

## **The Nature of the Semi-Parliamentary in Indonesia Constitutional System**

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**Abstract:** This study aims to analyze and discover the nature of the semi-parliamentary system in the Indonesian constitutional system based on the 1945 Constitution. Analyze and find the implementation of semi-parliamentary in the Indonesian constitutional system based on the 1945 Constitution. As well as analyze and find the ideal semi-parliamentary system in the implementation of the Indonesian constitutional system. As for the type of research This uses a type of normative legal research. The results showed that the essence of the semi-parliamentary system in the Indonesian constitutional system based on the 1945 Constitution still refers to the Trias Politica concept. In the presidential system, the president and the DPR are directly elected simultaneously, the functions and powers of the DPR are increasingly dominant (legislative heavy) than the president so that the government is ineffective. The implementation of semi-parliamentary in the Indonesian constitutional system based on the 1945 Constitution can effectively eliminate presidential authoritarianism (Executive Heavy), so that the president is no longer dominant compared to the DPR and cannot interfere with the Supreme Court and the Constitutional Court. On the other hand, the implementation of semi-parliamentary strengthens the functions and powers of the DPR, even though the government system adopted by Indonesia is a presidential system so that the government is ineffective. the process towards simplifying political parties naturally through an increase in the parliamentary Threshold. Likewise, the Presidential Threshold to nominate presidential and vice presidential candidates needs to be eliminated.

**Keywords:** Multi Party, Parliamentary, Presidential, Semi Parliamentary, The 1945 Constitution.

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### **I. INTRODUCTION**

The problem of the basic legal framework contained in the amendment to The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) still leaves the uncertainty of the government system adopted by Indonesia where the presidential system of government has not been consistently followed. In practice, it often creates bias in the formation of a cabinet by an elected president who is still not free to exercise his prerogatives because he has to accommodate the supporting party/coalition. There are several articles in the 1945 Constitution that show how strong the position of the House of Representatives is and of course this has implications that cannot be separated from the characteristics of the semi-parliamentary system in the Indonesian constitutional system (Izzati, Indra, & Junaidi, 2016). The problem is when it is practiced in a multi-party system because of the potential for deadlock in building relations between the executive and the legislature because there is no political party that controls the seats in the House of Representatives in a majority, so the formation of the cabinet cannot be avoided from the “rainbow” cabinet which of course is full of internal conflicts. in coalition parties that lead to or have the opportunity to frequently reshuffle the cabinet and dissolve coalition parties and open opportunities to be replaced by political parties that were previously outside the government.

The separation of powers between the President and the House of Representatives based on the amendments to the 1945 Constitution, which then gave the House of Representatives a stronger position than the President shows that the presidential system in Indonesia has experienced a difference from the concept of the presidential system itself. Therefore, more constructive thinking is needed to formulating a government system design that is more in line with the national cultural character in carrying out the Indonesian constitutional system. According to Soepomo, the system formed by the 1945 Constitution is different from the presidential system used in the United States, the Philippines and South America and is also different from the cabinet (parliamentary) system used in Britain and France (Arsil, 2017).

During the four times the Amendment to the 1945 Constitution by the People’s Consultative Assembly as a result of the 1999 elections, it turns out that it still leaves many weaknesses in the process of administering

the state administration, has fundamentally changed the pattern of relations between the President and the House of Representatives (Husen, 2019). The results of the changes made by the People's Consultative Assembly were very confusing and the concept and implementation of sovereignty were increasingly confused. This happened because the People's Consultative Assembly did not firmly determine the system of government it adopted, even though the 1945 Constitution as a result of the fourth amendment officially adopted a presidential system but the House of Representatives had many functions so that the fourth amendment to the 1945 Constitution created an unclear political and government system.

The contemporary Indonesian constitutional system notes that since the reformation, the DPR-President relationship has experienced a dynamic which has resulted in the strengthening of the position of the House of Representatives compared to the president. The strengthening of the House of Representatives has also been influenced after the implementation of the multi-party system.

## **II. STATEMENT OF THE PROBLEM**

1. What is the essence of the semi-parliamentary system in the Indonesian constitutional system based on the 1945 Constitution?
2. Is the implementation of semi-parliamentary in accordance with the Indonesian constitutional system based on the 1945 Constitution?
3. Can the semi-parliamentary system be the ideal system in the Indonesian constitutional system?

