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**CHECKS AND BALANCES STATE BODIES BASED ON 1945
INDONESIAN STATE CONSTITUTION**

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Abstract

The changing of 1945 constitution into Indonesian state constitution in 1999, 2000, 2001, and 2002 had brought the changing paradigm on statecraft system of Indonesian Republic. The changing is happened on government from executive heavy to be legislative heavy, quasi parliamentary, to be the clear presidential system. The changing system checks and balances between state bodies, which are People's consultative assembly and People's representative council with president and Supreme Court, also be created the new state body which has name as constitutional court. The transparency of other changing through checks and balances system between the state institutions which are stated on the 1945 state constitution makes it better. It used to be the legislative authority was belonging president and now it has been changed into the representative people council. By the checks and balances system will show the Indonesian republic is the country which used the constitutional law as required by the modern statecraft.

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1. Introduction

The proclamation of Independence Indonesian Republic which had been stated by Ir. Soekarno on 17th August 1945 and it created the changing of Indonesian state administration system. It means that Indonesian citizen is free since that moment just like other country. On 18th August 1945 The Indonesian preparation Independence committee (PPMKI) had decided the most historical statement on the politics, such as follow: legalizing the 1945 constitution into the Indonesian state constitution, electing Ir. Soekarno and Drs. Moh. Hatta as the president and vice president, and creating the central Indonesian national committee. Since the 1945 constitution was not supported yet by the institutions as stated at the Indonesian state constitution, and realized by the 1945 creators, so for fulfilling the article IV the regulations on changing the 1945 constitution had established “before the people’s assembly of Indonesian republic and supreme advisory council, all of the authorities will be handled by President and it was supported by the national committee.”

On 2nd September 1956 for the first time President inaugurate the cabinets. Although it was hard specially when facing the confrontation with the Dutch colonialism which still wants to stay here, actually the government was able to overcome all of the problems. It can be said that the Indonesian government in a very emergency situation and it cannot be handled in the normal way just like others. In other words it needs a lot of government requirements based on the constitution.

AK Pringgodigdo as cited by Zaini (1983) said by the emergency condition so it was legal when President can do as the dictator. But it had been denied by Mr. Ahmad Sanusi who said that the government system after the proclamation had been stated with the term “situation gebundenheit”. The emergency and abnormal situation will use the different ways on handling in the regular or normal one. The Indonesian republic statecraft based on 1945 constitution didn’t use any other systems from other country but special for Indonesian characteristics. It can be shown on the preface, contents, and even more the conclusion of 1945 constitution. (Joeniarso, 1982).

The 1945 constitution said that president is the head of state and also as the head of government. President is the highest authority under the people’s assembly Indonesian republic. The 1945 constitution which control as the popular sovereignty for people’s assembly Indonesian republic and people representative council, it is not effective for handling a lot of duties as the mandatory from the people’s assembly Indonesian republic, whether as the head of state or the head of government. On duty president will be assisted by the vice president and ministers as stated on article 17 verse (1) 1945 constitution. It’s different from the parliamentary system that all of ministers usually will do the responsibility to the people representative council but in Indonesia they will do the responsibility to the president directly. And president will do the responsibility to the people’s assembly Indonesian republic. It’s different like other countries or mostly applied in USA, that the authority of president is powerful except by impeachment. In Indonesia had applied in presidential government system as stated in 1945 constitution, the authority of president is always controlled by the people’s assembly Indonesian republic which has an authority on president’s one. Thus, the Indonesian government system just look alike the parliamentary one but actually it is not, as stated in general on 1945 constitution which stated “the president did not do the responsibility to the people representative council”. In other side there is a supreme court which is the highest level in Indonesian justice, but actually the Supreme Court cannot do the judicial review on the

constitution if there is a legally stated by the people representative council and the president against the 1945 constitution.

