THE SHIFTING OF THE PRESIDENT PREROGATIVE POWERS IN THE PRESIDENTIAL SYSTEM POST AMENDMENT TO THE UUD 1945 IN INDONESIA

a Andryan, b Eddy Purnama, c Suhaidi, d Faisal Akbar Nasution

ABSTRACT

Objective: To look for a shift in presidential power from the development of the constitution and constitutional practices in Indonesia. After the amendments to the 1945 Constitution were made, there was almost no authority the President could exercise alone without seeking approval or consideration from other institutions, except for the appointment of ministers. The research aims to determine the factors that cause the President's Prerogative Powers to be inconsistent with the ideal conception of the Indonesian constitutional system. Since the beginning of Indonesian independence, the constitution has placed the prerogative rights of the president very dominantly, now after very fundamental changes to the constitution it also has implications for shifting the prerogative power of the president.

Method: The research used juridical-normative. The approaches used in this research are the Legislative Approach, Conceptual Approach, and Historical Approach.

Results: In a presidential system, the president has absolute authority in appointing ministers, although in practice the president is also closely tied to supporting parties or other parties who have made political commitments to the president. In the 1945 Constitution after the amendment, there is no longer anything that is truly a prerogative power of the president that can be exercised without obtaining approval or consideration, especially from the People's Representative Council as the people's representative institution.

Conclusion: Prerogative power also has an undemocratic and potentially dangerous tendency, so to increase public accountability, the use of prerogative power by the President must apply power by involving institutions as representatives of the people.

Keywords: shift, prerogative power, president, presidential.

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a Legal Studies, Universitas Sumatera Utara, Indonesia, E-mail: andryan@umsu.ac.id, Orcid: https://orcid.org/0009-0000-1936-2800
b Professor of Legal Studies, Faculty of Law Universitas Syiah Kuala, Aceh, Indonesia, E-mail: eddy.purnama@unsyiah.ac.id, Orcid: http://orcid.org/0000-0001-6145-8697
c Professor of Legal Studies, Faculty of Law Universitas Sumatera Utara, Indonesia, E-mail: suhaidi.dunant@yahoo.co.id, Orcid: https://orcid.org/0000-0002-1833-2906
d Doctor of Law, Faculty of Law Universitas Sumatera Utara, Indonesia, E-mail: faisal@usu.ac.id, Orcid: https://orcid.org/0000-0003-3497-8974
A MUDANÇA DOS PODERES PRERROGATIVOS DO PRESIDENTE NO SISTEMA PRESIDENCIAL APÓS A EMENDA À UUD DE 1945 NA INDONÉSIA

RESUMO

Objetivo: Procurar por uma mudança no poder presidencial a partir do desenvolvimento da constituição e das práticas constitucionais na Indonésia. Depois que as emendas à Constituição de 1945 foram feitas, quase não havia autoridade que o presidente pudesse exercer sozinho sem buscar aprovação ou consideração de outras instituições, exceto para a nomeação de ministros. A pesquisa visa determinar os fatores que fazem com que os poderes prerrogativos do presidente sejam inconsistentes com a concepção ideal do sistema constitucional indonésio. Desde o início da independência da Indonésia, a Constituição colocou os direitos prerrogativos do presidente de forma muito dominante, agora, após mudanças muito fundamentais na Constituição, também tem implicações para a mudança do poder prerrogativo do presidente.

Método: A pesquisa usou jurídico-normativo. As abordagens usadas nesta pesquisa são a Abordagem Legislativa, Abordagem Conceitual e Abordagem Histórica.

Resultados: Em um sistema presidencial, o presidente tem autoridade absoluta na nomeação de ministros, embora na prática o presidente também esteja intimamente ligado a partidos de apoio ou outros partidos que assumiram compromissos políticos com o presidente. Na Constituição de 1945 após a emenda, não há mais nada que seja verdadeiramente um poder prerrogativo do presidente que possa ser exercido sem obter aprovação ou consideração, especialmente do Conselho Representante do Povo como instituição representativa do povo.

Conclusão: O poder prerrogativo também tem uma tendência antidemocrática e potencialmente perigosa, de modo a aumentar a responsabilização pública, o uso do poder prerrogativo pelo Presidente deve aplicar o poder envolvendo instituições como representantes do povo.

Palavras-chave: mudança, poder prerrogativo, presidente, presidencial.

