



CONSTITUTIONAL ASPECTS OF CHANGING THE PRESIDENT'S TERM OF OFFICE TO 3 (THREE) PERIOD FROM THE PERSPECTIVE OF INDONESIAN CONSTITUTIONAL LAW

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ARTICLE INFO	ABSTRACT
<p>Date received: 28 Oct 2022 Revision date: 23 Nov 2022 <u>Date received: 28 Nov 2022</u></p>	<p>The large role of the president, especially for a country that adheres to a presidential system of government, has had consequences for the sustainability of democracy. Indonesia is a country that adheres to a presidential system, as confirmed in Article 4 paragraph (1) of the 1945 Constitution which states that "The President of the Republic of Indonesia holds governmental powers according to the Constitution". Apart from this, the president's powers are also regulated in Chapter III of the 1945 Constitution concerning the Powers of State Government, containing 17 articles which regulate various aspects regarding the president and the presidential institution. This shows that the portion of the President's power is so large that it is natural that the topic of the presidency is always interesting to discuss. The problem formulation that will be the main topic of discussion is; What are the problems with regulating the presidential term of office in Indonesia? How is the presidential term changed to 3 (three) terms through amendments to the 1945 Constitution from the perspective of Indonesian Constitutional Law? This research uses descriptive research, with a qualitative research type, and uses a normative juridical research type, and this research uses library data collection methods (library research). In writing this thesis, the author believes that the regulation of the President's term of office is regulated in Article 7 of the 1945 Constitution. Since the era of President SBY to Jokowi, the discourse of increasing the presidential term of office has always been raised.</p>
<p>Keywords: <i>Constitutionality, President, Constitutional Law</i></p>	



INTRODUCTION

The 1945 Constitution as the Indonesian constitution contains basic rules where there is a division of power, which is in line with the theory put forward by Montesquieu, namely the trias politico theory, namely Legislative (Legislative Power), Executive (Implementation Power), and Judiciary (Judicial Power) which are three division of government power and sovereignty in the state. Former Chairman of the Indonesian People's Consultative Assembly Amien Rais said there was a scenario to change the provisions in the 1945 Constitution regarding the presidential term of office from two terms to three terms. Amin Rais' statement invited reactions from various parties, regarding the possibility of extending the presidential term of office. This wild statement has not yet been able to clarify the source of the truth. Regardless of the opinions of the general public, in reality it must be admitted that past trauma regarding the President's term of office has been so lasting, giving rise to a phobia regarding the notion that the President's power tends to distort civil liberties. In the Indonesian context, Bagir Manan believes that the President's strong power in administering the state is not just a fact, but rather something inherent in the 1945 Constitution system and its constitutional practices.

The role of the president is so great, especially for a country that adheres to a presidential system of government. Indonesia has established a presidential system as the system of government that it adheres to. The presidential system in Indonesia is confirmed in Article 4 paragraph (1) of the 1945 Constitution which states that "The President of the Republic of Indonesia holds government power according to the Constitution". Apart from this, the power of state government by the president is also regulated in Chapter III of the 1945 Constitution concerning the Power of State Government. Chapter III of the 1945 Constitution contains 17 articles which regulate various aspects regarding the president and the presidential institution, as well as the authority they have in holding government power. This shows that the portion of the President's power is very large, so it is not surprising that the issue of the presidency is always interesting to discuss in academic circles and in street discussions. During President Soeharto's reign there were deviations from the 1945 Constitution or it could be said that the 1945 Constitution was implemented purely and consistently, but President Soeharto took advantage of the weaknesses contained in the 1945 Constitution to perpetuate his power.

