

THE CONCEPTUAL AND HISTORICAL REVIEW OF CONSTITUTIONAL LAW IN INDONESIA

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Abstract

This research discusses constitutional law in Indonesia in terms of concept and history. The position of the constitution is an essential element in a state. It is the basic law in running the government of a country, because every legislation refers to the constitution as a reference. This research uses a qualitative descriptive method with the type of research is a library research. This research led to the conclusion that the constitution affirms the very strong position and relationship between the people and the ruler. The concept of the Constitution in Indonesia is based on the 1945 Constitution. The implementation of Pancasila democracy is based on the constitution or the 1945 Constitution. The history of the development of the Indonesian state administration there are four kinds of constitutions that have been in force, namely first, the period 18 August 1945-27 December 1949; Second, the period 27 December-17 August 1950; third, the period 17 August 1950-5 July 1959 ; fourth, the period 5 July 1959-1998.

Keywords: *Concept; Constitutional; History.*

A. INTRODUCTION

The term constitution comes from the French "conclituer" which means to form. The constitution in question is the formation of a State or composing a State. Philips Hood and Jackson as quoted by Jimly Asshiddiqie said that the constitution is: A body of laws, customs and conventions that define the composition and powers of the organs of the State and that regulate the relations of the various State organs to one another and to the private citizen.¹

Talking about the constitution cannot be separated from constitutionalism. Constitutionalism is an understanding of the limitation of power and the guarantee of people's rights through the constitution. Constitutionalism is the idea that government is a collection of activities organised by and on behalf of the people, but which are subject to some restrictions that are expected to ensure that the powers necessary for government are not abused by those who get the task of governing.

The basis of constitutionalism is the general agreement or consensus among the majority of the people regarding the idealised structure of the State. The organisation of the State is required by the citizens of a political society so that their common interests can be protected or promoted

1 Santoso, M. A. Perkembangan Konstitusi Di Indonesia, *Yustisia Jurnal Hukum*, Vol. 2, No. 3, 2013, page.11

through the establishment and use of a mechanism called the State. The consensus that ensures the establishment of constitutionalism in modern times is generally understood to rest on three elements of consensus, namely: First, Agreement on a common goal or ideal. Second, agreement on the rule of the law as the foundation of government or the administration of the State. Third, agreement on the forms of constitutional institutions and procedures.²

The first agreement regarding common ideals is the peak of abstraction that most likely reflects the common interests among fellow citizens who in reality must live in the midst of pluralism or plurality. Therefore, for a society to ensure togetherness within the framework of state life, it is necessary to formulate common goals or ideals. The second agreement is the agreement that the basis of government is based on the rule of law and the constitution, this second agreement is also very principled, because in every country there must be a shared belief that whatever is to be done in the context of organising the State must be based on the rules of the game that are determined together. The third agreement relates to the structure of State organs and the procedures governing their powers, the relationships between State organs and each other, and the relationship between State organs and citizens.³

These agreements are formulated in the constitution. The agreement becomes a guideline for life in the state so that it is placed in a high position. Because it is placed in a high position, the constitution is used as the supremacy of law. Supremacy of law is one of the elements in the rule of law. The constitution as the highest legal basis is formed on the basis of popular agreement so that the constitution must have democratic values. Therefore, a good constitution must guarantee the sovereignty of law that promotes democracy.

The 1945 Constitution explains that the Indonesian State is a democratic State that has sovereignty in the hands of the people, as well as a State with legal sovereignty. This is confirmed in Article 1 paragraph (2) which states: "Sovereignty is in the hands of the people and is exercised according to the basic law". This provision reflects that the 1945 Constitution embraces popular sovereignty or democracy based on the basic law or constitutional democracy.

Constitutional democracy is based on the idea that a democratic government has limited powers and is not allowed to act arbitrarily against its citizens. In the words of Lord Acton, a British historian, "Power tends to corrupt, but absolute power corrupts absolutely". For this reason, as a concrete political programme and system, the limitation of state power is organised by a written constitution. Power must be divided in such a way that opportunities for abuse are minimised, by devolving power to several persons or bodies. In principle, the less state involvement the better. State

2 Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta, Sinar Grafika, 2021, page.5

3 Siahaan, M. *Hukum Acara Mahkamah Konstitusi Republik Indonesia (edisi kedua)*, Jakarta, Sinar Grafika, 2022, page.15

involvement is only justified to intervene in the lives of its people within very limited limits.⁴

The basic principles of constitutional democracy applied in the Indonesian state system are as follows: 1). Placing citizens as the main source of sovereignty; 2). Majority rule and minority rights are guaranteed; 3). Limitation of government; 4). Limitation and separation of state power; 5). Separation of powers based on the Trias Politica; 6). Control and balance of government institutions; 7). Due process of law; 8). Elections as a mechanism for the transfer of power.⁵

Therefore, if a Constitution has been officially accepted by a nation, for them the Constitution is not only valid in the sense of law, but also a reality in the sense of being fully necessary and effective. Therefore, we need to know how Constitutional Law is in Indonesia. Furthermore, in this study, the focus of the author's discussion is related to how the basic concept of the constitution in the State, then how the concept of the Constitution in Indonesia, and how the constitution and political dynamics in Indonesia.

The purpose of this research is so that readers can know the constitutional law in Indonesia comprehensively from various sides, in this case from the historical, social, and political sides of the law, so that it is hoped that readers in their daily activities can be motivated to carry out state law according to its rules.

