

# The Change of Parliamentary System Towards Presidentially System of the Government of Republic Indonesia

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**ABSTRACT.** Reform movement in 1998 which was acted by high students and all element of society of Indonesia has been effecting to step down of the regime of new order which had governed more than 32 years. Its long period of the power of new order is based to the regulation on Article 6 (2) of the 1945 Constitution (original text) which mention that President and Vice President elected by the People's Consultative Assembly with the majority votes. Then, on Article 7 of the 1945 Constitution (original text) which mention that, President and Vice President holding the position during five years period and after that could be choose again. The both articles has misused by the power of new order (orde baru), its caused of the political strategy has been preparing systematically that every five position period, the President is effort to make sure that the report of government responsibility successfully accepted by the People's Consultative Assembly. Finally, after the amended of the 1945 Constitution, that the Article 6A (1) which mention the President and Vice President elected on one couple direct election by the people. And then, the Article 7 which mention that President and Vice President holding the position during five year period, and after that could be reelected on same position The research method which used is the qualitative model with the research approach are statute. The conclusion of this research that reform movement on the year 1998, has successfully changes the structure of the government from parliamentary system to ward presidentially system. Even though it implementation unsuccessfully yet, regarding to the expectation of the people.

**Keywords:** Reform Movement, Parliamentary, Presidential and responsibility.

## 1. INTRODUCTION

The concept of the rule of law is the concept of state administration based on law (*rechstaat*) not merely based on mere power (*machstaat*). The concept of the rule of law began with the movement of rationality of individualist human thought that occurred during the renaissance (*beginning in the 14th century*), which was a form of resistance to the arbitrariness of the rulers at that time towards the people. During the Renaissance gave birth to thinkers such as Niccolo Machiavelli (1469-1527) an Italian philosopher with his theory of power (*machtstaat*), namely the concept of world thought without morals and fighting each other so that the power factor is the most important (*maachstaat*). The ruler, namely the leader of the state, must have characteristics such as deer and lion. He must be a deer to become a pit and become a lion to surprise the wolf. The king or ruler of the state must have clever and slippery qualities like a mouse deer, but must also have cruel qualities and an iron hand like a lion [6], and Jean Bodin (1530-1596) a French philosopher with his country's sovereignty theory (*staats souvereiniteit*), namely the

concept of law as a sovereign king's order, and this king's order as a general rule that applies to the people and general issues. The king's power is the highest over citizens and the people, the king is not bound by law (*summa cires ac subditos legibusque soluta potesta*). Because if the king under the law will destroy the meaning of sovereignty. Law is the incarnation of the will of the state. It is the country that creates the law. And the state is the only source of law that has sovereignty.[4].

With the emergence of teachings or ideology of state sovereignty, the development of entering into the third period arises the existence of "*staatsrechtdogmatiek*" or "*staatsrechtssystematiek*" or referred to as "*wetenschap van het positief staatsrecht*", namely science concerning positive state law [2]. The philosophers who lived at that time included Immanuel Kant (1724-1804) a German philosopher with his theory of the rule of law (*rechstaat*), namely that the law was a product of practical reason based on (i) that every human being was treated according to his dignity, he must be treated in everything as a subject rather than an object, (ii) each person must act on the argument that

what is the basis of his actions is indeed the principle of the universe [3]. Thomas Hobbes (1588-1679) an English philosopher with the legal theory of his security order (*Night Guidance*), namely that law is a basic need for individual security, in the midst of wild prey, law is an important tool for the creation of society safe and peaceful [2]. John Locke (1632-1704) an English philosopher with legal theory was the protector of natural rights, namely with the concept of individual freedom and the primacy of the ratio, that the existence of social contracts in the state was not to give up human rights to the authorities, but instead the authorities guaranteed rights -the nature of human rights is protected by the authorities with the limitation of the ruling powers (*Trias Politica*) [3]. Jean Jacques Rousseau (1712-1778), a French philosopher with his general ethical theory of morality (*Moral & Ethics*), namely seeing the true existence of man as a person who has ethical autonomy, this individual's freedom is the basis of his life's ontology, that is Therefore, law as a public order is only understood in that basic reality [2].

