

Actualization of Checks and Balances between Executive, Legislative and Judicial in Indonesia

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Abstract

The study analyze the implementation of the democratic model and the government system in Indonesia. Checks and Balances among democracy pillars is the main focus of the analysis. The important finding of the study is that the democracy in Indonesia does not have a consistency in term of system.

Keywords: democracy system, checks and balances.

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I. Introduction

1.1. Background

The separation of powers known as “trias politica” is a model of government that is commonly used in countries that implement a democratic system. Democracy began in Ancient Athens in Greece. That’s where the embryo of democracy developed. But what was done in Athens was a form of democracy carried out directly by the people. This is understandable because at that time Athens was a city state that had no population as many as the countries that existed in the period thereafter and now.

Such a power separation model was first discovered in ancient Greece, then developed and spread to various countries over time. The ancient Roman Republic, among others, applied this model, as stated in the Roman Republic’s constitution. With this model the power holders of government are separated or divided into pillars consisting of: (1) executive, (2) legislative and (3) judicial.

Proponents of this ideology argue that the separation of powers will be able to keep democracy in the right corridor, and with this separation of powers can be avoided the tyranny of the ruler. Meanwhile, opponents of this ideology argue that the separation of powers, will slow down the course of government, there will even be a tendency for the executive pillar to become more dominant than the legislature and executive performance to be unaccountable, especially in countries that apply presidential systems.

In practice there is no one country that can exercise absolute separation of powers. Overlapping and symmetrical power always occur in government. But in general, in terms of the power of government can be categorized into two categories, namely: (1) the state that implements the separation of powers or (2) the state that conducts centralization of power.

1.2. Separation of Power Mechanism in Indonesia

Indonesian constitution, namely the 1945 Constitution (abbreviated as UUD 1945), which has been amended for 4 times has written and implies that Indonesia as a democratic country basically adheres to the separation of powers. Government or executive power is in the hands of the President (article 4), the power to form the law is in the hands of the House of Representatives (DPR) (article 20), while the judicial authority is in the hands of the Supreme Court (MA) (article 24) and the judiciary under Supreme Court and the Constitutional Court (MK) (article 24 C). In addition to those institutions there are three other institutions mentioned in our constitution that has the duties based on this separation of powers, namely the People’s Consultative Assembly (MPR), the Regional Representative Council (DPD), and the Judicial Commission (KY). Furthermore, there is another power, namely the authority of the auditor held by the Supreme Audit Agency (BPK). Indeed, our constitution explicitly does not regulate the mechanism of relations or interactions between pillars in the power of state administration. Based on the constitution the study will analyze the actualization of the

checks and balances in Indonesia.

1.3. Methodology

Qualitative method was used in the study. Desk study and secondary data also been applied to as the supporting data of the study.

II. Theoretical Concept of the Application of Separation of Power in Indonesia

Terminology of democracy is defined as “rule by the demos”, where “demos” itself can be interpreted as the public or the people. But the most easily understood is the statement delivered by Abraham Lincoln in his remarks delivered in Gettysburg that democracy is: “Government of the people, by the people, and for the people”. Therefore democracy implies that sovereignty or power is in the hands of the people, by the people and for the people. But in its implementation in almost all democracies, the one who rules or has political power is a group of people who are elected and elected by the common people.

Meanwhile, in his book Lijphart said that democracy can be interpreted as a government of the people and for the people. In this thinking, Lijphart presented models of democracy which were said to be close to ideal. To support this acceptance Lijphart quoted Dahl's opinion. In this connection, according to Dahl, democracy can be said to be ideal if there are 8 elements in managing the nation, namely:

1. Freedom to form and become a member of the organization,
2. Freedom of expression,
3. Right to vote,
4. Chance to become an official,
5. The right of political leaders to compete and get support and choice,
6. Getting alternative sources of information,
7. Free and fair elections, and
8. Government policy makers depend on the votes and other preferences of voters.

Furthermore, according to Lijphart, there is a very different model of democracy in the application of the 8 dimensions of Dahl above, namely democracy that applies the principle of majoritarianism and democracy that implements consensus,

More specifically, Lijphart argues that the Westminster Model applied to countries influenced by the United Kingdom is basically a majoritarian model. For the example, the democratic system that is implemented in the UK and New Zealand. This model concerns 9 interrelated elements as happened in England, namely:

1. Concentration of executive power because it is supported by a majority party in the parliament and cabinet,
2. The consolidation of power and cabinet domination because the executive and legislative are integrated,
3. The asymmetrical bicameralism between the House of Lords and the House of Common,
4. The two-party system, namely the Conservative and Liberal parties,
5. A single-dimensional party system caused by a homogeneous society so that party differentiation is based on differences in socio-economic policies,
6. The pluralist electoral system, the district system,
7. Government that is centralized and in the form of unity,
8. The constitution is not written and the highest position is in the hands of parliament, and

9. Exclusive representative democracy because there is no referendum.

But in his explanation Lijphart said that Britain was not an ideal Westminster model because of the various inconsistencies in the application of the 9 elements. The ideal Westminster model is implemented in New Zealand.

