



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

Editorial Office: Faculty of Law, Sriwijaya University Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.

Phone: +62711-580063 Fax: +62711-581179

E-mail: sriwijalayawreview@unsri.ac.id | sriwijalayawreview@gmail.com

Website: <http://journal.fh.unsri.ac.id/index.php/sriwijalayawreview>

Consistency of the Presidential System in Indonesia

Kuswanto*

Abstract: The current presidential system in Indonesia is the result of the amendments of the 1945 Constitution. Prior to Indonesian reform, the presidential system was influenced by a strong parliamentary pattern in which the president was responsible for the People's Consultative Assembly. Today, this provision is no longer exist. However, consistency of the presidential system is still problematic because the the dominance power of the president over the House of Representatives. These problematic points are not in line with presidential system principle because it reduce the authority of president. The Parliament may only establish any law as long as it is pursuant to the 1945 Constitution. This article aims to examine the issue of the Indonesian presidential system at least in two following sections. Firstly, it deals with dominance of presidential power over the House of Representatives. Secondly, president establishes the independent bodies such as Corruption Eradication Commission (KPK) and National Commission of Human Rights (Komnas HAM) which are constitutionally less restricted.

Keywords: Consistency; Constitutional Amendment; Presidential System; The 1945 Constitution.

ARTICLE HISTORY:

DOI: 10.28946/slrev.Vol2.Iss2.67.pp170-182

Received: Nov 24, 2017;

Reviewed: Jul 23, 2018;

Accepted: Jul 27, 2018;

Published: Jul 31, 2018;

Citation: V.2.2 SLRev. 2018.

* *Department of Law, Universitas Darul 'Ulum, Jombang, Indonesia.*
E-mail: Kuswanto.undar@gmail.com

INTRODUCTION

The process of constitutional reform in Indonesia in 1999-2002 was a very interesting political event and legal event. This process was preceded by a process of political reform in 1998. The target in the constitutional reform was to make a significant change to the Indonesian constitution, namely the 1945 Constitution (the 1945 Constitution). In 1999 general election, po-

litical agreement among the political elites on a number of major issues impacted to the amendment of the 1945 Constitution including presidential system, affirmation of human rights protection commitment, and checks and balances.

The main issue of this paper is the institutionalization of presidential powers in Indonesia in relation to legislative powers based on the presidential system in the amendment of the 1945 Constitution. This study is of great interest both in the Comparative Constitutional Law (Comparative Constitutional Law) and comparative studies of Political Science Comparative Politics). Constitutional change as a political process is very difficult to produce a product of legal decision consistent with the principle or principle of law (legal principle) which is ideal. Such products are often

pragmatic and compromise, regardless of principle or principle. Related to that this paper would be more specific to criticize the product of the process of constitutional change in the consistency of presidential system points formulated in the amendment of the 1945 Constitution with the principle or principle of the presidential system itself.

As preliminary information, regulatory changes concerning the issue of the relationship between the presidency and the legislative powers whose designs are based on the presidential system have been of particular concern since the People's Consultative Assembly (MPR), the holder of power constituting the constituent power, Presidential system purification. However, the policy cannot be fully implemented into the amendment of the 1945 Constitution. Therefore, the 1945 Constitution on the outcome of change, especially as it concerns the presidential system, is incapable of being consistent with the principle or principle of the presidential system itself with the incentive to continue the practice of the parliamentary system. On the condition, this paper would recommend thinking for a change back to the idea of an early change of the 1945 Constitution by implementing consistently the principle or principle of the presidential system itself.

Correspondingly, the systematics of this paper can be explained as follows. First, the author will explain the essential conception of the presidential system. That conception is here referred to as the principle or principle of the presidential system. Secondly, the author will explain the process and product of the amendment of the 1945 Constitution concerning the Indonesian presidential system. This discussion will show the crucial points of the outcome

of the change that clearly reflect the inconsistencies of the presidential system. Third, the authors will convey the points of thought in order to correct the weakness or lack of arrangement into the constitution concerning the arrangement in the relationship between the presidency and the legislative power based on the presidential system. This thinking is expected to contribute to the process of constitutional reform in the future, especially for the fifth amendment of the 1945 Constitution.

