

Mechanism_of_the_President_and_DPR_Relationship.

by C 18 02 2021 Pak Imawan

Submission date: 18-Feb-2021 08:21AM (UTC+0700)

Submission ID: 1511912912

File name: Mechanism_of_the_President_and_DPR_Relationship.pdf (513.76K)

Word count: 3966

Character count: 21751

Mechanism of the President and DPR Relationship in Indonesian State Government Law According to 1945 Basic Laws in Historical Perspective After Amendment

Imawan Sugiharto

Universitas Pancasakti Tegal, Indonesia

Email: imawansugiharto57@gmail.com

Abstract

The relationship between the executive and legislature has tended to be less harmonious for a long time. The problem between the two of them has always occurred since Indonesia officially became a country. This paper tries to describe how the relationship between the President and the DPR, which is the reference is the 1945 Constitution. The method used by researchers is juridical normative with a descriptive analysis approach. From this research, the researcher knows that there have been several shifts in executive functions and positions after the amendment four times and the Check and Balance authority that the DPR has to maintain the stability of power.

Keywords: *Amendment, President, DPR, the 1945 Basic Law.*

A. INTRODUCTION

Before the amendment, the 1945 Constitution gave large or dominant power to the executive (President), which resulted in the birth of an authoritarian government, so that the 1945 Constitution was known as executive heavy as happened during the two reigns of President Soekarno (1959-1967) and President Soeharto 19672-1998). This will always be repeated if there is no balanced supervision between the trias politica. For that, the same power must be exercised in a limited manner between the organs of the institution. This needs to be done in order to maintain balance, prevent domination and abuse of power. If this is not done, there will be domination, suppressing other powers, and tends to be abused, power tends to be abused, and absolute power tends to be abused absolutely. The 1945 Constitution, which was in effect during the days of President Soekarno (1959-1967) and President Soeharto (19674-1998), resulted in the legislative and judicial organs unable to keep up with the dominance of executive power (Koynja, 2017).

Each law requires the approval of the DPR (Article 20 verse (1)). With the 1945 Constitution, which was executive heavy during the Soekarno administration, the President dominated power, as evidenced by continually changing cabinets. This also happened during the Soeharto government, which was determined to implement the 1945 Constitution purely and consistently, which was inversely proportional to the reality on the ground. The two administrations' governance practices show the extreme dominance of the President's power so that the constitutional practice during the Old and New Order administrations did not create a tradition of oversight and balance between state institutions, particularly oversight between the legislature and the executive as mandated by the constitution.

History proves that the 1945 Constitution is the highest written basic law in the state (the higher law of the land), both at the central and regional levels, containing the distribution of power both vertically and horizontally (Sansuse, 2015). Various functions between state organs are relatively much regulated, including functional relations or power relations between one organ and another state organ (Jurnali, 2015). Amendments to the 1945 Constitution need to be carried out because of several weaknesses that make an undemocratic government appear (Jurdi, 2016). These weaknesses are:

First, the 1945 Constitution provides a strong basis for executive power (executive heavy). There is no system of checks and balances. In the New Order era, the president determined all national political agendas. Golongan Karya was very dominant in the MPR and DPR. The President is also the holder of power in the legislative field. Therefore, the supervision of the judicial and legislative institutions cannot be effective; because the power of the MPR and DPR lies more in the political aspect and is dominated by the President's political power, namely Golkar.

Second, the 1945 Constitution contains articles that have multiple interpretations. However, what must be generally accepted is the interpretation made by the President, such as the strength of Article 7 which states "The President and Vice President hold their posts for a period of five years and thereafter can be re-elected". The provisions of this article can be interpreted at least two kinds of interpretation, namely; can be re-elected multiple times after five years or can only be re-elected after his first term.

Third, the 1945 Constitution provides many attributions and delegations to the President to regulate important matters with laws and government regulations. The president is always in a more decisive position than the legislature, which has an impact on the amount of material in the law that comes from the will of the executive.

Fourth, the 1945 Constitution has too much faith in the goodwill of those in power, so that it depends more on the spirit of state administration than on strictly regulating power limitations.