B. RESEARCH METHODS

The research method used in writing this research is descriptive qualitative. The type of research is library research, which is collecting data or papers related to constitutional law in Indonesia that are literature. Descriptive qualitative research is a combination of descriptive and qualitative research.⁶ Qualitative descriptive methods are more directed to describe various kinds of phenomena that are natural or human engineering, more about the characteristics, quality and interrelationships between activities. On the other hand, descriptive research does not provide treatment, manipulation, or change in the variables studied, but describes a condition as it is. The only treatment given is the research itself which is carried out through observation, interviews, and documentation. Meanwhile, qualitative research was conducted because researchers wanted to explore non-quantifiable phenomena that were descriptive in nature such as the process of a work step, the formula of a recipe, the notions of a diverse concept, the characteristics of goods and services, various images and styles, the procedures of a culture, the physical model of an artifact and others. Sugiyono in his explanation said, descriptive qualitative research as a

4 Adnan, I. M., Ridwan, M., Siregar, V. A., & Mubarik, M., *Dinamika Negara Hukum dalam Sistem Demokrasi Pancasila di Indonesia*, *Jurnal Multidisiplin Madani*, Vol. 2, No. 3, 2022, page.1121–1138

5 Ridwan, Z. *Negara Hukum Indonesia Kebalikan Nachtwachterstaat*, *Fiat Justitia: Jurnal Ilmu Hukum*, Vol. 5, No. 2, 2011, page.37

6 Komala, F., & Ridwan, M., *Keindahan Hukum Islam*, *Jurnal Indragiri Penelitian Multidisiplin*, Vol. 2, No. 3, 2022, page.140–146

research method is based on the philosophy of post positivism which is usually used to research on natural objective conditions where the researcher acts as a key instrument.⁷

C. RESULTS AND DISCUSSION

1. Basic Concept of Constitution in the State

To understand the basic concept of the constitution in a State, it is necessary to know that there are generally two kinds of constitutions, namely written constitutions and unwritten constitutions.⁸ Almost all countries in the world have a written constitution or basic law, which generally functions to regulate the formation, division of authority and the work of various state institutions and the protection of human rights.

Countries that do not have written constitutions are the United Kingdom and Canada. In these two countries, the basic rules for all state institutions and human rights are found in customs and are also scattered in various documents, both relatively recent and very old documents such as the Magna Charta dating from 1215 which contains guarantees of the human rights of the British people. Because the provisions of statehood are scattered in various documents or live only in the customs of the people, the UK is categorised as a country with an unwritten constitution.⁹

The constitution of a State is essentially the highest basic law that contains matters concerning the administration of the State. Therefore, a constitution must have a more stable nature than other legal products. Moreover, if the soul and spirit of the implementation of the State administration are also regulated in the constitution so that changes to the constitution can bring major changes to the State administration system. It is possible for a democratic State to become authoritarian because of changes in its constitution.¹⁰

Sometimes the desire of the people to make changes to the constitution is something that cannot be avoided. This happens when the mechanism of State administration regulated in the constitution is no longer in accordance with the aspirations of the people. Therefore, the constitution usually also contains provisions regarding changes to the constitution itself, which then the procedure is made in such a way that the changes that occur are truly the aspirations of the people and not

7 Sugiyono, S., & Susanto, A., *Cara Mudah Belajar SPSS dan Lisrel Teori dan Aplikasi untuk Analisis Data Penelitian*, Bandung, Alfabeta, 2015, page.56

8 Ridwan, M., Umar, H., & Harun, H. Study on Human Rights Principles in The Medina Charter and its Implementation In Indonesia, *Indonesian Journal of Social Science Research*, Vol. 2, No. 2, 2021, page.52–64

9 Muannif, R., Yatini, Y., Ahmad Arif, Z., Rasta Kurniawati Br, P., Rina, S., Sariyah, S., Ontran Sumantri Riyanto, R., Asman, A., Dewi Pika Lbn Batu, B., & Firmansyah, F. *Ham Ditinjau Dari Berbagai Perspektif Hukum*, Nuta Media, 2021, page.43

10 Ridwan, M. Hak Asasi Manusia Dalam Piagam Madinah, *Veritas*, Vol. 4, No. 1, 2018, page.98–141.

based on arbitrary and temporary desires or the wishes of a certain group of people.

In the history of Indonesia's constitutional development, there are four kinds of constitutions that have been in force, namely first, the period 18 August 1945-27 December 1949 (the initial 1945 Constitution). Second, the period 27 December - 17 August 1950 (RIS Constitution), then third, the period 17 August 1950 - 5 July 1959 (UUDS 1950) and finally, fourth, the period 5 July 1959 - 1998 (re-enactment of the 1945 Constitution).

The Constitution in a State has a formal function, namely a tool to show its existence to the outside world, as a State's self-identity. Thus, a State cannot be formed without a constitution. The existence of a constitution in a State becomes very essential, even attributed to the constitution is one of the elements or elements of the formation of a State, in addition to the elements of the people, the territory and the existence of government.

In essence, the Constitution of a State is very fundamental, because it is the basis and benchmark for all the work of the State administrators in controlling the steering wheel of government, as well as a source of law for its citizens of the highest value. The Constitution is the highest and written law that regulates the mechanism of State administration, as a collection of rules for sharing State power and limiting government power so that it is not arbitrary.

In the perspective of legal theory, the existence of a constitution will give birth to a constitutional State, a legal State and a democratic State and what is even more desirable is a democratic legal State.