Democracy, in Indonesia, is not only a medium, but also a reflection of national personality and goal. In Soekarno's perspective, democracy is not different from social-nationalism, used as medium to reach national goals (Latif, 2012). Indonesia has been a legal country since the beginning of independence based on people sovereignty. This can be seen in the introductory part of 1945 constitution (Gaffar, 2013). According to Asshidiqie (2012), there are twelve basic principles of a legal country. One of them is the restriction of power and state body in the form of power separation (Martitah, 2013)

Before discussing how is the state institutions authority based on the 1945 state constitution (before amendment), what about the authority composition on the state institution? This is as the comparison both of the constitutions, with the checks and balances institution between one another state institution. The state government authority demand the 1945 constitution that Indonesian republic President has an authority based on the constitution. On doing the president's duty will be helped by vice president, and 5 years in a period and it can be re-elected. President and vice president are chosen by the people's assembly Indonesian republic or and before do the duty they must be swearing and promising in front of the people's assembly Indonesian republic and the people representative council. The members are the people's assembly Indonesian republic, people representative council, the regional representative council and other groups which are stated by the constitution.

President as the mandatory from the people's assembly Indonesian republic it can't be arranged in the 1945 constitution but the statements can be found in the contents of 1945 constitution's explanation on "state government system" on the number III, it has been stated here such as : President is proposed by the people's assembly Indonesian republic, obey and do the responsibility on it. The President is mandatory of the people's assembly of Indonesian republic and he must do the duty based on the decision's assembly. The president is not only "neben", but also "untergordnet" to the assembly (Kusnardi and Saragih, 1980). One of the essential pillars of a country is country sovereignty. Its core philosophy is embedded in the five basic principles of Indonesian Republic (Khaelani, 2013).

It can be concluded that the president is the mandatory of the people's assembly Indonesian republic which has an authority and do the whole of duties based the outline of the state policy. (Rahman, 2012). The changing is happened on government from executive heavy to be legislative heavy, quasi parliamentary, to be the clear presidential system (Zoelva, 2016).

The 1945 constitution stated president also as the head of the government and state. It can be found on articles 10, 11, 12, 13, 14 and 15 in 1945 constitution. Beside that based on the article 5 verse (1) the 1945 constitution the president also has an authority on creating the constitution which has been supported by the people representative council. It can be said before the changing of the 1945 constitution the president's authority is very widen. The president has an authority as the legislative, executive and even also judiciary which has been stated on the article 14 the 1945 constitution. The powerful authority of the president without the transparency of checks and balances system with other state institution will create unbalance Indonesian government system. That is one of the reasons the changing of the 1945 constitution. After the amendment of 1945 constitution has been the border constitutionally for president;

such as the limitation of the president's occupation, which was stated in the past 1945 constitution there is no clear the limitation on the occupation but maximum 2 periods (Asshidiqie, 2012).

2. Problem Statement

The powerful authority of the president without the transparency of checks and balances system with other state institution will create unbalance Indonesian government system.

3. Research Questions

The research questions are stated as follows:

- How is the construction of Indonesian republic government system based on 1945 constitution, is it parliamentary or presidential?
- How is the construction of Indonesian republic government system after the amendment of 1945 constitution?
- How is *checks and balances system* applied for the government institutions based on the Indonesian republic state constitution?

4. Purpose of the Study

Regarding the research questions, the purposes of this study are:

- To figure out the construction of Indonesian republic government system based on 1945 constitution.
- To figure out the use of the 1945 constitution after the changing into 1945 Indonesian state constitution?
- To explore checks and balances system applied for the government institutions based on the Indonesian republic state constitution.

5. Research Methods

This research is descriptive-qualitative. It aims at describing the government system of Indonesian Republic before and after the amendment of 1945 Constitution. It also explores the checks and balances system applied for the government institutions based on the Indonesian republic state constitution. The technique of collecting the data of this research is carried out by collecting some references or sources concerning with the government system of Indonesian Republic. The data were then analysed by corresponding them with its implementation to figure out the differences and similarities of the government system before and after the amendment of 1945 constitution of Indonesian Republic.

6. Findings

The changing of 1945 constitution which is done by the people's assembly Indonesian republic in 1999, 2000, 2001 and 2002 it has brought the huge development in statecraft. In for times changing, the original material of 1945 constitution had been changed into the basic one. Substantively, it had been the

newest proclamation constitution which has the same name as the 1945 state constitution. (Asshidiqie, 2012).

