

THE CONCEPTS OF DELIBERATIONS AMONGST REPRESENTATIVES IN INDONESIA'S PRESIDENTIAL ELECTION SYSTEM

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ABSTRACT--*The change in the constitutional system of Indonesia should ideally follow the concepts of deliberations amongst representatives in line with the philosophy of the country. It should not be the concepts of liberal democracy as reflected in the amendment of the constitution, especially in relation to direct presidential election. This involves the use of liberal democracy which is against the fourth principle of Pancasila (foundational philosophical theory of Indonesia) which states that democracy is guided by the inner wisdom in the unanimity arising from deliberations amongst representatives. The presidential election system is, however, different from the conventional concept which reflects mutual cooperation, not individualism. After the amendment of the UUDNRI, The Constitution of the Republic of Indonesia, Article 6A makes the election of the President and Vice President to be directed by the people and this was observed to affect the basic principles of the 1945 Constitution. This new system is slowly leaving the Pancasila principles which incidentally is the ideology of the country. The problem proposed in this article therefore was, "how is the concept of deliberations amongst representatives in Indonesia's presidential election system?" The method used was normative and the conclusion proposed are part of the reconstruction efforts to re-implement the concepts of deliberation in the appointment of President by elected representatives through honest and fair general elections.*

Keywords-- *Deliberations amongst representatives, Presidential Election System*

I. INTRODUCTION

The constitutional amendment changes the electoral system in Indonesia and several controversies are observed before, during, and after the amendment. This is due to the consideration of the constitution as a political agreement determined from several choices based on good and rational perspectives.

The collapse of the New Order government under Soeharto era on May 21, 1998, after 32 years of rule led to several demands on reform such as constitutionalism and the rule of law; regional autonomy; civil-military relations, civil society; governance reform, socio-economic development, good governance and Ombudsman institution; as well as gender and religious pluralism. Moreover, several other issues such as economic recovery, improvement of political and security stability, consistency in the enforcement of the supremacy of law which in certain perspectives is also associated with the demands of eradicating various corruption, collusion, and nepotism emerged and required urgent attention.

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The idea of reformation to realize the supremacy of the legal system became a priority within the constitutional frame. It functions as an effective basic reference in the process of administering governance in the constitutional system. One of these changes is the modalities for the general election system which is the embodiment of people's sovereignty and a platform to channel their aspirations as determined by the principles and systems in the original 1945 Constitution. This legal document showed the people's sovereignty is based on Pancasila which believes democracy is guided by the inner wisdom in the unanimity of deliberations amongst representatives. The intention of the general election in this original Constitution is to elect people's representatives to occupy the MPR (People's Consultative Assembly) legislature while the responsibility of electing the President is placed on these elected members through deliberations and consensus, not directly by the people.

The original and post-amendments of the Indonesia 1945 Constitution show a pattern to lead to both democratic and authoritarian governance. Such that using the original constitution, the style was democratic between 1946 – 1955, guided democracy in 1959 – 1967, a democratic pattern was considered by the MPR (People's Consultative Assembly) at the beginning of the new order in 1967 – 1971, authoritarian new order in 1971 – 1997, and finally became more democratic in 1999 – 2001 period. Moreover, under the post-amendment, the pattern tends to be democratic between 2002 – 2014 while neo-authoritarian through several parties stated is observed from 2014 up to now.

In summary, a neo-authoritarianism system has the following characteristics (i) liberalizing capitalist economy; (ii) the country has broad ownership of production equipment and continues to participate in the capitalist economy through companies oriented towards decentralized profit; (iii) are tightly regulated or controlled civil society institutions and public domains through authoritarianism; (iv) ruling elite maintaining a network of technocratic experts, public entrepreneurs, and local capitalists; and also (v) maintaining hegemony by mobilizing agreement for ideologies with different civilizations and distinctions rooted in the identity of the group.

The introduction of direct presidential election through the constitutional amendment and the MK's (Constitutional Court's) Decree Number 14 /PUU-XI/2013 which provides a way to administer general elections, especially in 2019, led to the emergence of Law No. 7 of 2017 concerning General Elections. Twenty years after the collapse of Soeharto, it was discovered that the modality for conducting general elections, especially for the president, is not better than the period. Despite several changes in the political democratization through legal instrumentation, the contestation of the cartel politics working within the constitutional system is the same. The oligarchy of political-economic power seems to be neatly maneuvered to control the power relations by decentralizing the elite party into a number of layers, both at the center and regions unlike the authoritarian regime of Soeharto. This has led to competition in power relations within the parties, instruments of general elections, and even with the oppositions. Therefore, this led to the reconsideration of the concepts of the presidential election following the original 1945 Constitution.