## **III. THEORETICAL FRAMEWORK**

### **A. Constitutional Theory**

Constitutional theory was developed by two well-known philosophers, namely Plato and Aristotle. For Plato, he argues that to create an ideal state is based on goodness. For that power must be held by people who have goodness, namely the philosopher or The Philosopher King. Such people are required to teach and put forward policies that will ensure the implementation of clean and just government (Lubis, 2000). Likewise, Plato's opinion can be found in his book *The Statesman*, his view of the rule of law that a government that is able to prevent the decline of one's power is government by law. Whereas in another book, namely *The Law*, Plato expressed his opinion that law is logism or reasoned thought, a rational thought, which is formulated as a state decision.

Some experts try to formulate a constitutional understanding. Wheare (1975) states:

*"The constitution is the entire constitutional system of a country in the form of a collection of regulations that form, regulate or govern the government in a country. The rules here are a combination of provisions that are legal (legal) and those that are not legal (non-legal)."*

Based on this opinion, it can be understood that the constitution is basically a system that regulates the constitution based on law and non-law. According to Moh. Kusnardi and Bintan R Saragih, quoted from Husen & Thamrin (2017), that:

*"Constitution means basic written laws which are usually referred to as Basic Laws, while unwritten basic laws are called Conventions, namely constitutional customs or basic rules that arise and are maintained in the practice of state administration."*

### **B. The theory of separation of powers (Trias Politica).**

The theory of separation of powers, which the originator named *Trias politica*, is a criticism of the royal government which tends to dominate three branches of power simultaneously and this is seen by John Lock and Montesquieu as unhealthy. The birth of the theory of separation of powers was motivated by the idea that power in a sovereign government cannot be delegated to the same person and must be separated into two or more free strong units to prevent abuse of power by the ruling party.

Montesquieu (1949) divides the power of the State into three powers so that power in the State is not concentrated in the hands of a single ruling king, namely as follows (Suparto, 2016):

1. Legislative, namely the power to form laws.
2. Executive, namely the power to carry out laws.
3. Judiciary, namely the power to supervise the implementation of laws (adjudicate).

According to Montesquieu, that the separation of powers is intended to maintain political freedom, which will not be realized unless there is security of the domestic community.

Separation of power, the theory of separation of power was pioneered by British nationality John Lock and French thinker Montesquieu (1689-1755), both of which stated that in a system of power must be separated (separation), both regarding the function (task) and regarding the fittings. Country implementing:

1. Legislative power, exercised by a representative of the people (Parliament).
2. Executive power, exercised by the government (President or King with the help of Ministers)
3. Judicial power, exercised by the judiciary (Supreme Court and the courts below).

Both John Lock and Montesquieu both held the view that the separation of powers lies in the organs, functions and personalities of State institutions, each separate or each in a different person.

John Locke's idea of the separation of powers in three branches of power (Arsil, 2017). This was inspired by his concern for the absolute monarchy, which did not give rights to the people he led.

### **C. Government Theory**

The government system has a relationship between the executive, legislative and judiciary institutions. This relationship includes legal relations, organizational relations, power relations and functional relations (Kantaprawira, 1985). All of this is in the context of achieving the objectives of State governance which are usually formulated in the constitution of a country or other official State documents.

From the search for various literatures of constitutional law and political science, there are different variants of government systems. For example, Strong (1960) divides the government system into categories: parliamentary executive and non-parliamentary executive or the fixed executive. Similar to Strong (1960), several experts and reviewers of Indonesian constitutional law also have various views about the form of the government system. For example, Asshiddiqie (2007) divides the government system into three categories, namely the presidential system, the parliamentary system of government, and the mixed system or hybrid system. Martosoewignyo (1987) also suggests three variants of government systems, namely parliamentary government systems, presidential government systems, and mixed government systems. If we look at Indrayana (2007) opinion regarding government systems, we will find even more varied forms of government systems, namely parliamentary government systems, presidential systems of government, hybrid or mixed systems, collegial systems, and monarchy systems. Although there are many variants regarding the forms of government systems, the government system discussed in this study is limited to the parliamentary government system and presidential government systems and mixed systems.

## **IV. IV.DISCUSSION**

### **A. The Essence of the Semi-Parliamentary System in the Indonesian Constitutional System based on the 1945 Constitution**

With the strong support of the House of Representatives for the President, the president's policy which has received harsh criticism from the public if the majority of the House of Representatives supports it, then the policy will be easily determined to be implemented. Thus the "hot ball" is in the hands of the House of Representatives, whether it wants to be used to support or against government policy, it is very much determined by the majority or not the support of the president in the House of Representatives.

The presidential system in Indonesia after the amendments to the 1945 Constitution, which has provided a lot of room for the House of Representatives to be involved in the process of appointing executive officials, including in determining decision-making on presidential policies, actually the power of the House of Representatives is already very strong at this time.

