

DEMOCRACY AND MONOCRACY PRINCIPLE IN 1945 CONSTITUTION OF REPUBLIC OF INDONESIA AFTER AMENDMENT AND IT'S IMPLEMENTATION IN CONSTITUTIONAL STRUCTURE OF REPUBLIC OF INDONESIA

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ABSTRACT

The spirit to distributing state power in 1945 constitution of republic of indonesia after amendment embodies two balance major power. Those are people's power (as known as democracy) and the power of law (as known as nomocracy) on the other side. The 1945 constitution in some point brace the Indonesia's social will to actualize the people's power as the owner of the state. On the other side, the constitution itself also provide a room for rule of law. The configuration of those both issue show the face of hegemony and domination, but when examined more closely are actually reinforcing each other. Indonesian social ideal is to realize its essence as a democratic state based on the rule of law. In that characteristic, then it will make the unqualified constitutional structure as a holder of hegemony. In this case, the structure itself actually more plays as a "container" of the state in distributing power.

Keyword : democracy, hegemony, constitution

A. The Background of the Problem

Since the independence day of Indonesia, the state has undergone several changes in the form of state and its government system, which also resulted in changes to the constitution. At the earlier day of independence, Indonesia use the 1945 Constitution (Mahfud MD, 2010: 36-37) set by PPKI on August 18, 1945 as the state national principle.

Along with the emergence of the Dutch colonial powers marked by the first military aggression in 1947 and the second military aggression in 1948, with a view to re-colonize Indonesia. In a state of urgency Indonesia approved the Round Table Conference (RTC) (Jimly Asshiddiqie, 2010: 37) in The Hague, which resulted in an agreement that turn Republic of Indonesia that used to be a unitary state into a state of the union, and Indonesian onstitution became a union constitution.

In 1950 Indonesia back into a unitary state with 1950 Provisional Constitution, as a further step, the president established and assigned the Constituent Body to formulate and establish "definitive" constitution, but before the work was completed the president publish the Presidential Decree on July 5, 1959 that set the state constitution back to 1945 constitution.

Controversy of the decree does not stop at the impatience of the President to wait the results of the Constituent Body, within the time of recess, suddenly the President issuing a presidential decree with with the primary substance to re-apply the 1945 constitution to replace 1950 Provisional Constitution. The basic problem is, the Presidential Decree in form of Precidential Decision, argued to be a legal action in replacing the Assembly's authority to modify and validate the Constitution.

The existence of the 1945 Constitution which begins with the Presidential Decree of July 5, 1959 continue to apply as the basis and guidelines for each constitutional activities until the amendments held during 1999 to 2002. Within any changes/amendments always contained strengthening elements in the social, economic, politic and culture fields.

In connection with these problems, this paper wants to explore and understand how the spirit of democracy and nomocracy was accommodated in the constitution and how it affect the Indonesian constitutional structure.

B. Analysis

1. The existence of the principle of democracy and nomocracy in the 1945 Constitution of Indonesia.

Democracy is an ideology or a system of government that was originally (in ancient Greece period) denied, because it is not an ideal system and may lead to anarchy, according to Plato monarchy was the best system whereas according to Aristotles Constitutional Monarchy was the best (Mahfud MD, 1999: 49). Several centuries later the democratic system was seen as the embodiment of the most appropriate and ideal for all modern systems of political and civil organizations. Unesco's research concluded that the democratic system is the best form of all the alternatives that exist and each of those system has weaknesses and comparative advantages.

The idea of democracy was strengthened along with the the emergence of reform that end the President Suharto's "authoritarian rule", who had ruled for 32 years. The victory of reformation not only marked by the resignation of Soeharto but also followed by "delegitimizing" the election results of 1997, which drive to re-election in 1999 to be held, those members of the Assembly from the result of ellection in 1999 then amend the 1945 Constitution.

The end of the Suharto's "Orde Baru" government became the turning point for reforming all aspects in the way of life of the nation, the reforms in all spheres must be preceded by amending the 1945 Constitution, because the in fact, the 1945 Constitution was never able to bring a democratic government. In 1999, Indonesian Institute of Sciences (LIPI) concluded that there were "congenital defects" in 1945 Constitution such as, lack of respect of human rights, the lack of checks and balances, the lack of

distribution of powers, and there is a heavy executive tendency in constitutional arrangements, those various congenital defects makes Indonesia couldn't provide a democratic governance. There were also a research from Universitas Indonesia (UI), Universitas Gadjah mada (UGM), Institut Teknologi Bandung (ITB), Universitas Brawijaya (UNIBRAW) and Universitas Hasanudin (UNHAS) that concluded, as long as the 1945 constitution not amended yet it will always has a potential to bring back the authoritarian political system.