By looking at the history of community civilization that occurred during the renaissance including the positive law period, these are things that are natural for human life to organize a better life. Coupled with the rapid development of science and technology followed by the development of industry in various fields of people's lives, it has changed the mindset of the people who were initially passive and always received what was decided by the authorities when it changed to being active and always critical of what what has been decided by the authorities at that time especially if it is felt to be unfair and contrary to the private rights of the community. This pattern has changed the state order which was originally state sovereignty held by the power of the royal group (*Monarchy*) to become the sovereignty of the state held by the power of society (*Democracy*) with certain restrictions so as not to be arbitrary. Montesquieu in his book "*L'Esprit des lois*" in an absolute power needs restrictions to be made so that the authorities do not take arbitrary actions, for that power must be divided into three forces (*Trias Politica*) namely the existence of legislative power, executive power and judicial power [13].

Democracy is a form of government in a state whose sovereignty is surrendered to the public (*res-publica*). The community has full authority to formulate what and how the state and government want to be formed, the principles of democracy or popular sovereignty can guarantee the participation of the community in the decision-making process, so that any legislation that is implemented and enforced

truly reflects a sense of community justice [14] In the practice of countries in the world, a democratic system is implemented in three democracies. The first is a liberal democratic system [8] that is power in the country is carried out for the broadest sovereignty of the people (direct decision), the state highly upholds human rights as high as possible, sometimes even above the public interest. For example, in the practice of the United States and some commonwealth countries, the second is a limited democratic system [8] that is power in the state carried out on people's sovereignty carried out with boundaries regulated by law and legislation (*decision representative*), in constitutional practice called parliamentary democracy, where power parliament is above the executive power. For example, France, Belgium, the Netherlands and Indonesia in the old text of the 1945 Constitution. And the third is the system of socialist democracy [8], namely the democracy which in principle does not recognize individual ownership rights over all means of production, because the means of production must belong to the community in terms of this country.

In the practice of current countries, governance in a country is carried out with two systems of government, namely a presidential government system, and a parliamentary system of government, although in practice the separation of the two systems is not absolute, because there are also countries implementing a system of government with quasi-presidential and parliamentary. The three forms of government as outlined above, and if connected with the system of government in a country and by observing the practices of countries in the world today, the presidential government system is closely related to the form of government with a liberal democratic system, while the parliamentary system of government is closely related with the form of government with a limited democratic system, and a totalitarian system of government closely related to the form of government of socialism.[2]

The history of democracy in Indonesia, especially in relation to the implementation of the form of government and government system in Indonesian constitutional law can be seen from the history of the formation and enactment of the state constitution, namely the 1945 Constitution. As it is known that in Indonesian constitutional law there have been four times the enactment of the state constitution namely: the 1945 Constitution period (*UUD-1945*) from August 18, 1945 to December 26, 1949, (ii) the period of the Constitution of United State of Indonesia (*KRIS*) from December 27, 1949 to August 16, 1950, (iii ) 1950 Constitution Provision

period (*UUDS-1950*) from 17 August 1950 to 4 July 1959, and (iv) the period of returning to Constitution 1945 (original text) from 5 July 1959 to the present [13].

The applicability of the four Constitution of the aforementioned country, both in the old order and the new order period, and with regard to how the form of government and government system in Indonesian constitutional law is implemented, in practice has not been able to provide the fairest legal guarantees and welfare to the community as mandated by the state philosophy of Pancasila. In reality, during the duration of the Constitution, there has been a very long political instability in the country, and the ebb and flow of state constitutions that have not been effective, coupled with the occurrence of fraud in the implementation of the Constitution by the government regime, especially in the old and new order. Finally, it came to a time when the community no longer trusted the government[5]. The political turmoil in 1998 was called the "reform movement" which succeeded in overthrowing President Soeharto who had been in power for more than thirty-two years. That is a movement that demands that the state immediately carry out reforms in various fields, for example: in the fields of social, economic, political, and of course in the field of law. One of the demands relating to reforms in the field of law, is the impetus for the immediate amendment of the 1945 Constitution in order to change the system of government from a parliamentary system to a presidential system, or provide reinforcement to a presidential system. For this effort and encouragement, finally the 1945 Constitution has been amended four times. The first amendment was set on October 19, 1999, the second amendment was set on August 18, 2000, the third amendment on November 9, 2001, and the fourth amendment was set on August 10, 2002 [5].