ANALYSIS AND DISCUSSION

Presidentialism as a Constitutional Principle

Functionally, the presidential system, or presidential, is the legal framework with respect to the regime types or forms of government of a state, as well as the parliamentary system, which forms the basis for setting the pattern of relations between the legislature and the executive of a country.¹ Conceptually, the presidential system as a constitutional concept has the same general features or features, although the state that applies it to the constitution can provide a particular feature that distinguishes it from one another as a presidential state.² The general conception of the presidential system, as well as its underlying ideal, is qualified here as a constitutional principle. Presidentialism as a constitutional principle will be the standard in evaluating the consistency of presidential systems in Indonesia.

¹ Matthew S. Shugart, *Comparative Executive Legislative Relations*, in R.A.W. Rhodes et.al., eds., *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, 2006, p344.

² Scott Mainwaring & Matthew S. Shugart, 1997, "Juan Linz, Presidential, and Democracy," *Comparative Politics*, 29 (4), pp463-468.

Before discussing the principle of the presidential system, it will be explained the concept of the presidential system. According to Shugart, the presidential system has three general characteristics: "(1) the executive is headed by a popularly elected president who serves as the chief executive; (2) the terms of the chief executive and the legislative assembly are fixed, and not subject to mutual confidence; (3) the president's names and directs the cabinet and has some constitutionally granted law-making authority."³ "In his further explanation, Shugart states:

Owing to their separate origins in the electorate and their fixed terms (separate survival), there is no formal hierarchy between legislative and executive authority. Inter-branch transactions are so important that they may be related to the passage of legislation that may be sought by their respective electorates.⁴

In other words, Cheibub explains the core of the presidential system is that the executive and the legislature are independent *inter alia*."⁵ Thus, government or executive does not require any legislative support to exist."⁶

Conceptually, the presidential system can be better understood by starting from the opposite concept, the parliamentary system. This system, according to Shugart, is different from the presidential system with regard to two aspects, namely "the origin and survival of executive and legislative authority." Shugart explains it as follows:

In a parliamentary system, executive authority originates from the assembly. The precise institutional rules for determining who shall form a cabinet vary across parliamentary systems, but in all of them, the process of forming a government falls to the majority party if there is one. If there is not, the government emerges from bargaining among those politicians who received their mandate at the most recent assembly elections. Once formed, the government survives in office only so long as it maintains the 'confidence' of the majority in the assembly. Again, the precise rules for determining when a government has lost this confidence vary, but always the executive is subject to the ongoing confidence of parliament.⁷

Different principles apply and at the same time their implications, in presidential systems. Cheibub & Limongi explains:

The fact that the head of the government's mandate originates in popular elections leads to a totally different world where coalitions and government duration are irrelevant. The president and the legislature have a fixed term in office and government duration, therefore, becomes a moot question. The fact that the president does not need to generate majority support in the legislature in order to remain in office, in turn, makes coalition governments unnecessary.⁸

Based on the above explanation can be obtained a general sense of the presidential system with regard to how the power of the president obtained and how the process of formation of government can be run by the system.

The emphasis above is that the position of the president authorized for his authority from the direct people, without going through parliament, and his relationship with the independent legislature is granted a permanent guarantee of tenure (fixed term) with more elegant sentence. In this stage,

³ Matthew S. Shugart, *Note 1*, p349.

⁴ *Note 3*, p354.

⁵ Jose Antonio Cheibub, *Presidentialism, Parliamentarism and Democracy*, Cambridge: Cambridge University Press, 2007, p1.

⁶ *Note 5*, p26.

⁷ Matthew S. Shugart, *Note 1*, p349.

⁸ Jose Antonio Cheibub and Fernando Limongi, 2011, "Legislative-Executive Relations," in Tom Ginsburg & Rosalind Dixon, *Comparative Constitutional Law*, Cheltenham: Edward Elgar, p214.