Every State has a constitution as its basic law. But not every State has a Constitution. It is not enough for a constitutional State to have a constitution, but the State must also embrace the idea of constitutionalism. Constitutionalism is the idea that the constitution of a State must be able to limit the power of government and protect the basic rights of citizens.

2. The Concept of the Constitution in Indonesia

The concept of the Indonesian State Constitution is based on the 1945 Constitution. Constitutional Mechanism of Pancasila Democracy. The mechanism for implementing Pancasila democracy is based on the constitution or the 1945 Constitution. The mechanism of Pancasila democracy has been stated in the explanation of the 1945 Constitution.¹¹

The existence of the Trias Politica concept is actually another expression of the concept of separation power, which is a concept intended to make state power in the form of several State organisational institutions that stand separately from each other. Indeed, the concept of Trias Politica is very attached to Montesquieu's thought. But actually the concept has undergone a long historical journey. The idea of dividing government power into three branches of power was started by Aristotle,

11 Santoso, M. A. *Perkembangan Konstitusi..Op Cit*, page.28

which was then followed by Cicero and Polybius, two Roman thinkers who came later. However, the idea had not yet been implemented in Greece or Rome at that time. In the following centuries, the idea of separation of powers continued to emerge along with the presence of its figures. For example, Mirsiglio in the XIV century, Bodin in the XVI century to John Locke and Montesquieu in the late XVII and early XVIII centuries.¹²

The concept of separation of powers according to E.C.S. Wade and G. Godfrey Phillips, consists of three important points, namely.

- a. That the holder of one of the three power institutions does not become part of one or more of the other power institutions. For example, the Minister is no longer a member of the House of Representatives.
- b. That a government institution does not influence the duties and functions that belong to other institutions. For example, the Court is free from executive influence or the Minister is not accountable to the DPR.
- c. That a government institution does not perform the functions of another institution. For example, the executive does not make laws.¹³

Avoiding the existence of an institution that can influence the duties and functions of other institutions does not mean the elimination of control mechanisms between State power institutions. However, the meaning of "can influence" here is that the duties and functions of an institution can be regulated or determined by the implementation of other institutions. Meanwhile, the control mechanism remains important according to the concept of separation of powers, as known as the checks and balances mechanism.¹⁴

Montesquieu's view, according to David Held's commentary, shows that efforts to reduce the level of centrality of power in one hand and to realise good governance can be done with the existence of checks and balances mechanisms between these institutions.

Thus, the essence of the concept of separation of powers, in addition to containing the three points above, also determines the existence of a mechanism of checks and balances between the three institutions of State power. Therefore, even though the separation of powers between institutions is carried out but is not followed by a form of balancing power through the mechanism of checks and balances, the consequences can also lead to uncontrolled power or arbitrariness.

12 Sari, M. Y. A. R., Suhartina, El Adawiyah, S., Ridwan, M., Azuz, F., & Hastuti, P. Increasing the Added Value of Shorea Javanica Resin from the Pesisir Barat District Through the Geographical Indication Regime. *Proceedings of the International Conference on Social, Economics, Business, and Education (ICSEBE 2021)*, 205 (Icsebe 2021), 2022, page.57–62

13 Asshiddiqie, J. Gagasan negara hukum Indonesia. *Makalah Disampaikan Dalam Forum Dialog Perencanaan Pembangunan Hukum Nasional Yang Diselenggarakan Oleh Badan Pembinaan Hukum Nasional Kementerian Hukum Dan HAM*, 2011;

14 Maksum, M. Konsep Kepemilikan Negara Atas Sumber Daya Air dalam Pandangan Maqasid Syariah, *Jurnal Pemikiran Dan Ilmu Keislaman*, Vol. 1, No. 1, 2018, page.235–247

3. Constitution and Political Dynamics in Indonesia

a. Orde Lama Period 1959-1966

Historically, it must be recognised that the 1955 general election was the only general election held during the Soekarno administration, or as the first general election for the Indonesian people. Various expectations accompanied the success of this election, so that some State institutions were formed as mandated by Article IV of the 1945 Constitution's Transitional Rules before the amendment, where these institutions were previously still held by the temporary National Committee (KNIP). However, the mandate had not yet been fully implemented, but what was more important to be implemented at that time was the effort to replace the 1950 Constitution with a new Constitution. Therefore, the elected representatives of the people, under a body called the Constituent Assembly, focussed their work on shaping the new Constitution.¹⁵

After almost three years in session, since March 1956, it turned out that the representatives of the people in the Constituent Assembly had not produced the expected new Constitution. Instead, the situation was one of fierce action around the basis of the state and so on. The two camps that had almost the same power support did not want to give in to each other. Therefore, each camp did not have the votes to reach a quorum (2/3 of the total number of members), as a result decisions in certain discussions were difficult to take. This fact finally led to the issuance of the Decree on 5 July 1959 by President Soekarno.¹⁶

According to Sri Hardiman in his book *Back to the 1945 Constitution Ushering in the Struggle for the Freedom of West Irian into the Territory of the Republic of Indonesia*, there were several considerations taken by Soekarno to issue the Decree, among others.

