

THE CONSTRUCTION OF CONSTITUTIONAL POLICY ON INDONESIA PRESIDENTIAL SYSTEM : HISTORICAL DEBATES AND PERSPECTIVES

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Abstract

Experiences written as historical debates and perspectives in the Indonesia Presidential system is shaping a country by our founding fathers to be an important part of the country's political process. Historical documents provided an entry point explanation of the choices the government system that has brought the country on its national ideals, achieving people's welfare, fair, safe, and tranquil. This paper discusses about the construction of constitutional policy on Indonesia Presidential system in 1945. The paper describes how the process of debates and the decision to choose a presidential system in Indonesia through the records and documents as recorded in BPUPK meeting. BPUPK is Board of Independence Efforts Preparation initiated by Japan in its short colonialism in Indonesia land. Furthermore, the paper also discusses how the differences in the practice of the constitution and the philosophy of the founders of the nation with the practice of government today.

Keywords: Government System, Indonesia Presidential System, Constitutional Policy.

I. THE DEBATES IN THE GOVERNMENT SYSTEM AND PPKI-BPUPK INDONESIA

The debate over the form of government can not be separated from Indonesia or Investigation Agency Business BPUPK Preparation of Independence which was formed by the occupation of the Japanese army on 29 April 1945. This body was formed as an effort to gain support for the Indonesian people with the promise that Japan will help Indonesia's independence process. BPUPK member were 63 people, chaired by the vice-chairman Radjiman Wedyodiningrat Hibangase Yosio (Japanese) and RP Soeroso. In Gunseikan edict No. 23 dated May 29, 1945, the Japanese colonial politics seems to attract the hearts of the people of Indonesia because of his own power had been destroyed in Asia. According to PJ Drooglever, BPUPK members were appointed by the Japanese military block, which has a tendency to support Japan. P.J Drooglever states:

" Before surveying the constitutional Debates of the post-1945, it would be useful to take a Closer Look at the main constituent body of the Republican State of 1945, the BPUPK. This body was composed of over 60 members chosen by the Japanese military government from among the more senior Nationalist leaders and officials. There was no room in it for anyone whole heartly had not cooperated with Japan. The Social Democrat Sjahrir, for instance, who was surely one of the most prominet pre-war leaders of the Nationalist movement had no seat on this committee"

On August 7, 1945, Japan dispersed BPUPK-PPKI or replaced by the Preparatory Committee for Indonesian Independence which consists of 21 people from various ethnic groups in Indonesia. There was no agreement at the first meeting of the formula so it needs to be made the basis of the state committee of nine (9). On June 22, 1945, the committee is to formulate the basis of nine countries that later recorded as the Jakarta Charter (Jakarta Charter) that contains:

- "a. Godhead with the obligation to run for devotees of the Islamic Shari'a-followers;
- b. Just and civilized humanity;
- c. The unity of Indonesia;
- d. Kerakyatan led by the inner wisdom of deliberations of representatives;
- e. Social justice for all people of Indonesia"

Having discussed the basic state, then the second meeting of the second meeting lasted 10 to 17 July 1945 with the theme of the discussion were on the state, territory, citizenship, the draft Constitution, economics and finance, defense of the state, education and teaching. In this meeting the Committee established designer of the Constitution of 19 people consisting of a chairman Ir. Sukarno, with the Homeland Defense Committee chairman Abikoesno Tjokrosoejoso and Economic and Finance Committee chaired by Mohammad Hatta. With the vote, ultimately determined the independence of Indonesia namely the former Dutch East Indies, coupled with Malaya, North Borneo, Papua, Timor-Portuguese, and the surrounding islands. At the meeting it was agreed that the original democracy was built in Indonesia and became a basic principle in the preparation of the basic state contains two elements, namely a meeting or shura, a forum for deliberation, where an agreement was adhered to by all, or a place where people can resist an unjust act that made by ruler. Therefore, Mohammad Hatta proposed the concept of the State of kinship, which is referred to as the State Board. The processes of policy making in the state of kinship is a container constitutional democracy to transform the original into a modern context. The implementation of Shura institutions set up to do a deal in the modern state. Later, it was transformed into the People's Consultative Assembly and Board of Representatives that became the foundation for the rights of freedom of association, right to assemble, and the right to express opinions.