1 INTRODUCTION

The history of Indonesian constitutional history is inseparable from the dynamics of power possessed by the president, both in the capacity of the president as head of government and the president as head of state. The 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) gives the presidential institution a very strong position. The president is the administrator of government. Apart from exercising executive power, the President also exercises the power to form laws and regulations, powers related to law enforcement (pardon, amnesty and abolition) and so on.

The president's power cannot be separated from the development of the constitution and constitutional practices that apply in Indonesia. At the beginning of independence, the 1945 Constitution placed the President as dominant. Based on the provisions of Article IV of the 1945 Constitution of the Transitional Rules, before the
MPR, DPR and DPA were formed, the President held government power assisted by a National Committee. However, it turns out that in its development, based on Vice Presidential Decree No. X, 14 November 1945, the President only became Head of State, while the Head of Government was held by the Prime Minister. Reducing this function through constitutional practices without changing the 1945 Constitution. (Naskah Komprehensif: 2010)

The President's position only as Head of State continued until the enactment of the RIS Constitution on 19 December 1949. The same thing also happened when the Indonesian nation implemented the 1950 Provisional Constitution which also placed the President only as Head of State. The RIS Constitution, which was implemented at the same time as the dissolution of the unitary state of the Republic of Indonesia on 27 December 1949, adopted the form of a Federated Republic. (Ismail Sunny: 1983) The parliamentary government system is accompanied by the policy that parliament cannot overthrow the government as stated in article 122 of the RIS Constitution. The part that directly indicates the adoption of a parliamentary system is Article 118 which reads:

1. The President cannot be contested.
2. Ministers are responsible for a government policy, either jointly for the whole, or each for their own part in that matter.

The president as head of state has special rights or privileges that other state functions do not have, namely prerogative rights. The 1945 Constitution, according to A.K. Pringgodigdo, gives prerogative rights to the President, especially in forming the cabinet. (Ni'matul Huda: 2001)

"...form if the matter of forming a cabinet is seen as the President's prerogative; in this case he actually shares responsibility. Therefore, the articles in the Constitution which state that something wrong is done by the President, do not give him a prerogative, but only guarantee that this matter will be regulated or decided by the Cabinet or Minister concerned and the regulation or decision will be signed by the President (with the Minister's contrasign). So in the past (when the king still had prerogatives guaranteed in the Constitution) things like that it is "van de Kroon's prerogative", at present these articles only guarantee that these matters will be dealt with at a higher level than that of the Minister himself."

According to the RIS Constitution (bagir Manan: 2013), (1949 Constitution) and the 1950 Provisional Constitution, the President's prerogative rights are for example stipulated in forming ministries (Article 50 of the 1950 Constitution); has the right to dissolve the DPR (Article 84 UUDS 1950); giving signs of honor (Article 126 KRIS 1949,
Article 87 UUDS 1950): granting pardon (Article 160 KRI 1949, Article 107 UUDS 1950); enter into treaties with other countries (Article 175 KRS 1949, Article 120 UUDS 1950); appointing RI representatives to other countries (Article 178 KRS 1950. Article 123 UUDS 1950); accepting representatives from other countries in RI (Article 178 KRS 1949, Article 123 UUDS 1950); declare war (Article 128 UUDS 1950); declare a state of danger' (Article 129 UUDS 1950).

In the reform period, the President’s power as holder of executive power has begun to shift, namely in connection with the amendments to the 1945 Constitution. Before the amendment to the Constitution, the president held the power to form laws. We can see this when referring to Article 5 paragraph (1) of the 1945 Constitution, which states that "the President holds the power to form laws with the approval of the House of Representatives". Then, after amending Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it was determined that "the President has the right to submit draft laws to the House of Representatives". Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia gives the DPR the authority to form laws, namely "the People's Representative Council holds the power to form laws". In this way, the power to form laws has shifted from previously being vested in the President to the DPR. This is an interesting issue, after the amendment to the 1945 Constitution of the Republic of Indonesia, namely that there have been restrictions on the prerogative power of the president. (Margarito Kamis: 2015)

2 THEORETICAL FRAMEWORK

2.1 DIVISION OF POWER

One of the characteristics of a legal state (the rule of law or rechtsstaat) is characterized by the division of power in the administration of state power. This division was carried out by law which later became the basic idea of modern constitutionalism. (Jimly Asshiddiqie: 2006) As Julius Stahl states, the division or separation of powers is one of the important elements of Continental European legal state theory. (Ni’matul Huda: 2007)