Even at that time, there was a legal product in the form of MPR Decree no. I/ MPR/1978 concerning MPR Rules and Regulations, which contains the determination of MPR members to defend the Constitution and not wish to make changes to the 1945 Constitution. The provisions of Article 7 of the 1945 Constitution before the amendment stated that the President and Vice President were elected for a term of five years and thereafter being able to be re-elected is a provision that can be interpreted as giving the President the opportunity to continue in office because there are no clear term limits. During the practice of state administration during both Sukarno and Suharto's reigns, it was used as a legal basis to expand and maintain their power. Thus, the 1945 Constitution before the amendment did not fully implement the ideology of Constitutionalism because there were no restrictions on the President's term of office which was closely related to the President's power. Prior to the amendment to the 1945 Constitution, it began with the 1998 MPR Special Session which issued 3 MPR decrees, including MPR Decree Number VIII/MPR/1998 concerning the Revocation of MPR Decree Number IV/MPR/1983 concerning Referendum, MPR Decree Number: XIII/MPR/1998 concerning Limitations on the Term of Office of the President and Vice President, MPR Decree Number XVII/MPR/1998 concerning Human Rights. The MPR's decision prompted four amendments. Judging from the history of the authoritarian leadership system, the first amendment limited dominant executive power because of the articles in the 1945 Constitution, the President has a very strong and large position and power so that political aspirations emerged which wanted the President's power to be reduced so that there is a balance of power (checks and balances) between high state institutions. The MPR responded positively to this aspiration by amending the 1945 Constitution. Because before the amendment, other state institutions had unequal power and even seemed to be under the control of the President's power or were



unconstitutional. As stated by Moh. Mahfud MD said that the Indonesian state is based on a written Constitution but has never given birth to a government that is substantially Constitutional. It is true that formally the government that was born has fulfilled the wishes of the Constitution, but as stated by Indonesian lawyer/Advocate Adnan Buyung Nasution, a Constitutional government is not a government that simply conforms to the words of the Constitutional Articles but rather a government that is in accordance with the Constitution which indeed contains the essences. Constitutionalism. The absence of a democratic and constitutional government in Indonesia is caused by the 1945 Constitution which does not clearly and strictly contain the principles of limiting power accompanied by a system of checks and balances so that it can easily be misused by the government, specifically the President as the ruler of the executive sector. This also means that the 1945 Constitution does not expressly absorb the essential intentions of the Constitution.

The terms of office of the President and Vice President are content material in the Constitution and the process of changing the regulations is also carried out through a Constitutional amendment mechanism, so this means that the relationship between the regulations on the terms of office of the President and Vice President can be seen with the Constitutions during the period in which these regulations come into force. So by referring to the Constitution in force at that time, it can be seen the constitutionality of a provision, namely whether or not the regulation is in the Constitution and the suitability of constitutional practices with the provisions in the Constitution. 10 Referring to the *ius constitutum* in the Indonesian Constitution, it can be seen that the Constitutionality of term limits The President and Vice President in Indonesia are regulated in Article 7 of the 1945 Constitution. The amendment to Article 7 of the 1945 Constitution explains that the term of office of the President is limited to only two terms. Limiting the President's term of office after amending Article 7 of the 1945 Constitution can avoid authoritarian power. So by amending the 1945 Constitution in 4 periods, it is nothing but to provide checks and balances in every government institution between the legislature, executive and judiciary.

However, the formulation of this Article still has weaknesses, namely, first, this Article has a formulation that opens up gaps for it to be interpreted differently from the original intent of the formulation of the Article. If we refer to the original intent of the formulation of Article 7 of the 1945 Constitution regarding term limits for the President and Vice President, it is intended to be applied either consecutively or non-consecutively, the most important thing is that after serving two terms of office, the person cannot serve again in that position. the same. Not all provisions in the Constitution must be stated explicitly as intended in the original intent of the provisions, however, it is best to avoid ambiguity in the formulation of articles in the Constitution which can then give rise to debate because there are different interpretations or meanings of the sound of the articles. In addition, the provisions on term limits for the President and Vice President are provisions that are closely related to the political realm. As a provision that is closely related to political elements, it is possible for this provision to be "politicized" by unscrupulous politicians and if this happens, then the philosophical enthusiasm to limit the terms of office of the President and Vice President in the Constitution will be in vain. The problem formulation of this research is: How is the presidential term of office regulated in Indonesia? What are the problems with regulating the presidential term of office in Indonesia? How is the presidential term of office changed to 3 (three) terms through amendments to the 1945 Constitution from the perspective of Indonesian Constitutional Law? There have been many developments in the regulation of limiting the term of office of the President and Vice President starting from the initial formation of the 1945 Constitution up to the current 1945 Constitution as well as the many problems and issues that occurred before the regulation of the fixed term of office of the President and Vice President in Indonesia before the amendment. The 1945 Constitution, therefore, the author is encouraged to examine "CONSTITUTIONAL ASPECTS OF CHANGING THE PRESIDENT'S TERM OF OFFICE TO 3 (THREE) PERIOD FROM THE PERSPECTIVE OF INDONESIAN CONSTITUTIONAL LAW"