The idea of people's sovereignty or democracy clearly contained in the 1945 Constitution, since in the preamble to the articles within it. The fourth paragraph of the preamble of the 1945 Constitution states that "... so the Indonesian independence was formed in the constitution of Republic of Indonesia which formed in an arrangement of Republic of Indonesia which is based on people's sovereignty and in grounded to..... and democracation that led in the inner wisdom of deliberations representative"

The result of those amendments containing the principles of democracy as contained in article 1, paragraph (2) which states that "sovereignty is vested in the people and carried out according to the Constitution" this shows that Indonesia adheres to the principle and the democratic system so that all the aspirations of the people can be directed and constructed as a mutual decision, the principle of democracy and the sovereignty of the people were also reflected in the some procedure and mechanism such as political recruitment, law making policy mechanism, etc.

The idea of the rule of law (nomocracy) also accommodated in Article 1 (3) which asserts that "Indonesia is a State of Law", which means that every nation and state activities should be based on the law. therefore, democracy must be implemented in accordance with applicable law by any underlying philosophy. From this side it is understood that the implementation of the people's sovereignty without the rule of legal norms will only result in anarchy.

The idea of people's sovereignty (democracy) and the notion of the rule of law (nomocracy) juxtaposed ideally by the 1945 Constitution, in article 1, paragraph (2) and Article 1 paragraph (3), with all of those explanation could be concluded that the democracy that we run is a democratic constitutional or a democracy based on the law, while on the other hand this country was a democratic state of law.

The state of law ideology teaches that there is an important "point" that the law was an unified state system. Supreme power system was not a single person, but rather the law, and it makes law as the ultimate power in Indonesia which all of those law culminated to the constitution, that was the reason why our constitution frequently referred to as the basic written law.

2. Implementation of the Democracy and Nomocracy Principles in State Administration Structure

2.a. Indonesia as a State of People's Sovereignty

2.a.1. People's Consultative Assembly (MPR)

1945 Constitution after the amendment admit nine high state institutions Such as People's Consultative Assembly (MPR), House of Representative (DPR), Regional Representative Council (DPD), President and Vice-President, Supreme Court, Constitutional Court, Audit Board of the Republic of Indonesia, judicial commission and other additional institutions like the Election Commission. Among those nine institutions, only the People's Consultative Assembly (MPR) that have the characteristic features of Indonesian institution (Jimly Asshiddiqie, 2005: 12), while the other one is more like a "copy" of the institutions that exist at the time of Dutch colonial, the House Of Representative came from the *Volksraad*, Supreme Court based on *Hogerechtschof*, Audit Board of the Republic of Indonesia was derived from the *Raad van Rekenkamer*, the President based upon *Governor General*.

MPR formed from members of the DPR and DPD, as an institution that was born and as a manifestation of the spirit of democracy, although the president is elected directly by the people as how it stipulated in article 6A 1945 Constitution, but the Assembly still has authority still has the authority dealing with constitutional issues on a large scale especially in the case of the dismissal of the president as stipulated in section 7A 1945 constitution and in certain situations MPR still has the authority to elect the president and/or vice president as in section 7B 1945 Constitution.

2.a.2 House of Representative (DPR)

The House of Representatives after the amendment has some significant strengthening in the field of role and function. The role of legislation that had been dominated by the president and then became the authority of the House of Representatives, the dominance is seen in putting the problem of making a law which was originally located in Article 5 in constitution, which is the article on state power then shifted to Article 20 under the "chapter" that regulating the powers of parliament. Which stipulated as follows: "The House of Representatives holds the power to make laws.

2.a.3. Regional Representative Council (DPD)

Regional Representative Council is a new institution based on the third amendment of the 1945 Constitution, the council is the replacement regional representatives and group representatives. DPD is a state institution that consists of representatives of regions by not considering the size of the area, or the size of the population, each region has 4 representation. The existence of DPD members have been through an election by using a district system and be represented lots.

The council authorities within; propose and discuss the draft law on regional autonomy, the capital and local relations, the formation, expansion and merger of regions, management of natural resources and other economic resources The council also has authority to provide second opinion the Parliament on the state budget bill and the bill relating to taxes, education and religion.

2.a.4 President and Vice President

The third amendment of 1945 Constitution has given the fundamental changes to the President and Vice President's presence from time to time such as; First, shifting the position of the president which was originally very strong not only as a government authority holder, but also as holders of power legislation field.