Linz proposes an interesting discernment of the difference between presidential and parliamentary systems by looking at which position is the most dominant part of each system. Linz's argue that:

A parliamentary regime in the strict sense is one in which the only democratically legitimate institution is parliament; in such a regime, the government's authority is completely dependent upon parliamentary confidence." While on the presidential system Linz states: "In presidential systems, an executive with considerable constitutional powers – generally including full control of the composition of the cabinet and administration – is directly elected by the people for a fixed term and is independent of parliamentary votes of confidence."⁹

The above opinion is essentially still concerned with the general features or features of the presidential system and has not touched (the nature) of the presidential system, including the ideas underlying it inherently in the essence. Unlike a parliamentary system that prioritizes or prioritizes legislative support to a governing executive, a presidential system that requires the president as chief executive to be directly elected by the people must have a specific, specific meaning. If the previous explanation emphasizes both the legislative and executive aspects of independence, reinforced by their respective fixed term, the author sees that there is still a substantial aspect to understand the meaning of the presidential system. It ultimately provides an explanation of the principle or principle of, or within, the presidential system itself.

Unlike the parliamentary system, the president is in a presidential system, as an executive, independent. The President has an equal position with the legislative body that obtains a direct mandate from the peo-

ple. This conditioning effort must have a specific meaning, in this case, the idea of a presidential system. In addition to its presidential factor, the executive power itself is essentially more privileged than the legislative power.

Executives have the more acting ability when compared to legislative (and judicial) based on their respective functional characteristics.¹⁰ The superiority of the executive when compared to other governing bodies concerning its function is:

Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances.¹¹

The executive power is, in essence, equipped with a variety of supporting tools that enable it to respond to any situations both normal and abnormal or emergency. Fatovic stated:

Executives possess special resources and characteristics that enable them to formulate responses more rapidly, flexible, and decisively than can legislatures, courts, and bureaucracies.¹²

Furthermore, as the name implies, executives have a great responsibility¹³ in the administration of the country because to

⁹ Juan J. Linz, 1990, "The Perils of Presidential's," *Journal of Democracy*, 1 (1), p52.

¹⁰ Eric A. Posner & Adrian Vermeule, *Terror in Balance: Security, Liberty and the Courts*, Oxford: Oxford University Press, 2007, pp3-6.

¹¹ Clement Fatovic, *Outside the Law: Emergency and Executive Power*, Baltimore: The John Hopkins University Press, 2009, p2.

¹² Note 11.

¹³ Responsibility arises when legal obligation is exist. Nurhidayatulloh, et. al., 2018, "Forsaking Equality: Examine Indonesia's State Responsibility on Polygamy to the Marriage Rights in CEDAW," *Jurnal Dinamika Hukum*, 18 (2), p182-193.

perform laws are more important than to create them.”¹⁴

The presidential system basically wants the president not to rely on the support of the legislature in governing. This understanding reinforces the executive positions that are essential, institutionally, more comparative advantage than other governmental bodies. In this case, the view of Thomas Jefferson, the third president of the United States, as a practitioner of the presidential presidency by the presidential system, is worth listening to. According to Jefferson:

The president unifies the will of the nation and thereby embodies it. The source of the president's claim to embody the will of the nation is his mode of election; because the president is the single nationally elected officer, the president can claim, more than members of Congress, to represent the national will. Because the president must be able to execute that will, it must be surprisingly strong, or energetic.¹⁵

In a presidential system, the capacity of the president to govern run the government is the most important issue. Independence of the legislature is the starting point. However, to be discussed here, the notion of implication is wider. The presidential system has an internal logic that the president is a strong and stable executive power holder. This strong and stable power does not imply that the president holds absolute power. But the notion is that all executive power is centred on the president, and does not require the consent of the legislature because it comes directly from the people. This is in line with Alexander Hamilton's opinion, related to the reason why the pres-

ident should be elected directly by the people and must be one person rather than many people, namely to ensure the executive could act with vigorous decision.¹⁶

This understanding is conceived as the principle of the presidential system. In order to constitutionalize the system to be more consistent, the benchmark is the principle of the presidential system as stated above: the strong and stable executive power of the president in which all the executive powers are under the effective control of the president himself because of his dependence on the legislature. This is the problem faced by the Indonesian presidential system, the ability to elaborate the principle precisely into the constitution.

