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Dismissal of President in Indonesian State Administration System

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Abstract

The experience of Indonesia's statehood has gone through a fairly long phase. Starting after the independence on August 17, 1945, Indonesia immediately ratified the 1945 Constitution (UUD 1945) on August 18, 1945. Considering the transition from colonialism, the Indonesian state administration system was not yet stable. Soekarno was appointed as a President at that time. The constitution had experienced some changes (Provisional Constitution of 1949 and Provisional Constitution of 1950) and with the Presidential Decree of July 5, 1959, the 1945 Constitution was re-enacted. Interestingly, the articles of the 1945 Constitution do not explicitly regulate the dismissal of the president. However, it is regulated in the Elucidation of the 1945 Constitution and that is implicit in the form of the authority of the House of Representatives (DPR) asking the People's Consultative Assembly (MPR) to hold a special session to hold the president accountable if he is considered violating the state's course. It is not confirmed what the sanctions are, it is only interpreted by the MPR Decree that president can be dismissed. Then there was reformation in 1998 by making some changes to the 1945 Constitution four times (in 1999, 2000, 2001 and 2002) and it is confirmed in Article 7 of the 1945 Constitution (Post-Amendment) the president could be dismissed if proven to have violated the law and must go through an inspection mechanism in the Constitutional Court before the special session of the MPR. This paper aims to compare the dismissal of president procedures in pre- and post-reform and a description of the challenges ahead in the president dismissal procedures.

Keywords: *Presidential Sytem; President Dismissal; State Administration; Indonesia*

Introduction

After the decree of July 5, 1959, which enacted the 1945 Constitution into a written constitution that re-applied in Indonesia, various debates arose among constitutional law experts regarding the Indonesian government system. This debate is important to be explored and elaborated because it will have implications for the justification of the dismissal of president regulation. It is because there is a slight difference between the presidential system and the parliamentary system of government regarding the mechanism of the dismissal of president, especially when compared with various countries.

The debate can be identified, for example, from the opinion of the University of Indonesia (UI) constitutional law professor, Ismail Suny. In his writings, he firmly stated Indonesia has presidential

system of government. According to Suny (1982, p. 136), it is clear in the 1945 Constitution (Pre-Amendment), that the state minister is a presidential aide and is not responsible to the House of Representatives (DPR), this is the consequence of adopting a presidential system. In contrast to Sri Soemantri (professor of constitutional law at Padjajaran University) and Suwoto Mulyosudarmo (professor of constitutional law at Airlangga University), for them, the Indonesian government system is a combination of parliamentary and presidential. If we look at the presidential or vice-presidential election, we will see the use of a parliamentary system (conducted by the People's Consultative Assembly/MPR). While the formation of a cabinet uses a presidential system (conducted by the President). Supervision and accountability use a parliamentary system (DPR and MPR) (Isra, 2010). Another opinion is conveyed by Saldi Isra (professor of constitutional law at Andalas University), in his dissertation, which considers that the government system according to the 1945 Constitution is a presidential government system with a loose category. It is because the president who is a mandate of the MPR, elected and appointed by the MPR and responsible to the MPR, the presidential system category still exists. For instance, the president cannot dismiss the legislature and the president appoints ministers. In addition, ministers are responsible to the president, not to the MPR (Isra, 2010, pp. 61-62).

The debate on the government system then ceased to emerge after the reformation. First, a government system structure in the 1945 Constitution eliminates articles that lead to multiple interpretations of the government system. As exemplified by the president is no longer responsible to the MPR. Second, there is an agreement both from the 1945 Constitution amendment composer and constitutional law experts that the government system structure to be realized is a presidential system. Thus, in the amended 1945 Constitution the president is no longer elected by the MPR but by the people and cannot be dismissed by the MPR based on violating the state's course. This paper intends to explore a comparison between the procedures of president dismissal before and after the 1945 Constitution amendments related to the government system, cases that have occurred in the dismissal of president in Indonesia and the challenges that must be faced in the future regarding the dismissal of president.