## 2. RESEARCH METHOD

The type of research used in this study is descriptive analysis, namely research that aims to describe precisely an individual, condition, symptom or group, or to determine the spread of a symptom, or to find whether there is a relationship between a symptom and other symptoms in the community [1]. The research model is used by using a qualitative approach, in which this study emphasizes the pattern of human behavior, which is seen from the "*frame of reference*" of the perpetrator itself, so individuals as central actors need to be respected and an analysis and place it as part of a whole [1]. Qualitative research is a type of research whose findings are not obtained through statistical procedures or other forms

of calculation [10]. The specifications in this study are conducting research in the field of constitutional law, especially those relating to the history of the development of forms and systems of government in Indonesia. The data used are primary data, namely data obtained directly from the first source, namely in the form of interviews with experts in the field of constitutional law. While secondary data are official documents such as legislation, legal science reference books, research results in the form of reports and so on [10]. Data analysis is done by looking holistically at all research related problems, including linking problems with theoretical references to provide deepening and strengthening to provide good research results.

## 3. RESULT AND DISCUSSION

### 3.1 Literacy

Democracy comes from the Greek words "*demos*" and "*cratos*". "*Demos*" means the people, "*Cratos*" means power (government). So democracy means people's government, namely: its people play a very decisive role in government. While Monarchy also comes from the Greek words "*monos*" and "*archien*". "*Monos*" means group or group, "*archien*" means power (*government*). So monarchy means group or group government, namely: it is groups or groups that hold a very decisive role in government, not the people in general [10]. Bryan A. Garner "*Democracy*" means "A Government by the people, either directly or through representative's [11] and" Monarchy "is interpreted as" A Government by a single person, with powers verifying from absolute indicators to merely ceremonial "[14] In implementing the government so that there is no abuse of power, the government must be given restrictions on power. In this case John Locke said that the ruler does not have absolute power, to protect these rights, then it is the people who make the law not the ruler (*Trias Politica*) [14]. John Locke divides state power into 3 (*three*) functions, namely: (i) Legislative functions, namely legislative functions, (ii) Executive functions, implementation of laws and (iii) Federative functions, cooperation functions in the field international relations [13]. This opinion has been refined by his student C.L.S. Montesquieu, which states that separation is intended to solely gain people's political freedom, is not harmed, this idea which is very famous for "*Trias Politica*" [14]. Montesquieu divides the functions of state power into 3 (*three*) functions, namely: (i) Legislative functions, namely institutions that function to make laws, (ii) Executive functions, namely institutions that function to implement laws, and (iii) Judicial Functions ,

namely a functioning institution overseeing the law [13].

The branch of executive power is a branch of power that holds the highest administrative authority of the state [9]. Carl J. Friedrich, said that the government system is a combination of the word system, which means an entire consisting of several parts that have a good functional relationship between any part of the functional relationship to the whole, so that the relationship creates a dependency between the parts that result if one part does not work properly will affect the whole. While governance in the broadest sense is all matters carried out by the state in carrying out the welfare of its people and the interests of their own country [9]. Sri Soemantri, interpreting the system of government regarding the system of relations between the executive and the legislature. The existence and or absence of a relationship between the executive and the legislature gave birth to a system of parliamentary government and presidential government systems [3]. In practice, countries in the world today are known as three types of government systems, namely: (1) Presidential systems, (2) Parliamentary systems, and (3) Mixed systems.

