

THE SUCCESSION PRESIDENT IN INDONESIA

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ABSTRACT

Succession research purposes with the title of President in Indonesia is to identify, locate, and analyze change, mechanisms and legal implications of the President is in accordance with the paradigm of the state and nation in Indonesia. From these results, based on analysis of the theory of sovereignty, the president Substitution implementation incompatible with the paradigm of nation and state of Indonesia, the 1945 Constitution, and the Constitution Amendment the 1945 contitution of the republic of Indonesia sovereignty paradigm the goal of power. In the Constitutional ideology, based on Pancasila and the 1945 Constitution changed the paradigm of repressive law schools. Theoretical arguments Succession President of Indonesia, theoretically democratic constitutional state, no presidential term limits. The 1945 Constitution Amendment restrictions office of President. Based on the theory of democracy, President Succession mechanism of representative democracy based on the 1945 Constitution and the Constitution Amendment 1945 implementation undemocratic. Succession effect on the legal implications of the President based on the theory of the Presidential election, the 1945 Constitution and the 1945 Amendment unconstitutional occurred legality.

Keywords: The Succession President in Indonesia, Paradigm nation and state, Mechanisms and Implications of the Law

INTRODUCTION

Succession of democracy President is a mandate to get the ideal president with the vision and mission are clear and useful for many people (Munir Fuady: 2010, 193). Succession President can be done in two ways, namely how autocratic or authoritarian and democratic manner. How to turn democracy President is placed in an atmosphere of popular power based on the principle of the sovereignty of the people.

Succession President in Indonesia conducted by the constitution. Constitution or the Constitution is a formal source of law that must be implemented by the soul of the Proclamation of Independence of the Republic of Indonesia, the fourth paragraph contained in the 1945 Constitution. Constitution in accordance with the values of Pancasila.

Pancasila as the state is the source of all sources of law provides legal guidance and overcome all legislation including the Constitution (Moh, Mahfud MD: 2007: 3). Opening and Pancasila gives limits, norms and policy direction for the implementation of the State, also in wisdom State Policy (Notonagoro, 1957:10) That the meaning of the proclamation of the law has two meanings, first, second inroad colonial legal order, and second and second development of Indonesia's national legal order (Isrok: 2006, 1)

In the Preamble of the 1945 Constitution gives the provision that the state of democracy in Indonesia is a country shaped kesatuan Republic. Republic showed the government, as opposed to the form of the kingdom (Hasan Zaini Z:1970: 154)

As a logical consequence of the form of the state's Republican desired shaped the appointment of the Head of State elected by the people and took office during a period specified by applicable law (Moh. Mahfud MD: 2001:112.)

President implemented based on the popular guided by the wisdom of deliberation/representation. That is the turn of the president carried by the people. This is one of the procedural natures of deliberative democracy is the electoral mechanism to determine the people's representatives who will sit in the parliament and also to select the future leaders of the executive (Abdul Mukthie Fadjar: 2009)

The paradigm in the Amendment Act of 1945 (1999-2002) president elected by the People's Consultative Assembly to be elected by the people directly. Mentioned in Article 6 paragraph (2) of the 1945 Constitution, the President and Vice President shall be elected by the People's Consultative Assembly by a majority vote. After the change of The 1945 Constitution, in Article 6A paragraph (1), the President and Vice President elected as a pair directly by the people.

Succession President of the Republic of Indonesia began Selection and appointment of President Soekarno, Succession of President Soekarno to Soeharto, Succession President Soeharto to BJ Habibie, Succession President BJ. Habibie to President Abdurrahman Wahid and KH. President Abdurrahman Wahid to Megawati, President of the six changes occurs in a way that is not normal.

Succession President has constitutional experience problems of philosophy, the problem of juridical and problems of theoretical. Third issue of law motivated the three main problems: first, the "problem of philosophy", Implementation of change the President, prior to the 1945 changes to the paradigm of sovereignty changed or transformed into a paradigm of state sovereignty for the purpose of power. After Constitution Amendment of 1945, the paradigm of sovereignty changed or transformed into a rule of law or the constitution for the purpose of power. So Succession President incompatible with the constitutional rights of citizens.