With these weaknesses, during the 1945 Constitution (before the amendment), democracy was never achieved in Indonesia. To prevent authoritarian tendencies from recurring, the 1945 Constitution must be renewed to strengthen further and guarantee the implementation of democracy so that a state based on law is truly a means of realizing social justice for all Indonesian people (Susilo, 2018). Amendments to the 1945 Constitution to balance power between the legislative, executive, and judicial branches.

The organizational structure at the central level is regulated in the 1945 Constitution, which after the amendment to the 1945 Constitution consists of the MPR, DPR, DPD, President, BPK, the Constitutional Court (MK), and the Supreme Court (MA), as well as the judicial commission (non-judicial institutions) (Hassan, 2015). Each organ has a duty and function. However, in carrying out its functions, one state organ is not absolutely separate. The 1945 Constitution also regulates the relationship between state organs, both two-way and unidirectional relationships (Wijaya, 2016).. Although the DPR, according to Article 20 verse (1) of the 1945 Constitution (amendments), is the main power holder to formulate laws, the President still has the right to propose the Bill. Therefore, to discuss the Bill, the President and the DPR were involved together in its formation as a whole (Lewis, 2005).

From the description above, researchers are interested in knowing the relationship between the legislature and the executive in the 1945 Constitution from Indonesian Constitutional Law.

B. METHOD

³⁰ The method used by researchers in this research is normative juridical ²⁷ with a descriptive analysis approach. Researchers used data sources derived from primary

legal materials, secondary legal materials, and tertiary legal materials. Initial research begins by analyzing objective law (legal norms), then analyzing subjective law following the researcher's point of view based on a historical point of view and has been applied to date. The research method used is a literature study with deductive analysis.

C. RESULT AND DISCUSSION

1. Executive Position

State power that is concentrated in one institution results in various negative side effects; this is why society wants a change in the distribution of power that is more assertive. Coupled with calls from all over for democratization in all fields, the President's position in the 1945 Constitution needs to be reexamined. The amendments to the 1945 Constitution manifested this during the 1999-2002 period. An example of an article in the 1945 Constitution that is considered crucial and requires immediate amendment is Article 5 verse (1) of the 1945 Constitution, which states that the President has the power to make laws that should be the DPR function. This article has been amended through the First Phase Amendment of the 1945 Constitution stipulated in the General Session (SU) of the MPR-RI in October 1999 to become "The President has the right to submit a Draft Law (RUU) to the DPR" (Aryani, 2018).

With this change, there is a shift in power to form laws, which previously were under the President's power to become the power of the DPR. So far, with the power to form laws that are with the President, the contents of the drafted laws will benefit the President. Meanwhile, the DPR's role is limited to approving or rejecting the bill submitted by the executive. DPR members' right to submit a bill is complicated by the many requirements in the rules of procedure. On this basis, it cannot be denied that many laws were born due to the President's political will (executive) (Fauzi, 2005). The dominance of the President's position in the formation of laws is inseparable from the effect of not purely applying the Montesquieu Theory in the Trias Politica, namely Separation of Power, but refers to the diffusion of the power system (Armia, 2016).

According to experts, the Indonesian government system before the amendment is often said to be a semi-presidential system or the MPR system (Jurdi, 2019). In this system, the President as an executive is responsible for the MPR and carries out the

duties according to the GBHN set by the MPR (Azahary, 2015). One of the amendments to the 1945 Constitution's goals is to tighten the government that adheres to a presidential system centered on executive power (president) as head of government and does not depend on the legislature as before the amendment (Tutik, 2016). That is why, when the reform era opened up opportunities for amendments to the 1945 Constitution, the idea emerged to include a system of checks and balances between the legislature, executive, and judiciary. In terms of the relationship between the executive and legislature, the president's dominance in the legislative process is shifted by the DPR (Nurtjahjo, 2005).

