

**SEPARATION AND DISTRIBUTION OF POWER IN THE
CONCEPT OF A DEMOCRATIC STATE IN INDONESIA**

***PEMISAHAN DAN PEMBAGIAN KEKUASAAN DALAM KONSEP
NEGARA DEMOKRASI DI INDONESIA***

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ABSTRACT

Democracy as a system of government which in modern times is adopted by almost all countries in the world, is developing very widely and dynamically along with the development of the state constellation. A system that positions the people as the final determinant of the exercise of power is considered ideal in constitutional life. Indonesia is one of the countries that implements the separation of powers in its government system as outlined in the 1945 Constitution. Based on the background above, the author can formulate the problem as follows: how is the Separation and Distribution of State Power in Indonesia, and what is the Concept of a Democratic State in Indonesia. The type of research used in this research is library research. Indonesia is a rule of law state where state power has been mentioned or regulated in the 1945 Constitution of the Republic of Indonesia. Indonesia as a rule of law state with a constitutional democratic system and the Constitution as a legal basis has the function of limiting the power of the three branches of government that hold the power. such as executive, legislative and judicial. This executive power is held by the president and vice president. The legislative power or law-making power is the People's Representative Council. And this judicial power is held by the Supreme Court, Constitutional Court and Judicial Commission. It should be noted that the Judicial Commission does not carry out judicial duties but still plays a role in the field of judicial power. The development of democracy in Indonesia can be divided into two stages, namely the pre-independence stage and the post-independence stage.

Keywords : Democracy, Government System, Power, State Administration.

ABSTRAK

Demokrasi sebagai sistem pemerintahan yang pada zaman modern ini dianut oleh hampir seluruh negara di dunia, berkembang dengan sangat luas dan dinamis seiring dengan perkembangan konstelasi kenegaraan. Sistem yang memposisikan rakyat sebagai penentu akhir penyelenggaraan kekuasaan dianggap ideal dalam kehidupan ketatanegaraan. Indonesia merupakan salah satu negara yang menerapkan pemisahan kekuasaan pada sistem pemerintahannya yang dituangkan pada UUD 1945. Berdasarkan latar belakang diatas, maka penulis dapat merumuskan masalah sebagai berikut: bagaimana Pemisahan dan Pembagian Kekuasaan Negara di Indonesia, dan bagaimana Konsep Negara Demokrasi di Indonesia. Jenis penelitian yang digunakan dalam penelitian ini adalah penelitian kepustakaan (library research). Indonesia sebagai negara hukum yang di mana kekuasaan negara telah disebutkan atau diatur dalam Undang-Undang Dasar Negara Republik Indonesia 1945. Indonesia sebagai negara hukum dengan sistem demokrasi konstitusional dan Undang-Undang Dasar menjadi sebuah pijakan hukumnya mempunyai fungsi untuk membatasi kekuasaan ketiga cabang pemerintahan pemilik kekuasaan seperti eksekutif, legislatif, dan yudikatif. Kekuasaan eksekutif ini dipegang oleh presiden dan wakil presiden. Kekuasaan legislatif atau kekuasaan pembuat undang-undang adalah Dewan Perwakilan Rakyat. Dan Kekuasaan yudikatif ini dipegang oleh Mahkamah Agung, Mahkamah Konstitusi, dan Komisi Yudisial, perlu diketahui Komisi Yudisial memang tidak melaksanakan tugas peradilan namun tetap berperan dalam bidang kekuasaan kehakiman. Perkembangan demokrasi di Indonesia dapat dibagi dalam dua tahap yaitu tahapan pra kemerdekaan dan tahapan pasca kemerdekaan.

Kata Kunci : Demokrasi, Sistem Pemerintahan, Kekuasaan, Ketatanegaraan.

I. INTRODUCTION

Democracy has an important meaning for the layers of society that use it, because democracy is the right of the people to determine for themselves the course of life of a country's organization. The concept of democracy was born from ideas about the relationship between the state and law, in ancient Greece it was practiced in state life in the 5th to 6th centuries, when the implementation of democracy was practiced in a direct manner (direct

democracy), meaning the people's right to make decisions. politics is carried out directly by all citizens acting based on majority procedures.