Second, "legal problem", 1 of the Old Order: The President is elected by acclamation Article III of the Transitional Provisions of the 1945 Constitution. The President appointed for life (conflict of norm) with article 7 of the 1945 Constitution. Vacancy occurs norm (vacuum of norm), the Election Law and the Law on Political Parties. 2. New Order: (vague of norm) of Article 7 of the 1945 Constitution, and Law. 17 On the Election of 1969 and Law No.. 3 In 1975 on Party Politic established for determining longevity President. 3. Reform: 1. Constitution of 1945, did not set the threshold (presidential threshold). 2. Vague norm: Article 6, Law No.23 Year 2003 on the Election of President and Vice President. Article 5 of Law No. d. 42 Year 2008 on the Election of President and Vice President, candidates for the physical condition and rohani. Vague of norm of Article 29 paragraph (2) of Law No. 2 of 2008 on Political Parties, Recruitment of candidates for President and Vice President democratically.

Third, the "theoretical problem", in the 1945 Constitution, the sovereignty of the people does not have the rights of individuals, represented by the Assembly. Its implementation does not set the term of office of President. While in the Constitution Amendment of 1945, the sovereignty of the hands of people executed by the Constitution, There presidential term limits, but the nomination of the President and Vice President shall be proposed by a political party or a coalition of political parties, which are not open and transparent implementation not through the convention. Tends to be candidates for President and Vice President of Internal Political Party Board.

SUCCESSION PARADIGM PRESIDENT

Based on the analysis of the theory of sovereignty, Succession President in Indonesia with sovereignty of the people based on the 1945 Constitution and the 1945 Constitution Amendment.

According H.L.A. Hart, the concept of sovereignty as the supreme authority includes the concept of decision-making processes.

For example, how much sovereignty decisions are set, both legislative and executive field (*the administration of law*). While the reach of the rule (*the domain of sovereignty*) to rational analysis between sovereign and subject, related matter who or what the object in the sense of the target covered by the concept of power that is supreme.

Implementation is not in accordance with the paradigm of nation and state of Indonesia sovereignty in Article 1 (2) Sovereignty is in the hands of the people, and carried out entirely by the People's Consultative Assembly. The paradigm of sovereignty changed or transformed into a paradigm of state sovereignty for the purpose of power. As for in Article 1 (2) Sovereignty belongs to the people and implemented in accordance with the Constitution. That the sovereignty paradigm changed or transformed into a rule of law or the constitution for the purpose of power.

Succession President in Indonesia in Constitutional ideology, based on the analysis of the theory of the democratic rule of law, not in accordance with the paradigm of nation and state that the paradigm of ideology Pancasila and the 1945 Constitution and the Constitution Amendment, 1945, implementation of repressive laws turned into ideology.

According to Sri Soemantri M, in theory the constitution contains the rules of law (legal rules) are important for the country. The Constitution can not be separated from the history of the independence of Indonesia, which contains:

1. The results of the political struggle of the nation in the past;
2. The view that the nation's leaders to be realized both for the present and for the future;
3. A desire, with which the development of the life of the nation was about to grammatical-nationality led;
4. Highest levels of the nation's constitutional development.

Implementation of the Constitution does not fit the paradigm and nation and state of Indonesia, the constitution aimed at power. Serve the repressive rule of law according to A Mukthie Fadjar, repressive laws have characteristics:

1. Institution direct legal institutions open to political powers, the law identified by the state and subject to the *raison d'état*.
2. Official perspective dominates everything, which in this perspective rulers tend to identify their interests with the interests of the community.
3. Opportunity for people to get justice, where they can obtain protection and answers to complaints are limited.
4. Special oversight bodies, such as the police, for example, established to maintain social order to impose ruler.
5. The existence of a dual legal regime, namely instituting justice classes consolidate and validate the patterns of social subordination.

Theoretically occur multiple interpretations (*vague norm*), *norm vacuum*, and the conflict norm materially controversial whose application always depends on the willingness ruler distortion.

Making a fair law, which, according to Lon Fuller must meet the following requirements?

- a. Generally, do not be ad hoc (temporary).
- b. It should not be kept secret.
- c. For guidance activities later in life, does not apply retroactively.
- d. Can be understood by the common people.
- e. Should not contradict each other.
- f. It should not be something that cannot be ordered diladone.
- g. There must be firmness, certainty, not always changing.
- h. There is a consistency between the rules announced by the implementation.

Formation MPRS.III /MPRS/1963, to Ir. Sukarno as president for life. Contrary to Article 7 Consitution 1945, that the President and Vice President shall hold job for five years, and thereafter be reelected.