Amendments to the 1945 Constitution that have been made four times in a row, namely: (1) On October 19, 1999; (2) On August 18, 2000; (3) On November 9, 2001; and (4) On August 10, 2002 (Gunawan, 2008). This amendment has had a major impact on changes to the Republic of Indonesia's state administration system, bringing the government into a better presidential system (Huda, 2001). Meanwhile, the view of other experts states that the amendment strengthens the legislative organs. Judging from the tendency for the growing legislature to be heavy (Johan, 2018). This raises ambiguity/dualism between presidential and parliamentary. This instability is due to the multiparty system adopted by Indonesia. It is believed to have led to the state of a minority president and a divided government, further distancing the harmony between the executive and the legislature (Rose, 2004). Article 1 of Law No. 10 of 2004 states: (1) Legislative regulations are written regulations established by state institutions or authorized officials and are generally binding; (2) Laws are statutory regulations established by the DPR with the approval of the President.

Amendments in Article 5 verse (1) of the 1945 Basic Law and Article 20 verse (1) of the 1945 Basic Law in the formation of laws have influenced the shift in power in the formation of laws from the President's power to the power of the DPR. Based on Article 5 verse (1) and Article 20 verse (1) of the 1945 Constitution, the power for the formation of laws from the President is shifted to the DPR, which will change the law-making format. Historically, these two organs have shown a less harmonious relationship from time to time (Susilo, 2013). In the first amendment, the substance amended involves two things, namely: (1) Empowering the DPR, (2) Limiting the power of the President. Initially, the President held power to form a law with the approval of the DPR; then, in this first amendment, the opposite occurred, the DPR formed the law (Article 20 verse

(1), while the President had the right to submit a bill to the DPR (provisions in Article 5 verse (1)) (Latif, 2013).

Through this change, the DPR position has become stronger, not only limited to enacting laws but also having a role in the appointment of state officials and granting amnesty and abolition. Even the DPR has a supervisory function as stipulated in Article 20A verse (1), which states "DPR ³has a legislative function, a budgetary function and a supervisory function." The supervisory function was originally regulated in the explanation of the 1945 Constitution. In the checks and balances system, the President as the chief executive has an equal position but controls one another from one organ to another. Parliament plays the role of the holder of legislative power following presidential principles; the President cannot dissolve Parliament. Likewise Parliament can only demand the President's dismissal if the President is proven to have violated the law.

Between four forms of purification, three are directly related to the relationship between the president and the DPR. The change in elections from a representative system to a direct election, for example, is a major step as part of efforts to purify the presidential system. However, as long as the system representatives still elect ²the president and vice president, it is difficult to avoid the president/vice president from being accountable to the institution that elects him. Referring to the experience under the 1945 Constitution, the presidential and vice-presidential elections conducted by the MPR have forced the highest executive leadership to be politically accountable to this institution. The representative institution will dismiss the president for political reasons.

2. Checks and Balances System

Concerning these checks and balances, the idea of changing the parliamentary system from the supremacy of the MPR is proposed, which consists of three elements, namely; (1) DPR, Regional Representatives and Class Representatives become bicameral system (two chambers) parliament which takes place in a relationship of checks and balances with other institutions, particularly with the executive and judicial institutions. The political representative is the DPR, while the territorial representative institution is the DPD, which has the legislative function of the elected representatives through elections (Kuswanto, 2020).

After the idea of reform in 1998, which impacted political change after the 1998 reformation, it has pushed the DPR institutions to become more democratic and accountable. This at least provides a new performance for the DPR, which was previously considered to have less role in carrying out its functions during the New Order era. After the reformation the role and function of the DPR RI was returned to its original place as a legislative institution that carried out its functions (Susanto, 2014). The functions of the DPR in the check and balance system after amendments are:

First, Legislation Function. Namely, the function of the legislature to form laws. This function is the primary function of the people's representative institutions in the form of a regulatory function (regaled function), which is the authority to determine regulations that bind and limit citizens with legal norms. This regulatory function is more concretely manifested in the formation of laws (*wetgevende* function/law-making function). The legislative function has four forms of activity, namely: (1) Law-making initiatives; (2) Discussion of a bill; (3) Approval of the ratification of a bill; (4) Granting of binding approval or ratification of treaties on international agreements and other legal documents.