Analysis and Discussion

Presidential and Democratic System

Theoretically conceptual, presidential office is often associated with the form of republic government or the teachings of democracy. The word of republic itself has been known since the era of Classical Greece and Rome. The books written by Plato and Cicero are both entitled "Republic" (Isra, 2010). In terms of office, the presidency has been known for a long time. At least since the 18th century in the United States a head of state of a republic has been known. This can be examined from the constitution (Art II, Sec 1 par.1) produced by the Federal convention in 1787 which stated in the constitution that "the executive power shall be vested in a President of the United States of America ..." (Isra, 2010).

In Asia, the office of president appeared in the Philippines at a time when the US colonialists granted limited independence (15 November 1935). A commonwealth state is established, the Commonwealth of the Philippines, with Manuel Quezon as the president (1935-1944) (Alrasid, 1999). According to grammar, the word president (*substantivum*) is a derivative of to preside (verbum) which means to lead or appear in front. Whereas according to Alrasid (1999, p. 10) the Latin word *presidere* is derived from the word *prae* which means in front and the word *sedere* which means to sit. The office of president is a strategic work environment. It cannot be left vacant even a little. A case study of the US President John F Kennedy replacement who was shot dead on November 22, 1963 so at that time, Lydon B Johnson was appointed President on board the President's Air Force One aircraft (Alrasid, 1999, p. 115). Considering how strategic the position is.

Regarding the presidential system itself, Professor of Constitutional Law UI and Former Chair of the Constitutional Court, Jimly Asshidiqie as quoted by Saldi Isra, formulated the existence of nine presidential governmental characteristics or presidentialism systems namely: (1) there is a clear separation of powers between executive and legislative; (2) the president is the sole executive. The executive power of the president is not divided and there are only president and vice president; (3) the head of government is the head of state or vice versa the head of state is the head of government at the same time; (4) the president appoints ministers as aides or as subordinates responsible to him/her; (5) Members of Parliament may not have executive positions and vice versa; (6) president cannot dissolve or force parliament; (7) if the parliamentary supremacy principle applies in the parliamentary system, then in the presidential system the constitutional supremacy principle applies. Therefore, the executive government is responsible to the constitution; (8) the executive is directly responsible to the sovereign people and (9) the power is spread not as centralized as in a parliamentary system that is focused on parliament (Isra, 2010, pp. 39-40).

In Juan Lintz's perspective that the paradigm of a presidential system fundamentally does indeed place such a large amount of President power under the constitution to form its cabinet and apparatus. In addition, the President is not only the chief executive, but also the head of state (Lintz, 1985).

Based on various theories and opinions, many experts consider that the United States is a country that is consistent in implementing a presidential system even though it does not purely hold the teachings of Montesquieu *trias politica* which separates functions and organs in absolute terms from three branches of power namely the legislative, executive and judicial powers. Alder and English (1989, p.53) acknowledge that the United States constitution is greatly influenced by the teachings of *trias politica* regarding the separation of powers theory.

Hanta Yuda AR identified the United States made the president the axis of executive power as well as the head of state. The president appoints ministers and the ministers are responsible to the president. In addition, the presidential election system in the United States is conducted with direct election by people through Electoral College so that the implication of the president is accountable to his people. The relationship between the president and parliament is placed in the concept of checks and balances and one another cannot dissolve each other. The term of the president office itself is limited periodically and the same figure can only be elected for one more term of office. In addition, Yuda (2010) stated the president cannot be overthrown politically and can only be dismissed during his term of office if he violates the law through an impeachment mechanism. The phenomenon of electing a president (and vice president) by members of a body called “Electoral College” provides a basis for the argument of Rasid (2002) to argue that the presidential election system in the United States is not a direct election by people, but by the Electoral College.

