formula for the formulation of amendments to the 1945 Constitution related to the three-term presidential office. One of the major parties in Indonesia, PDIP, wants this change and wants the People's Consultative Assembly to return as the highest state institution that has the authority to regulate and determine the Outline of State Policy as stated by Megawati Soekarno Putri in the 5th Bali Congress as the party that won the election contestation. general public in 2019 which of course has given rise to various conceptions of discourse from various circles of society on the wishes of the PDIP party. If it is elaborated that, PDIP is the biggest force in the parliament that has power in the government system in Indonesia. Not to mention, if the PDIP party forms a coalition and consolidates, it will further strengthen the position of PDIP in the MPR with the number of seats it has in parliament. Due to this situation, it is not impossible to carry out an amendment agenda through the embodiment of the provisions contained in Article 37 of the 1945 Constitution.

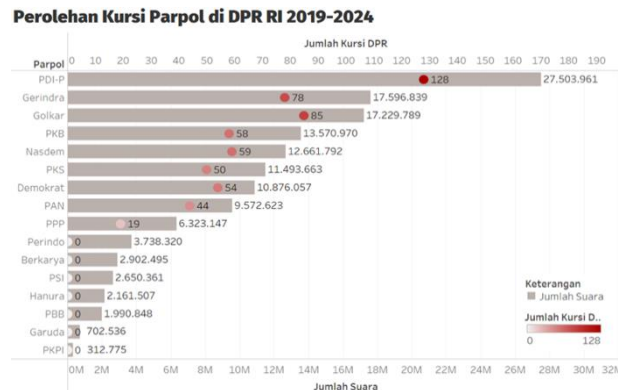


Figure 1. Political party seats in the DPR RI 2019-2024

Source: Election House

The 1945 Constitution is resultant in nature, which means it does not rule out the possibility of amendments made by mutual agreement. Mahfud MD: 2021 states that law is a resultant product, which comes from developments that occur based on the political, legal and social situations that exist in society so that the law can change according to community conditions. Then from that, the true constitution is not final as stated by Francois Venter because the constitution will always go hand in hand with the movement to the constitutional system along with the running of government in the country. However, what needs to be underlined is that if the circulating discourse wants to make changes to the fifth amendment to the 1945 Constitution through changes to articles relating to the presidential term of office, what needs to be considered by power holders and government policy regulators is that they must still be able to ensure the direction and path of democracy is in accordance with corridors that are in line with the hopes of the nation's ideals to create a government relay in accordance with the wishes of the people by prioritizing the legitimacy of the people, not the legitimacy of the interests of political parties alone. Which fits the Vox populi adage, Vox Dei. Not merely wanting to pave the way on the pretext that has been accommodated in the constitution through amendments made by the stakeholders in power. In fact, the mandate of Article 7 of the 1945 Constitution, which has been formulated, does not want to be repeated, as was the case during Suharto's 6-term leadership. Indeed, the limitation of the term of office after the amendment which was carried out four times before the formula for wanting to formulate a change in the agenda of the fifth amendment was to try to avoid power with the nuances of authoritarianism which puts forward a clause of the main objective, which is the mechanism of the system of checks and balances in every institution within the wheels of government.

The dynamics of politics in Indonesia, if seen in two pendulums, namely between the opposition and supporters of political parties, have qualifications that seek to be able to perpetuate their power through political figures who are trusted and known to the public and based on their previous experience in government and politics. For example, the discourse of the three-term president is actually not a new issue, but has often been echoed, such as the endorsement of Susilo Bambang Yudhoyono and Jusuf Kalla in the 2019 election. The spirit of carrying out Jokowi's three-term presidential term came from Politician Effendi Simbolon from the PDIP Faction who compared the 5 terms of Russian President Vladimir Putin.

As for the urgency of the usefulness of the need for a transition of tenure and the problems that will be faced if power is held in an unrestricted period of time which creates

the conception of a term of office, it is an attempt to encourage a change in the leadership relay which is not solely derived from the wishes of the individual, the party that bears it. but also wants the will of the people at large. Limitations related to the position of the president require periodic solutions to the incumbent president, and become a logical consequence if the political parties of the president face an opposition situation. Therefore, according to Paul (2010) in his work "If it Quacks like a Lame Duck, Can It Lead the Free World: The Case for Relaxing Presidential Term Limits" that limiting power will minimize the benefits of the incumbent and in a political configuration can provide space for opportunities for other political parties regarding the change of wheels of power and government.

Theoretically, in the Constitutional Law, there are four concepts of office for the president and vice president, namely :

- No Re-Election : No Second Term. Countries that adhere to such as South Korea, Turkey and Mexico
- No Immediate Re-Election: No continued term of office. Countries that follow such as Peru and Venezuela
- Only One Re-Election : Maximum two terms of office. Countries that adhere to such as Indonesia, the United States Republic of the Congo. A country that adheres to this concept is a country with a presidential system of government.
- No Limitation Re-Election : There is no limitation of term of office. Adhering countries such as Nicaragua and Benin.

The concept of limiting power actually emphasizes two aspects, namely legal restrictions and ethical restrictions. Legal restrictions that are officially regulated in laws and the constitution regarding the positions of president and vice president with a maximum of two times, and ethical restrictions are restrictions that are not written down in the law that are mutually agreed upon, such as not encouraging relatives to continue in power, This is indeed not a violation, but ethically it should not be done. In essence, the limitation of power that has been regulated in the constitution of the 1945 Constitution is our highest legal basis to prevent the concentration of power which is taboo in the democratic process.

CONCLUSION

Based on the results of the analysis and discussion, the author draws the conclusion of the urgency regarding the strategic issue of the 3rd term presidential office. proposed by a number of political interests. Indeed, in its dimensions the 1945 Constitution is not final. However, despite the spirit of the formulation of the previous amendments which limited the presidential term limit to two terms as described in Article 7 of the 1945 Constitution, looking at the dynamics of politics in Indonesia where the power in the parliament is dominated by the party that carries President Jokowi, namely PDIP, this map does not allow this map. will lead to opportunities for change as described in Article 37 of the 1945 Constitution. However, the nuance of all this is political pragmatism. Which is where Indonesia as a country that is oriented to a presidential system of government has regulated the limitation of power with the aim of closing the gap for the pendulum of authoritarianism in the wheels of government. According to the author, if this strategic issue is a discourse and agenda that has been successfully carried out, then this will hurt the spirit of the 1998 reform struggle. Because the limitation of the president for two terms is a big mandate that occurred during the reformation period. As a great nation, we must maintain and oversee the spirit of reform that occurred in 1998, if this is on the agenda, then we will betray the

struggle for reform which focuses on balanced justice for the people and the sustainability of the Indonesian nation and this is a setback from democracy such as returning and moving backwards. during the new order. In the form of momentum to avoid abuse of power, the concept of applying for office with the concept of Only one re-election is an appropriate concept adopted by Indonesia today to allow minimizing the practice of abuse of power by limiting power as regulated in the constitution of the Unitary State of the Republic of Indonesia.

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