In opposed to Hatta argument who intended to moderate people by having people rights of express opinion, Sukarno thoughts were colored by the ideas of Sun Yat-sen. In a speech in 1945 until the committee drafting the constitution of Indonesia, Sukarno declared that "since then (1918), nationalism has been implanted in my heart, through the influence of the (Sun Yat-sen's) of the Three People's Principles (democracy, nationalism, and socialism)". Sukarno believed that Indonesia and China had the same goals; and their aspirations were similar in their struggle for national independence.

Soekarno's confidence was risen as continuation of the Pan-Asianisme. He wrote in the newspaper Suluh Indonesia Muda in 1928 that mainly opposed the democracy brought by Western in the colonialism way. The discussions and debates that occurred in the state system and PPKI BPUPK were heavily avoid to emulate the Western system, both presidential and parliamentary systems. This was stated by Koichi Kawamura, who conducted research on the Constitution of 1945 and Indonesia's political institutions. Kawamura stated:

".. As a background of rejecting Western political institutions Such as presidentialism / parliamentarism or separation of powers by independence

leaders of Indonesia, it can be pointed out That Had there existed an Influential philosophy of anti-Western, anti-modernism successively inherited Among Javanese intellectuals since the 1910s”.

Led by Soekarno and Soepomo, the debates on constitutional frame was clearly opposed the values of western democracy. It was believed that freedom of speech and separated power in the national bodies were unnecessary. It was a brought products of colonialism. The background rejection of Western political institutions such as presidential system or parliamentary system and the division of power by the leaders of Indonesia's independence can be found in book of BPUPK records. The thoughts of anti-Western firstly occurred by in Java since 1910.

In BPUPK meeting, one of the founding father, Mr Soepomo, a philosophy thinker of Indonesia at that time rejected Western democracy and individualism. Therefore, the constitutional approach were no meet in to parliamentary system, so were the cabinet systems. It was because they believed the western system have led to imperialism and war on all countries. Beside Soepomo, Sukarno also firmly rejected individualism in the Draft Law. In his speech, Soekarno declared individual rights did not need to be written for the people of Indonesia as well as no need to write in the constitution. Soekarno considered the values of individualism would bring the country in to separation. However, this unexplored thoughts eventually led the President and who ever in power stay in tenure with no control of people. Soekarno expressed his thought in the large meeting on July 15, 1945 in the discussion of the draft Constitution. Soekarno stated:

"..... This is precisely what I am about to explain. This is the source of catastrophe-catastrophe in the world. Countries in Europe and America was founded on the basis of the so-called rights of sovereignty *staat* *staatssovereiniteit* ... human rights as an individual's independence, sovereignty and independence *staat* rights as one body anyway. It's actually already contained the conflict....that's what makes the world of Europe and America became a world full of conflict, with unrest, with disputes, with the war. "

The attitude of Western individualism and liberalism that has given birth to capitalism has caused concern in both Soekarno and Soepomo. Therefore, Soepomo declared Indonesia to have its own system which he called the “family system”, where the head of state is given the concentration of power and responsibilities were more dominant. In his speech on July 15, 1945 with the show continued discussion draft Constitution, Soepomo stated:

"The system of state government that provides "predominance" in the state power in government, especially at the head of state" concentration of power and responsibility "in the hands of the Head of State"

In the minds of Soepomo, liberal democracy was not an option because it was the embodiment of individualism, a system that led to the independence of the world, led to imperialism and war among all men. The thinkers of the Nation and then choose the basis of kinship as the state and reject the parliamentary system. Soepomo was strongly support for a State kinship, His views were:

".... basic kinship system of government requires that regard the Government in general and in particular the Head of State as the Head of the Family, which consists of all the people”.