In author’s opinion, the choice of government system itself does not have a significant correlation with democracy. Indonesia which choose a presidential system, for example, is inseparable from the challenges of democracy. Like criticism from Burhanudin Muhtadi who view the procedural democracy that we implement–post-reform–which is very interested in institutionalizing democratic consolidation, in fact is still lack of tolerance. For him, our democratic culture is still intolerant, marked by a surge in people's confidence surplus on one side and the decline of country's authority on the other. The authorities are powerless in enforcing the law. The government failed to send a clear signal to guarantee pluralism that has been institutionalized in the 1945 Constitution (Muhtadi, 2013, pp. 182-183).

Dismissal of President

Pre-Amendment to the 1945 Constitution

As explained earlier, when the 1945 Constitution took effect before the changes or amendment, there was a crucial debate among the state administration experts to formulate the system of government adopted. Some have a presidential opinion; some are a mixture of presidential and parliamentary and some even think of a presidential system with a loose category. However, after the reformation, there was an agreement that a pure presidential system would be adopted in Indonesia.

The amendment to the 1945 Constitution is based on traumatic experience and the spirit of institutionalizing a government system as well as supporting democracy. During the New Order (commonly abbreviated as Orba), whether or not it was recognized, Suharto's authoritarian regime was contributed by the weakness of the articles in the 1945 Constitution. As exemplified by the term of office for the president is unclear. Article 7 of the 1945 Constitution (Pre-Amendment) stated: "The President and Vice President hold office for a term of five years and afterwards can be re-elected". The formula ".... and afterwards can be re-elected" is an unclear norm limit. This means that the same figure can be elected indefinitely, what is important is being elected. This have a significant impact in giving birth to two presidents who were authoritarian (Soekarno and Soeharto).

In addition, the benchmarks for the dismissal of president were very biased and political. First, the president dismissal in the body of Pre-Amendment of the 1945 Constitution was not explicitly regulated in Article 8 which read: "If the President passes away, resigns, or is unable to carry out duties in his term of office, he is replaced by the Vice President until that term ends". Whereas the clarity of the president can be dismissed is an interpretation of the Elucidation of the 1945 Constitution. The state government system explains the position of the House of Representatives (DPR) which has a strong position and supervise the actions of the president. If the DPR considers that the President has violated the state's course regulated by the Constitution or by the People's Consultative Assembly (MPR), the MPR can be invited to a special session so that they can hold the President accountable.

In the case of President Soeharto, he was not dismissed by the MPR, but by using Article 8 norm that is interpreted as the president can "quit". Thus, on May 21, 1998, President Soeharto used the norm of "quitting" or in everyday language is "resigning from his position as president". It was one-sided because of the insistence on a wave of student action demanding reform. Thus, in the case of President Soeharto it cannot be used as an example of the dismissal of president.

According to Suny (1982), because the president in Article 4 paragraph (1) of the 1945 Constitution (Pre-Amendment) is the holder of state government authority according to the 1945 Constitution, therefore the president's responsibility to the MPR is the responsibility of using sanctions. Political accountability that is sanctioned allows the MPR to dismiss the President from his office at any time (*kan hem op elk gewenst moment onslaan*), or the president can be dismissed (*op straffe van ontslag*) from his office even though his term has not ended (Suny, 1982, pp. 261-262). This is the basis for the MPR decision regarding the dismissal of president.

In the constitutional norm of the description above, according to the author, there are anomalies in the regulatory context. How important norms regarding president dismissal are regulated in an Elucidation. In fact, in the concept of regulation, an Elucidation cannot have a binding capacity to the norm. Besides, the benchmarks are very political. How to measure the state's course is violated by the president?

Second, due to bias and politics, two Indonesian presidents who were dismissed by the MPR, in fact are still debatable in terms of legal considerations. Soekarno was dismissed because of his

accountability speech entitled Nawaksara along with its supplement rejected by the MPRS at the MPRS plenary session in 1967. The reason was because President Soekarno was considered responsible for the G30SPKI case and a decline in public morals. How can a president be assigned the responsibility of managing the nation's morals which is very heavy?