The Inconsistency of Presidency Purification Efforts in Indonesia

The arrangement of a presidential system in Indonesia is one of the agenda in the amendment of the 1945 Constitution. The amendment to the 1945 Constitution is done in stages, namely: First Amendment to the 1999 People's Consultative Assembly (MPR) General Session; Second Amendment to the 2000 MPR Annual Session; Third Amendment to the 2001 MPR Annual Session; And Fourth Amendment at the 2002 MPR Annual Session. Meanwhile, in making the amendment are several important points as follows. First, it does not change the Preamble to the 1945 Constitution. Second, it retains the form of the Unitary State of the Republic of Indonesia. Third, reinforce the presidential government system. Fourth, the elucidation of the 1945 Constitution is not enforced and the matters in the 1945 Constitution of the 1945

¹⁴ Jeremy D. Bailey, *Thomas Jefferson and Executive Power*, Cambridge: Cambridge University Press, 2007, pp1-27.

¹⁵ Note 13, pp9-10.

¹⁶ John Yoo, 2009, "Unitary, Executive, or Both," *The University of Chicago Law Review*, 76, pp1937-1938.

Constitution that is normative will be formulated in the form of articles. Fifth, make changes by addendum. Sixth, the formulation of power sharing is firmly accompanied by mechanisms checks and balances.¹⁷ This section will be specifically focused on the issue of a presidential system arrangement in Indonesia in the process of amendment to the 1945 Constitution. The agenda for strengthening the presidential system began to appear explicitly in the third amendment of the 1945 Constitution (2001). After the first and second changes the main agenda is strengthening the position of the House then in this third change is done repositioning of presidential power in the corridor of a presidential system.¹⁸ Principles relevant to the affirmative issue of the presidential system are the direct institutionalization of the presidential election mechanism, the confirmation of the reasons for the termination of the president from his tenure and the assertion that the president should not dissolve the House of Representatives (DPR).¹⁹

The 1945 Constitution before the change cannot be understood as a pure presidential system because the president is not directly elected by the people and may be dismissed at any time by a vote in the MPR.

Such an arrangement is more favourable to the parliamentary system, which requires (the chief of the executive) to the parliament. This is in contrast to the mission statement of the 1945 Constitution before a change that seems to institutionalize a presidential system.²⁰

Two of the most prominent aspects related to the consistency of the Indonesian presidential system are the legislative position in relation to the executive in which the legislature is expressly stated to have rights that are conceptually more skewed with a parliamentary system. These parliamentary rights are stated explicitly in Article 20A Paragraph (2) of the 1945 Constitution resulting from the second amendment. The aforementioned provision states: "In performing its functions, other than the rights provided for in other articles of this Constitution, the People's Legislative Assembly shall have the right of interpellation, the right of inquiry and right of opinion."

The above provisions clearly indicate the internal inconsistency of the presidential system of the 1945 Constitution itself. The rights of the People's Legislative Assembly as mentioned above are losing their relevance if it is related to the principle of the presidential system that "the executive and the legislature are independent of one another." Furthermore, the provision may undermine the government's performance under the president. The third amendment assure that president can only be dismissed by juridical reason and political reason has no longer affecting the decision. Article 7A of the 1945 Constitution determines:

The President and/or Vice President may be dismissed in his term of office by the People's Consultative Assembly on the recom-

¹⁷ Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-undang Dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses dan Hasil Pembahasan 1999-2002, Buku I Latar Belakang, Proses dan Hasil Perubahan UUD 1945*, Jakarta: Mahkamah Konstitusi RI, 2010, pp954-955.

¹⁸ Denny Indrayana, *Amandemen UUD 1945: Antara Mitos dan Pembongkaran*, translated from *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-Making in Transition*, Bandung: Mizan, Bandung, 2007, pp195-199 & 240-241.

¹⁹ Note 17, pp275-276.

²⁰ Note 17, p374.

mentation of the People's Legislative Assembly, if proven to have committed a violation of the law in the form of treason, corruption, bribery, other serious crimes or disgraceful acts or if proven no longer Qualify as President and/or Vice President.²¹

To implement such provision, the role of the Constitutional Court is required to provide a decision, not a decision based on the opinion of the DPR c.q. MPR itself. The regulation on this matter is formulated in detail in Article 7B of the 1945 Constitution, the result of the third amendment.

In political practice, the existence of the provision of Article 20A Paragraph (2) of the 1945 Constitution serves to be an incentive in encouraging DPR's behaviour towards a parliamentary style rather than how it should behave according to the current presidential style. This phenomenon of political practice is very contrary to the underlying principle of the presidential system itself. In turn, it has the effect of weakening the performance of the government (president) because it has to respond to the parliamentarian attitude of the DPR. Such an experience occurred during the first administration of President Susilo Bambang Yudhoyono (2004-2009) who had to face the disruption of the DPR for reasons of strengthening the bargaining position, rather than the substantial reasons, for things that were essentially in the domain of executive policy exclusively.²²

The above case can happen is actually more due to a political error made by President Susilo Bambang Yudhoyono (SBY).