In this thinking, the head of state is considered as the head of a large family that protects all people. Soepomo also mentioned that the people who believe in the head

of state must also be accompanied by the spirit of nationality. As a countervailing power of the head of state, then Soepomo mention the need for a representative body of the people, as expressed in his speech on May 31, 1945 in the meeting BPUPK on the basis of the state. Soepomo stated:

"To ensure that the leadership of the country, especially the Head of State continually unite the soul with the people, in the arrangement of the State government of Indonesia, the system should be set up consultative bodies. Head of State will continue with the Agency Consultative bergaulan to always know and feel a sense of justice of the people. How will it shape the Consultative Board, is one thing we have to investigate, but should not use the system of individualism ...".

To avoid a head of state power without limits that can lead to totaliarisme, Muhammad Yamin proposed division of power into six parts, namely the power of the president, parliament, the Assembly, CPC, MA and DPA. In addition to the division of powers, Yamin also filed a choice of form a unitary state in comparison with the state federation. Advantages of a unitary state, according to Yamin, among others, Indonesia who want to build does not want "two-faced", meaning the state that is unitarisme and state employee who is federalism so that there are two types of leadership and governance in one country. In addition, Yamin experts considered insufficient or educated people in each province to take care regions respectively. Yamin thoughts on unitary system clearly written in the Proceedings BPUPKI on July 11, 1945 in agenda preparation Drafting of the Constitution. Yamin stated:

"The island of Java became the center of the Republic of Indonesia, up by itself, however the other islands will lack of the educated people, and federalist state can not be formed, because there was no power to the ground side and everything will be used in a short time to form a single unitary, namely the Republic of Indonesia which is based on a round unitarisme".

Regarding the division of power into the state institutions, as proposed by Yamin above, Soepomo was disagreed on the grounds that the government only focuses on executives due to the practice of the institution and legal policy makers eventually handed over to the government. The court gave the power to the government to work and the government was given authority to make regulations. Accordingly, Soekarno also considered the principle of "Trias Politica" did not match the reality of Indonesia at that time. Sukarno, who served as Chairman PPKI at the time, was confirmed that the distribution of power in the Trias Politica was no longer up to dated. Referring to the Soviet Union and China were not adopted to guarantee the country's social justice.

In Soekarno's arguments, he did not entirely reject the argument Soepomo and Mohammed Yamin, but filed a representative institution that has the ultimate power to elect a head of state. The head of state appointed by an institution that was named the MPR (People's Consultative Assembly). MPR was identified with the knowledge to choose the head of state who were considered capable of carrying the nation's resolve of government affairs. MPR exercised control over the heads of state and conducted the election every five years. Almost all of the members present at the meeting PPKI approve this idea.

After rejecting the system of liberal democracy and Western democracy based on individualism, the Founders of this Nation adopted a system of kinship as the basic philosophy in the construction of Indonesia's political institutions. This concept

evolved from the efforts of indigenous intellectuals who want the original principles of social integration that comes from their own culture and traditions of Indonesia. Indonesian nationalist activists formulated a new nation state in the movement against Dutch colonialism. The thinkers of the nation were dominated by thinkers such as Ki Hajar Dewantoro that the state were the sole leadership of Indonesia's cultural heritage. In response to that argument, Kawamura wrote:

“In other words, the Java culture, since it was based on the Indian world, had the potential to overcome Modernity. Dewantoro As suggested, therefore, Western democracy, the which was based on individualism, Caused Anarchy, while Javanese democracy, "regarded the establishment of 'uniting all individuals' as the most important. It means that each individual is less independent while he is united with the Whole and that he sincerely sacrifices for interests of all. Thus, 'a leader and followers are united' (united-ing Kawulo Gusti) "(Tsuchiya [1982: 334]), the which attains order and peace”.

The principle states that filed by the family tend to be rooted on Soepomo's thought who were strongly attached to the Javanese culture; with a single leadership proposed that obeyed by the people is like a kingdom led by a just king and not likely to betray his people. Kamamura asserted in his writings:

“Accordingly, legitimizing principle of a new state was grown up from an ideology which was consciously derived from Javanese culture. However, the concept suggested by Dewantoro was strongly influenced by the doctrine of the totalitarian state in the Third Empire of Germany. The Nazi's doctrine of totalitarian state Recognized as the state substantially the organic and the mystic, rejecting the distinction the between an individual, society, and the state in principle (Higuchi 1998: 192-193).”