Democracy as a system of government which in modern times is adopted by almost all countries in the world, is developing very widely and dynamically along with the development of the state constellation. A system that positions the people as the final determinant of the exercise of power is considered ideal in constitutional life. However, decision making that relies on the one man one vote principle where the party with the most votes is the most decisive is a weakness that causes the existence of a democratic government system to be paradoxical because the majority of votes does not necessarily reflect justice and truth. So the system must be balanced with the principles of justice, democracy, or the rule of law, which is then called the principle of the rule of law or legal sovereignty.¹

Every country has a basic law/constitution which is the main thing and reference for the country in running the government. This also regulates the separation of powers and political systems in the country² one of the goals is to improve public services.³ Indonesia is one of the countries that implements separation of powers in its government system as outlined in the 1945 Constitution.

The principle of separation of powers was developed by two great thinkers from England and France, John Locke and Montesquieu. The concept of separation of powers put forward by these two great thinkers became known as the Trias Politica theory. According to John Locke, power is divided into three powers, namely:⁴

- 1) Legislative power, tasked with making regulations and laws.
- 2) Executive power, tasked with implementing the laws contained therein including the power to adjudicate.
- 3) Federative power, its duties include all actions to maintain state security in relations with other countries such as making alliances and so on (today it is called foreign relations).

Meanwhile, Montesquieu, in the issue of separation of powers, differentiates it into three parts, although there are differences with the concept presented by John Locke, namely :

- 1) Legislative power, tasked with making laws.

¹ Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Jakarta: PT. Bhuana Ilmu Populer, 2007.

² Suparto, "Teori pemisahan kekuasaan dan konstitusi menurut negara barat dan islam", *Jurnal Hukum Islam*, Volume 19, Nomor 1, Januari, 2019.

³ H Herizal, *et al.*, "Pendekatan Akuntabilitas Pelayanan Publik Dalam Mengikuti Perubahan Paradigma Baru Administrasi Publik", *Journal of Governance and Social Policy*, Volume 1, Nomor 1, Januari, 2020.

⁴ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Jakarta: Gramedia, 2002.

- 2) Executive power, tasked with implementing laws (but Montesquieu prioritizes actions in the field of foreign policy).
- 3) Judicial power, tasked with judging violations of the law.

From these two opinions there are differences in thinking between John Locke and Montesquieu. John Locke incorporated judicial power into executive power, while Montesquieu viewed the power of the court (judiciary) as an independent power. According to Montesquieu, in every government, the three types of power must be separated from each other, both regarding the tasks (functions) and regarding the equipment (organs) that carry them out. According to this teaching, there is no justification for interference or influence between one another. Therefore, Montesquieu's teachings are called separation of powers, meaning that each of the three powers must be separate, both the institutions and the people who handle them..⁵

Regarding the theory of separation, Montesquieu made an analysis of the British government and he stated; when the legislative and executive powers are united in the same person, or in the same high institution, there is no freedom. Once again there will be no freedom if judicial power is not separated from legislative and executive power. And in the end it would be a very sad thing if the same person or the same institution exercised all three powers, namely establishing laws, carrying out public decisions and adjudicating crimes or individual disputes.

The journey of the Indonesian government system began before the amendments to the 1945 Constitution of the Republic of Indonesia, namely the division of power into 6 institutions, namely the President, the People's Consultative Assembly, the People's Representative Council, the Financial Supervisory Body, the Supreme Advisory Council and the Supreme Court. However, after the amendment was carried out, power was divided into 7 institutions with the addition of one institution, namely the Regional Representative Council, where the Supreme Advisory Council was replaced by the Constitutional Court. This division of power is in line with the concept put forward by Montesquieu in stating that the Trias Politica provides limits on power where it is not permissible for only one political power, but must be distributed among several institutions.

Based on the background above, the author can formulate the problem as follows; what is the Separation and Distribution of State Power in Indonesia, and what is the Concept of a Democratic State in Indonesia.