- 1) The president's suggestion to return to the 1945 Constitution did not get a decision and the Constituent Assembly.
- 2) Most of the members of the Constituent Assembly stated that they would no longer attend the session. It was impossible for the Constituent Assembly to complete its work.
- 3) It endangered the unity of the state, the nation and the people, and hindered universal development.
- 4) Forced to take the only way to save the proclaimed state.
- 5) The Jakarta Charter of 22 June 1945 animates the 1945 Constitution, and is a unitary series with the constitution.¹⁷

But, more than that, it turned out that the constituent assembly members who agreed to return to the 1945 Constitution

15 El-Muhtaj, M., *Hak Asasi Manusia Dalam Konstitusi Indonesia*, Jakarta, Prenada Media, 2017, page.77

16 Dicey, A. V., *Pengantar Studi Hukum Konstitusi*, Yogyakarta, Nusamedia, 2019, page.6

17 Fatwa, A. M., *Potret Konstitusi Pasca Amandemen UUD 1945*, Jakarta, Penerbit Buku Kompas, 2009, page.11

were above 50%. Just look at the first vote on 30 May 1959, members who agreed to return to the 1945 Constitution numbered 269 while those who rejected it numbered 199. In the second ballot on 1 June 1959, there were 264 members who agreed while only 204 rejected. Likewise, in the third vote on 2 June 1959, 263 members agreed and 203 rejected. So, although it did not reach a quorum, basically most constituent members supported the return to the 1945 Constitution.¹⁸

The issuance of the decree, in essence the dissolution of the constituent assembly and the return to the 1945 Constitution, was actually not the only form of political manoeuvring carried out by President Soekarno. It was just that with the decree, the right momentum to make changes became more open. A few months earlier, President Soekarno had put forward his idea to implement a system of government called Guided Democracy.

The essence of the Guided Democracy Guidelines is deliberation for consensus, but if deliberation for consensus is not achieved then the issue is left to the leader to make a policy by taking into account existing opinions. Then the leader can make two provisions, namely suspending the issue discussed or eliminating the issue altogether. But to implement this political format of Guided Democracy, there are several principles agreed between the president and the government on 19 February 1959, summarised as follows.¹⁹

- 1) To nourish the party system, it must be done by simplifying the parties through the renewal of political laws.
- 2) The membership of the DPR, in addition to representatives of the parties resulting from the general elections, should also include representatives from functional groups.
- 3) Functional representatives, in addition to being included in the list of candidates from the parties, should also be appointed by the president.
- 4) For this reason, the president can provide considerations in the preparation of the list of candidates with the assistance of the National Front (Council).
- 5) In the House of Representatives, co-operation is sought under the functional body, which is assisted by the National Front. Efforts are made by way of deliberation, and not by decree on the basis of a regulation.
- 6) The President appoints 35 members of the DPRD from the ABRI, because the ABRI did not exercise its right in the general election.
- 7) The formation of the National Front was to be done on the basis of a government regulation.

18 Wheare, K. C., *Konstitusi-Konstitusi Modern*, Yogyakarta, Nusamedia, 2018, page.3

19 Fatwa, A. M., *Potret Konstitusi Pasca.. Op Cit*, page.21

Clearly, the agreement had placed Soekarno's political role as president and commander-in-chief in the administration of the state government in a concentrated and powerful position. The DPR was in fact under the power of the president. Therefore, in addition to being able to intervene in party policies, especially in the preparation of DPR candidates from parties, the president also appoints a significant number of functional DPR members. Not only that, according to the principles of Guided Democracy, all elements in the DPR must work together and make decisions based on deliberation or not based on a regulation. Thus, if the deliberation reached a deadlock, of course, the next decision was in the hands of the president/supreme leader.

Such principles cannot be denied that Soekarno had tended to carry out a political format that gradually reduced the functions and authority of other state institutions, the DPR for example, or in other words tended to concentrate power in his hands as president/supreme commander/great leader. Therefore, it is quite reasonable that most experts, Moh. Mahfud MD, among others, consider Soekarno to have practised authoritarian politics. According to Moh. Mahfud MD, there are several indications of Soekarno's authoritarianism, namely.

- 1) Parties were very weak; political power was characterised by a tug of war between Soekarno, the Army and the PKI.
- 2) The executive led by the president is very strong, especially since the president doubles as chairman of the DPA, which in practice becomes the maker and selector of legislative products.
- 3) Freedom of the press was severely restricted; during this era there were a spectacular number of anti-press actions.²⁰

With very strong control of power, Soekarno also frequently dismantled his cabinet. According to Suwata Mulyasudarmo, the peak of this concentration of power began with the third working cabinet. There are several indications, namely.

- 1) The President formed the National Council with the task of assisting the government. The National Council is a body that gathers extra-parliamentary powers. Its organisational structure was directly under the president.
- 2) The DPR as a result of the 1955 general election was dissolved and then on the basis of Presidential Decree No. 4 of 1960, the President established the House of Representatives of the People of Gotong Royong (DPRGR).
- 3) The chairman and deputy chairman of the DPRGR, the chairman and wakill chairman of the MPRS, the chairman and deputy chairman of the Supreme Advisory Council (DPA) and the chairman of the National Drafting Council were given the position of ministers. Thus the position of the four state bodies was under the leadership of Soekarno.

²⁰ Mahfud, M., *Konstitusi Dan Hukum Dalam Kontroversi Isu/Prof. Dr, Moh. Mahfud MD*, 2009,

The concentrated or authoritarian political format will inevitably affect how the local government administration system is organised. The political format that gave birth to legal products with orthodox / conservative characteristics, according to Moh. Mahfud MD, is evident from the existence of conservative content through legal products-Presidential Decree (Penpers) No. 6 of 1959 which was then followed by Act No. 18 of 1965 concerning local government, namely.