As president of the presidential system, SBY is very wrong when starting his government by opening parliamentary behaviour initiatives through the formation of multi-party coalitions within the government and in the DPR. As elected president, SBY failed to gain majority support in parliament. To overcome the strategic obstacles in the government, SBY invites political parties to join the government in the hope that once the political parties join, their representatives in the DPR will fully support the president's policy.²³ Should, in line with the spirit of the presidential system, it is not necessary to do by the elected president as above has been affirmed by Cheibub & Limongi. The political stances taken by President SBY delegitimize presidential powers based on the presidential system.

The principle of the presidency, in essence, contains protection against the presidency and the president in running the government. It appears implicitly that the president cannot be politically disturbed by the House. Through a different, but very straightforward phrase, it says: "*under presidentialism, the government cannot be replaced even if a majority of the legislature so wishes.*"²⁴ Here, in fact, whoever his president, in the presidential system, he must have the courage to rule, even if only gained minority support in parliament.

The role of the President that no longer dominating the governmental powers, the strengthened role of the DPR, and the lowering position of the MPR that no

²¹ Republic of Indonesia, *Undang-undang DasarNegara Republik Indonesia 1945*, Article 7A

²² Hanta Yuda AR, *Presidensialisme Setengah Hati: Dari Dilemma ke Kompromi*, Jakarta: Gramedia Pustaka Utama, 2010, p185-191.

²³ Note 2, pp135-141 & 170-181.

²⁴ Jose A. Cheibub, Adam Przeworski & Sebastian M. Saiegh, 2004, "Government Coalitions and Legislative Success Under Presidentialism and Parliamentarism, *British Journal of Political Science*, 34, p566.

longer as the highest state institution – reflecting the paradigm shift in administering the state.²⁵

The President in running the government cannot be blamed by the House of Representatives unless the president violates the law as intended by Article 7A of the 1945 Constitution. Thus, as a negative parable, even the sleeping president, throughout his tenure, he cannot be dismissed by the Parliament. However, the existence of parliamentary political rights of the House has the potential to cause political disruption to the president as the facts of politics are proven to support such juridical assumptions.

A strong presidential character based on a presidential system is evident from President Barack Obama's attitude in response to his minority position in the Republican-controlled House of Representatives. The condition is feared will hinder the running of government policies in the social and economic field. Without a hint of a bit Obama gave his statement his attitude as follows:

We are not just going to be waiting for legislation in order to make sure that we're providing Americans the kind of help that they need. I've got a pen, and I've got a phone. And I can use that pen to sign executive orders and take executive actions and administrative actions that move the ball forward... I've got a phone that allows me to convene Americans from every walk of life to try to bring more and more Americans together around what I think is a unifying theme: making sure that this is a country where, if you work hard, you can make it.²⁶

²⁵ Zen Zanibar, 2018, "The Indonesian Constitutional System In the Post Amendement of The 1945 Constitutions", *Sriwijaya Law Review*, 2 (1), p45-55

²⁶ Tara Helfman, 2015, "Book Review: Crown and Constitution," *Harvard Law Review*, 128(8), 2015, p2234.

The above statement is not a form of arrogance, but the reasonable attitude of a president whose system of government is based on a presidential system. When faced with institutional barriers of minority support in parliament, presidents in presidential systems are still allowed to move on the basis of their discretion. That is the advantage of the government in a presidential system in which the head of his government does not need to rely on parliamentary approval.

Moreover, the existence of new government agencies (state auxiliary agencies) that are functionally executive, but whose position is independent of the president. Note that not all new independent governing bodies are problematic in relation to the consistency of the presidential system principle. The examples of the Judicial Commission which are in the realm of judicial affairs. Judging from the principle of the presidential system, bodies such as the Judicial Commission are not a problem because they do not lie in the realm of executive power. In another sense, the more specific question here is the new independent governing body but functionally within the realm of executive power.