Meanwhile the consensus model is a model that is formed in a very pluralistic society as happened in Switzerland and Belgium. This model concerns 8 elements to prevent the emergence of majority tyranny, these elements are:

1. Large coalition of executives,
2. Formal and informal separation of powers,
3. Bicameralism is balanced with the presence of representatives of minority groups,
4. A multiparty system that reflects the plurality of its people,
5. Multidimensional party system because of heterogeneous society,
6. Proportional representation,
7. Federalism is territorial and non-territorial to protect minority groups, and
8. Written constitution and minority veto rights.

In practice, both models can basically carry out the form of direct democracy in terms of decision making on certain problems. In its implementation direct democracy is carried out through a referendum, where all people who have the right to vote are directly involved in decision making.

The United States, which has always been regarded as a pioneer of contemporary democracy, implements a democratic system that lies between the Westminster model and the consensus model. Elements taken from the Westminster model appear in:

1. Concentration of executive power in the hands of the president,
2. Two-party system,
3. The electoral system uses the district system, and
4. Single-party party system.

While the application of elements from the consensus model appears in:

1. Separation of power,
2. Balanced bicameral system,
3. Federalism, and
4. Written constitution and minority veto rights.

In terms of the implementation of direct democracy, the United States is in a moderate position, however the United States is an example for the application of a mixed democratic system between majoritarian and consensus. Of all the countries observed by Lijphart, the democracy he applied basically could be categorized into the three types of democratic models.

Regarding the efforts to run the government, Lijphart explained that the Executive can be run by: (1) Majority or power, and (2) Sharing power (coalition). In the meantime, the coalition is carried out in the form of: (1) Policy-blind basis coalition, and (2) Policy-based coalition.

In terms of the form of government, there are at least two forms, namely: (1) presidential and (2) parliamentary. Meanwhile in terms of the number of rooms in the parliament, Lijphart said there were at least two types, namely: (1) bicameral system and (2) unicameral system.

Additionally, Lijphart was expressing the existence of various models of democracy in accordance with various aspects of society. According to him, “majoritarian democracy” is very appropriate when applied to a homogeneous society, while for a heterogeneous or pluralist society it is more suitable to use “consensus democracy”.

In both models of democracy, a bicameral parliamentary system can be applied. He further suggested that to model of the “majoritarian democracy” is more appropriate if applied asymmetric bicameralism, or an unequal bicameral parliamentary system. This means that one of the chamber has a greater function and power than the other chamber.

Whereas for countries that implement “consensus democracy” it is more appropriate to apply the parliament which is “balanced bicameralism”. This means that the two chambers in the parliament have the same function and power. Lijphart explained more clearly that in terms of its authority, when using “asymmetric bicameralism” is often referred to as “soft bicameralism”, while those who apply “balanced bicameralism” are also referred to as “strong bicameralism”.

Based on these opinions and theories, for Indonesia, a pluralistic nation (which has diversity), the appropriate democratic system is “consensus democracy”, by applying the parliamentary system “bicameralism”, and the power between chambers in balanced bicameralism or also called “strong bicameralism”. Then by referring to the government models presented by Lijphart, the model of government that is suitable in Indonesia is the presidential system, by applying a “coalition cabinet” from various parties that have the same principle (policy-based coalition).

What we see in the practice of democracy in Indonesia, we can conclude that:

1. The democracy adopted in Indonesia is a mixture of majoritarian and consensus, proven by our constitution, its preamble determines the consensus of democracy (in accordance to the fourth principle of Pancasila), while the body is applied direct presidential elections, it means majoritarian democracy.
2. In addition, the preamble of the 1945 Constitution also stipulates representative democracy, but in the presidential election using direct democracy,
3. The government is presidential system, but the president has no veto rights as is applied in countries that implement this system, so the legislature in principle has stronger legislative rights,
4. The cabinet formed is a policy-blinded coalition, and
5. The parliamentary system applied is two chambers (DPR and DPD), but the legislative power between the two is not equal (asymmetric bicameralism).

Although the separation of powers in Indonesia is applied, but from the various realities of the implementation of the democratic model and the government system, what is applied in Indonesia does not have consistency between one system and another. Therefore the application of the principle of check and balances in Indonesia will be imperfect.