- 1) Highly centralised due to deep central interference with the regions.
- 2) The principle of the widest possible autonomy is not elaborated at all in the articles.
- 3) The head of the region is fully determined by the centre and is in charge of overseeing the running of the government in the region.
- 4) The DPRD has practically no role, and its decisions can even be suspended by the head of the Region.

These indications of the concentration or concentration of power in the hands of the Regional Head are clearly not adopted or shifted from the provisions of the 1945 Constitution, if the Regional Head is seen as a tool of the central government or the president who is also a mandate of the MPR. But the use of the expression *mandataruis*, according to Bagir Manan, is not a separate position institution that is distinguished from the position of the president as head of state and head of government. He added, that Supomo himself actually did not intend to make the mandate as an institution. The phrase only indicates that the president is positioned as the recipient of the MPR's mandate, because he is elected by and subject to the MPR. Likewise, the phrase "Concentration Of Power And Responsibility Upon The President" in the explanation of the 1945 Constitution cannot be justified as a provision that all state power is concentrated or centralised in the hands of the president. The phrase still has relevance to the previous phrase, namely "Under the People's Consultative Assembly, the President is the highest organ of state government," where the president in this sense, according to Moh. Mahfud MD, acts as head of government or chief executive. So as head of state and government, the president still has the same position as the DPR, namely as an equal power institution. The same applies to the head of the Region. Although he or she acts as the representative of the central government - as well as the head of the regional executive - the regional head cannot be seen as an institution of power that is subordinate to the DPRD.

b. The New Order (ORBA) Period 1966-1998

The period 1966-1998 was the political period of the New Order. The G-30-S/PKI incident at the end of 1965 became a significant momentum to end the previous political period known as

the Old Order. The outbreak of the G-30-S/PKI rebellion did not automatically overthrow the Old Order government, but starting from the rebellion, various constitutional events were born which eventually became a series to end the Old Order's political role in the arena of the government of the Republic of Indonesia.

Although the G-30-S/PKI rebellion was suppressed, various crises, especially the political and economic crises, continued so that the emergence of various demonstrations and actions gave birth to three demands known as Tritura (three demands of the people), namely the dissolution of the PKI, the dissolution of the Dwikora cabinet, and lowering the price of goods.²¹

The large wave of demonstrations and actions that emerged, accompanied by the unstable condition of the nation, forced President Soekarno to issue a warrant to Soeharto to take all actions deemed necessary to ensure the creation of security and government stability on behalf of the President / Commander-in-Chief / Great Leader. The warrant was issued on 11 March 1966, hence this event is referred to as the supersemar event (11 March warrant).²²

Initially, Supersemar was not intended to replace Soekarno as the leader of the country. But in fact, it was supersemar that gave birth to a new political pattern as well as a new pioneer, namely the beginning of the New Order government. The evidence, according to Moh. Mahfud MD, is that with the supersemar Soeharto was able to dissolve the PKI and take action for political reform and stability, and with the supersemar Soekarno's power with his guided democracy was actually lost. Then Soekarno's power disappeared or ended completely when his accountability speech was rejected and Soeharto was appointed as the definitive presidential official at the V MPRS session in Jakarta in 1968 through decree No. XLIV/MPRS of 968, meaning that the political role of the new era in the Indonesian government stage became legitimised, which was then termed the New Order.

New Order politics, according to Dewi Fortuna Anwar, sought to concentrate power in the hands of the executive in a widespread and systematic way, and left other state institutions weak and highly dependent on the executive. The New Order government also, according to Afan Ghaffar, conducted a political format in the format of de-alignment. This format was carried out in two ways, namely creating mass depoliticisation systematically through a number of policies. For example, establishing the principle of monoloyalty for all civil servants and SOE employees under the Korpri organisation. Thus, employees are not compartmentalised into ideological flows that follow the ideologies of political parties. Meanwhile, the floating

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- 21 Ridwan, M., *Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia*, *Varia Hukum*, Vol. 3, No. 1, 2021, page.37–66
- 22 Jimly Asshiddiqie, S. H., *Konstitusi Dan Konstitusionalisme Indonesia*, Semarang, Sinar Grafika, 2021, page.17

mass is created so that individuals do not have certain ties to political parties, except during general elections. Political parties are only present at the district level as electoral districts, in sub-districts there are only commissioners, and in villages they are not allowed at all. The reason for this was so that people would not be swayed by political party games. In reality, however, Golkar freely travelled to the village through village officials.²³

As a political force, the presidency has all the resources necessary for a political process. Other political forces cannot match the magnitude of its political resources. The interpretation of the industrialisation of power as an alternative to the separation of powers has led to an unclear relationship between state institutions. In fact, there is a very strong symptom that the equality between state institutions is very low, due to the dominant power of the presidency. Similarly, the New Order's political recruitment was closed, with recruitment processes often based on political patronage rather than capacity and leadership. The bureaucracy was also run for the sake of the political interests of the rulers at the centre, as a result of which it could benefit and concentrate on those who tended to be centralised in Jakarta, eventually also weakening the position of the government in the regions. The accumulation of all these consequences has resulted in a weakening of human rights guarantees. The freedoms of association, assembly, freedom of speech, and freedom of press are weakened - if not stifled - in their implementation. If the implementation of human rights does not work, the law enforcement process will automatically not work properly. How can the law be enforced if there is no independence in the world of justice. Indeed, Indonesia has its own underlying gambling institution such as the Supreme Court. But in the placement pattern and career formation pattern, it is still under the government bureaucracy.²⁴

