

## **DEMOCRACY IN THE CONSTITUTIONALITY SYSTEM IN INDONESIA**

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### **ABSTRACT**

Democracy is a form or mechanism of a Government System of a country as an effort to realize sovereignty over the state to be carried out by that State Government. Based on that democratic system, democracy in Indonesian constitution can be found in the concept of democracy in which contained in UUD 1945 as "Staats Fundamentalnorm". The formulation of sovereignty in the hands of the peoples shows that the position of people is the highest and most central. People are the origin and the goal of state power, therefore people are constituted as the central paradigm of state power.

One of democracy pillars is the principle of trias politics. It divides the three state political powers (executive, legislative and judicial) to realize the three types of state institutions that are mutually independent and ranked in parallel in each other. The parallel and independence of the three state institutions types are needed in order to make these three state institutions can supervise and control each other based on the check and balances principle.

**Keywords:** Democracy, Constitutionality System

### **INTRODUCTION**

Seen from the constitutionality historical reality, Indonesia as one of the postcolonialist countries, democracy is used as its constitutional principles. But until now, it can be said that it has not found a definite route in realizing changes in UUD 1945 to establish equal and balanced check and balances between its branches of power. It is also for realizing the supremacy of law and justice and guaranteeing the protection of human rights. Starting with the amendments to UUD 1945 (1999), amendments to UUD 1945 (2000), amendments III to UUD 1945 (2001) and changes to IV UUD 1945 (2002) which were so fast had caused fundamental changes to the Indonesian constitutional system even though they could be applied change, at least requires more than 20 organic laws which are certainly not easy to compile.

Within certain limits of amendment I of UUD 1945 has shifted the focus of government from the executive to the legislature. The entire process of this change eliminated various parliamentary

authorities in other sessions. In the amendment II of UUD 1945, there were four changes, namely the question of human rights, the autonomy of the regional government, the defense of state security and the matter of territory, also the symbol of the state and peoples.

The amendments to III and IV of UUD 1945 have changed fundamental matters related to the conviction that sovereignty is in the hands of the people and carried out according to the Constitution, as well as the determination of the authority of MPR, DPR and DPD, rule elucidation of law in UUD 1945 and others. Various historical facts show that the parliament has been formed with different systems and institutions, but the instruments related to democratic representation are the most strategic issues to be studied in order to overcome the main weaknesses of democracy without constructive steps, unconstitutionalism and autoitarianism as what happened in the past will continue take place.

From the description above, problems arise as follows:

1. What is the concept of democracy in Indonesia?
2. What is the Indonesian constitutional system after the amendment to UUD 1945?

## **RESEARCH METHODS**

In this study using the following methods:

1. Library Research which studies libraries and other scientific works related to the problems under study in order to obtain a theoretical and legal basis that is related to the discussion or problems studied.
2. Research normative law in the form of data obtained from library studies consisting of provisions or legal regulations, newspapers, legal magazines, journals and others all of which are relevant to the problems to be investigated.

## **RESEARCH RESULTS AND DISCUSSION**

### **1. Forms and Concepts of Democracy in Indonesia**

The term democracy comes from "demos" which means the people and "kratos" means government, so that it can be interpreted as a people's government, the Indonesian people have long practiced the idea of democracy that is still at the village level called village democracy. Examples of the implementation of village democracy are village head election and village consultation, this is genuine democracy.

Village democracy has five characteristics: meeting, consensus, mutual cooperation, the right to hold a joint process, the right to step aside from absolute king power. Using a contextual

approach, democracy in Indonesia is a Democracy of Pancasila. Indonesia, the basis of the Indonesian state and the Pancasila as the ideal of society and as a guide to making political decisions, as a unifying society that can resolve conflicts. Democratic values contained in the Pancasila values are as follows:

- a. People's sovereignty
- b. Republic
- c. State based on law
- d. The Governing constitutional
- e. Representatives system
- f. Deliberation principle
- g. Divinity principle

Democracy of Pancasila can be interpreted broadly and narrowly. Broadly speaking, Democracy of Pancasila means people's sovereignty based on the Democracy of Pancasila means people's sovereignty carried out according to wisdom of wisdom in deliberation / representation. In connection with Democracy of Pancasila in Indonesia know that the term "civil society". Civil Society is a complex network of NGOs outside the government of a country that works independently or jointly with the government regulated by law. Indonesian civil society is not entirely the same as the Civil Society according to the concept of western communist liberalism. Indonesian civil society has a characteristic, remains religious or religious and there are more tangible facilities from the state in terms of providing legal guarantees and political support for the presence of civil society, a cultural and ideological atmosphere and providing social infrastructure and what is needed.