In the Parliamentary Liberal democracy, (Single Presidential candidate) Demokracy Guided (Life time Presidential appointment), Democracy Pancasila (The President is elected Assembly, with always a single candidate).

Direct presidential election is considered more democratic. Law No. 23 Year 2003 on the presidential election, five candidates earned the President and Vice President. And Law. 42 Year 2008 on the presidential election, get the 3rd pair candidates for President and Vice President. Theoretical arguments Succession President in Indonesia, based on the analysis of the theory of the democratic rule of law, not in accordance with the paradigm of nation and state of Indonesia, there has been a paradigm of integrative concept that there are no restrictions on the position of President.

PRESIDENTIAL SUCCESSION MECHANISM

The essence of democracy is the sovereignty of the people think it is emphasized by Sigmund Neuman, democracy divide into six (6) main elements, namely:

1. National sovereignty in the hands of the people;
2. Choosing a free alternative;
3. Democratically elected leadership;
4. Rule of law;
5. The existence of political parties;
6. Pluralism (pluralism).

From the philosophical point of view about the basic ideals of the joints of the shape of people's rights in the general election, Abidin Ahmad said the principles of democracy are:

1. Sovereignty of the people
2. Equal rights for all citizens to elections
3. Elections evenly to every men and women with no differences rights, and
4. The right amount of power in the hands of the majority.

Furthermore Isjwara Representative Democracy (commonly known as the Government of the Republic).

It is a form of government based on the principles that the people as a whole can not run state government. In a democracy, the will of the people expressed through representatives chosen by the people in a general election, and who act as representatives of the people in the affairs of state. Representative democracy must meet several requirements, namely:

1. Elections were held in a democratic manner;
2. Representatives after he took it to reflect the will of the people, and
3. Representatives of the people can be held accountable by the people.

The process of change begins with the President in Indonesia Election and Appointment of President Soekarno. That is, after the independence of the Republic of Indonesia on August 17, 1945.

Presidential candidate requirements set forth in Article 6 paragraph (1) of the 1945 Constitution which states is the President of Indonesia. The term of office of President under Article 7 the 1945 constitution, Soekarno elected President by acclamation. The president is elected by the Preparatory Committee for Indonesian Independence on the basis of the Transitional Provisions of Article III of the 1945 Constitution.

Provisions regarding the terms of office of President in Article 69 paragraph (3) of the Constitution Republik Indonesia Serikat (RIS), the President of Indonesia must have turned 30 years old, the population group Terms abandoned, because it no longer includes the word "original". At RIS Constitution does not regulate the president's term.

Term of office of President of Article 45 paragraph 5 of the 1950 Provisional Constitution, the President and Vice President should be Indonesian citizens who are 30 years old. 1950 Provisional Constitution does not regulate the term of office of President. Soekarno-based transitional provisions continue to hold the office of President. In the Provisional People's Consultative Assembly Decree No. III/MPRS/1963 on the Appointment of Leader of the Revolution Bung Karno Indonesia Being the President of the Republic of Indonesia for Life.

Constitution and the Organic Law made for the longevity of President Soeharto. The blurring occurs Norma (Vague of norm). MPR IX/MPRS/1966 (SP March 11, 1966). And Succession President through the Electoral started Year 1971 - 1997 Soeharto was always a single candidate. By-Law legitimacy. 16 Th 1969 On Election. Law No. 3 Th 1975 On-Golkar political party. As the determination of the President by the Assembly as the sole candidate.

In the Reformation: The nomination of the President of the People's Consultative Assembly appears more than one candidate is no longer a single candidate. The 1945 Constitution did not set the threshold (presidential threshold), the terms of the seat or valid votes nationwide election House of Representatives, before the election of President and Vice President. So there is a conflict of norms, with Article 5 (4) of Law No. 23 of 2003 on the General Election of President and Vice President. A pair of candidates proposed political party or coalition of political parties that obtain 15% of the total seats in the House of Representatives 20% of the valid votes nationwide election of Parliament. And there is a conflict of norms, with Article 9 of Law No. 42 Year 2008 on the Election of President and Vice President. A pair of candidates proposed political party or coalition of political parties that obtain 20% of the total seats in the House 25% of the valid votes nationwide election of Parliament. Emptiness norm, the President proposed a non party political (Independent). Vague of norm: Article 6 of Law No. 23 of 2003. And: Article 5 d of Law 42 of 2008, qualified candidates physically and spiritually.

