

LEGAL ANALYSIS OF THE LENGTHENING OF THE PERIOD OF GOVERNMENT OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA

RIFKY EFFENDI HARDIJANTO¹ and WIWIK SRI WIDIARTY²

^{1,2} Universitas Kristen Indonesia. Email: ¹rifkyeh@gmail.com, ²wiwik.widiarty@gmail.com

Abstract

The emergence of the issue of the Fifth Amendment, especially the proposal for a presidential term of 3 periods, has returned to being 'busy' on the stage of discourse in the public sphere today, making it interesting to examine. This research relies on doctrinal legal research with a study of legal materials and literature as the primary data, while its approach is oriented towards statutory, historical and comparative approaches. This research shows that the Fifth Amendment to the 1945 Constitution can be carried out through constitutional conventions, moreover by taking into account the current legal political configuration. The political map dominated by PDIP and the coalition is certainly an attempt to smooth over the changes to Article 7 of the 1945 Constitution, from which previously the term of office of the president was limited to only 2 periods, and then changed to 3 periods referring to the conditions specified in Article 37 of the 1945 Constitution. Of course, the fifth amendments need to be reviewed from all aspects, especially the spirit of reform and the goals of the state as emphasized in the Preamble of the 1945 Constitution.

Keywords: Legal Analysis, The Lengthening the period of Governing, The President of The Republic Indonesia.

INTRODUCTION

The Presidential is a state system in which the head of government is held by the President. The president as head of government as well as head of state is directly elected by the electorate/people (S.L Witman & J.J Wuest in Shafiie, 2011). This foundation is one of the characteristics of countries that use the presidential system as their state system. In general, a country that uses the presidency as its system of government will implement a democratic system. Democracy itself comes from the Greek, namely "demos" and "kratos or kratein". Demos, which means people and kratos / kratein, which means government, so the word democracy means a government, run by the people. Democracy is a system that shows that general policy is determined based on the majority of the people in periodic elections based on the principle of political equality and is held in an atmosphere of guaranteed political freedom (Henry B. Mayo, 1960).

In Indonesia itself has a government structure that is composed in the 1945 Constitution since Indonesia's independence, the composition consists of the President and Vice President who are in charge of holding power over the government, holding power over the TNI, and supervising the Indonesian society as a whole, under the president directly there are ministers in charge of coordinating activities according to their sector, after that there is the House of Representatives (DPR) is tasked with supervising the implementation of laws, state budgets and government policies, next there is the People's Representative Assembly (MPR) which has

the task of amending and enacting the Constitution and inaugurating the president and vice president with the results of the general election in the plenary session of the MPR.

Recently, the issue of Jokowi 3 Periods often appears and appears in various national mass media. Although this issue was vigorously echoed in the era of President Joko Widodo, but previously in the era of President Susilo Bambang Yudhoyono a similar discourse had also been proposed, but the public refused. This is not without reason, considering that the 3-term presidential term is clearly contrary to the 1945 Constitution Article 7 which states that "The President and Vice President hold office for five years, and thereafter can be re-elected in the same term, only for one term" (Republic of Indonesia).

The news about Jokowi 3 This period certainly did not go unnoticed by the media, all mass media, especially online media, are competing to raise the topic to be presented to the public. Jokowi's 3-Period news contains news value in the form of prominence, namely important people. Important and prominent people always create news, not only their speech or behavior; even their names have created news.

The issue of the Indonesian president going to serve for 3 terms (15 years) has become a hot topic of discussion recently. According to Siti Zuhro as LIPI's political researcher, the issue first rolled around during the presidency of Susilo Bambang Yudhoyono (SBY) and at that time the proposal received a response of rejection from the public (Yahya & Erdianto, 2021). During Joko Widodo's presidency, Amien Rais again echoed the issue of a 3-term president in his video entitled: It is Now or Never (Amien Rais Official, 2021). In the video, Amien Rais explained that there is a scenario that will be made to amend the 1945 Constitution so that the president can be elected 3 times or can serve for 3 terms (15 years).

Regarding this issue, Megawati Soekarnoputri as the general chairperson of the DPP PDI Perjuangan touched on the issue of the presidential term scenario from 2 terms to 3 terms, she suspected that there were some parties who created the issue (Sari & Meliana, 2021). Furthermore, Mahfud M.D as Coordinating Minister for Polhukam explained that: "The matter of the position of President for 3 periods is a matter of political parties and the MPR. In the Cabinet, I never talk like that, not the field" (CNN Indonesia, 2021). As for the statement from President Joko Widodo, he emphasized that he has no intention and is also not interested in serving as president for 3 terms (Farisa & Rastika, 2021).