⁵ Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum UI, 1983.

II. METHOD

The type of research used in this research is library research. Library research is data obtained through library research sourced from statutory regulations, books, official documents, publications and research results. This research is included as library research because the data used mostly uses secondary data in the form of legal documents.⁶

III. ANALYSIS AND DISCUSSION

a. Separation and Distribution of State Power in Indonesia

If we look at history, in relation to the separation of powers, before there were changes or amendments to the 1945 Constitution of the Republic of Indonesia which related to power, the sovereignty of the people rested with the People's Consultative Assembly. Its position as the highest institution proves that the People's Consultative Assembly has the authority or power to elect the President and Vice President. After there were changes to the 1945 Constitution of the Republic of Indonesia, state power was separated into executive, legislative and judicial powers. The aim is to create good government and the power of the state is not vested in one person, as was the case before the amendment to the 1945 Constitution of the Republic of Indonesia, which had the power to elect the President and Vice President.

John Locke said that the power to make laws and execute laws should not be held by the same person.⁷ According to him, if both types of power are held by one person, one organ, or one state institution, then that person or institution will not be able to act fairly. As an illustration, the House of Representatives has the power to make laws to be implemented by other institutions including the House of Representatives itself, and the laws that have been made by the House of Representatives are used by the executive power, as well as the judiciary. So, there is mutual control (checks and balances) between the three branches of government that have the power. This means that John Locke's opinion above has been applied by the Indonesian people, where no formation and implementation of laws is carried out by one person or institution.

Indonesia as a rule of law state with a constitutional democratic system and the Constitution as its legal basis has the function of limiting the power of the three branches of government that hold power such as the executive, legislative and judiciary. So that the implementation or implementation of a power owned by the government is not exercised with authority. So in this way the rights or interests of the people can be felt. This kind of concept is called constitutionalism according to Dahlan Thaib. This is also in line with

⁶ Supriyadi, "Penerapan Hukum Pidana Dalam Perkara Pencemaran Nama Baik", *Jurnal Mimbar Hukum*, Volume 22, Nomor 1, Februari, 2010.

⁷ Encik Muhammad Fauzan, *Hukum Tata Negara Indonesia*, Malang: Setara Press, 2017.

the opinion of Mahfud MD who stated that constitutionalism is a political idea about how to limit government power through making a constitution, both written and unwritten. We can see Mahfud MD's opinion in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia that constitutionally the state recognizes the existence of indigenous peoples, both respecting the rights or customary laws that apply. This means that the state has limited itself in terms of the interests of indigenous peoples, where even though the applicable customary law is not explicitly or even not written at all in statutory regulations, the existence of customary law is still recognized by the law in force in the State of Indonesia.

Executive power according to Wynes is implementing laws and carrying out government affairs in order to create order, security and so on.⁸ Meanwhile, according to Bagir Manan, government duties or authority can be divided into several groups, namely administrative duties and authority for administering state administration, administration in the security sector, administration in the field of public services, and administration in the field of administering public welfare. This executive power is also stated in the 1945 Constitution of the Republic of Indonesia that government power covers the administrative, judicial, military and diplomatic fields.

This executive power is held by the president and vice president. In terms of power, the most prominent of the several areas of government or presidential power that have been described above are the areas of implementation of legislation or administration of state administration and the area of judicial authority. It is through these two areas of presidential power that directly confront or come into contact with the interests of the people. As an illustration, a president has the right to submit draft laws. Each bill must be approved by the House of Representatives. Apart from that, the president also has the right to establish government regulations to implement laws and form presidential regulations. However, the president's power is limited by the legislative power or in this case the House of Representatives, as mentioned above, the president's power in establishing government regulations, presidential regulations and so on must obtain approval from the House of Representatives, so in that case whatever policy that will be issued by the president as the holder of executive power there are limits to his power.