The connection of Democracy of Pancasila with Indonesian civil society is qualitatively characterized by the supreme faith and devotion to God, the guarantee of human rights in upholding the rule of law principle, broad participation of peoples in making public decisions at various levels, implementation of peopleship education to develop smart and good Indonesian peoples, good morals and noble deeds.

The failure to establish a democratic culture has made it difficult for people to manage. Violence, terror, brutality, public insecurity. Indonesia already has a democratic institution, people have not enjoyed democracy either among the government, business services have happened to oppression of workers. It seems that democracy is still a business and is still limited to the elite. Here the institution is not supported by democratic behavior. Achieving democracy until it touches people's lives is long and difficult, so it is still absolutely imperative to be treated.

## **The Concept of Democracy in Indonesia**

### **Concept of Power**

The concept of state power according to democracy as contained in UUD 1945 as follows:

- a. Opening of UUD 1945, paragraph IV.
- b. The main idea in the opening of UUD 1945.
- c. UUD 1945 Article 1 paragraph (1)
- d. Indonesia is a unitary state in the form of a republic.
- e. First article, paragraph (2) of UUD 1945.
- f. Kedaulatan in the hands of the people and is based in accordance with the Constitution.

According to RI provisions that state the highest authority/ sovereignty is in the hands of the people and the realization set in the state constitution, before the amendment of the highest power carried by the Assembly.

### **Division of Power**

As explained that the highest power in the hands of the people and carried out according to the Constitution, therefore the power according to democracy as stated in UUD 1945 is as follows:

Executive power, delegated to the president (article 4/1 of UUD 1945) "the president of the Republic of Indonesia holds the power of government based on the Constitution".

Legislative power is delegated to the president and MPR and DPD (articles 5/1. 19 and 22 of UUD 1945), "the president establishes government regulations to enforce the law" (article 5 paragraph (2)). The composition and position of DPD is regulated by law (Article 22 C paragraph 4) . Judicial power is delegated to the supreme court (article 24 paragraph (1) of UUD 1945.) "Judicial power is an independent power to conduct justice to uphold the law and justice of executive power, or supervision delegated to the BPK and DPR (article 20 paragraph (1)).

DPR holds the power to form a law. In UUD 1945, the amendments result in no concessional power which in the Constitution (before amendment) was delegated to DPA (Article 16 of UUD 1945). Such a mechanism of delegation of power in constitutional law and political science is known as "Distribution of power" which is an absolute element of a democratic state.

### **Limitation of the Power**

Can be seen through the five-year process or mechanism of power in UUD 1945 as follows:

- a. Article 1 section (2) of UUD 1945, the people's political sovereignty is carried out through the election of the power to make changes to the Constitution, appoint the president and impeachment to the president if it violates the constitution.
- b. Article of 20 section 1.
- c. DPR has legislative functions, budget functions and supervisory functions (\*\*)
- d. People held another election after forming MPR and DPR.

### **Decision Making Concept**

Decision making according to UUD 1945 is detailed as follows:

- a. Explanation of UUD 1945 on the subject III.
- b. MPR's decision are appointed with the highest vote (for example article 7B section 7)

The decision of MPR on the proposal for the dismissal of the president and / or vice president must be taken at MPR plenary meeting attended by at least 3/4 of the total members and approved at least 2/3 of the members present, after the president and/or vice president given the opportunity to deliver an explanation at MPR plenary meeting (\*\*\*) .

These provisions contain the basic points that the concept of decision making adopted in Indonesian constitutional law are based on:

- a. The decision is based on a deliberation as its principle, meaning that all decisions taken as far as possible are reached by deliberation to reach consensus.
- b. If it is not achieved, it will be possible decision by majority vote.

### **Concept of Supervision**

The concept of supervision according to UUD 1945 is determined as follows:

- a. Article 1 section (2), the people have the highest power, the guarantee is carried out and distributed according to the Constitution. Unlike the Constitution before the amendment, MPR has the highest power as the incarnation of people's power. The constitution as a result of MPR amendment was limited, which included the president and vice president and dismissed the president according to his term of office or if he violated the Constitution.
- b. Article 2 Section (1), MPR consists of DPR and members of DPD. Based on the provisions, according to UUD 1945 the results of the amendments to MPR have only been selected through elections.

- c. explanation of UUD 1945 is concerning on DPR.  
Based on these provisions, the concept of supervision according to Indonesian democracy as stated in UUD 1945 is basically as follows:
  - a. It is done by all peoples. Because power in the Indonesian constitutional system is in the hands of the people.
  - b. Constitutional supervision, formally are in DPR.

### **Concept of Participation**

- a. According to Article 27 paragraph (1) of UUD 1945  
All of people together with its position in law and government and shall abide by the rule of law and without any exception.
- b. Article 28  
For the freedom of association and assembly, issuing thoughts by word of mouth and writing is stipulated by law.
- c. Article 30 section (1) \*\*)  
Each of every people is entitled and obliged to participate in the defense and security of the state.