Based on what has been explained above, it can be seen that the issue of presidential tenure to 3 terms (15 years) has existed during SBY's presidency and currently the issue causes contrast from some circles. More related to legal issues in the legal political configuration of the 2-term presidential term plus to 3 terms is interesting to study in more detail about measuring or measuring how much chance the 3-term presidential term is.

RESEARCH METHODS

The research method applied is doctrinal legal research in other words referred to as normative legal research whose research is based on and rooted in ideas developed by its conceptors (H S Salim and Erlis Septiana Nurbani, 2013), this research is centered on the study of legal

materials such as laws and regulations and other literature materials (Johnny Ibrahim, ²⁰⁰⁶) according to the substance of the study. The approaches applied in this study are statute approach, historical approach and comparative approach (Rauf, Bunga, and Djanggih 2018). Thus, the approach is used to examine the regulation of tenure from both the aspects of *ius constitutum* and *ius constituendum*, tracing the constitutional history of presidential tenure including conducting a comparative study of countries that impose a 3-term presidential term.

DISCUSSION

In Article 7 of the Constitution of the Republic of Indonesia of 1945, it is explained that the president and vice president hold office for five years, and thereafter can be re-elected to the same office for only one term. Here it can be seen that the term of leadership of the president and vice president is only valid for 10 years (2 terms) and cannot lead again after the 2-term period has been completed. There are examples that show that the president or vice president can only serve 2 times / for 10 years, namely:

1. Jusuf Kalla who served as vice president during the first term of President Susilo Bambang Yudhoyono (2004 – 2009). After that, he once again served as vice president during the leadership of President Joko Widodo in the first term (2014 – 2019).
2. Susilo Bambang Yudhoyono who served as president for 2 terms (10 years), namely in 2004 – 2014.

This shows that a person can only serve as president / vice president for 2 terms / for 10 years, either sequentially or having a time lag in leadership.

1. 3-Term Presidential Term (15 Years)

Regarding this issue, if the president wants to serve more than 2 terms (10 years) or in this case for 3 terms (15 years), then first amend the 1945 Constitution which is the main basis in determining the term of office of the president and vice president. The term of office is determined in Article 7 of the Constitution of the Republic of Indonesia of 1945, and the article was amended in 1999 after the end of the new order period. The term limits were made to avoid long tenures such as during Suharto's presidency, as well as to reflect democracy and so that leadership regeneration could be created. Article 7 of the Constitution of the Republic of Indonesia of 1945 which reads: "The President and Vice President hold office for five years, and thereafter may be re-elected to the same office, only for one term" must be amended again so that the president can serve more than 2 terms.

2. Presidential Term of Office for 3 Terms (15 Years) In Viewpoint of Democracy

The president's term of leadership as head of state and also as head of government for more than 2 terms (or in this case for 3 periods / 15 years) will not conflict with democracy as long as the amendments to the 1945 Constitution are implemented. Because, when referring to the notion of democracy itself, namely: "a system that shows that general policy is determined on the basis of the majority of the people in periodic elections based on the principle of political equality and held in an atmosphere of guaranteed political freedom" (Henry B. Mayo, 1960),

it can be concluded that if the majority of the people want the president to lead more than 2 terms (or in this case there is 50% plus 1 society who wants it so) then in this case president Joko Widodo can serve for 3 terms (15 years), and this does not hurt democracy at all. This is because people want it, even though there are interests in it. Indonesia, which is based on democracy, will still call the president's leadership period for 3 terms (15 years) not injurious to democracy and existing regulations if article 7 of the 1945 Constitution is amended and if it is the desire of the majority of the people.

However, if you refer to the reasons why article 7 of the 1945 Constitution was amended in 1999 (which is to reflect democracy and leadership regeneration) and there is resistance from some parties who do not want the presidential term to be more than 2 terms, it will show that the government does not obey the regulations that have been mutually agreed upon and does not pay attention to the wishes of some people who reject it.

Article 7 of the 1945 Constitution states that "The President and Vice-President hold office for five years, and thereafter may be re-elected to the same office, for one term only". The question then arises is, can Indonesia enforce the same as in some of the countries that have been mentioned for the presidential term in addition to 1 term to 3 terms. To answer this, let's look at the political configuration of law in the constitution and other laws and regulations.