METHOD

Research methods are used as a systematic way to search, discover, develop, analyze a problem, test objective and optimal truth and carry out correct methods. The right method is expected to be able to provide a sequential flow of thought in efforts to achieve the study. Research methods are needed as a type of scientific thinking used in research and assessment of this thesis, which has the ultimate goal of achieving objectivity in writing this thesis. Writing this thesis uses normative juridical research methods. Normative legal research is legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope of material, and consistency. In other literature, it is stated that normative legal research consists of: research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history, and comparative legal research. Normative legal research is carried out by examining written law which is binding in nature from all aspects related to the subject matter being researched.

RESULTS AND DISCUSSION

1. Problems of Arranging the President's Term of Office in Indonesia

The issue of a 3-term presidential term has always emerged during the two presidential terms. During the reign of Susilo Bambang Yudhoyono (SBY), the issue of the president being able to serve 3 terms was also raised. Political researcher from the Indonesian Institute of Sciences (LIPI) Siti Zuhro said the issue of changing the presidential term to three terms emerged from the SBY era to President Joko Widodo. Power is always interesting, because the relations of power holders are able to access all matters of interest practically and pragmatically. The issue of the discourse on increasing the presidential term of office has drawn rejection. The reason is that the presidential term of office will certainly be increased

violates the constitution. This is because the constitution has expressly stipulated that the president's term of office is only one term, and he can be re-elected for only one term. Zainal Arifin Mochtar is of the opinion that it is currently impossible to serve 3 terms as president and that if forced, it would be necessary to change articles in the Constitution. In line with Zainal, Refly Harun critically believes that the discourse of a presidential term of up to three terms will be difficult to materialize. According to Refly, constitutional changes are usually motivated by an event that makes it necessary. Meanwhile, currently there is no urgent situation to extend the president's term of office.

Elsan Yudhistira argued by quoting Bill Gelfald's dissertation, he explained that if the President holds power for a long time by extending his term of office, studies in several countries actually show irregularities committed by the president which have a negative impact, such as in former countries of the Soviet Union where gross domestic income per capita decreased per year after the President's term of office was extended, and there was a decline in aspects of political rights after four years of the President extending his term of office. The constitutionality of term limits for the president and vice president as a condition for nominating the president and vice president has already been implemented by the United States. As the country that first implemented a presidential system. Even though we are talking about presidential terms of office, America has a black record regarding this matter. This black note, when Franklin Delano Roosevelt was elected to serve four consecutive terms, he served from 1933 until he died while still in office, namely on April 12 1945 due to a stroke.

Realizing this dark record, after the death of Franklin Delano Roosevelt, calls began to emerge for the United States constitution to strictly regulate presidential term limits and make term limits a constitutional requirement for presidential and vice-presidential candidacy in the United States. This pressure ended when the 22nd Amendment to the United States Constitution was ratified by 36 states on February 4, 1951. Since then, the provisions regarding term limits for the President and Vice President of the United States have been firmly and explicitly determined in the constitution. Then



term limits were also made a constitutional requirement for nominating president and vice president in the United States. Thus, the provisions on term limits for the President and Vice President of the United States are not only unwritten regulations (constitutional conventions), but also have clear constitutionality in the United States Constitution.

The constitutional history in the United States can actually also be a lesson for Indonesia which is also facing the same problems. The United States has experienced times when terms of office limits and requirements for the president and vice president were not explicitly stated in the constitution, such as the current situation in Indonesia. However, facts in the constitutional history of these two countries are proof that provisions that are prone to being politicized in order to maintain power, if not regulated firmly and explicitly in the constitution, will create gaps for unscrupulous politicians to maintain their power continuously.

This happened in Indonesia, due to the lack of clarity regarding the regulation of two-term positions, giving rise to misunderstandings about the law in interpreting the presidential term of office. On Monday, April 30 2018, the Constitutional Court (MK) registered a judicial review case against the Constitution (Judicial Review), with registration number 40/PUU-XVI/2018. The case was filed on April 27 2018 by three applicants from the private sector, the Singaperbangsa Workers Union, and the Proletarian People's Association for the Constitution. The three applicants intend to review the material of Article 169 letter n and Article 227 letter i of Election Law Number 7 of 2017 which regulates the term of office of the President and Vice President. Article 167 letter n states that the requirement to become a presidential candidate (capres) and vice presidential candidate (cawapres) is that you have never served as President and Vice President for two terms in the same position.