### **B. Semi-Parliamentary Implementation in the Indonesian Constitutional System based on the 1945 Constitution**

After the amendment to the 1945 Constitution with an affirmation of the presidential system, in principle it is in accordance with the social and cultural conditions and geography of Indonesia which consists of thousands of islands. However, what still needs to be further studied is whether the presidential system is suitable for multi-party systems or not. To answer this question, it can be seen from the history of the journey of the government system with the combination of the party system used. History records that in the Soekarno era with a parliamentary system with a combination of multi-party systems, it can be said that it failed to create government stability. The New Order government, by maintaining the presidential system by simplifying the number of political parties, was proven to be able to create government stability within three decades. Meanwhile, in the era of BJ Habibie's government, the transition from the New Order to the Reformation Order, although only continuing the Soeharto period, it was also unable to create government stability. Meanwhile, in the era of Abdurrahman Wahid's government, as a government that had successfully changed/amended the first and second amendments of the 1945 Constitution., which for the first time in the reform era a multi-party system was implemented, apparently failed to create government stability. On the other hand, Megawati Soekarno Putri's government, which continued her Abdurrahman Wahid period, was able to create a stable government. On the other hand, during the two periods of SBY's administration, there was a very strong political dynamic that failed to create government stability. Meanwhile, the era of Joko Widodo's administration, although there was a lot of criticism from civil society, but the stability of the government in the House of Representatives.

### **C. The Ideal Semi-Parliamentary System in the Indonesian State Administration System.**

The presidential system adopted by Indonesia ideally provides broad powers for the president to carry out his executive duties. This power cannot be limited or reduced without constitutional reasons. However, this large power also cannot be used arbitrarily for his personal interests.. Two constitutional boundaries that can be used as the basis for limiting the executive power of the president include the limitation of prerogative rights and the principle of separation of powers.

In order to maintain the realization of separation of powers and checks and balances, in carrying out the duties and responsibilities of the president, the prerogative rights should be written in the constitution so that there is no chance for the president to prioritize his personal interests or for the president to be overlooked by pragmatic interests. The doctrine of separation of powers and checks and balances is actually in accordance with the principle of certainty in the rule of law.

The Indonesian constitutional system has experienced a shift in constitutional principles which increasingly emphasizes that the Unitary State of the Republic of Indonesia implements a presidential system. Political trias have been followed in the post-amendment system of the 1945 Constitution which is manifested in the form of separation of power and distribution of power. This can be seen in the provisions of Article 4 section (1) regulates that “*the President of the Republic of Indonesia holds the power of government in accordance with the Constitution*”. This means that the executive power rests with the president. Meanwhile, Article 20 section (1) regulates that “*The House of Representatives holds the power to make laws*”. This means that the legislative power is in the hands of the House of Representatives. Meanwhile, Article 24 section (2) regulates that “*The judicial power is exercised by a Supreme Court with its subordinated judicial bodies within the form of general courts, religious courts, military courts, administrative courts, and by a Constitutional Court*”.

## **V. CONCLUSION**

The Indonesian presidential system combined with a multi-party system has actually led to a change in the government system from a presidential system to a system that has not yet completely become a parliamentary system, but is more accurately described as a semi-parliamentary system, especially when viewed from the extent of the powers of the House of Representatives after the change/amendments to the 1945 Constitution, there are many presidential rights or powers that cannot be decided without requesting the involvement of the House of Representatives to give approval or consideration. So with the explanation above, actually the implementation of the Indonesian constitutional system has essentially implemented a semi-parliamentary system.

The key factor for the stability and strengthening of government in the presidential system is that it is largely determined by the party system used. Multi parties with elections that are held simultaneously between the Presidential election and the Legislative election, the elected President will have more freedom to control the political dynamics because previously the position of the political parties who are the presidential candidates is supported, this situation at least we can learn from the 2019 election which was held. simultaneously between the Presidential election and the Legislative election.

To assess whether the separation or distribution of power has been carried out properly, it must be equipped with the implementation of a check and balance mechanism. This is constitutionally contained in the 1945 Constitution, namely in Article 5 section (1) regulates that “*The President is entitled to submit draft law to the House of Representatives*”. Meanwhile Article 20 section (1) regulates that “*The House of Representatives holds the power to make laws*”.

If previously the power to form laws rests with the president, then after the amendments to the 1945 Constitution it has shifted to the House of Representatives. The President is only given the right to propose a bill to be discussed together in the House of Representatives. The mechanism of checks and balances can also be seen in the judicial power, in this case the Constitutional Court is given the authority to examine laws against the 1945 Constitution. law, the Supreme Court has the authority to test it. This shows that the relationship between high state institutions (the House of Representatives, President, Supreme Court and the Constitutional Court) is a process of mutual control as a mechanism of checks and balances.

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