The above views are sufficient to indicate that the political role of the New Order in 1966-1998 rested on strengthening the executive branch of government, of course supported by ABRI and the bureaucracy, and strengthening the role of the central government (sensitisation of power). Both were campaigned under the slogan of increasing national economic growth on the basis of political stability. For the sake of these goals, all efforts must be made, both in the form of rewards for those who succeed and support and in the form of repressive measures for those who refuse. Of course, in this case, the cases of Sri Bintang Pamungkas, Permadi, the revocation of the

23 Purnamawati, E., Perjalanan Demokrasi di Indonesia, *Solusi*, Vol. 18, No. 2, 2020, page.251-264

24 Winarno, S., Demokrasi, Demonstrasi dan Demo Crazy, *Arsip Publikasi Ilmiah Biro Administrasi Akademik*. 2019, page.7

SIUPP of editors, Detik and Tempo magazines, are some of the examples of government actions during this period.²⁵

With such features and characteristics, it is possible to imagine the actual pattern of local government implementation during the New Order era. It is undeniable that the implementation of the government became an integral part of the political will of the government at the central level, namely by strengthening the position of the government (bureaucracy). This is acknowledged by Mochtar Mas'oud, that on the basis of bureaucratic policy objectives, the New Order government has succeeded in carrying out political engineering, namely creating a centralised government building, as this is reflected in the regulation of government administration in the regions as contained in Act No. 5 of 1974. The issuance of the law was, in the New Order's view, a form of bureaucratic structuring with the following objectives: First, to transfer government authority to higher levels of the bureaucracy, namely the government policy-making process. Second, to make the bureaucracy effective and responsive to the orders of central leaders. Third, to expand the new government's authority and consolidate control over the regions.²⁶

This capability has been illustrated previously through MPR Decree No. IV/MPR of 973. In this decree it is said that in order to facilitate the implementation of development spread throughout the country and in fostering political stability and national unity, a harmonious relationship between the central and regional governments on the basis of the integrity of a unitary state is directed at the implementation of real and responsible regional autonomy that can ensure regional development and development, and is carried out together with the principle of deconcentration. Thus, there are at least three regional directions, namely that there must be harmony with political development and national unity, must be able to ensure harmonious relations between the central and regional governments on the basis of the integrity of a unitary state, and must be able to ensure regional development and development.

Therefore, the principle used in the implementation of local government is the principle of real and responsible autonomy. Real, in the sense that the granting of autonomy to the regions must be based on factors, calculations and actions or policies that can actually ensure that the regions concerned are actually able to manage their own households. Responsible, in the sense that the granting of autonomy is truly in line with its objectives, namely; launching development spread throughout the country and in harmony or not in conflict with the three directions that have been given. Thus, the

25 Johan, T. S. B., *Hukum Tata Negara Dan Hukum Administrasi Negara Dalam Tataran Reformasi Ketatanegaraan Indonesia*, Deepublish, 2018, page.142

26 Kadarisman, M., *Dinamika Politik Dalam Reformasi Administrasi Publik, Kias Kajian Ilmu Sosial*, Vol. 2, No. 1, 2021, page.141–157.

implementation of local government through the principle of autonomy is more of an obligation than a right, namely the obligation to participate in the course of development as a means of achieving prosperity which must be accepted and carried out with full responsibility.

The New Order's centralised and bureaucratic political format often resulted in political decisions that were not measured by legislation. Just look at the case of the removal of the candidate for the head of the Deli Serdang Region, or the case of the dismissal of members of the provincial DPRD of Jambi province in 1979. In the case of the removal of the candidate for the head of the Deli Serdang Region, the central government removed the candidate proposed by the DPRD, as a result of which the chairman of the Development Work Faction resigned. The same thing can be seen in the case of the dismissal of members of the Jambi provincial DPRD. Because some DPRD members did not vote for the central government's preferred candidate in the 1979 gubernatorial election, these members were dismissed from their membership after the election.

If analysed further in Act No.5 of 1974, there are no provisions underlying these two cases. According to Articles 15 and 16, the DPRD nominates and then selects candidates for the head of a region from a minimum of three and a maximum of five candidates, who have previously been consulted and agreed upon by the DPRD leadership/leaders of factions with the Minister of Home Affairs for candidates for Governor, or with the Governor for candidates for Regent/Mayor. Then the results of the selection of candidates are submitted by the DPRD to the President through the Minister of Home Affairs through the Governor for Regent/Mayor candidates, from a minimum of two people, and to be appointed one of them. Here, there is no provision that the central government has the authority to drop one of the candidates proposed by the DPRD, except only in the form of deliberation and agreement, but this agreement cannot be interpreted as a form of authority to determine everything.²⁷

Likewise, in terms of the dismissal of DPRD members according to Article 20 of Act No.5 of 1974 in conjunction with Article 20 paragraph (1) and Article 27 paragraph (1) of Act No.16 of 1969 (updated with Act No.2 of 1985), that DPRD members cease to serve interim as members, because; a. they die, b. at their own request in writing to the leadership of the DPRD, c. they reside outside the region concerned, and no longer fulfil the requirements as a member of the DPRD based on mandatory information, e. they are declared to have violated their oath/pledge as a member of the DPRD by a decision of the DPRD concerned, f. they are replaced by their own political party, as referred to in Article 43, and g. they are replaced by

27 Bakri, M., *Pengantar Hukum Indonesia Jilid I: Sistem Hukum Indonesia Pada Era Reformasi*, Malang, Universitas Brawijaya Press, 2011, page.41

their own political party, as referred to in Article 43. Is replaced by his/her own political party, as referred to in Article 43, and g. Is subject to the prohibition on holding office pursuant to Article 43. Article 43, specifically paragraph (1) of Act No.16 of 1969, stipulates that the right to replace delegates of organisations participating in the general election in the Consultative Body/People's Representative is vested in the organisations participating in the general election concerned, and in the exercise of this right, the leaders of the Consultative Body/People's Representative concerned must first consult with each other.