The presidential government system in which the presidential election comes from the president's words so that the presidential government system is a functional relationship between institutions in the administration of government where the implementation is headed by the president. In purely carrying out the presidential system of government, the Trias Politica doctrine must be truly implemented where there is a clear division of power on state duties which includes: (i) Legislative which has rule making function, (ii) Executives who play a role in implementing the rule application function, (iii) the Judiciary who has the right to adjudicate the rule adjudication function. With the following characteristics: (1) The President as head of state as well as head of government, (2) The President is directly elected by the people, (3) The absence of the highest state institution, (4) Executive and Legislative powers are equally strong (5) The clarity of the division of power between the executive and the legislature, (6) The existence of constitutional supremacy, (7) The President is responsible to the people and (8) There is clarity in the term of office of the President and Vice President [16]. Jimly Assiddiqie added that the characteristics of the presidential government if: (a) the position of head of state is not separate from the position of head of government, (b) the head of state is not responsible to the parliament, but directly responsible to the people

who elect him, (c) the president does not disperse parliament (d) the cabinet is fully responsible to the President as the holder of state government authority or as the highest administrator [2].

Parliamentary government system, or parliamentary executive systems are often also referred to as the Cabinet System, or some also refer to the British system, because this system comes from England, even though the country is a kingdom, but this system is also widely applied to the republic. The mention of this name is actually inaccurate, said the parliament often causing misinterpretation, giving birth to associations as if those who own the parliament are only found in the parliamentary system, even though there is also a parliamentary body in the presidential system. The mention of cabinet names is also inappropriate, because in other systems there is also a cabinet in the government. The use of this term only wants to show that the executive power is in his cabinet not in the president [14]. The characteristics of a parliamentary government system are certainly very different from the presidential government system, including: (1) The head of state is not concurrently the head of government, because the head of government is usually held by a prime minister, (2) The president is not directly elected but elected by parliament and responsible to parliament, (3) There is the highest institution in the country, namely parliament, (4) Executive institutions have less power than legislative powers, (5) There is no clarity about the term of office of the president or prime minister, because at any time may be dismissed by parliament[18].

In another view, Jimly Assiddiqie said that the government system is parliamentary if (a) the system of leadership is divided into positions of head of state and head of government as two separate positions, and (b) if the system of government is determined to be responsible to the parliament, thus (c) cabinet can be dissolved if they do not get parliamentary support, and vice versa (d) the parliament can also be dissolved by the government, if deemed unable to provide support to the government [2]. Meanwhile, in a mixed system, there are presidential characteristics and joint parliamentary characteristics in the government that is applied. This mixed system is usually referred to by experts in accordance with the habits applied by each country. For example, the system practiced in France is commonly known by scholars as a hybrid system. The position of head of state is held by the President who is directly elected by the people, but there is also a head of government led by a Prime Minister who is supported by parliament as in the usual parliamentary system.

Therefore, we can also call this French system quasi parliamentary [3].

### **3.2 The Original Text of the 1945 Constitution.**

With regard to what can be interpreted related to the presidential and parliamentary system of government and if connected with the provisions in the original text of the 1945 Constitution, it can be seen that the provisions in Article 3 read that the People's Consultative Assembly (*MPR*) stipulates the Basic Law and the outline of the state's direction, can be interpreted as a characteristic of a system of parliamentary government. It can be seen that the Article does not at all mention how the executive's role in this matter is the President in terms of his own authority to form the Broad Guidelines of the State (*GBHN*), but by the People's Consultative Assembly (*MPR*) which will be carried out by the President. In Article 4 Paragraph (1) it states that the President of the Republic of Indonesia holds a government according to the Constitution, which can be interpreted as a characteristic of a presidential government system. If you see the sound of this article, the Indonesian government system is a presidential system, and on the other hand the President is not responsible to the House of People Representatives (*DPR*), meaning that the position of the President does not depend on the House of People Representatives [16]. But how in practice the President must account for his performance every five years, this is a system of parliamentary governance.