Five important stages in the law-making process must be used as a benchmark, among others: (1) the bill comes from the DPR and the government. Development does show that the number of bills originating from the DPR is far greater compared to the previous era. Nevertheless, even that is not sufficient because the 1945 Constitution prioritizes the DPR in using the legislative function compared to other functions; (2) Research and preparation of academic texts. Academic papers are needed to explain the logic and reasons that support the importance of the draft law being made into law; (3) Priority for deliberation of laws. This is necessary to answer precisely the needs of state administration; (4) Preparation of a draft law. Namely, the preparation of the main ideas in the academic manuscript is then used as legal norms; (5) Public access in the process of discussing laws.

The second, The Budget Function. The budget function (budgeting) is part of the legislative function to determine the APBN for each fiscal year. In this case, the DPR plays a role in forming laws as a legal basis for the government to make public policies as explained in the concept of democracy, which means the community's role in making public policies (public policy). The APBN contains a systematic and detailed list containing plans for state revenues and expenditures for one fiscal year (1 January - 31

December). The legal basis and procedures for preparing the APBN are contained in the 1945 Constitution Article 23 verse (1), (2), and (3).

Article 23 verse (3) states that if the DPR disapproves of the President's RAPBN proposed, the government will carry out last year's APBN. In an emergency (for example, a natural disaster), the Government can make expenditures for which the budget is not yet available at least 6 (six) months after the end of the fiscal year. The president's accountability for implementing the state budget to the DPR is in the form of financial reports that have been audited by the BPK. Based on Article 15 verse (1) of Law Number 17 of 2003 concerning State Finance (Law No. 17 of 2003).

The Third, the Supervision Function. The DPR also functions as a control institution (supervisor) of the running of the government. This supervisory function is regulated in Article 20 a verse (1) of the 1945 Constitution, which explains that the DPR ³has a legislative function, a budgetary function, and a supervisory function. In explaining the 1945 Constitution, it has significant meaning because the DPR can propose to the MPR to ask for accountability from The President is in a special session if the President is deemed to have violated existing provisions (Rindawan, 2018).

The control function by the DPR (real parliamentary control) can be carried out in 3 (three) forms (Muttaqin, 2019), namely: (1) Control of executive; (2) Control of expenditure. And (3) Control of taxation (Supervision control). In building public government management, supervision is an important aspect to keep government functions running well. About the implementation of the supervisory function, the DPR has (1) Interpellation rights; (2) Right to inquiry; and (3) The right to public opinion. The implementation of the supervisory function with the rights of the DPR cannot be separated from the checks and balances between the DPR and the President which were built through the amendments to the 1945 Constitution, which strengthen the role of the DPR on the one hand and reduce the power of the President on the other (Rahadian, 2018).

For example, the supervision in Article 23 of the 1945 Constitution is a source of authority for the DPR to determine the State Budget, which provides a juridical, philosophical understanding as a form of people's sovereignty. The DPR position in determining and supervising the APBN is a manifestation of the management of state

finances, which is the same task as the government, especially in making laws and establishing the APBN.

D. CONCLUSION

The government system becomes purely presidential after previously being semi-presidential. In this new system, the executive (president) is no longer accountable to the MPR. The legislative function holder is the DPR, carried out jointly with the President to obtain joint approval. In the passage of laws, the President has the authority to pass laws with a certain time limit to ratify a law and as the basis for the legislative function. The DPR after the written amendment in Article 20A Verse (1) of the 1945 Constitution, namely the ³House of Representatives, has a legislative function, a budget function, and a supervisory function. The legislature has the authority to *check and balance*, namely by reducing executive power not to exceed the limit or have absolute power.