The study of the concepts of deliberations amongst representatives in Indonesia's presidential election system after the amendment of the 1945 Constitution used the normative method. This was conducted through efforts of positive law inventory, the discovery of principles and philosophical basis (dogma or doctrine) of positive law, and the efforts in discovering the *in concreto* law worthy of application with the legislation or statute approach used to research, explore, and examine several regulations regarding the presidential election system and theory of imamate by Al Mawardi. Through the basic assumption that the changes in the presidential election system lead

to liberalism, this study was conducted to formulate a system based on conventional system. Therefore, the proposed problem was “how effective is Indonesia’s presidential election system through the concepts of deliberations amongst representatives?”

II. DISCUSSION

Pancasila, as the basis of the country, needs to be understood as a unity, where each principle, direction, and limit animates or underlies each other. It also needs to be placed in an integrative unity with the main thoughts outlined in the opening of the 1945 Constitution. However, without a holistic understanding, Pancasila loses its meaning and subjective interpretation to become distorted and counterproductive like the post-amendment which provides for a direct presidential election in the country.

The paradigm concerning democracy developed in the amendment to the 1945 Constitution tends to refer to electoral democracy emphasizing on the process of general elections. Conceptually, it is a standard in a liberal democracy which prioritizes the freedom of individuals to enjoy citizenship rights. Liberal democracy is defined as the rejection of the country’s interference in the lives of individuals.

The study conducted by Vedi R. Hadiz exemplified the case of the Governorship election of East Java in July 2003, especially to understand the working process of money politics and general elections in post-authoritarian Indonesia, particularly before the direct election institutions in 2005. It was found that non-occurrence of political riots was not due to effective control and some tensions were also observed from thugs and civilian militias protesting against the candidates even at the central level in the direct presidential elections since 2004 to 2019. This was due to the failure to fulfill agreements made due to the help rendered to the cheating practices of the candidates during the election

This phenomenon is no longer merely resistance to cartel politics but also to the continuous practices of the corrupt political cell since the introduction of the direct presidential elections. This includes the need to keep using general elections as a means of democratic contestation to continue producing and at the same time gaining profits from the development of the political economy. The ideological platform of parties is not used to effect political changes but to meet the interests of certain stakeholders. The authority obtained through electoral democracy channels in general elections becomes the justification to be more able to articulate those interests of reproduction more legally, and in political practice, it is more acceptable.

The electoral democracy model involves the adoption and imposition of the western democratic model in Indonesia which is different from the practice before the amendment of the 1945 Constitution. It is important to state that tradition was one of the basic conceptions of the founding fathers in formulating the 1945 Constitution. For example, the concepts of deliberations in the fourth principle of the Pancasila was based on the practices of the country for centuries.

The amendment, changed the electoral system from indirect to direct as provided in Article 6A:

- (1) The President and Vice President are elected in a pair directly by the people.
- (2) Pairs of candidates for President and Vice President are presented by political parties or a combination of political parties participating in the general elections before the electioneering process.

(3) Pairs of candidates for President and Vice President with more than fifty percent of the total votes in the general elections and at least twenty percent of the votes in each province spread over more than half the number of provinces in Indonesia shall be inaugurated as the President and Vice President.

(4) In case no pair is elected to the office of the President and Vice President, the first and second pairs with the most votes in the general elections shall be inaugurated as the President and Vice President.

(5) The procedures to administer the Presidential and Vice-Presidential elections are further regulated in the constitution.

The third amendment to the Article 6A, especially in paragraph (1) as stated above is different from the provision of the original script of the 1945 Constitution Article 6 paragraph (2) which states that "The President and Vice President are elected by the People's Consultative Assembly with the most votes". However, a decree, MPR Decree No. II/MPR/1973, was made in 1973 by the MPR and recorded in history to show it no longer has the power, as the highest institution of the country, to elect and appoint the president and vice president.

The post-amendment changed the presidential election system formulated and contained in the original script of the 1945 Constitution and abandoned the efforts of the founding fathers to implement a presidential election system that aligns with the original patterns of the Pancasila ideology. The amendment, however, reflects the dominance of liberal constitutionalism.

These changes led to several issues due to the belief that the electoral process should follow the traditions and culture of the country to avoid complications. An example is a system used in the Buton Sultanate of the Southeast Sulawesi involving deliberations amongst representatives through the consultative bodies to elect the Sultan without considering lineage regulated in the Sultanate Constitution called *Martabat Tujuh* or Seven Dignity.