With regard to the dismissal of Soekarno, there are interesting things, especially the transition from Soekarno to Soeharto. When studying the history of legal documents, the event of the transfer of Presidential power from Soekarno to Soeharto began after the Indonesian Communist Party rebellion in 1966, known as the G30SPKI. President Soekarno at that time issued a Presidential Order/Supreme Commander in Chief of the Armed Forces of the Republic of Indonesia/Great Leader of the Revolution/Mandate of the MPRS on March 11, 1966 which instructed General Soeharto the Minister of the Army Commander to make special efforts to overcome dangerous threats to the safety of the government and the revolutionary authority of the great leader of revolution and the integrity of the nation and state.

It became interesting because the Presidential Order above or well known as Supersemar was later legitimized by the Provisional People's Consultative Assembly (MPRS) Decree Number IX/MPRS/1966 regarding the Presidential Order/Supreme Commander in Chief of the Armed Forces of the Republic of Indonesia/Great Leader of the Revolution/Mandate of the MPRS. The MPRS decree had been valid until the MPR resulted from the general election were formed (the second dictum). For the author, the issuance of MPRS Decree Number IX/MPRS/1966 above is odd and anomalous in terms of statutory law because how the MPRS institution which has a higher position than the president can legalize the products of their subordinates, which is the president (Supersemar).

Then, MPRS Decree Number XXXIII/MPRS/1967 was issued regarding the Revocation of State Government Power from President Soekarno. In the dictum considering the MPRS decree, it was clear that this Decree was issued because President Soekarno's Speech on June 22, 1966 entitled Nawaksara and Presidential Letter Number 01/Pres/1967 regarding Nawaksara Supplement did not meet people’s expectations in general because it did not clearly contain the accountability of President Soekarno's policies regarding G30SPKI along with its epilogue, economic and moral declines.

There are two important matters in the MPRS decree mentioned above, which are (a) stating that President Soekarno has been unable to fulfill constitutional responsibilities, as befits a Mandate's obligation to the People's Consultative Assembly (Provisional), who gave the mandate, which is regulated in The 1945 Constitution (Article 1) and Stipulated the People's Consultative Assembly (Provisional) Decree Number XV/MPRS/1966, and (b) appointing General Soeharto, a mandate of MPRS Decree Number IX/MPRS/1966 as Acting President based on Article 8 of the 1945 Constitution until the President elected by the People's Consultative Assembly resulting from the General Election (Article 4).

In fact, Article 4 of the MPRS Decree Number XXXIII/MPRS/1967 was violated by the MPRS itself by then issuing MPRS Decree Number XLIV/MPRS1968 regarding the Mandate Appointment of MPRS Decree Number IX/MPRS/1966 as President of the Republic of Indonesia. It is because in the previous MPRS Decree (MPRS Decree Number XXXIII/MPRS/1967), General Soeharto was only an Acting President until a new president was elected by the MPR from the General Election, not by the Provisional MPR (MPRS).

The reason to appoint General Soeharto as President –one of which– in considering the letter g of MPRS Decree Number XLIV/MPRS/1968 was stated: “that the people’s psychological stability and foreign trust will increase, if the President's Official with all his power appointed as President of the Republic of Indonesia”. That reason, in writer's opinion, is very pragmatic and political. There is no justification from the juridical aspect.

While in the dismissal case of President Abdurahman Wahid in 2001, he was dismissed by MPR Decree Number II/MPR/2001 without giving an accountability speech. The dismissal was due to President Abdurahman Wahid refused to attend MPR's special session and instead issued a Presidential Decree on July 23, 2001, one of the substances was deactivating the DPR/MPR. This event was actually the end of accusation conflict of the DPR Special Committee against President Abdurahman Wahid who was accused of misusing the assistance of Sultan of Brunei in the amount of two million US dollars in which there is no judicial decision regarding that issue. It was only political allegation argument as if the law.