The transparency of other changing through checks and balances system between the state institutions which are stated on the 1945 state constitution makes it better. It used to be the legislative authority was belonging president and now it has been changed into the representative people council. Article verse (1) stated “president has a right to propose the design of constitution”.by this changing so the president authority only having a right and it is not a duty or an obligatory on designing the constitution. It had been strengthen by the article 20 verse (1) The1945 constitution had arranged that “the representative people council has an authority on the constitution”. Verse (2) every draft constitution will be discussed by the people representative council with the president to get the same decision”. In the next verse (4) “president legalizes the draft constitution which had been agreed and discussed to be a constitution”. Verse (5) “In 30 days if the draft constitution which had been agreed to be legalized by president but there is not legalizing by president the constitution is legal and it must be constituted”. By this mechanism so the discussion on the constitution becomes clear between the representative people council and president. If there is a violation assumption on the constitution based on the appellant, it can be asked the petition to the constitution court. In executive, the authority of the president is getting stronger and it can be said for along his authority the people assembly’s Indonesian republic is not able to do the impeachment. 1945 constitution Article 7 stated: “Each President and vice president has five years occupation, and after all it can be re-elected in the same occupation, only in one period. Article 7A stated: “Each President and vice president can be impeached by the people’s assembly based on the proposal of the representative people council, whether it had been proofed law violation such as the country betrayal, corruption, bribery, and other serious criminal acts, or reprehensible acts and it had been proofed as the pre requisite as each president and vice one. To strength the checks and balances system, so the discharge of the president is not be able politically as happened with Soekarno, Soeharto, B.J. Habibie or even Abdurachman Wachid, whereas are happened through the special plenary by the people’s assembly without any legal and law protection from them. Beside that based on the article 7B verse (4) the process of the president’s discharge is done by the constitution court which will check, justify, and judge as fair as the representative people council’s opinion in the longest ninety days after the requirement of the representative people council had been accepted. The constitution court will give the judgment whether it had been proofed or not. Thus it had been concluded that the impeachment each president and vice president must use the law process.

7. Conclusion

The post changing of 1945 constitution gives the checks and balances system is done well, mostly the institutions such as the people’s assembly and the representative people council, each president and vice president also constitution court on handling the duty and the obligatory. By the checks and balances system will show the Indonesian republic is the country which used the constitutional law as required by the modern statecraft. With the understanding checks and balances at least it will reduce the conflict between state institutions as stated in the 1945 state constitution and giving the legal formal of the law for every state institution.

References

- Asshidiqie, J., (2012). Mahkamah Konstitusi Dalam sistem Ketatanegaraan Republik Indonesia, Mahkamah Konstitusi. Jakarta: Mahkamah Konsititusi
- Gaffar, J., M., (2013) Demokrasi Dan Pemilu Indonesia. Jakarta: Konpress
- Joeniarso, (1982). The Indonesian statecraft history. Jakarta: Bina Aksara Indonesia.
- Khaelani, (2013). Negara Pancasila. Yogyakarta: Paradigma
- Kusnardi, M., Saragih, B., (1980). Susunan Pembagian Kekuasaan Menurut Sistem Undang-Undang Dasar 1945. Jakarta: Gramedia.
- Latif, Y, (2012). Negara Paripurna, Historitas, Rasionalitas, dan Aktualitas Pancasila. Jakarta: Kompas Gramedia, hal.475
- Martitah, (2013). Mahkamah Konstitusi Dari Negative Legislature Ke Positive Legislature. Jakarta: Konpress
- Rahman, T., (2012). Kekuasaan Presiden Pasca Amandemen UUD 1945. Makalah Pada Simposium Nasional Satu Dasawarsa Perubahan UUD 1945: Indonesia Menuju Negara Konstitusional, 31st Oktober-1stNovember 2012, Law faculty Pajajaran University, Bandung.
- Zaini, H., (1983). Pengantar Hukum Tata Negara Indonesia. Bandung: Alumni
- Zoelva, H., (2016). Impeachment Presiden Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945. Jakarta: Konpress.