Article 227 of the letter states that registration of prospective presidential and vice presidential candidates must be accompanied by a letter requiring that they have never served as president or vice president for two terms in the same position. This is an example of how there is still a lack of harmony in understanding regarding the term of office of the president. Even if we look at the purpose of limiting the presidential term of office, it is to learn from past experience. How then does the term of office of the president in the old and new order eras, as well as on a global scale the term of office of the president of the United States, often be interpreted differently due to arrangements that still have the potential to be misinterpreted. Studying and reflecting from the constitutional history of Indonesia during the Old Order and the New Order as well as the constitutional history of the United States, it would be best to amend Article 7 of the 1945 Constitution of the Republic of Indonesia to prevent negative things from history from being repeated in the future. This is important to avoid double interpretations of the formulation of the presidential term of office article in the 1945 Constitution. In connection with the draft amendment to Article 7 of the 1945 Constitution of the Republic of Indonesia, another opinion by Qonita hereby proposes a new formulation for the amendment of this article, namely:

Article 7:

- 1) The President and Vice President hold office for five years, and thereafter can be re-elected in the same office, for only one term, either consecutive or non-consecutive.
- 2) No person shall be elected to the offices of President and Vice President more than twice.

Actually, increasing the term of office of the president is not important. The most important thing is that there are endless examples of leadership. As Aditya Perdana said, even though the issue of the President's term of office for three terms has surfaced, what is more important is the commitment to regeneration in national leadership. Moreover, the public does not want the president's term of office to be increased. We can see this based on the results of the Indonesian Political Parameters survey showing that the majority of respondents reject changing the presidential term of office to a maximum of three terms. 52.7% of respondents said they disagreed when asked whether they agreed or disagreed if the presidential term was changed and extended to three terms. On average, 52.7% disagreed, 27.8% agreed, the rest did not answer. This means that the public does



not agree if the presidential term is changed to three terms.

2. Changing the President's Term of Office to 3 (three) Periods Through Amendments to the 1945 Constitution from the Perspective of Indonesian Constitutional Law

Constitutional principles are basic political and legal principles that cover structure, procedures, authority/rights and obligations. Therefore, constitutionalism is closely related to amendments because it aims to improve a country's important records and/or documents which include form, structure, procedures, so that they are better than before. Amendments to the 1945 Constitution are also important to improve the contents of the constitution in accordance with the country's hopes and outlook on life. The aim of amending the 1945 Constitution is as follows:

1. Change or update the editorial and substance of the constitution (in part or in full), so that it is in line with the ideological, political, economic, social, cultural conditions, as well as the nation's defense and security conditions in accordance with the era.
2. Making the 1945 Constitution the basic norm of the nation's ongoing democratization struggle to restore constitutionalism, so that guarantees and protection of human rights can be upheld, the anatomy of power is subject to law, and an independent judiciary is created.
3. To avoid legal updates or legal reforms that fix the missing parts, so that the processes and mechanisms for changing or creating new legal regulations are in line with the basic law, namely the constitution.

The reasons for amending the 1945 Constitution are as follows:

1. Historical reasons, from the beginning in its history the 1945 Constitution was created by the founders of our country (BPUPKI, PPKI) as a temporary Constitution, because it was created and enacted in a hasty atmosphere.
2. The philosophical reason is that the 1945 Constitution mixes various conflicting ideas, such as between the notion of popular sovereignty and integralism, between the rule of law and the notion of state power.
3. Theoretical reasons, from the perspective of constitutional theory, the existence of a constitution for a country is essentially to limit the state's power so that it does not act arbitrarily.