REFERENCES

1. Armia, M. S. ¹⁷ (2016). Eksekutif Review Terhadap Perda Retribusi di Daerah Otonomi Khusus. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 5(2), 245-260.
2. Aryani, N. M., & Hermanto, B. (2018). ¹⁶Rekonstruksi Kejelasan Kedudukan Wakil Presiden dalam Kerangka Penguatan dan Penegasan Sistem Presidensiil Indonesia. *Jurnal Legislasi Indonesia*, 15, 91-101.
3. Azhary, H. M. T. (2015). ²⁶*Beberapa Aspek Hukum Tata Negara, Hukum Pidana dan Hukum Islam*. Prenada Media.
4. ¹⁹Gunawan, W. A. (2008). Pemakzulan (Impeachment) Presiden dalam Perspektif Hukum Tata Negara. *Jurnal Hukum & Pembangunan*, 38(3), 416-438.
5. ¹³Hassan, M. M. (2015). Transformation to more-accrual-based accounting practices in Indonesian Government. *Journal of International Business Research*, 14(1), 139.
6. Huda, N. M. (2001). ²²Hak Prerogatif Presiden dalam Perspektif Hukum Tata Negara Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 8(18), 1-18.

7. ¹⁵Johan, T. S. B. (2018). *Hukum Tata Negara dan Hukum Administrasi Negara dalam Tataran Reformasi Ketatanegaraan Indonesia*. Yogyakarta: Deepublish.
8. Jurdi, F. (2019). *Hukum tata negara Indonesia*. Jakarta: Kencana.
9. ²Jurdi, F. (2016). Eksistensi Parlemen Indonesia Setelah Amandemen Konstitusi. *Jurnal Hukum Staatrechts*, 2(1). 23-34.
10. ¹²Jurnali, T., & Siti, N. A. K. (2015). Performance Management System for Local Government: The Indonesian Experience. *Global Business Review*, 16(3), 351-363.
11. Kuswanto, H., & Atmoko, A. D. (2020). ²⁵Konsepsi Kekuasaan Legislasi Presiden dalam Undang-Undang Dasar 1945. *Jurnal Hukum Bisnis*, 4(1), 346-362.
12. Koynja, J. J. (2017). ²⁴Konstitusionalitas Fungsi dan Wewenang Wakil Presiden RI setelah Amandemen UUD 1945. *Jatiswara*, 30(2).
13. ²⁹Latif, Y. (2013). *Negara Paripurna*. Jakarta: Gramedia Pustaka Utama.
14. ⁸Lewis, B. D. (2005). Indonesian Local Government Spending, Taxing and Saving: An Explanation of Pre-and Post-decentralization Fiscal Outcomes. *Asian Economic Journal*, 19(3), 291-317.
15. ¹¹Muttaqin, E. Z. (2019). Konsep Pemisahan Kekuasaan (Separation of Power) Pasca Amandemen UUD 1945 Antara Lembaga Eksekutif dan Legislatif. *Al Qisthas: Jurnal Hukum dan Politik Ketatanegaraan*, 6(1), 14-31.
16. ¹⁰Nurtjahjo, H. (2005). Lembaga, Badan, dan Komisi Negara Independen (State Auxiliary Agencies) di Indonesia: Tinjauan Hukum Tata Negara. *Jurnal Hukum & Pembangunan*, 35(3), 275-287.
17. ⁷Rahadian, I. (2018). *Analisis Pengaturan Hak-Hak DPR dalam Undang-Undang Nomor 17 Tahun 2014 (Studi terhadap Hak Interpelasi, Angket dan Menyatakan Pendapat Dalam Sistem Pemerintahan Pasca Amandemen UUD 1945)* (Master's thesis, Universitas Islam Indonesia).
18. ²¹Rindawan, I. K. (2018). Studi Komparatif Tugas dan Fungsi Presiden dalam Sistem Ketatanegaraan Sebelum dan Sesudah Amandemen UUD 1945. *Widya Accarya*, 9(2).
19. ²Rose, M. (2004). Democratizing information and communication by implementing e-government in Indonesian regional government. *The International Information & Library Review*, 36(3), 219-226.
20. ⁹Sensuse, D. I., Cahyaningsih, E., & Wibowo, W. C. (2015). Knowledge management: organizational culture in Indonesian government human capital management. *Procedia Computer Science*, 72, 485-494.