III. Actualization of Checks and Balances in Indonesia

The separation of power model known as “Trias Politica” in contemporary political science was first introduced by John Locke (1632-1704) a British philosopher and Montesquieu (1689-1755) a French political philosopher, according to this model of government power separated or divided into pillars consisting of: (1) executive, (2) legislative and (3) judicial.

There are actually differences between their opinions. John Locke included judicial power in executive power, while Montesquieu viewed the power of the court as a stand-alone power.

Theoretically the separation of powers between the executive and the legislature can be analyzed by looking at the method of election. Basically, parliamentarians are accountable to their voters. Likewise the chief executive in this case the president, is also accountable to the voters. Both have different accountability, so clearly they must always uphold their respective accountability. If they violate this accountability, the “punishment” they will get is political punishment, that is, they will not get the trust of the voters, or will not be reelected.

In its development, although these three powers have been separated from one another, there is still a need for checks and balances between them, where each branch of power can supervise and balance other branches of power. This mechanism is needed so that there are no abuses of the power they have.

The easily recognizable checks and balances mechanism in Indonesia is between the legislature and the executive. But what is meant by the legislature here is only the DPR, because the DPD is constitutionally “not having” the power to make laws. The mechanism is mainly in terms of:

1. Legislation,
2. Budget,
3. Supervision,

However, Indonesian constitution in Article 20, in the case of making laws, only allows an unbalanced checks mechanism. The power of the DPR in the matter of the law basically cannot be denied by the government, as evidenced by the provisions contained in paragraph 5 of the article. Where a bill that has been jointly agreed upon, must be promulgated within 30 days, even without the president’s endorsement. The effort of checks from the government can only be done through the Constitutional Court when the law is contrary to the constitution.

Meanwhile, our constitution basically does not provide an opportunity for a checks and balances mechanism to occur, both between the legislature and the judiciary, and between the executive and the judiciary. Judicial power in our constitutional system (based on the constitution) cannot be corrected or controlled by other powers. This power is only supervised by the Judicial Commission which is also on the judicial pillar.

Of the various provisions, the executive position in Indonesia is very weak. All activities that will be carried out by the executive cannot be carried out without control and decisions from the DPR. Because all executive activities must be contained in budget documents whose budgetary powers are in the hands of the DPR. The various rights held by the DPR both as individuals and as institutions. They have very strong power to control and even to influence the executive.

Thus the actual legislative pillars, especially the DPR, and the judicial pillars (MA and MK) in Indonesia can do their work without control from other pillars. There is no one mechanism written in our constitution that provides opportunities for checks and balances on these two pillars.

In relation to the National Development Strategy, the existing system can only be subjected to a mechanism of checks from the DPR to the executive (government), through various functions it has. And after the development is carried out every year an audit is

conducted by another authority, namely the BPK.

Therefore, the success of the National Development Strategy depends heavily on how the executive can make various efforts to be able to “make the DPR understand and approve” various plans to be carried out by the executive, in the form of budget approval, as outlined in the State Budget.

So that, it is undeniably if an Indonesian president (in the presidential system) always considers the power in the DPR when composing his cabinet, this effort is carried out nothing else to get support from the DPR. With the support of the DPR, all plans made by the executive, which promised in the election campaign, will be financed and implemented.

IV. Conclusion and Recommendation

4.1. Conclusion

Indonesia is implementing separation of powers, but the model of democracy and the government system that is applied in Indonesia does not have consistency between one system and another. As a result of this inconsistency, the implementation of checks and balances among power holders experienced various obstacles.

So that, to implement a consistent separation of powers in the future, there needs to be a complete and comprehensive review of the constitution. To this end, an amendment of constitution is needed.

Conceptually, Indonesia has to review the constitution which is related to choices of:

1. Representative democracy or direct democracy,
2. Majoritarian democracy or consensus democracy,
3. Presidential or Parliamentary,
4. Policy-based coalition or Policy-blind coalition,
5. Bicameral or Unicameral Parliament
6. If bicameral, the power between chambers is equal or not equivalent.
7. Tight Separation of powers or loose.

4.2. Recommendation

As the recommendation, for Indonesia, a pluralistic nation, the most appropriate democracy system is “consensus democracy”, by applying a parliamentary system of “bicameralism”, and the power between chambers in a balanced bicameralism or namely “strong bicameralism”, the government system is “presidential”, by implementing a “coalition cabinet” from various parties that have the same principle (policy-based coalition).

In order to achieve The Great Indonesia, it has to be a consistent in implementing political and governance system.

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