In the history of Buton and after the enactment of the Seven Dignity, a number of important sultanate officials have been sentenced to death for violating the regulations and provisions of the valid constitution, one of which was Sultan Maradan Ali (1647 – 1654) sentenced to death by hanging. Moreover, some were deposed due to their incapability in discharging their duties as contained in the constitution. This shows the Seven Dignity has legal values that can be used in developing Indonesia in a better direction. Every country establishes a system of governance in line with the needs of its people and this is observed in the element of democracy integrated into the *Murtabat Tujuh* or Seven Dignity of the Buton Sultanate. The head of the government is a Sultan elected by the Siolimbona (legislative) institution. This governance system can be said to be presidential with the Sultan acting directly as the head of the country through a constitutional monarchy form.

This presidential election system is observed to be moving the country away from the principles of Pancasila and also abandons its traditions, thereby causing damage to the electoral system. Moreover, the education obtained by the people about politics and democracy is immoral, unhealthy, and bad. For example, the system is expected to produce qualified leaders but on the contrary, transactional capitalists are produced leading to lack of synergetic relationship between the people and elected president. The leaders produced by this system usually have the tendency to be irresponsible to the people due to the assumption they have bought their votes. The people are also believed not to have the capability to conduct any social control because they have pawned their idealisms. This phenomenon is, however, not appropriate with Pancasila and endangers the life of the nation.

Furthermore, the system causes a lot of social conflicts, wastes finance, and inefficient in assuring effective administration in the country. This proves globalists have cooperated with the reformists to damage the country's electoral system and this has led to several controversies.

The implementation of direct general elections is the same as providing an open stage for conflicts. For example, during the 2019 presidential election, there were personal attacks and slanders on the presidential and vice-presidential candidates. Other occurrences observed include scorns, careless accusations, divisions of society in a community, religion conflicts, bribes through gifts, money, and others including putting neutrality of the government apparatus to test. The society has a habit to judge candidates based on public opinion, and this makes it easy for it to be misled or deceived through manipulations by the candidates. Moreover, the danger of money has incarnated in the selection of consul, a position which can only be managed by a consul for a year in the traditions of the Roman Republic which since in 68 AD has escaped their portraits. It is also observed that the system also makes it easy to ignore the scorning of candidates' religion as observed in the case of Thomas Jefferson during the 1801 presidential election. The quality and integrity of candidates are also not focused and this has been the major trend since the idea of direct elections was introduced in 1787.

Furthermore, corruption crimes involving politicians are increasing due to the huge sum of money usually spent to during direct general elections leading to actions contradicting the laws after they have won. This also leads to high dependence on capital owners which further cause the creation of oligarchic power towards making policies to favour sponsors, pay debts to investors, and deposit to the bearer party

There are also operational problems of collecting data in a direct presidential election due to the mistakes of incompetent, ill-trained, and frustrated officers as well as a long period of campaign and complicated election schedule. Furthermore, the mass media also arbitrarily report news just for temporary interests and this makes people feel provoked, thereby, making the direct presidential election increasingly divisive and endangering the country.

According to Scalia, it is possible to use an amendment through the interpretation of originalism in providing an answer to controversy with respects to understanding the meaning of the constitutional text or original intent of formulators. Therefore, considering the original intent of the initial formulators of the 1945 Constitution text, the ideal model of presidential election based on the concepts of deliberation amongst representatives and making Pancasila the basic ideology of the country should be re-introduced. Democracy according to Pancasila is not about loss and victory but discussing and deciding important issues relating people's fate through the use of deliberation and consensus that is full of wisdom.

According to Al Mawardi in the theory of imamate, two ways are used to appoint an *imam* (caliph or country leader). First, through the voter councils tasked with the responsibilities of electing the *imam*, and second, the board of *imams* in charge of appointing one of them. Therefore, the concepts of deliberation amongst representatives needs to be restructured by appointing a president through a consultative body containing members elected through honest and fair general elections.

III. CONCLUSION

One of the fundamental changes regarding the presidential election after the amendment is the movement from the use of inner wisdom in the unanimity of deliberations amongst representatives to a direct election through Article 6A of the 1945 Constitution of the Republic of Indonesia. This new system is not in alignment with the traditions and culture of the country has provided by the fourth principle of the Pancasila. Therefore, the use of an indirect presidential election by reconstructing the concepts of deliberation amongst representatives has the ability to reduce electoral costs, increase the dignity of Pancasila, and produce a good President without any suspicion of cheating and political riots.

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