The division of powers is different from the separation of powers. Separation of powers means separate powers without any relationship between one another. Meanwhile, division means that power is divided into several parts, but they are not separate and have a relationship between one another. The originator of the theory of
separation of powers was John Locke in his book "Two Treaties on Civil Government" (John Locke: 1960) which separated legislative, executive and federative. Inspired by John Locke's opinion, Montesquieu in his book "L' esprit des Lois" argued that in every government, there are three types of power, namely executive, legislative and judicial. (Miriam Budiardjo: 2009)

In Indonesia, the principle of separation of powers with a system of checks and balances means that the power given to state institutions by the makers of the Constitution is seen as balance, and conversely, the obligation of the recipient of power to be accountable to the giver of power is seen as checks (supervision). Therefore, the relationship between the giver of power and the recipient of power is a relationship of supervision by the body giving power to the body receiving power. (Suwoto Mulyosudarmo: 2005) In the 1945 Constitution of the Republic of Indonesia, this can be seen in:

a. In the law-making process, it can be seen from Article 5 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads, "The President holds the power to form laws with the approval of the DPR", as well as Article 20 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads, "The DPR holds the power form a Law", and Article 21 of the 1945 Constitution of the Republic of Indonesia which states, "Members of the DPR have the right to submit proposals for draft Laws".

b. The dismissal of the president, namely in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads, "The President holds government power according to the Constitution" (attributive authority) indicates that it is not delegated by the MPR, so that the president cannot be dismissed by the MPR, but there is the exception is if it is deemed to have committed a violation of the law in accordance with Article 7A of the 1945 Constitution of the Republic of Indonesia which states, "The President and/Vice President can be dismissed during their term of office by the MPR on the recommendation of the DPR either if they have been proven to have committed a violation of the law..." and according to Article 24C Paragraph (2) the DPR's opinion must be submitted first to the Constitutional Court and the dismissal mechanism must be based on Article 7B of the 1945 Constitution of the Republic of Indonesia.
c. Appointment of Ministers, in fact the Constitution adheres to a presidential system where the President has the power to appoint and dismiss ministers. Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads, "Ministers are appointed and dismissed by the President."
d. Review of laws appears in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads, "The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to test laws against the Constitution..."

2.2 PRESIDENT’S POWERS ACCORDING TO THE PRESIDENTIAL SYSTEM

The government system can be understood as a system of work relations between state institutions and regional institutions. Jimly Asshiddiqie divides government systems into three categories, namely presidential systems, parliamentary systems, and mixed systems or hybrid systems. The government system in a country can run with the cabinet as a government organization in which there are councils of ministers, which have duties and functions in administering government. As a country that implements a government system directly headed by the President, Indonesia has a cabinet composition that is directly responsible to the President.

The Presidential System with a Fixed Executive or Non-Parliamentary Executive means that the survival of the executive body does not depend on the legislative body, and the executive body has a certain term of office. The freedom of the executive body towards the legislative body results in the executive body's position being stronger in dealing with the legislative body. Moreover, ministers in the presidential cabinet can be chosen according to the president's own discretion without regard to the demands of political parties. Thus, the choice of president can be based on expertise and other factors that are considered important. This system existed in the United States, Pakistan during the Basic Democracy period (1958–1969), and Indonesia under the 1945 Constitution.

In the context of the Indonesian State, one of the agreements in implementing the amendments to the 1945 Constitution is to maintain the presidential system, while improving it so that it properly meets the general characteristics of the presidential system. (Jimly Asshiddiqie: 2005) According to Bagir Manan, the presidential system in Indonesia before the amendment to the 1945 Constitution had characteristics that were
almost similar to the system in the United States with several special characteristics, namely:

(a) The President is elected by the people's representative body (MPR).
(b) The President is subject to and responsible to the people's representative body (MPR) but is not subject to and responsible to the DPR. In addition, the President can be dismissed by the MPR.
(c) The President can be re-elected indefinitely every 5 years.
(d) The President together with the DPR exercises the power to form laws.

3 METODE PENELITIAN

The research method used is juridical-normative, namely research that doctrinally examines the basis of rules and legislation regarding the President's Prerogative Powers in accordance with the Presidential system after the Amendment to the 1945 Constitution. Through this research it is hoped that the factors that cause the President's Prerogative Powers to not be in accordance with the ideal conception can be identified. Indonesian constitutional system. The approach used in this research is: Legislative approach, looking for rules and legal foundations in describing presidential powers, both before changes to the 1945 Constitution and after changes to the 1945 Constitution. Conceptual approach, used to find the ideal formulation the prerogative powers of the president according to the presidential system of government. The historical approach is carried out within the framework of tracing the history of the presidential institution, especially with regard to the power of the President in Indonesia. This approach is to understand the philosophy of the rule of law in the development of the Old Order, New Order and Reformation regimes.