In fact, at PPKI meeting on May 31, 1945, Soepomo explained the doctrine of totalitarian or integrative ideology that emphasizes the unity of a leader with his followers, believed to be most in accordance with the tradition of Indonesian society, while showing an example of socialist society and the German emperor system in Japan. Kawamura later wrote back Soepomo statement: "The indigenous social structure of Indonesia is the creation of Indonesian culture, the fruit of the Philosophy or the inner spirit of the Indonesian people. The inner spirit and the spiritual structure of the Indonesian people is characterized by the ideal of the unity of life (unity of life), the unity of leaders and followers (unity kawulo and gusti), that is, of the outer and the inner world, of the macrocosmos and the microcosmos, of the people and Their Leaders. All men as individuals, every group or grouping of men in a society, and every society in the life of the entire world --- each of these is considered to have its own place and its own obligations (dharma) According to the law of nature, the whole being aimed at achieving the spiritual and physical balance. Men as an individual are not separated from other individuals or the outside world. Men, groups of men, and, indeed, all groups of creatures, all are interacting and interrelated and all have influence on each other. This is the totalitarian idea (the idea of totalitarianism), the integralistic idea (the idea of integrative) of the Indonesian people the which is embodied in its indigenous form of government."

This idea certainly does not indicate the presence of power controllers from other institutions of the executive. The President is the leader of a policy so that the House should cooperate and coordinate to the legislation. The President as head of

government can also coordinate to implement the regulations. In fact, the president can change the rules if the situation urgent, so it appears in the 1945 Presidential authority beyond the legislative power.

From the minutes of meetings of Board of Inquiry Efforts Preparation of Independence (BPUPK) when discussing the basic state on May 28 to July 1 and from 10 to 17 July 1945, and meetings of the Preparatory Committee for Indonesian Independence (PPKI) at 18-22 Agustus 1945, we can follow the development of the nation's thought leaders on the basis of the state. Bung Karno and Bung Hatta Prof. Soepomo are three figures who declared the establishment of the Republic of Indonesia based on Indonesian people life style that is familiar, which in the discourse of the pro-independence proclamation defined the same as kolektivisme.

Principles of system of government, Indonesia is based on the 1945 Constitution before the amendment contained in the Explanation of the 1945 Constitution on seven key basic system of government is as follows:

- 1) Indonesia is a country based on law (rechtsstaat);
- 2) Constitutional system,
- 3) The highest state power in the hands of the People's Consultative Assembly,
- 4) The President is the organizer of the highest state government under the People's Consultative Assembly;
- 5) He is not accountable to the House of Representatives;
- 6) Minister of state is the assistant of the President, ministers of state are not liable to the House of Representatives;
- 7) Heads of state power is not unlimited.

In a large meeting BPUPKI on July 15, 1945 with the Basic Law Drafting event Dr. Sukiman who assert that the bill drawn up subcommittee led by Ir. Sukarno had "Alone System" different from other state government system. But he thought better able to ensure the stability of government which is the basis for building the state capital. Sukarno statement is then translated in the form of presidential system of government but the president was not elected directly but through a representative body of the people who appoint and dismiss the president.

Indonesian sovereignty held by a body called the Assembly who have the duty:

- 1) Changing and establishing the Constitution;
- 2) inaugurated president and vice president;
- 3) dismiss the president / vice president in his tenure the President run the country according to the direction of the lines that have been established by MPR

II. THE CHANGE OF CONSTITUTION

In the Preamble of the 1945 Constitution was revealed how the will of the founders of this nation about the presidential system of Indonesia, which has its own distinct system with a presidential system in another country. The difference is even stronger because the President can not be dissolved by the House and not accountable to Parliament, the President is the highest government administrators. In exercising the power of state government, the full responsibility in the hands of the president. President in charge of and responsible to carry out GBHN or other MPR decree.