Other provisions can be seen in Article 5 Paragraph (1) that the President holds the power to form a law with the approval of the House of People Representatives (*DPR*), which can be interpreted as having the characteristics of a presidential government system and characteristic of a parliamentary system. Sentences with the approval of the House of People Representatives (*DPR*) can be interpreted as having the same power in the field of legislation. The provisions of Article 6 Paragraph (2) states that the President and Vice President are elected by the People's Consultative Assembly (*MPR*), can be interpreted as a feature of a parliamentary system of government, this provision clearly emphasizes the parliamentary system because the President is appointed by the People's Consultative Assembly (*MPR*) with the most votes, meaning The President is the mandate of the People's Consultative Assembly (*MPR*). then the provisions of Article 7 read that the President and Vice President hold their positions for a period of five years and thereafter they can be re-elected, which can be interpreted as a characteristic of the presidential government.[16] Article 10 states that

the President holds the highest authority over the Army, Navy and Air Force, which can be interpreted as a characteristic of the presidential government system. Article 20 Paragraph (1) states that each law requires the approval of the House of People Representatives (*DPR*), which can be interpreted as a characteristic of a system of parliamentary government. Article 21 Paragraph (1) states that members of the House of People Representatives (*DPR*) have the right to advance the draft law, which can be interpreted as a characteristic of a system of parliamentary government. Showing some of the articles above that the implementation of a government system in the Indonesian constitutional system cannot be ascertained with certainty whether Indonesia adheres to a presidential system or a parliamentary system, because there are provisions governing presidential and parliamentary systems[16].

In the expert's view, Susanto explained that regarding the position of president elected by the People's Consultative Assembly (*MPR*) with the most votes was one of the characteristics of the parliamentary government system because the President was appointed and dismissed by the parliament (*MPR*), when the President was considered unable to carry out tasks government. This often happens in the practices of countries that adhere to a system of parliamentary government. Like Japan, the United Kingdom and Australia. [11] While other experts view, Oksidelfa Yanto is explaining that in generally the rules of Constitution 1945 has belonging the content which is deemed as the characters of the government by the presidential system. Such as : President has power to make or form the regulations or rules with approved by the Council of People Representative (*DPR*), exactly in the references of states law that the power to make or form of regulation or rules is the Council of People Representative and not the power of President.[17].

### **3.3 The Result Amendment of the 1945 Constitution (One Text).**

After the amendments to the 1945 Constitution, there have been very significant changes with regard to the application of presidential or parliamentary systems. It can be seen in the provisions of Article 3 Paragraph (1) that the People's Consultative Assembly has the authority to amend and stipulate the Constitution, Paragraph (2) reads the People's Consultative Assembly inaugurates the President and Vice President, Paragraph (3) says, that the People's Consultative Assembly can only dismiss The President and / or Vice President in his term of office according to the Constitution, can be interpreted as a

characteristic of the presidential government system. Noting the sound The articles above have confirmed that the People's Consultative Assembly (*MPR*) is not the highest state institution (creditor) who has the authority to elect the President and Vice President, but only has the authority to appoint only the results of the elections conducted by the Commission General Election (*KPU*). In Article 4 Paragraph (1) it states that the President of the Republic of Indonesia holds a government according to the Constitution, which can be interpreted as a characteristic of the presidential government system. Article 5 Paragraph (1) states that the President has the right to submit a draft law to the House of People Representatives (*DPR*), which can be interpreted as a characteristic of a presidential government system. Article 6A Paragraph (1) states that the President and Vice President are elected directly in a pair by the people, which can be interpreted as a characteristic of the presidential government system[2].

In implementing democracy, legal politics no longer places people's sovereignty in the People's Consultative Assembly (*MPR*). if in the past the sovereignty was in the hands of the people and carried out entirely by the People's Consultative Assembly (*MPR*), then now the people's sovereignty was carried out with the provisions of the Constitution. In this context, the presidential election is no longer carried out by the People's Consultative Assembly (*MPR*), but is carried out by direct election in accordance with the constitution, because the People's Consultative Assembly (*MPR*) is no longer the highest institution [2]. Article 7 states that the President and Vice President hold positions for five years, and after that they can be re-elected in the same position, only for one term of office, can be interpreted as a feature of the presidential government system. The term of office of the President and Vice President is an element that is very deep in emphasizing the presidential system of government, this is because the absence of such term limits will be misused by the authorities as in the two eras that occurred in Indonesia. Article 7C reads that the President cannot freeze and / dissolve the House of People Representatives (*DPR*), can be interpreted as a characteristic of the presidential government system, this reflects that between the two institutions has the same power and strength that can not be dropped, as happens in a parliamentary system of government. Still under the authority of the President Article 10 reads that the President holds the highest authority over the Army, Navy and Air Force, can be interpreted as a characteristic of the presidential government system, it has reinforced the position of

the President as well as head of state, due to defense supervision and security in the army, the Navy and the Air Force are the President's authority as head of state[12].