Post-Amendment of the 1945 Constitution

Based on the grim experience above, the 1945 Constitution was amended. Now in Article 7 A and Article 7 B of the 1945 Constitution is formulated that the dismissal of the President is no longer a political but juridical benchmark as described below:

1. The President can be dismissed if he violates the law in the form of treason, corruption, bribery, other serious crimes or despicable acts or does not meet the requirements as president anymore.

2. Before the MPR dismisses the President, the mandatory procedure that must be taken is for the DPR to propose an opinion regarding the alleged violation of law committed by the President to the Constitutional Court. The Constitutional Court then conducts an examination. If proven, the Constitutional Court based on Article 83 paragraph (2) of Law Number 24 Year 2003 regarding the Constitutional Court is to justify the DPR's opinion. Then, the DPR hold a plenary session to continue the proposal to dismiss the President to the MPR. The MPR must hold a hearing to decide on the DPR's proposal no later than 30 days after the MPR accepts the proposal from the DPR. The MPR decision is taken at a plenary session attended by 3/4 of the total number of members and approved by at least 2/3 of the total number of members present at the MPR plenary session. The same thing applies to the dismissal of the Vice President.

The dismissal case of the above model is actually similar to the norm in the United States Constitution. President in the US can only be dismissed if they commit a crime. Article 2 paragraph (4) of the United States Constitution states that "The President, Vice President and all civil officer of the United States, shall be removed from office on impeachment for and conviction of, treason, bribery, or other high crime and misdemeanors".

There are some interesting things to be criticized regarding the model of the president dismissal post-reform that involved the Constitutional Court as follows.

1. It is rather unusual that the Constitutional Court hears the DPR's opinion on alleged violations of the law by the president. Thus, what is being judged is opinion. Therefore, the product of its decision is whether or not to justify the DPR's opinion; normally, it is pleading guilty or not legally to suspected law violation by the president.

   Therefore, Soewoto Mulyosudarmo stated that the decision of the Constitutional Court on the DPR's opinion was only considered in the MPR, it cannot be considered as a president dismissal model based on a judicial ruling (*forum privilegiatum*). A dismissal can be considered on the basis of a judicial institution's decision (*forum privilegiatum*) if the Constitutional Court is authorized to plead the President guilty (Hufron, 2018, pp. 29-30).

2. One of the reasons for dismissing the president is committing a disgraceful act. This formulation caused controversy among state administration experts. Law Number 42 Year 2008 regarding President and Vice President Election (when applicable) in Article 5 letter i formulated

disgraceful acts as actions that are contrary to religious norms, moral norms, and customary norms such as gambling, drinking, addicted to drugs and adultery. Such formula is very unclear considering that our religious, moral and customary norms are very complex and difficult to be used as a benchmark.

3. What if the Constitutional Court's ruling justifies the DPR's opinion that there is a violation of the law by the president, but in the MPR session, the MPR has different opinion. Or the MPR does not impose sanctions to dismiss the president even though the Constitutional Court's decision justifies the DPR's opinion regarding violations of the law above. Does this imply that a legal ruling is defeated by a political ruling? This anxiety has surfaced in the thinking of Soemantri (as cited in Arifin, 2004, p. 20), a constitutional law expert from Padjajaran University.

4. Article 7B paragraph (4) of the 1945 Constitution gives time to the Constitutional Court to examine, adjudicate and decide as fairly as possible within ninety days regarding the dismissal of the president. Is the time allocation sufficient? Because criminal evidence requires a deep examination. It's not enough for only ninety days.

5. Another important and interesting matter to discuss is the absence of provisions requiring the president to be present during the examination process at the Constitutional Court session. Does the absence of these rules do not mean violating the principle of procedural law, namely "*audi et alteram partem*" (the right to be heard in a balanced way).

The complexity of regulation and mechanism for the dismissal of the president above is further complicated by symptoms of presidential system inconsistencies. According to author's examination, it turns out that after the amendment, the 1945 Constitution does not fully adhere to a purely presidential system. This can be seen from the following symptoms.