4 RESULTS AND DISCUSSION

4.1 PREROGATIVE POWER OF THE PRESIDENT

The President holds power as Head of Government and also as head of state. The position as head of government can be seen in Article 4 Paragraph (1) of the 1945 Constitution, which states that the President of the Republic of Indonesia holds government power. Then, Article 17 of the 1945 Constitution, the government system adopted is the Presidential system, namely the President holds government power, so ministers are appointed and dismissed by the President. (Rahimullah: 2007) The president
as the holder of executive power has enormous and centralized power. It is said to be large and centralized because the president in this period functions as:

1. Head of state and head of government.
2. As the holder of the power to form laws.

Presidential prerogative, John Locke in the book Two Treatises of Government expressed that prerogative as the power to act according to one’s own decision (discretion) for the public good, without ensuring legal provisions, sometimes even against the law itself "This power to act according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called prerogative". Locke views that existing laws are unable to accommodate the many problems that exist. It is even impossible to predict laws that can provide solutions to public interest. That is why the existence of a special power called the Prerogative is necessary. Locke further said that the Prerogative is nothing but the power to do good for the public without any laws/rules (Prerogative is nothing but the power of doing public good without a rule). In this context, Locke considers the prerogative to be a positive power for the public good. Therefore, the prerogative really depends on the policy of the king/prince (Wise of princes). Bagir Manan mentions several characters of prerogative power, namely: (Bagir Manan: 1998)

a. as “residual power”.
b. constitutes discretionary power (frieis ermessen, beleid).
c. nothing in written law.
d. restricted use.
e. will disappear if it has been regulated in law or the Constitution. By looking at the examples mentioned and the principle that the king can do no wrong, adding one of the prerogative character traits attached to the position of head of state, not to head of government.

Bagir Manan said that the meaning of loss (prerogative power) here does not always mean that prerogative power will disappear. These various prerogative powers can be regulated in law or the Constitution. If it has been regulated in law or the Constitution, it is no longer referred to as prerogative power, but as power according to or based on law (statutory power) or power according to or based on the Constitution (constitutional power). Thus, it can be concluded that prerogative rights are rights that are left in the hands of the crown. Meanwhile, other parts of the crown’s absolute power have
shifted to another branch of power, namely parliament. Prerogative as a residual right or power, especially in the field of executive power. (Bagir Manan: 1995)

Linguistically prerogative comes from the Latin praerogativa (to be chosen as the first to vote), praerogativus (to be asked to be the first to vote), praerogare (to be asked before asking others). (Bagir Manan: 2000) Meanwhile, prerogative according to the Big Indonesian Dictionary is defined as a privilege that a person has because of his position as head of state. As a legal institution (constitutional law), the prerogative originates from the British constitutional system. Until now, prerogative institutions remain a source of law, especially a source of constitutional law in the British Empire. (Herman Sihombing: 1982) It is not easy to formulate the meaning of prerogative power, both because of its historical source as a legal institution and its scope. At this time, the president's prerogative powers are increasingly limited, either because they are regulated by law or by restrictions on how to exercise them. Clement Fatovic said that "prerogative as an aberration from the normal operation of executive power. Whereas prerogative is a highly discretionary power that operates outside the bounds of the law, executive power is a rule-bound power that operates within the bounds of the law" (Clement Fatovic: 2015)

A number of groups view prerogative rights as a remnant of authoritarianism before the era of enlightenment in Europe. On June 15, 1215, when King John reigned, the winds of change blew when Magna Charta wanted changes. The charter contained the privileges of the high nobility. The charter is considered a milestone that started efforts by the people to participate in the management of power. Slowly but surely, the power of the king or queen of England is getting smaller. All cuts are included in the law. Prerogatives are powers that remain in the hands of the king or queen and are not regulated by law. Now, practically the king or queen of England is only a symbol. In constitutional practice its role is almost nil. A form of prerogative that is still used by kings or queens today is, for example, granting someone the title of nobility. (Justice Forum: 2001)