The context of changing the presidential term of office, regardless of the urgency behind it, is that if viewed in the current political configuration, it is very possible to amend the 1945 Constitution. Article 37 of the 1945 Constitution itself provides a mechanism for making changes to the Constitution. To make changes to the 1945 Constitution, you must go through a number of stages. These stages are as follows:

1. First, the proposal for change is submitted to at least 1/3 of the MPR members. In article 37 paragraph (1) of the 1945 Constitution, it is stated that proposals for changes to the articles of the 1945 Constitution must be submitted by at least 1/3 of all members of the MPR. The members of the MPR itself consist of members of the DPR and members of the DPD (Regional Representative Council).
2. Second, the reasons for changing the article must be clear. Article 37 paragraph (2) states that every proposal for an article in the Constitution must be conveyed clearly which part you want to change along with the reasons.
3. Third, the MPR session must be attended by a minimum of 2/3 of the MPR members. Article 37 paragraph (3) regulates that the session to decide whether to propose changes to articles of the 1945 Constitution must be attended by a minimum of 2/3 of all MPR members. If less than this number of members attend, then the trial cannot be held.
4. Fourth, the decision to change must be approved by a minimum of 50%+1 members of the MPR. Based on paragraph (4) of article 37, the decision whether an article of the 1945 Constitution can be changed must be approved by a minimum of 50%+1 or half of the members of the MPR plus one member of the MPR. If it is less than this amount, then changes to the articles of the 1945 Constitution cannot be made.



5. Fifth, the article regarding the form of the state cannot be changed. In the last paragraph regarding changes to articles in the 1945 Constitution, there is a regulation that specifically the article regarding the form of the Indonesian unitary state cannot be changed for any reason. The 1945 Constitution is the basic rules or basic rules of the state (staatsgrundgesetz) which in its preamble contain the staatsfundamentalnorm as the main idea from which the basic rules or basic rules of the country were born.

Regarding the article on the term of office of the President, history records that changes occur in line with developments and changes in the constitution in Indonesia. Constitution Effective Time Arrangements for Limiting the President's Term of Office are as follows:

1. 1945 Constitution Period I: 18 August 1945-27 December 1949, there are regulations on the term of office of the President, namely in Article 7 of the Constitution 632. 1945 Constitution Period II: 5 July 1959-19 October 1999 1945 which states that the President and Vice President hold office for 5 years , and afterward can be selected again.
2. KRIS 1949 27 December 1949-17 August 1950, there was no regulation of the term of office of the President.
3. UUDS 1950 17 August 1950-5 July 1959, there was no regulation on the term of office of the President.

4. 1945 Constitution 19 October 1999-Now, there is a regulation on terms of office

President, namely in Article 7 of the 1945 Constitution which states that

The President and Vice President hold office for 5 years, and afterward can be re-elected in the same position, for only 1 term. Proposals must be submitted in writing clearly indicating the articles proposed to be changed and the reasons. This proposal is then submitted to the leadership of the MPR and will be reviewed by the ad hoc committee if the proposed amendment meets the requirements. The requirements referred to in this case are the fulfillment of a minimum of 1/3 of the MPR members as proposers and the article proposed to be changed along with the reasons for the change. Furthermore, Article 112 paragraph (1) MPR Regulation 1/2014 explains that an MPR Plenary Session will then be held which must be attended by at least 2/3 of the total MPR members. If the proposal does not receive approval at the MPR Plenary Session, the proposal cannot be submitted again during the same MPR membership period, in accordance with Article 112 paragraph (3) MPR Regulation 1/2014. On the other hand, the decision to amend articles of the 1945 Constitution in the MPR Plenary Session can be made by approval of at least 50% plus one member from all MPR members, in accordance with Article 112 paragraph (2) MPR Regulation 1/2014.

CONCLUSION

Based on the description of the discussion throughout the research, several conclusions can be drawn as follows:

1. The problem of regulating the term of office of the President in Indonesia as an effort to uphold the principles of constitutionalism. Since the era of President SBY to Jokowi, the discourse of increasing the presidential term has always been echoed. Of course this is a form of violation of the constitution. Even if you want to make an amendment, it will violate constitutional ethics. Constitutional ethics is not only related to the body, but also to conventions in the form of political agreements (resultantes) between society and the state. The public certainly does not expect too long of power and tends to co-opt.
2. Changing the presidential term of office to 3 (three) terms through amendments to the 1945 Constitution from the perspective of Indonesian Constitutional Law makes it possible to accommodate, where the 1945 Constitution itself is open to being changed because the constitution is not a final thing, but limiting the presidential term of office is an effort to prevent the occurrence of continuous control of positions of power which is believed to be the basis for abuse of power and authority. The discourse on a three-term presidential term is aimed at national growth and development. However, there are many concerns regarding this discourse,



because it is feared that it will become a target for abuse of power and authority as well as political bias interests that will only benefit certain parties.

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