First, the post-amendment of the 1945 Constitution in fact contains acute contradiction and complication elements. If in general the articles in the 1945 Constitution affirm the adoption of the presidential system (Article 7A, Article 7B, Article 10, Article 17 paragraph (1) and (2) of the 1945 Constitution), but the article regarding the appointment of ambassadors (Article 13 paragraph (2) of the 1945 Constitution), apparently involves the consideration of the House of Representatives (DPR). This provision very distorts the institutionalization of the presidential system. The same as a provision regarding the need for regulation of state ministries which should be the prerogative of the President (Article 17 paragraph (4) of the 1945 Constitution).

Second, there is dangerous experimentation for democracy in the presidential system which is originally from the practice of political administration combining presidential and multi-party systems. This combination is believed to tend to give birth to a minority president and a divided government. Generally, the presidential system is only stable if it adheres to two parties.

Third, the adoption of a political party coalition system which is actually uncommon in a presidential system and is only commonly held in a parliamentary system (Yuda AR, 2010, pp. 5-6). Mainwaring (1990, p.2) believes that it is difficult to form a stable government if the presidential system model is designed under a multi-party foundation and a coalition of political parties.

Thus, although in the post-amendment of the 1945 Constitution, the president is no longer possible to be dismissed because he violates the state's course (fully measured by law, which is violation of the law), the combination of presidential and parliamentary systems above has the potential to disrupt the effectiveness of government administration. President in order to avoid practices that lead to the dismissal of the president in a multi-party-based presidential system will conduct various negotiations,

accommodation politics and coalitions so that the government can be stable. On the other hand, opportunities for threats to democracy are open due to the limited members of political parties in parliament who function as the Opposition. It happens because most members of political parties are accommodated by the president in his cabinet. This happened both during the era of President Susilo Bambang Yudhoyono and President Joko Widodo.

Conclusion

In principle, the Presidential system is rooted in the character that the president and the DPR are of equal status, cannot dismiss each other and supervise and balance one another (checks and balances). The President appoints and dismisses ministers as a prerogative. As well as the DPR supervises the president according to their capacity. In this context the constitutional supremacy system also applies.

Indonesia's constitutional experience is always a complication, contradiction and inconsistency in the government system implementation. Initially in the enactment of the 1945 Constitution on August 18, 1945, there was a debate regarding the identification of the government system. There was an opinion that believed the current system was presidential. Not a few also believed a combination of the presidential and parliamentary. There was also in a moderate sense as a loose presidential system. However, this debate was considered to be no longer relevant when the 1945 Constitution amended after the reform.

Regarding the dismissal of the president, if prior to the amendment to the 1945 Constitution, the mechanism for dismissing the president is unclear, only implicitly regulated in the Elucidation of the 1945 Constitution and the benchmarks are very political because of violation the state's course, but after the amendment of the 1945 Constitution the president can only be dismissed if he violates the law. In addition, it involves the Constitutional Court in the judicial determination of the violation of the law mentioned. Although it has involved the Constitutional Court as a judicial institution, there are various difficulties in its implementation. For instance, the examination time is limited to 90 days whereas criminal cases require sufficient time. Constitutional Court decisions that do not directly determine the president can be dismissed because that authority is in the MPR as a political institution and there are unclear legal benchmarks in the dismissal of the president such as the formulation of a despicable act.

The complexity above is complicated by the political reality of a multi-party-based Indonesian presidential system. This will threaten the value of democracy when the minority president consolidates power with political parties in the form of massive recruitment of political party members in the cabinet so that in parliament the Opposition that controls the government is minimal. Thus, according to the author, two things are needed. First, the purification of the presidential system by making the fifth amendment to the 1945 Constitution, as well as, secondly clarifying the norms in the 1945 Constitution regarding the dismissal of the president so that they no longer cause political uproar.

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