After the political reform of 1998, there was a great tendency in the process of limiting power, especially the president (executive). One of the techniques employed in the dissolution of executive power, so that power is more divided among many, through the legislation that forms a new governmental body. Some of these new governing bodies are, to name some of the most famous examples, National Commission of Human Rights (Komnas HAM) and Corruption Eradication Commission (KPK). At first glance, this effort seems

good. However, when drawn a straight line with the principle of presidential, this effort is inconsistent.

The acceptance of these efforts is based on the notion that the executive concept is rich in functions, but structurally, the Indonesian constitutional system is too poor for institutions to rely solely on the 1945 Constitution itself. The government bodies that are constituted by the 1945 Constitution are still very limited to implement a broader constitutional scheme in bringing the country to its goal. These bodies are People Consultative Assembly, House of Representative, Regional Representative Council, President, Supreme Court, Constitutional Court, Judicial Commissions, Audit Board of the Republic of Indonesia and Central Bank.²⁷

The issue here is not solely about the use of legislative power and the dispersion of executive power with the creation of new independent governing bodies. The Parliament may establish any law as long as it is not contrary to the Constitution, including establishing a new governmental body along the corridors of governmental power based on the Constitution. The dissolution of the executive power, by the idea of being linked to the limitation of power, is a good idea but it is not always constitutional if it is done by ignoring the constitution, the constitutional principle itself as the principle of presidential. At this point, the theoretical analysis proposed by Zainal Arifin Mochtar is less precise when looking at this phenomenon solely from the issue of limi-

tation of power alone, but ignores the very nature of the system of government adopted in the constitution, in this case, the presidential system.

As explained above, the existence of new governmental bodies in the executive and independent realms should not be separated from the context of the applicability of the presidential system, unless the principle of this form of government is regarded as irrelevant or has no constitutional meaning. The principle is that independent government bodies in the executive environment reduce the power of government in the hands of the president based on the presidential system. For example, the authority to eradicate corruption by KPK is still the realm of execution of laws that should be under the control of the president, so in the conventional mechanism, it is in the hands of the prosecutor's office. As the authority to eradicate corruption turns to the independent KPK, the president as the holder and administrator of the highest administrative power, as chief executive, no longer has that responsibility, including the control to oversee the real people who are still in the executive. Therefore, the president cannot be held accountable for the eradication of corruption that is still within the realm of execution of the law (executive), so it must be accounted for by the independent KPK. At this point, it can be concluded that the existence of government bodies such as the KPK and Komnas HAM are contrary to the principle of presidential system.²⁸

The basis of the analysis to support the above argument is the constitutional theory that developed widely among American

²⁷ Cf. Zainal Arifin Mochtar, 2016, *Lembaga Negara Independent: Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi*, Jakarta: RajaGrafindo Persada, pp129-131.

²⁸ Note 24, pp11-28.

constitutional scholars known as the concept of the unitary executive. This article shows that the concept of the unitary executive is most appropriate to interpret the concept of executive power on presidential system. Ginsburg & Menashi explains the concept of the unitary executive:

...has nothing to do with the extent of presidential power but only with who is to exercise those powers, however broad, allocated to the executive. Its proponents seek not to evade the limitations of separated powers, but rather insist – especially when dealing with the other branches – that the President alone is responsible for the actions of the executive branch.²⁹

Based on the theory, concept of unitary executive constitution should:

...empower the President to control the execution of federal law. This generic assertion has as many as three sub-claims: that the President, as the ‘constitutional executor’ of the laws, personally may execute any federal law himself; that the President, as Chief Executive, may direct all executive officers in their execution of federal law; and that the President, as the Supreme Executive Magistrate charged with ensuring faithful law execution, may remove executive officers.³⁰

The above view is a statement about the constitutional theory of the Constitution of the United States on the executive power of the president based on the presidential system. Based on this conception, if the 1945 Constitution is rightly a presidential constitution, then the theoretical understanding as stated also applies *mutatis mutandis*. It can, therefore, be concluded if projected according to the concept of a unitary executive, the dissolution of executive

power through the establishment of independent governing bodies in the realm of executive power is very much against the principle of the presidency because it implies reducing the capacity of the president as the holder of executive power.