Since the founding of the United States, prerogative power has resolved important disputes. George Washington unilaterally declared neutrality in the Anglo-French conflict in the early 1790s, even though there was not a word in the constitution that clearly gave him the power to do this. Thomas Jefferson purchased the Louisiana Territory from France in 1803, even though there was not a single word in the constitution detailing the national government's power to acquire territory. Andrew Jackson, using the power to fire members of his cabinet, established presidential supremacy within the executive
department, even though the constitution said nothing about this. (Ni’matul Huda: 2003) Abraham Lincoln, wielded so much power in his presidency that political scientist Clinton Rossiter of Cornell later called a "constitutional dictatorship": constitutional in the sense that midterm elections and presidential elections were held in the midst of a raging civil war; and dictatorship in the sense that Lincoln sometimes exceeded the bounds of the law and the constitution in times of national crisis. (Richard M. Pious)

Franklin Roosevelt also relied on prerogative powers before the United States entered World War II. He made an intergovernmental agreement with Great Britain to exchange old destroyers for naval bases, a maneuver that greatly helped British convoys across the North Atlantic with war equipment. Intergovernmental agreements, unlike treaties, do not require the approval of two-thirds of the Senate, which is why Roosevelt used the international form of agreement when exercising his own prerogative.

There are four approaches used to identify the cases above, the four approaches are: (Jimly Ashiddiqie: 2007)

1. That the president does not have inherent power. The president can only act on the basis of explicit provisions in the constitution or at least based on explicit provisions determined by law (There is no inherent presidential power; the president may act only if there is express constitutional or statutory authority);
2. The president has inherent authority unless the president interferes with the functioning of another branch of government or usurps the powers of another branch);
3. The president may act outside the powers explicitly specified in the Constitution as long as the president does not violate the provisions of the law or the Constitution (The president may exercise powers not mentioned in the Constitution so long as the president does not violate a statute or the constitution);
4. The president has inherent powers that may not be reduced or limited by Congress and may act unless the Constitution is violated.

After the amendments to the 1945 Constitution were made, almost no presidential authority could be exercised alone without seeking approval or consideration from other institutions, except for the appointment of ministers as regulated in Article 16 and Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia states "The President forms an advisory council whose task is to provide advice and considerations to the President, which is then
regulated in law". Based on Law Number 19 of 2006 concerning the Presidential Advisory Council, the Presidential Advisory Council (Wantimpres) is a government institution tasked with providing advice and considerations to the President as intended in Article 16 of the 1945 Constitution of the Republic of Indonesia. The Wantimpres is located under the President and is responsible to the President.

Article 17 of the 1945 Constitution of the Republic of Indonesia, the President is given the authority to appoint and dismiss ministers as assistants to the president. Even though it has absolute authority in appointing ministers, in practice it is still very tied to supporting parties or other parties who have made political commitments to the president when the succession of presidential and vice-presidential elections takes place. Thus, it can be said that in the 1945 Constitution of the Republic of Indonesia, nothing is truly the president's prerogative that can be carried out without obtaining approval or consideration, especially from the People's Representative Council (DPR) as the people's representative institution.

The 1945 Constitution of the Republic of Indonesia gives a strong position to the President. The president is the administrator of government (Article 4 paragraph (1)). Apart from executive power, the President also exercises the power to form laws and regulations (Article 5 and Article 22), powers related to law enforcement, such as granting pardons, amnesties and abolitions (Article 14). In exercising his powers, the President is assisted by one Vice President (Article 4 paragraph (2)) and a number of ministers (Article 17).

The main task of a president is to protect the constitution and implement the laws. Based on the clarity of the regulations in the Constitution, the president's duties can be classified into two types, namely powers that are explicitly regulated in the constitution (enumerated constitutional powers); and implicit powers (implied constitutional powers). In his position as Head of State, according to M. Solly Lubis, the President has prerogative rights, apart from internal authority, he also has authority in external relations, which in the 1945 Constitution of the Republic of Indonesia are detailed as follows: (M. Solly Lubis: 1997)

1. Article 10: The President holds supreme authority over the Army, Navy and Air Force.
2. Article 11: The President with the approval of the House of Representatives declares war, makes peace and agreements with other countries.
3. Article 12: The President declares a state of danger. The conditions and consequences of a dangerous situation are determined by law.

4. Article 13: The President appoints ambassadors and consuls. The President receives ambassadors from other countries.

5. Article 14: The President grants pardon, amnesty, abolition and rehabilitation.

6. Article 15: The President gives titles, decorations and other honors.

As stated in the explanation of Articles 10 to 15, the President's powers in these articles are the consequences and position of the president as head of state. From the point of view of the national system, an important link between prerogative authority and national leadership is the orientative tendency, which needs to be developed in the attitudes and policies of the head of state in carrying out the duties and prerogative authority, so that it is always consistent with the values, principles and norms contained in the three constitutional foundations.