However, even though there is no normative basis, because it has become the format or configuration of New Order politics which is centralised and bureaucratic, anything can be done, including the two cases above. This political format greatly influenced the distribution of power between the DPRD and the Regional Head because the DPRD was always under the power of the bureaucracy or the executive. If this is the case, then it is clear that the shift in the distribution of power between DPRD and Regional Heads during the New Order period was not only due to provisions in Act No.5 of 1974 that were not in line with or shifted from the 1945 Constitution, but was also influenced by the political dynamics of the New Order, which was based on strengthening the executive branch of government (bureaucracy) and strengthening the role of the central government (centralisation).

c. Reform Era 1998-Present Period

This period is also known as the Era of Reform, which is a period of government that intends to improve and/or change the order of life of the nation and state in various dimensions towards a better direction than before. The definition of reform itself has actually received many responses from various experts. Warsito Utomo has summarised these responses, including:

Khan (1981) defines reform as an effort to make basic changes in a bureaucratic system that aims to change the structure, behaviour, and existence or long-standing habits. Meanwhile, Ouah (1976) defined reform as a process to change the processes and procedures of public bureaucracy and the attitudes and behaviour of bureaucrats to achieve bureaucratic effectiveness and national development goals. Then, Samonte (1979) defines reform as changes or innovations in the use of planning and adoption to make the administrative system a more effective agency or agent for social change; as a good instrument for bringing political equality then social, and economic change, all in the process of accelerating development and nation building.

Warsito Utomo adds that the essence of the above views revolves around four things. Firstly, reform implies innovation and transformation. Second, successful reform requires systematic change

within a broad framework, in a careful and planned manner. Third, the goal of reform is to achieve effectiveness. Fourth, reform must be able to cope with changes in the environment. Thus, the scope of reform is not only limited to processes and procedures, but also closely related to changes at the level of structure and attitudes and behaviour.²⁸

Reforms are usually preceded by the existence of conditions in the nation's life that are considered no longer appropriate because of the many negative consequences caused. The accumulation of various negative consequences gave birth to demands from elements of the nation for improvement and change. In Indonesia itself, the beginning of the Reform Era was marked by an economic crisis, but from this crisis then came various other crises such as political, legal and so on. Aian Ghaffar noted that by 1998 the private sector's foreign debt had reached US\$ 80 billion, the value of the rupiah was constantly depreciating, inflation was skyrocketing, national foreign exchange reserves were depleting, basic food supplies were increasingly limited, unemployment was increasing, and the economy could be said not to be turning.²⁹

The dying economic crisis resulted in demands from various parties, both domestic and foreign, for Soeharto to resign from his position as President of Indonesia. The domestic demand was, of course, pressure from the Indonesian people themselves. At that time, the demands from the community, led by the university community through various demonstrations and actions, reached its peak when no less than 15,000 students took over the House of Representatives, causing the national political process to be paralysed. There was also pressure from the international community, especially the United States, which openly demanded that Soeharto resign immediately. As aired by CNN television. US Secretary of State Madeline Albright repeatedly broadcast a statement calling on President Soeharto to resign from office.³⁰

The culmination of these pressures finally pushed Soeharto to do nothing but choose to resign from the position he held for approximately 32 years. Soeharto stepped down from office on 21 May 1998, and B.J. Habibie was appointed as his successor, who at the time served as Vice President. Starting from the date of Soeharto's resignation and the appointment of B.J. Habibie, the Reformation Era in the life of the Indonesian nation and state began.³¹

28 Hadi, S., *Disintegrasi Pasca Orde Baru: Negara, Konflik Lokal, Dan Dinamika Internasional*, Yayasan Obor Indonesia, 2006, page.33

29 Kersten, K. P. L. G., *Berebut Wacana: Pergulatan Wacana Umat Islam Indonesia Era Reformasi*, 2018, page.5

30 Firas, M. A., Politik Dan Birokrasi: Masalah Netralitas Birokrasi Di Indonesia Era Reformasi, *JRP (Jurnal Review Politik)*, Vol. 6, No. 1, 2016, page.160–194

31 Kardi, K., Demokratisasi Relasi Sipil–Militer Pada Era Reformasi Di Indonesia, *Masyarakat: Jurnal Sosiologi*, 2015, page.231–256.

The fall of the New Order regime, marked by Soeharto's resignation from the Presidency, has brought about a shift in Presidential power in Indonesia from a dictatorial to a democratic one, as shown in the table below.