In the end, it can be concluded that a system with its opposite components is not good.³¹ This happens to the 1945 Constitution. A system, including a system of government, should be consistent with the principle of non-contradiction, at least as a form of adherence to the simplest laws of logic. These two conditions of inconsistency or contradiction, if not addressed immediately, could have an impact on the power of the president from the perspective of the presidential system. This is not a problem if the system of government is a parliamentary system.

Reorganization of the Indonesian Presidential System

The amendment of the 1945 Constitution was made by politicians with a very limited level of legal knowledge, and with a very high political desire to take advantage of the moment as capital to gain an opportunity to gain political power. With the presidential system, implicitly, politicians experience fear if their political role becomes diminished, especially the political role in parliament (DPR). The choice of a presidential system clearly creates a dilemma for their narrow political interests. This choice poses a risk to their political career because, as a constitutional implication, the president's leadership will be pushing around so

²⁹ Douglas H. Ginsburg & Steven Menashi, 2010, “Nondelegation and Unitary Executive,” *Journal of Constitutional Law*, 12 (2), p252.

³⁰ Saikrishna B. Prakash, 2009, “Fragmented Features of the Constitution’s Unitary Executive,” *Willamette Law Review*, 45, p701.

³¹ Graham Priest, “What’s So Bad About Contradictions?” in Graham Priest, J.C. Beall, Bradley Armour-Garb eds., 2004, *The Law of Non-Contradiction: New Philosophical Essays*, Oxford: Oxford University Press, pp23-38.

that it will be very difficult for them to balance. Political aspirations of politicians are actually more suited to the parliamentary system than the presidential system.

With overwhelming political aspirations, containers such as presidential systems are too narrow for them. To play a significant political role, the parliamentary system is very accommodating to the aspirations of politicians because it prefers negotiations or close ties between legislative-executives in which executives form and run governments with the confidence of parliament. While the presidential system is more of a zero-sum game or the winner takes all.³² More substantially, in the presidential system, the chances for the president to continue his tenure are open. Demonstratively Samuels & Shugart stated: "In the capital of presidential system the executive has far more incentives and opportunities to 'go it alone' and violate his/her party's mandate."³³ This is a concern. Politicians need executive dependence on them, not vice versa as initiated by presidential systems. In these situations, the role of politicians is diminished, so they need the media to exist within the presidential system, one of them by causing political disturbance to the government (president).

The Indonesian presidential system still requires reorganization, in particular, to be more consistent with the conception of a true presidential system. The political presidential system will work properly if legislative power is not too strong, political parties are disciplined and systems in political

party are not highly fragmented."³⁴ The empirical condition does not occur in Indonesia. Hypothetically, the constitutionality of the presidential system in Indonesia contributes to the lack of specific constitutional rules in describing the relationship between the executive (president) and the legislature, including efforts at the level of legislative efforts that have a significant impact on the weakening of power President in the executive realm.

On that basis, the prescriptions that can be proposed to institutionalize the presidential system in the 1945 Constitution consistently, it must include two points. First, responding to the parliamentary ownership of parliamentary political rights. Second, respond to the establishment of independent government bodies at the level of law.

In relation to the response to the parliamentary political rights of Parliament, it is necessary to amend the 1945 Constitution with the focus of abolishing Article 20A Paragraph (2) of the 1945 Constitution. The provision is clearly inconsistent with Article 7A of the 1945 Constitution so as a form of reinforcement of the presidential system, Politicization that could disrupt the president's performance in exercising the power of government needs to be eliminated. The justification for such efforts is not too difficult because the provision is obviously negligence from the drafters of the amendment of the 1945 Constitution which is still carried or influenced by the nature of parliamentary thinking. This very critical issue seems to have escaped the attention of Denny Indrayana.³⁵

³² Juan J. Linz, *Note 9*, p55-58.

³³ J. Samuels & Matthew S. Shugart, 2003, "Presidentialism, Elections, and Representation," *Journal of Theoretical Politics*, 15 (1), pp39-40.

³⁴ Scott Mainwaring & Matthew S. Shugart, *Note 2*, p449.

³⁵ Denny Indrayana, *Note 17*, pp374-380.