Article 4 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia confirms that "the President holds governmental powers according to the Constitution". The president who holds government power in this article refers to the definition of president according to the presidential system of government. According to Jimly Asshiddiqie, in a presidential government system, there is no distinction or no need to make a distinction between the position of the president as head of state and the position of the president as head of government. (Jimly Asshiddiqie: 2012) The 1945 Constitution of the Republic of Indonesia does not contain provisions regulating the position of head of state or the position of head of government or chief executive.

Clinton Rossiter said that there are at least four main roles of a president in the United States which in its development have been widely adopted by countries that have presidential positions in their countries. First, the president is the head of state. The duties as head of state are duties commonly carried out by the Queen of England, the President of the French Republic and the Governor General in Canada. Second, the President as Head of the Executive or government. Third, the president as the main diplomat. Fourth, the President as the main legislator, and Fifth, the President as the supreme commander of the armed forces. (Abdul Ghoффar: 2009)

Several changes to the articles in the amendment to the 1945 Constitution of the Republic of Indonesia place the DPR as the decision-making institution in the form of giving "approval" to several state agendas, including: (Taufiqurrohman Syahuri: 2011)
1. The President in making international agreements that have broad and fundamental consequences for the lives of the people.
2. Government regulations in lieu of law.
3. Appointment of Supreme Court justices.
4. Appointment and dismissal of members of the Judicial Commission.

Apart from that, there are still other agendas that require the DPR's "consideration", including:

1. Appointment of ambassadors and consuls.
2. Accepting the placement of ambassadors from other countries.
3. Granting amnesty and abolition.

Ismail Sunny emphasized that the 1950 Constitution states that the President cannot be contested (Article 83), but this prerogative does not include criminal responsibility. The 1945 Constitution places several of the President's regulated powers as prerogatives of the President, which can be implemented by the President himself without having to ask for approval or consideration from other institutions. Ramlan Surbakti, said that the power of the Presidential Institution during the New Order regime was very dominant because of the following six factors. First, the 1945 Constitution itself states explicitly that the president's duties and authority cover not only the executive, but also the legislative. The president holds government power (executive), holds the power to form laws (legislative) with the approval of the DPR and establishes government regulations to implement the laws as they should. The duties and authority of the executive alone are very broad, including the legislative sector. (Ramlan Surbakti: 1998)

Second, apart from being head of government (executive), the president also holds the position of head of state. Because the 1945 Constitution adheres to a presidential system, these two positions are held by the president. As head of state, the president holds supreme power over the Army, Navy, Air Force; declare war, make peace and treaties with other countries (with the approval of the DPR); declare the state of danger and its consequences as stipulated in law; appoint ambassadors and consuls; grant pardon, amnesty, abolition and rehabilitation; giving titles, without merit, and other signs of honor. The position of head of state is generally more symbolic than substantial, but in practice it is actually substantial. According to the 1945 Constitution, the use of this authority requires approval from the DPR or is regulated by law, but in practice it is done independently.
Third, the various titles attached to the position of president have in fact been used as a new source of power for the president beyond that stated in the 1945 Constitution. This new type of power is that the president as a mandate member of the MPR has changed the meaning of becoming president as a substitute for the MPR; The presidential prerogative, which is not mentioned at all in the 1945 Constitution, changes its meaning to mean that other parties cannot influence it; and the president as Commander of ABRI changed its meaning to ABRI as a tool for the president to maintain his power.

Fourth, both constitutionally and personally, the president controls financial resources that are large enough to be used to maintain his power. There were at least four financial sources controlled by the president during the New Order. Fifth, Pancasila is used more as a tool for hegemony over the people than as a guideline and benchmark in administering the state and government. Through various means and methods, Pancasila is used as a tool to gain obedience from the people. It is the people who are told to implement Pancasila according to the ruler's interpretation, while the president and his assistants act as interpreters and therefore the main source of truth. Those who hold views other than those of the authorities tend to be eliminated. Pancasila should function as a guideline and benchmark for state administration.

Sixth, the political format practiced by the New Order regime is described by political scientists differently (authoritarian bureaucracy, acting state, neopatrimonial, development dictatorship, and so on), but all of them agree that the New Order was not democratic at all because the president had absolute power so that it is not appropriate to call it "democracy", especially if it is added with the additional statement Pancasila.