The next organ of government power is the legislative power or law-making power. What is included in this legislative power is the People's Representative Council. According to Jimly Asshiddiqie, the People's Representative Council has three functions, namely legislative, budget and supervisory functions.⁹ According to him, more broadly, the functions of the people's representative institutions are regulatory functions, supervisory

⁸ Encik Muhammad Fauzan, *loc.cit.*

⁹ Jimly Asshiddiqie, *loc.cit.*

functions and representative functions. Looking at the general function of the People's Representative Council as a representative of the people, which if we relate it to the concept of constitutionalism then the people's representative institution should prioritize the interests of the people in accordance with the basic law of the constitutional state that sovereignty is in the hands of the people.

Then next is the judicial branch of government power. This judicial power is held by the Supreme Court, Constitutional Court and Judicial Commission. It should be noted that the Judicial Commission does not carry out judicial duties but still plays a role in the field of judicial power (Article 24B of the 1945 Constitution of the Republic of Indonesia). Where in general this judicial power functions as a punishment or sanction for a violation of the provisions of the law. In Indonesia, the judiciary is known as the administrator of judicial power, which in general we can understand as an independent power to administer justice with the aim of carrying out law enforcement for the sake of achieving justice. K. Wantjik Saleh said that judicial power is separate from interference from government or executive power and statutory or legislative power and is also independent from the influence of these two powers.¹⁰

b. The Concept of a Democratic State in Indonesia

The development of democracy in Indonesia can be divided into two stages, namely the pre-independence stage and the post-independence stage. The development of democracy in post-independence Indonesia has experienced ups and downs (fluctuations) from the time of independence until now, during the 55 year journey of the Indonesian nation and state, the main problem faced is how democracy manifests itself in various aspects of national and state life, such as in the political field, economic, legal and socio-cultural. As an order of life, the core of a democratic order of life is empirically related to the issue of the relationship between the state or government and the people, or conversely the relationship between the people and the state or government in a position of balance (equilibrium position) and carrying out mutual supervision (check and balance).¹¹

The development of democracy in Indonesia seen in terms of time is divided into four periods, namely:¹²

1. Period Parliamentary Democracy 1945-1959

Democracy at this time was known as Parliamentary Democracy. The parliamentary democracy system came into effect a month after independence was proclaimed and began to be strengthened in the 1945 and 1950

¹⁰ Encik Muhammad Fauzan, *loc.cit.*

¹¹ Puslit IAIN Syarif Hidayatullah, *Pendidikan Kewarganegaraan Demokrasi, Ham Dan Masyarakat Madani*, Jakarta: IAIN Jakarta Press, 2000.

¹² *Ibid.*

Constitutions. It turns out that this parliamentary democracy system is not suitable for Indonesia, even though it can work satisfactorily in several other Asian countries.

The 1950 Constitution stipulates the implementation of a parliamentary system where the executive body consists of the President and his Ministers who have political responsibility. Due to the fragmentation of political parties, each cabinet is based on conditions that revolve around one or two large parties and several small parties. The coalition apparently did not work well and the coalition parties did not hesitate to withdraw their support at any time, so that the cabinet often fell due to rifts within the coalition itself.

In general, the cabinet during the pre-election period held in 1955 could not last longer than an average of eight months, and this hampered political economic and political development because the government did not have the opportunity to implement its program.

However, during this period the position of parliament was very strong and in turn the position of political parties also strengthened, therefore everything related to state policy could not be separated from the critical attitude of members of parliament to debate it both through parliamentary forums and individually.

2. Guided Democracy Period 1959-1965

The characteristics of the political system in this period were the domination of the role of the president, the limited role of political parties, the development of communist influence and the expanding role of ABRI as a socio-political element.¹³ In government practices, during this period there has been a lot of distortion of democratic practices. The Presidential Decree of July 5 can be seen as an attempt to find a way out of the political gridlock that occurred in the constituent assembly, which is a form of deviation from democratic practice.

Likewise, the 1945 Constitution states that a president can last for at least five years. However, MPRS Decree No. III/1963 which said Ir. Sukarno, as president for life, canceled the five-year term limit.

There are many deviations from democratic practices, especially in the executive sector. For example, the President is given the authority to intervene in the judiciary. This can be seen in Law Number 19/1964, in the legislative sector the president can take political action based on the presidential regulations Number 14/1960 in the event that members of the People's Representative Council do not achieve benefits.