## **2. Indonesian State Constitutionality System After Amendments to UUD 1945**

One of the most important contents of a constitution (constitution) is how the administration of the state constitutional system is carried out by organs or state institutions is a sub-system of the entire system of administration of the state. The system concerns the mechanism and procedures of work between the state organs as a unified whole in carrying out state power. State institutions that are given the power to achieve state goals.

The amendment to the constitutional system carried out through changes to UUD 1945 is an attempt to cover up various weaknesses of UUD 1945. As the result, the direction of change is to, among other things, reinforce some principles of administration before the change, namely the principle of state law (rechts staat), and the principle of a constitutional system (constitutional system), rearranging) state institutions and establishing new state institutions to conform to the constitutional system and state principles based on the law. This change did not change the systematics of the previous UUD 1945 to safeguard the welfare and originality of UUD 1945, changes were mainly shown in the improvement on the position and authority of each state institution adapted to the development of modern democracies.

### **Principle of the Law State**

Amendments to UUD 1945 reinforce the principle of the rule of law and include article 1 paragraph (3) of UUD 1945, which says "the Indonesian state is a legal state" / the intended state of law is a country that places judicial power as independent power respecting human rights and the principle of due proc law. The implementation of an independent judicial power is listed in Chapter IX which amounts to 5 articles and 16 section (before the change only 2 articles with 2 section) .

The power of Judicial is the approaching power to carry out justice in order to uphold law and justice (article 24 paragraph (1) of UUD 1945). Judicial power is carried out directly by the Supreme Court (MA) and the judiciary under it in the general court environment of the military justice religious court, the state administrative court and by the constitutional court (MK). Whereas other bodies of functions relating to judicial power are regulated in law.

This guarantee of an independent judicial power is reflected in the strict authorization in the articles of UUD 1945 and the mechanism of mutual control between the judicial commission (KY), DPR, the president, and the Supreme Court appointment of 9 judges in which each are appointed by DPR, President and MA.

Human rights are regulated very completely in UUD 1945 which has been amended in separate chapter, namely chapter XA which consists of 16 articles 24 section before the change is only 2 articles 1 verse.

The above arrangement is intended to guarantee the protection of human rights both for every people and every person in the territory of the Republic of Indonesia is the running of a government based on the principle of due process of law that every action on government policy must be based on applicable provisions. Every state policy and government can be sued by every people or every person in the event of encroachment or violation of law against the rights of peoples guaranteed by the constitution.

### **Constitutional System Based on Check And Balance**

The amendment to UUD 1945 concerning the administration of a constitutional system is carried out to reinforce the power and authority of each state institution, reinforce the power limits of each state institution for each state institution and place it based on state administration function for each institution.

The system that will be built is a system of check and balance, namely the power of each power institutions of each state institution by the Constitution in which there is no highest and none is low, all are regulated based on their respective functions. On the basis of article 1 paragraph 2 of UUD 1945 spirit, that is the change of sovereignty in the hands of the people and carried out by

MPR into people sovereignty and carried out according to the Constitution by state institutions which regulate the power and authority in the Constitution .

Therefore the people's sovereignty is carried out by DPR DPD, the President of the BPK MA and others according to their duties and authority regulated by the Constitution, even the people can directly implement the system more clearly. UUD 1945 before the amendment is implementation of state power based on the constitution.

The authority and power of each state institution are regulated and specified in a manner and compensate and limit each other from the one based on Constitution provisions. It is the term which is called as the Check and Balances system (protection of power) even every people can go through a state organ called the Constitutional Court if there is a state that violates its initial rights to constitutional rights which are guaranteed by the Constitution.

This system remains in the presidential government system, even reinforcing the presidential system, namely the president is not responsible to the parliament under the supervision of DPR. The President can only stop in his term of office because he does so in the Constitution or no longer qualifies as president. DPR can propose to dismiss the president during his term as specified in the Constitution.

## **CONCLUSIONS AND SUGGESTIONS**

### **Conclusions**

Democracy is a system which shows that public policy is determined on the basis of a representatives majority who monitored effectively by people and government periodically based on the principle of equality and held in an atmosphere of freedom politics. Democracy as a system of the constitution is that every regulation should be balanced and prioritizing people behalf (government from, by, and for the people).

Democracy in Indonesia must refer to Indonesian personality, which is appropriate and in line with Pancasila and UUD 1945. The target is able to bring prosperity to Indonesian nation and to know its various personalities related with Indonesian state system and its implementation.

### **Suggestion**

Any efforts to understand the reality of constitutional systems need to be improved from constitutional perspectives systematically methodologically so that it can give importance not only for the academic world but for constitutionality practices as well.

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