In the 1945 Constitution it is clear that for the office of a president can only last 2 consecutive terms with each term being for 5 years in office. However, it should be noted that the Indonesian Constitution does not close itself to renewal because the regulations in Article 37 of the 1945 Constitution allow amendments to be made if the proposed changes are submitted at least 1/3 of the number of MPR members, then the MPR holds a session for changes to the 1945 Constitution if it is attended by at least 2/3 of the number of MPR members and to decide on changes to the articles in the 1945 Constitution then the MPR must be attended by at least 50 percent plus one vote from the number of members of the MPR. Mpr members themselves consist of the DPR which in the General Elections is followed by the Politik Party to get seats representing the people and the Regional Representative Council (DPD) comes from individuals. The total members of the MPR for the 2019-2024 term consist of 575 DPR members and 136 DPD members, a total of 711 members.

3. Countries with a 3-term presidential term

Recently, issues related to the addition of presidential and vice presidential terms, especially Indonesia, have been discussed more and more intensely, so before studying further, let's look at the implementation of the 3-term presidential term in force in several countries.

a. Islamic Republic of Iran

The Islamic Republic of Iran or known as Iran is a country located in the Middle East region with a theocratic presidential system of government, every presidential candidate needs to get approval from the Iranian Guardian Council to be able to run for office and the president is accountable to the people and ensure that the country's constitution is obeyed (Seráfica Gischa, 2020).

The chief executive of the government held by the President is directly elected by the people for a term of four years and may be re-elected to the same office. The President may serve consecutively for 2 terms and one other term. So according to the Iranian Constitution, a President can serve as president for 3 terms with the next period there must be a pause period for the leadership of another president to serve (Zulkarnen Zulkarnen, 2017).

b. Socialist Republic of Vietnam

The country is located in the East Asian region and is known as a Socialist Republic-shaped country using a parliamentary system of government, where the president is the head of state while the head of government is held by the prime minister. With the existence of the Communist Party being used as the sole party in Vietnamese democracy, the limit is that the other parties must get approval to participate in the general elections.

The country, which is also located on the Indochina peninsula in Southeast Asia, has a system of office of the President for five years in one term and can serve for 3 terms in the election period, but to become a president, first become a member of the National Assembly of Vietnam. Because of the single-party system used, the person ranked first in Vietnam was not the President, but the Secretary General of the Communist Party of Vietnam.

In addition to being a representative of the country, the president as head of state is also the commander-in-chief of Vietnam (Council National Defense and Security) whose task is to guard and defend various kinds of threats that come both domestically and abroad (Cheril Liony Oktavianii, 2019).

c. Republic of Cape Verde

Known for its weak economic background, as well as the inadequate availability of natural resources, Cape Verde remains a tourist icon with its main islands Boa Vista and Sal.

The country, located in the North Atlantic Ocean on the west coast of Africa, is in the form of a Republican state with its form of government being a semi-presidential, where the president heads the head of state and the prime minister serves as the head of government. With its party system are Dwe Parties namely PAICV: Partido Africano da Independência de Cabo Verde (African Party of Independence of Cape Verde) and MpD: Movimento para a Democracia (Movement for Democracy) (Asphalt Ants, 2020).

Republica de Cabo Verde has the same presidential term as Iran, where a president can serve for 3 terms with 2 consecutive terms and has a break for other presidents to serve to be re-elected to 3 terms. Each term, a President will carry out a mandate for five years in office.

d. Democratic Republic of the Congo

The country previously renamed Zaire is a country located in the region of central Africa, with its form of government being the Presidential Republic. The president directly elected in general elections holds power as head of state and prime minister holds the power of head of government.

The Democratic Republic of the Congo (République démocratique du Congo) gained

independence from France in 1960 and the nation's capital, located in the city of Brazzaville, allowed a president to serve for three terms.

The rule that the President of the Congo may serve for 3 terms is based on the 2015 Constitutional Referendum. This means that the president can be in power for 15 consecutive years which previously the country had no restrictions on the office of the presidential term, with president Danis Sassou-Nguesso being the president in power for approximately 36 years.

e. **Republic of Kiribati**

As an island nation, this country is located in the Pacific Ocean in the form of a republic and has a mixed system of republican government. The President holds the office of head of state as well as head of government, during his reign; the President can serve successively for 3 terms with the duration of each term being 4 years through direct elections (Rifan Aditya, 2021).

4. Conclusion

Assessing the opportunity in the form of legal construction contained in the Indonesian constitution related to the desire for a presidential term to 3 terms allows it to be accommodated through the fifth amendment to the 1945 Constitution, in which the 1945 Constitution itself opens itself up to be amended because the constitution is not a final thing, so that although the existence of Article 7 of the 1945 Constitution limits the power of the office of the president to a maximum of 2 terms, however, with the current political configuration of the law or political map, it leads us to a normative awareness that a 2-term office can be changed to 3 terms by referring to certain conditions as stated in Article 37 of the 1945 Constitution and as long as it is in line with and in accordance with the ideals of the nation and state as stated in the preamble to the 1945 Constitution.

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