A rather difficult issue is to provide prescriptions to limit, even exclude, the establishment of independent governing bodies, including those already existing. Some of these agencies have very good performance, such as the KPK. As a result, because of its good performance, the principle thing becomes neglected. Such pragmatic approaches should not be maintained, especially in the process of maturation into a more established constitutional system. What is meant here is that all constitutional decisions must be made on the basis of constitutional principles, not on the basis of factual considerations such as distrust of existing government agencies. This process is not easy because indeed, specifically for the KPK, all already fascinated by the effectiveness of the work of the KPK. However, this should not be allowed to remain permanent because it shows the abnormality of the constitutional system, i.e. tolerating internal inconsistencies.

CONCLUSIONS

The drafters of the amendment of the 1945 Constitution ignore the loophole in the institutionalization of a presidential system to sustain the parliamentary political behaviour. In order to maintain the role of political behaviour, the 1945 Constitution amendment should be transparent in order to achieve the real presidential system.

Furthermore, the semi-presidential system is one of the options for accommodating the presidential system and the parliamentary system. The semi-presidential system is in line with the new principle of separation of powers.

REFERENCES

Books

- Bailey, Jeremy D. 2007. *Thomas Jefferson and Executive Power*. Cambridge: Cambridge University Press.
- Cheibub, Jose Antonio. 2007. *Presidentialism, Parliamentarism and Democracy*. Cambridge: Cambridge University Press.
- Fatovic, Clement. 2009. *Outside the Law: Emergency and Executive Power*. Baltimore: The John Hopkins University Press.
- Ginsburg, Tom & Rosalind Dixon, (eds). *Comparative Constitutional Law*. Cheltenham: Edward Elgar.
- AR, Hanta Yuda. 2010. *Presidensialisme Setengah Hati: Dari Dilema ke Kompromi*. Jakarta: Gramedia Pustaka Utama.
- Indrayana, Denny. 2007. *Amandemen UUD 1945: Antara Mitos dan Pembongkaran*, translated from *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-Making in Transition*. Bandung: Mizan.
- Mochtar, Zainal Arifin. 2016. *Lembaga Negara Independen: Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi*. Jakarta: Raja Grafindo Persada.
- Posner, Eric A., & Adrian Vermeule. 2007. *Terror in Balance: Security, Liberty and the Courts*. Oxford: Oxford University Press.
- Priest, Graham, J.C. Beall and Bradley Armour-Garb (eds). 2004. *The Law of Non-Contradiction: New Philosophical Essays*. Oxford: Oxford University Press.
- Republic of Indonesia, *Undang-undang Dasar Republik Indonesia 1945*.

Rhodes, R.A.W., et. al., (eds). 2006. *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.

Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi. 2010. *Naskah Komprehensif Perubahan Undang-undang Dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses dan Hasil Pembahasan 1999-2002, Buku I Latar Belakang, Proses dan Hasil Perubahan UUD 1945*. Jakarta: Mahkamah Konstitusi RI.

Journals

Cheibub, Jose A., Adam Przeworski & Sebastian M. Saiegh. 2004. "Government Coalitions and Legislative Success Under Presidentialism and Parliamentarism." *British Journal of Political Science*. 34.

Ginsburg, Douglas H., & Steven Menashi. 2010. "Nondelegation and Unitary Executive". *Journal of Constitutional Law*. 12 (2)

Helfman, Tara. 2015. "Book Review: Crown and Constitution". *Harvard Law Review*. 128 (8).

Linz, Juan J. 1990. "The Perils of Presidentialism". *Journal of Democracy*. 1 (1).

Mainwaring, Scott, & Matthew S. Shugart. 1997. "Juan Linz, Presidentialism, and Democracy," *Comparative Politics*. 29 (4).

Prakash, Saikrishna B. 2009. "Fragmented Features of the Constitution's Unitary Executive". *Willamette Law Review*. 45.

Nurhidayatulloh, et. al. 2018. "Forsaking Equality: Examine Indonesia's State Responsibility on Polygamy to the Marriage Rights in CEDAW". *Jurnal Dinamika Hukum*. 18 (2).

Samuels, David J., & Matthew S. Shugart. 2003. "Presidentialism, Elections, and Representation". *Journal of Theoretical Politics*. 15 (1).

Yoo, John. 2009. "Unitary, Executive, or Both". *The University of Chicago Law Review*. 76.

Zanibar, Zen. 2018. "The Indonesian Constitutional System In The Post Amendment of The 1945 Constitution", *Sriwijaya Law Review*. 2 (1).