Le Sueur-Herberg, (Saldi Isra: 2002) said that prerogative power has an undemocratic and potentially dangerous tendency, so to increase public accountability it is necessary to strive for the following things: First, there must be clearer regulation of relations between state institutions, especially between the President and institutions. - other state institutions. Second, there must be somewhat more detailed regulations at the constitutional and organic law level regarding the President's authority both as Head of State and as Head of Government. Third, in using constitutional power and statutory power that concerns people, it is best to involve other parties outside the President.

The development of the constitution and regimes of power from the Old Order, the New Order to the Reform Order, has brought changes to the meaning of presidential prerogatives. Since the beginning of Indonesia's independence, the constitution has
placed very dominant presidential prerogatives, now after very fundamental changes to the constitution it also has implications for shifting presidential prerogatives. As Eddy Purnama said, the shift from executive heavy to legislative heavy in the hands of the DPR with party sovereignty has spread to all levels and has ultimately become the root of problems in the Indonesian constitutional system. (Eddy Purnama: 2014) The shift of power through heavy legislative power to the DPR also has an impact on the dominance of political parties in determining the direction of policies made by the president. Thus, the president's prerogative power is also increasingly interfered with by the supremacy of political parties through the DPR institution.

Limitation of power is usually realized through two options, namely a system of separation of power and distribution of power. The separation of powers is horizontal in the sense that power is separated into functions that are reflected in state institutions that are equal and balance each other (checks and balances). Meanwhile, the division of power is vertical in the sense that the manifestation of power is distributed vertically downwards to state institutions below the institutions holding state power. (Pataniari Siahaan: 2012)

If we compare the concept of division of power between John Locke (1632-1704) and Montesquieu (1689-1785), the fundamental difference in their thinking is that John Locke incorporated judicial power into executive power, while Montesquieu viewed judicial power as standing alone. (Benny K. Harman: 1997) In contrast to the thoughts of John Locke and Montesquieu, a Dutch scholar, Van Vollenhoven, stated that the duties in a state are not three, but four branches of power using Kwartas Politica (Catur Praja), which includes duties police as the task of maintaining public and state order. (M. Solly Lubis: 2008)

In general, separation of powers in Indonesian is interpreted as (separation of power) starting from an understanding of Montesquieu's Trias Politica theory. This arises from the understanding of Montesquieu's opinion which states, "when the legislative and the executive powers are united in the same person, or in the same body of magistrate, there can be no liberty". Montesquieu's views had a very broad influence on thinking about state power. Montesquieu's opinion quoted is interpreted to mean that the branches of state power are completely separate or have no relationship at all.

The notion of completely separate branches of state power cannot actually be proven. This is because in practice, Montesquieu's views were never implemented in a pure manner or were never born into facts. Jimly Asshiddiqie, stated:
"The concept of Trias Politica idealized by Montesquieu is clearly no longer relevant today, considering that it is no longer possible to maintain that the three organizations only deal exclusively with one of the three functions of power. Current reality shows that the relationship between branches of power cannot possibly touch each other, and that all three are equal and control each other in accordance with the principle of checks and balances."

Saldi Isra, stated that Montesquieu's view did not say that the existing branches of state power had no relationship with each other. Montesquieu emphasized more on the main problem, the branches of state power should not be in one hand or in one state organ. However, it is generally understood that Montesquieu wants a very strict separation between the branches of state power, namely that one branch of power only has one function or conversely one function is only carried out by one branch of state power. In fact, Montesquieu wanted the functions of one branch of state power not to be carried out or duplicated by another branch of power. Therefore, Saldi Isra emphasized that ideally, the theory of separation of powers should be interpreted to mean that in carrying out its functions or authority, branches of state power have exclusivity which must not be touched or stolen by other branches of state power.

The Presidential system of government based on the pre-amendment 1945 Constitution is impure in nature. This is because the system is mixed with elements of the parliamentary system. This mixture is reflected, among other things, in the concept of presidential accountability to the MPR which is included in the definition of parliamentary institutions, with the possibility of giving him the authority to dismiss the President from office, even though not for legal reasons.

Even though there are weaknesses, the large power of the president also has a positive impact, namely that the president can control all government administration so that he is able to create a unified and solid government. The government system is more stable, not easy to fall or change. Conflicts and disagreements between state officials can be avoided. However, in practice in the course of the government system in Indonesia, it turns out that the great power of the president is more detrimental to the nation and state than the benefits it brings.