Soekarno's guided democracy was not true democracy, but rather a form of authoritarianism. This form of democratic system does not reflect the

¹³ Pengertian, Unsur Penegak, Parameter, Sejarah Perkembangannya di Indonesia"<http://kurniarizawahyu.blogspot.com/2016/03/makalahdemokrasi.html>, 2019, Diakses pada 25 Februari 2024, Pukul 20.00 WIB.

meaning of democracy itself. Soekarno's guided democracy ended with the birth of the PKI 30 September Movement (G30S/PKI).

c. Pancasila Democracy Period 1965-1998

This period of government emerged after the failure of the G30S/PKI. The formal foundations of this period were Pancasila, the 1945 Constitution, and MPRS decisions. The spirit that underlies the birth of this period is the desire to restore and purify the implementation of government based on Pancasila and the 1945 Constitution of the Republic of Indonesia in a consistent and pure manner.

To rectify the misuse of the Constitution that occurred during the Guided Democracy period, we have taken corrective action. MPPS Decree Number III/1963 which stipulates a lifetime term of office for Ir. Sukarno was canceled and the position of President returned to being selective for five years. During this period, the practice of democracy in Indonesia always referred to the values of Pancasila and the 1945 Constitution. Therefore, democracy during this period was called Pancasila Democracy. Because in democracy, Pancasila views people's sovereignty as the core of the democratic system, because the people have the same right to determine themselves. Likewise with equal political participation for all people. For this reason, the government should provide protection and guarantees for citizens in exercising their political rights. However, "Pancasila Democracy" in the New Order regime was only rhetoric and an idea that had not yet reached the level of practice or implementation. Because in state and government practices, this regime does not really provide space for democratic life.

d. Reformation Period Democracy

The implementation of democracy in the reform era (1998-now) was marked by the overthrow of the previous president, Suharto, who served as president for around 32 years. Indonesian democracy during the reform period laid a strong foundation for the implementation of Indonesian democracy in the future. There are several indicators of the implementation of democracy in Indonesia, namely:¹⁴

- 1) Freedom of the press is given as a public space to participate in national and state affairs.
- 2) The implementation of the multiparty system was seen in the 1999 General Election. This period gave the people the opportunity to associate and gather according to their ideology and political aspirations.

¹⁴ Arum Sutrisni Putri, "Karakteristik Demokrasi Periode Reformasi (1998-sekarang)," <https://www.kompas.com/skola/read/2020/02/13/160000569/karakteristik-demokrasi-periode-reformasi-1998-sekarang-?page=all>, 2019, Diakses pada 25 Februari 2024, Pukul 20.15 WIB.

The characteristic of the reform period is Pancasila democracy. Citizens are tasked with guarding democracy so that it can be applied in all aspects of life. The characteristics of democracy during the reform period were that elections were more democratic, there was a rotation of power from the central to regional government. Open political recruitment pattern: Basic rights of citizens, political recruitment to fill political positions is carried out openly. Every capable and qualified citizen can hold political office without discrimination. The basic rights of citizens are guaranteed, most of the people's basic rights can be guaranteed, such as freedom of expression, freedom of the press and so on.¹⁵

IV. CONCLUSION

Indonesia as a rule of law state with a constitutional democratic system and the Constitution as its legal basis has the function of limiting the power of the three branches of government that hold power such as the executive, legislative and judiciary. So that the implementation or implementation of a power owned by the government is not exercised with authority. Therefore, limiting power in a democratic country is constitutionally very necessary, both in the power of institutional organs and other forms of power in a country, all of which are needed to provide checks and balances and can lead to the principles of good governance. government) so that there is no overlap and arbitrariness in exercising these powers.

Indonesia, on its journey to democracy, has experienced several periods, until now it is undergoing a period of reform. In the reform period, elections are more democratic and the basic rights of citizens are guaranteed, most of the people's basic rights can be guaranteed, such as freedom of expression, freedom of the press and so on.

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¹⁵ *Ibid.*

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