After the amendment, the presidential institution solely understood only as executive body. In such a position is the president was merely was a implementer of legislative decisions which had been decided as Law by Parliament, and in form of Constitution by the People's Consultative Assembly. Based on those explanation, President and the Vice President position exactly only the Law and Constitution executive officer. Second, the presidential election shifted from elected by the Assembly to be elected directly by the people, there also rejection of direct election, by the "repellent" because it is considered contrary to the precepts 4 of *Pancasila*. Mahfud MD confirms that the precepts 4 of *Pancasila* has nothing to do with the presidential election.

The presidential election should be based on what was stipulated in the 1945 Constitution and the laws regulating further. While the four precepts of *Pancasila* calls for institutions consultative/representative of the people who can deliberate on the various aspirations of the people for the state administration. Third, in order to implement the function of checks and balances, the president and vice president can be dismissed amid tenure, as known as the *Impeachment*.

2.b. Indonesia as State of Law

2.b.1. Supreme Court

The Supreme Court is a court of full holders of judicial power, this occurs prior to the 1945 amendment, upon the third and fourth amendments of 1945 Constitution, judicial power held by Supreme Court and also the Constitutional Court.

Judicial authority shall be done by the Supreme Court and judicial bodies underneath it, in field of general courts, religion courts courts, military courts and the administration courts filed and also by a Constitutional Court. (Article 24 paragraph (2) 1945 Constitution)

The authority of the Supreme Court includes:

- a. Conduct of judicial authorities
- b. Adjudicate the cassation
- c. Reviewing the regulation beneath the law to the law
- d. Recommending three constitution judge candidates to the president to be set as constitutional judge by the president
- e. And other authority that provided by law.

The Supreme Court is the highest court among all the courts within the judicial field and also as the peak of judicial power and judicial function in Indonesia that free from government and other party's intervention within its duties.

2.b.2 Constitutional Court

The Constitutional Court was born simultaneously with the high spirit of reform which drive to the amendments of the Constitution, in other words, the constitutional court is one manifestation of the monumental changes in the 1945 Constitution. Fajar Mukti explained that the presence of the constitutional court other than as actors and holder of independent judicial power, law enforcement and justice agent, also considered as a guard to make sure the Indonesian Constitution to be implemented in a responsible manner in accordance with the will of the people and democratic ideals.

As the guardian and interpreter of the Constitution, the 1945 Constitution gives the authorities that stipulated in Article 24C of Constitution to examine, adjudicate at the first and last decision and its decision will be final and binding, in reviewing laws concerning the Constitution, disputes over the authority of state institutions, the dissolution of political parties and disputes over election results. In addition to the authority, the constitutional court still has a "constitutional obligation" to decide upon the opinion of Parliament on alleged violations by the President and / or Vice President mentioned in 1945 or popularly called the impeachment.

2.c. Configuration of function and position of Democracy and Nomocracy

The authority of the Constitutional Court as how it stipulated in Article 24C of Constitution can be described as that the 1945 Constitution encouraging, directing and conditioning so that the people's sovereignty could be running as how it should, while the rule of law (nomocracy) with all the legal institutions act as guards and guarantor to make sure democracy or the implementation of people's sovereignty could be implemented properly without breaking the law.

Some examples reveal that whether its "potential" or empirical. We often see that some Parliament product in form of law which politically are very powerful in executing democracy (legislation function) but when those laws considered contrary to constitution by the constitutional court through judicial review, the law may be canceled. Such a common situation.

All the explanation also provide that there is a possibility that the president could be impeached during his/her time, though it must be approved by parliament and should involve the Constitutional Court and the Assembly, it indicates that although the president elected by the people in terms of indicated there is no doubt in its legitimation, but if the president violates the constitution or commits some certain criminal then-president was not above the law and should be subject to the law (principle nomocracy).

C. Conclusion

From the description in this paper can be concluded that; the relationship between the people's sovereignty (democracy) and the rule of law (nomocracy) shows the ups and downs relationship, sometimes holding hands and encourages each other, and mutual enforcing. On another occasion had to face-to-face and must strictly annulled the performance of one of the others.

The founding fathers have projected it far ahead and teach us that everything should not be allowed to flourish in the extreme way, as well as the strengthening of democracy, even though it is the best option and the most ideal of the various alternatives, but democracy must be guarded strictly by law in order to keep it within the right track.

The "character" of democracy that based on law and policy formulation that based on democracy should be able to oversee and took a highly heterogeneous nation such as Indonesia toward the gate of prosperity.

D. Recommendation

Alignment between nomocracy and democracy and should be maintained, furthermore, it must always continue to be developed to anticipate the heavier threats and challenges that faced day by day by the nation and the state.

This mindset should be disseminated to the various layers of the state agents and officials, because the sectoral ego is a universal disease that can come to anyone, especially against rogue elements who have a strategic role and function in the state administration in Indonesia.

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