Entering the Reformation period, the Indonesian people were determined to create a democratic government system. For this reason, it is necessary to formulate a constitutional government or a government based on the constitution. Constitutional government is characterized by the country's constitution containing:
1. There are restrictions on government or executive power.

The existence of new changes in the Indonesian government system is intended to improve the old presidential system. These new changes include direct elections, a bicameral system, a check and balance mechanism, and giving greater power to parliament to carry out oversight and budget functions. Even though a presidential coalition system with multiple parties presents many difficulties and problems, considering the design of the current presidential election system, it is difficult to face the formation of a coalition government. Constitutionally, Article 6A Paragraph (2) of the 1945 Constitution of the Republic of Indonesia opens up space for coalitions of political parties participating in elections. Then, the 2008 Law concerning the General Election of President and Vice President, requires support requirements of at least 20 percent of seats in the DPR or 25 percent of valid votes in the DPR election for political parties or combinations of political parties to nominate pairs of candidates for president and vice president. (Saldi Isra: 2010)

Viewed from a practical perspective, the presidential system does provide several advantages (compared to the parliamentary system), namely: (Arend Lijphart: 2002)

(1) Executive stability based on guarantees regarding the length of the president's term of office. This is different from the parliamentary system which is more likely to cause executive instability due to the large possibility of using parliamentary power to overthrow the cabinet through a motion of no confidence or without a formal motion of no confidence when the cabinet has lost the support of the majority of parliament members.

(2) The general election of the president can be considered more democratic than indirect elections, both formal and informal, such as the executive in a parliamentary system.

(3) The existence of separation of powers which means limitations on executive power which is a very valuable protection for individual freedom against tyrannical government.

In a presidential system, it can be concluded that several of the President's authorities are usually formulated in the Constitutions of various countries, which include the following scope of authority: (Jimly Asshiddiqie: 2005)
1. Executive authority or administering government based on the Constitution (to govern based on the constitution). Even in a stricter system, all government activities carried out by the president must be based on constitutional orders and applicable laws and regulations. So the tendency for discretionary power is to be limited as narrowly as possible.

2. Legislative authority or to regulate general or public interests (to regulate public affairs based on the law and the constitution). In a system of separation of powers, the authority to regulate is considered to be in the hands of representative institutions, not in the hands of the executive. If the executive agency feels the need to regulate, then the authority to regulate in the hands of the executive is derivative of legislative authority. This means that the President cannot enact regulations that are independent.

3. Judicial authority in the context of restoring justice related to court decisions, namely to reduce sentences, grant forgiveness, or eliminate charges that are closely related to the court's authority. In a parliamentary system that has a head of state, this is usually easy to understand because of the symbolic role that is in the hands of the head of state. However, in a presidential system, the authority to grant pardons, abolitions and amnesties rests with the President.

4. Diplomatic authority, namely carrying out relations with other countries or other subjects of international law in the context of foreign relations, both in war and peace.

5. Administrative authority to appoint and dismiss people in state positions and state administration positions. This is also because the president is also the chief executive.

6. Authority in the security sector, namely to regulate the police and armed forces, conduct war, national defense and internal security.

5 CONCLUSIONS

In the context of the Indonesian State, one of the agreements in implementing the amendments to the 1945 Constitution is to maintain the presidential system. The development of the constitution and power regimes from the Old Order, the New Order to the Reform Order, has brought changes to the meaning of presidential prerogative powers. Since the beginning of Indonesia's independence, the constitution has placed very
dominant presidential prerogative powers, now after very fundamental changes to the constitution it also has implications for shifting presidential prerogative rights. The shift from executive heavy to legislative heavy in the hands of the DPR with party sovereignty has spread to all levels and has ultimately become the root of problems in the Indonesian constitutional system. The shift of power through the heavy legislature to the DPR also has an impact on the dominance of political parties in determining the direction of policies made by the president. Thus, the president's prerogative power is also increasingly interfered with by the supremacy of political parties through the DPR institution.

In principle, in dealing with problems between state institutions, especially the presidential institution through prerogative powers, the formulation of presidential prerogative powers is as a principle in the presidential government system, namely giving power to the president to increase public accountability. Therefore, the use of the President's prerogative power must limit power by involving institutions as representatives of the people. This is done in addition to providing a form of presidential accountability, as well as controlling each other in accordance with the principle of checks and balances.
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