Table Shifting power of the President of Indonesia

Question	Respondent Responses	Number of Respondents	Total (%)
To what extent has the power of the President of Indonesia changed after reformasi?	More powerful	85 people	28,4%
	More balanced	170 people	56,6%
	No shift from the previous president	30 people	10%
	Dictatorial	15 people	5%
Total		300 people	100%

Source: Processed Data 2009

The table above shows that after the reformation the President's power is more balanced, this can be seen from the results of the respondents' links that the author did where out of 300 people the total number of respondents that the author researched, 170 people (56.6%) said that the President's power after the reformation was more balanced, meaning that after the reformation the President was no longer a dictator like the new order period. This is marked by the amendment of the 1945 Constitution, in which new State institutions appear, such as the Constitutional Court (MK), DPD, etc., and the most fundamental is regarding the ratification of the law where during the New Order era the President could refuse to ratify a draft law, but after the reform if within a predetermined time the President does not ratify the draft law that has been approved by the DPR, then the law is immediately valid and applicable, and must be implemented.

Amendments to the 1945 Constitution have abolished the term supreme state institution with the term high state institutions, meaning that after the reform of the 1945 Constitution does not want the existence of power institutions that have higher authority than other institutions. After the reform (amendment) of the 1945 Constitution the role of the MPR as a State institution began to shift, this was seen during the New Order period when the election of the President and Vice President was elected by the MPR as the highest State institution.

The political dynamics that occur above create difficulties in determining what the political format of this era actually is. There are at least two reasons for that. Firstly, because this era is still in a transition period that has more euphoria, namely from the previous

New Order era to the actual Reform Era. Therefore, the reality that occurs is still part of an effort to further search for or try out the best format. An example is the enactment of laws on politics. Since the beginning of this era in 1998, there have been two political laws, namely Act No. 2 of 1999 on Political Parties, Act No.3 of 1999 on General Elections and Act No.4 of 1999 on the Structure and Position of the MPR, DPR and DPRD. These three laws were then updated with Act No. 31/2002 on Political Parties, Act No. 12/2003 on General Elections, and Act No. 22/2003 on the Structure and Position of the MPR, DPR and DPRD, and even added with Act No. 23/2003 on the Election of the President and Vice President.³²

Secondly, this era has just begun so that many of the instruments prepared have not been able to run properly, such as the contents of the 1945 Constitution after the amendment, the MPR only completed the fourth amendment to the 1945 Constitution on 10 August 2002. The post-amendment of the 1945 Constitution did not bring significant changes.

It cannot be denied that the new Constitution contains many new provisions as well, and has even changed the structure of the Indonesian state administration, such as the addition and subtraction of the State institutional structure. The occurrence of changes in the content of the Constitution is a consequence of the amendment of the 1945 Constitution, with the occurrence of changes in the content marked by the establishment of new state institutions such as, DPD, the Constitutional Court.

Nevertheless, indications relating to political life have actually been reflected at the beginning of the Reformation Era. As is understood, the Reformation Era which began in 1998 along with the end of the New Order in the same year has several main agendas, namely amending the 1945 Constitution, changing political laws, abolishing the dual function of ABRI, implementing regional autonomy, and prosecuting human rights violators and KKN. This agenda was partly accommodated in the MPR SI of 10-13 November 1998, which produced 12 MPR Decrees, including decrees on limiting the terms of office of the President and Vice President, on the direction of the state, regional autonomy, human rights, corruption, politics and the economy.

In relation to the discussion of the political dynamics of the Reform Era, the second basic concept above needs to be examined further. The strengthening of the political role of DPRD, or in other words, the strengthening of the people through DPRD, is reasonable when looking at previous conditions, where the existence of DPRD was only like a kerakap growing on a rock. However, the concept of strengthening should not put DPRD subordinate to the Regional Head. The strengthened role of DPRD means that DPRD can perform

32 Nyman, M., *Democratizing Indonesia: The Challenges Of Civil Society In The Era Of Reformasi* Nias Press, 2006, page.10-19

its three functions perfectly, and also that DPRD is an equal partner for the Regional Head.

The practices that have occurred outside the provisions of these laws and regulations have also contradicted or shifted from the provisions of the 1945 Constitution, both before and after the amendment. The reason is not much different from the political dynamics that occurred during the New Order and Old Order periods, namely the existence of a form of subordinate authority between power institutions. The only difference is to whom the subordinate authority belongs. Whereas during the New and Old Order periods the authority was vested in the Regional Head, during the Reform Era the authority was transferred to the DPRD.

D. CONCLUSION

The basis of constitutionalism is an agreement (consensus) among the majority of the people regarding the idealised building regarding the State. The consensus that ensures the establishment of constitutionalism in modern times is generally understood to rest on three elements of consensus, namely: First, agreement on a common goal or ideal. Second, agreement on the rule of the law as the foundation of government or the administration of the State. Third, agreement on the forms of constitutional institutions and procedures. The soul and spirit of the implementation of State administration is regulated in the constitution so that changes to the constitution can bring major changes to the State administration system. It is possible for a democratic State to become authoritarian because of changes in its constitution. The concept of the Constitution in Indonesia is based on the 1945 Constitution. The history of the development of Indonesian state administration, there are four kinds of constitutions that have been in effect, namely first, the period 18 August 1945-27 December 1949 (early 1945 Constitution); Second, the period 27 December-17 August 1950 (RIS Constitution); third, the period 17 August 1950-5 July 1959 (UUDS 1950); fourth, the period 5 July 1959-1998 (re-enactment of the 1945 Constitution). Meanwhile, the political dynamics in Indonesia are divided into three, namely: Old Order (ORLA) period 1959-1966, New Order (ORBA) period 1966-1998, and Reformation Era period 1998-Present. Changes in the constitution in Indonesia are caused by external factors and internal factors and are influenced by existing legal political conditions which then also have an impact on changing the constitutional system in Indonesia.

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