Then Article 20 Paragraph (1) The House of People Representatives (*DPR*) holds the power to form laws, can be interpreted as a characteristic of the presidential government system, this is very apparent as an effort to restore the position of the House of People Representatives (*DPR*) as a state institution that has authority in the field of legislation. Article 21 states Members of the House of People Representatives (*DPR*) have the right to propose a draft law. One of the ideas of change that when it was offered was a proposal for a system and mechanism for checks and balances in the political system and state administration. This proposal is very important because during the era of the two previous orders it could be said that checks and balances were not available. In making laws, for example, all are dominated by executives, both the initiation process and the endorsement. During the new order, for example, there was never a draft law that came from the initiative of the House of People Representatives (*DPR*) [12]. There is even an image at that time that the House of People Representatives (*DPR*) is only a stamp agency for every law formulated by the government. Shows some of the articles above that the application of a government system in the Indonesian constitutional system in general that the Indonesian government system adheres to a presidential system. Although in some cases there are still things that the President should have full power in the government sector, for example there are still matters that must be approved by the legislature, for example clemency and rehabilitation requests or to the judiciary, for example amnesty and abolition requests[12].

In the expert's view, Susanto explained that with the changes in the provisions of the Constitution which stated that the President and Vice President were directly elected by the people as sovereign holders and were no longer elected by the People's Consultative Assembly (*MPR*), this confirmed that the Indonesian government system adhered to pre-system government system. Even though there are still some things that have not been fully implemented in accordance with the characteristics of the presidential government system as it should [11].Next is the view of another expert, Oksidelfa Yanto said, after amendment the successor of national leader President choose directly by the people and responsible to the people. The end of position period inconcerning the article (8) Conatitution it caused : Pass away of President, resign, or disability to doing the obligation

of its position. The results of amendment also has successfully to carrying out the separate of power, especially in the fields of judicial power under control of Supreme Court (MA) as the independent institution, no intervene from government or another powers. Beside that, after amendment, has published several regulations especially the regulations of special crimes. Such as : Terrorism, Human Trafficking, Juvenile etc. The above captions is meaning the part of characters of the government of presidential system. [17].

#### 4. CONCLUSION

Based on the provisions of the 1945 Constitution in the original text, the general position of the President actually has characteristics that can be categorized as a presidential government system, for example the separation of powers between the President and the House of People Representatives (DPR), the limitation of the President's term of office year and can be re-elected in the next term of office, the President as head of state as head of government, the President has the prerogative right to choose a cabinet and is fully responsible to the President. However, in the provisions of the 1945 Constitution the original text, there are provisions stating that the President and Vice President are elected by the People's Consultative Assembly (MPR) with the most votes. This provision has led to the interpretation that because the President and Vice President are appointed and dismissed by the People's Consultative Assembly (MPR) as a parliamentary institution, this is one of the characteristics of a parliamentary system. Therefore, with the amendment to the 1945 Constitution specifically relating to the position of President and Deputy President who were originally appointed and dismissed by the People's Consultative Assembly (MPR), it was changed to be directly elected by the people and responsible to the people. Then the amendment to the provisions was intended to strengthen the presidential government system as intended in the 1945 Constitution

The recommendation in this study is that the President and Vice President not only have the prerogative right to form cabinets in government, but have the freedom in compiling state ministry organizations currently limited by the Law of the State Ministry, so that the President and Vice

President are able to formulate work programs that effective and efficient in accordance with the work plan that has been announced

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