21. ⁶Susanto, E., Budiharto, B., Suharso, S., & Dewi, D. A. S. (2014). Pelaksanaan Kekuasaan Pemerintahan Oleh Presiden Pasca Amandemen UUD 1945 (Studi Periode 2004-2009). *Varia Justicia*, 10(2), 1-7.
22. ⁵Susilo, A. B. (2013). Reformulasi Perbuatan Melanggar Hukum Oleh Badan Atau Pejabat Pemerintahan dalam Konteks Kompetensi Absolut Peradilan Tata Usaha Negara. *Jurnal Hukum dan Peradilan*, 2(2), 291-308.
23. ¹⁴Susilo, D., & Roesli, M. (2018). Konsepsi Kekuasaan Legislasi Presiden dalam Undang-Undang Dasar 1945. *Mimbar Yustitia*, 2(2), 159-172.
24. ²³Tutik, T. T. (2016). *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*. Jakarta: Prenada Media.
25. ⁴Wijaya, A., & Glasbergen, P. (2016). Toward a New Scenario in Agricultural Sustainability Certification: The Response of the Indonesian National Government to Private Certification. *The Journal of Environment & Development*, 25(2), 219-246.

Mechanism_of_the_President_and_DPR_Relationship.

ORIGINALITY REPORT

16%

SIMILARITY INDEX

15%

INTERNET SOURCES

10%

PUBLICATIONS

%

STUDENT PAPERS

PRIMARY SOURCES

1	Matylda Awedyk, Agnieszka Niezgoda. "New opportunities for future tourism after 25 years of political and socioeconomic transformation – foresight in Poland's tourism planning", Journal of Tourism Futures, 2016 Publication	2%
2	journal.unnes.ac.id Internet Source	1%
3	iosrjournals.org Internet Source	1%
4	www.tandfonline.com Internet Source	1%
5	jurnal.unikamamuju.ac.id Internet Source	1%
6	journal.ummgl.ac.id Internet Source	1%
7	dspace.uii.ac.id Internet Source	1%

8	Internet Source	1 %
9	slis.scu.ac.ir Internet Source	1 %
10	bemkm.ugm.ac.id Internet Source	1 %
11	ejournal.ihdn.ac.id Internet Source	1 %
12	www.psc.gov.za Internet Source	1 %
13	journal.iainkudus.ac.id Internet Source	1 %
14	www.yurisdiksi.org Internet Source	<1 %
15	ejournal.umm.ac.id Internet Source	<1 %
16	sinta3.ristekdikti.go.id Internet Source	<1 %
17	repository.ar-raniry.ac.id Internet Source	<1 %
18	digilib.uinsby.ac.id Internet Source	<1 %
19	Muhammad Aksan Akbar. "Politik Hukum	<1 %

Pemberhentian (Pemakzulan) Presiden dan/atau Wakil Presiden di Indonesia dalam Prespektif Negara Hukum dan Demokrasi", SASI, 2020

Publication

-
- | | | |
|-----------|--|----------------|
| 20 | Yusdiyanto Yusdiyanto. "Reviving the Broad Guidelines of State Policy (GBHN) as the Product of People's Consultative Assembly (MPR) in the Presidential Government System in Indonesia", FIAT JUSTISIA:Jurnal Ilmu Hukum, 2018 | <1 % |
| <hr/> | | |
| 21 | id.123dok.com
Internet Source | <1 % |
| <hr/> | | |
| 22 | www.neliti.com
Internet Source | <1 % |
| <hr/> | | |
| 23 | fr.scribd.com
Internet Source | <1 % |
| <hr/> | | |
| 24 | jatiswara.unram.ac.id
Internet Source | <1 % |
| <hr/> | | |
| 25 | jurnal.narotama.ac.id
Internet Source | <1 % |
| <hr/> | | |
| 26 | jurnalfai-uikabogor.org
Internet Source | <1 % |
| <hr/> | | |
| 27 | lawjournal.ub.ac.id
Internet Source | <1 % |

28

www.socialsciencejournal.org

Internet Source

<1 %

29

Dwi Septiwiharti. "BUDAYA SINTUVU
MASYARAKAT KAILI DI SULAWESI TENGAH
[THE SINTUVU CULTURE OF THE KAILI
PEOPLE IN CENTRAL SULAWESI]", Naditira
Widya, 2020

Publication

<1 %

30

download.atlantis-press.com

Internet Source

<1 %

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off