The position of President and the Parliament are parallel. In formation Act and establish the state budget, the President must obtain the approval of DPR. Presiden can not dissolve the House of Representatives and the House was not able to impose the

President. The President is responsible to the MPR in addition, must pay attention to the House vote, because the Parliament has the right to conduct supervision of the President; Parliament are also entitled to provide a proposal to hold a Special Session of the Assembly to hold the President. Therefore, the task of head of state is limited.

After practicing the year of 1945 Constitution, as predicted by Hatta, no people control on the government. As a result of a very strong president, people eventually rejected the leadership of totalitarian. President Soekarno was stepped down by MPR in 1965. Eventhough still many rumor on his tenure including a possibility of coup d' état, the point was that people need to be listened in the government.

The strong position of head of state is written in the constition had been also used by Soekarno successor. President Soeharto who was in power since 1966 maintained his position for 32 years. One of his power that the constition of 1945 did not clearly stated the limitation of tenure. He could be in power as long as people or the MPR reappointed him. The elections was held every five years, somehow there were no point of justice and fairness in each election. The executive power above the other state power, legislative and judicative. Even the members of legislative and judicative board must be approved by the executive power.

The five months of debates in the formulation of 1945 constition was really short to build Indonesia in the future. I could be understand at that time as a struggle for independence and colonialism were keep find a way to resteped in Indonesia land. Therefore, Soekarno once state that the constition could be change when the country is stable.

Somehow, the power of executive as created in the constition of 1945 has led President Soeharto to use the constitution as his basic source to capture his presidential power. No effort to put the people power as any oppotion againts his government will be put down.

In 1998, one of the longest power president in the world was stteped down. President Soeharto should leave the presidential seat. Following the resignation the president, then the constitution was again debated to be changed. For four years respectively, in 1999, 2000, 2001, and 2002, the constition of 1945 has changed and amanded four times.

One of the most prominent change is to reduce the power of President as executive board. The separation of power was a content of debates. The tenure of president must be written clearly for only two terms; the power of president should be concent with the approval of legislative power (DPR). Especially for legislation power which was formerly DPR only treatead as a stamp rubber. Most executive power should be also on concern of DPR.

DPD as Region representative was created. MPR power was no more to elect president, people do the election directly. Many of this changes on the 1945 Constition as a basic thought to involve people in the government voices. The presidential system tended to copy American System where two chambers recognized and president reelected for two terms. Formerly, Indonesia has a presidential system the system itself including the president are not elected directly by the people but by the Assembly. As noted also by ASEAN sources of information that states the Sovereignty of the people rests with the People's Consultative Assembly (MPR). Hence, the President is accountable to the Assembly. The legislative power is vested in the House of Representatives (DPR). Other institutions of the state are the Supreme Court, the Supreme Advisory Council and the Supreme Audit Board. (Sovereignty of

the people are in MPR. Presiden accountable to the Assembly. Legislative power in the hands of the House. Institutions in other countries is the Supreme Court and the CPC.

It was proven that the system maintained in Constituion of 1945 guarded the power of president as the only power in the state. Therefore, the main change of constitution was to eliminate the power of president and it must in parrallel power with the DPR, the people representative. Somehow, still the changes were not yet meeting the people need of prosperity as the system does not yet meet the guard of DPR member to speak only for people need. It needs further debates to balance the power of executive and legislative which mainly for the sake of the people and state. The system currently still leave the people behind by no transparancy and accountablity in the state decision.

III. CONCLUSION

The debates on constitutional frame in the presidential system has shown a short description that our founding fathers intensionally avoid the western system. However, it left the checks and balances system and rather put the power of president above other state instition. It was not think of that time that whoever on power could abuse the power. Therefore, the constitution of 1945 has changed to make more balance between the power of executive and legislative. The ideas was to make a system on control among the state power. Somehow, again, the people's need still left behind in the system that the elites power in the executive and legislative avoid to be more open and transparant in their decision. Constituens only needed in each five year when election held. No further attachment between legislative members and their constituents. The presidential system is still alone system since the people need still unrest in the unfinished business of purely executive and legislative power.

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