Comparison of Presidential Succession mechanism in many countries there is a difference: the United States President is elected representation system, in France and in select Philippine President directly by the people through Politic Party.

Succession Mechanism in Indonesia as a democratic president in the 1945 Constitution, the Constitution of RIS, 1950 and Provisional Constitution re-enactment of the 1945 Constitution. Theoretically Succession President implemented the system of representative democracy (representative democracy). In implementation, based on the theory of democracy, Succession President does not run democratically. Constitutionally created to always hold on to power democratically.

Succession mechanism President directly in Indonesia organized by the 1945 Constitution Amendment. Theoretically Succession President implemented the system of direct democracy. In implementsinya, based on the theory of democracy, undemocratic ongoing Presidential succession defined by political party or a coalition of political parties. Candidates do not open and transparent, Presidential candidate of the dominant political party officials, the Convention closed opportunities, and closed for Individual candidates. As well as the Presidential Treshol constitution is not set in 1945. Democracy is defined by the ruler set.

Legal Implications of Presidential Succession

Presidential election system of representative or system (direct popular vote) by people legally carries legal implications. Etymologically the word 'implication' is a translation of the word 'implication-implicate-imply'. Words have meaning implication: the purpose, meaning, a knotted, or involvement. Implicate means involved or implicated. While imply meaning implied (John M. Echols: 2000: 313) In the Indonesian Dictionary, the implications mean, circumstances involved, which include or knotted; were not declared, or a related engagement (W. J. S. Poerwadarminta: 1983:377)

The word "legal" (which, as "legitimate", derived from the Latin word *lex*, legal) means "in accordance with the law". An action is legal if it is done in accordance with the laws or regulations. "Legality" is compliance with applicable law. Legality is one of the possible criteria for the validity of the authority. Legality requires that the authority is run in accordance with applicable law. A legal action is appropriate, if not invalid in accordance with applicable law (Franz Magnis Suseno: 1987:59)

Legal implications theoretically based on the theory of the Presidential election affect the legality of the presidential election. Succession legality President in Indonesia theoretically based on the theory of electoral President, legally unconstitutional, there was the problem of using a mixed system from recruitment (DPR/MPR) to elect the President, as well as directly is still determined by a Political Party or coalition of political parties, are not open to the public, the dominant candidate for President of the Board of Political Parties. And Presidential threshold is not set in the 1945 Constitution.

Legal implications theoretically based on the theory that any deviation Presidential election: The legitimacy of the President in Indonesia Succession theoretically based on the theory of electoral President is not legitimate, representative system of presidential elections (representative democracy) is any deviation between voters asprasi President with representatives in the People's Consultative Assembly. While direct presidential election (direct democracy) President proposed by political parties (multi-party), it is not open, no conventions, will win if only won the vote at the densely populated areas. Thus the legitimacy of the President is weak.

Legitimacy is questioned motivational mechanism which obviously makes people willing to accept the authority of the ruler. "Rational-legal legitimacy" based on the belief in rational legal order that underlies the position of a leader". This is the most common motivation in modern society: those who hold power under the law and according to the regulations is a legitimate ruler.

Preparatory Committee for Indonesian Independence appoint the President by acclamation, only a single candidate. MPRS No.3/MPRS/1963 appointment of President for life. No. MPRS. Revocation of power of President Soekarno XXXIII/MPRS/1967, replacing President Soekarno. Succession mechanism happens president controversially, from the appointment of the President, President Soekarno to Soeharto, President Soeharto to President BJ Habibie, President BJ Habibie to President Abdurrahman Wahid, President Abdurrahman Wahid to President Megawati of President Megawati to President Susilo Bambang Yudhoyono.

In the direct election of the President threshold is not set in the 1945 Constitution. Election Legitimacy representation system, the Assembly has always produced a single Presidential candidate. Legitimacy direct presidential election is not legitimate because the president came from a coalition of political parties that would eliminate the concept of ideal presidential system of government. The President's happening paradigm based on the 1945 Constitution, the President is responsible to the People's Consultative Assembly, after the 1945 Constitution Amendment President is directly responsible to the people.

CONCLUSION

Based on the discussion of the issue can be concluded as follows:

1. Based on the analysis of the theory of sovereignty, the Presidential Succession implementation incompatible with the paradigm of nation and state of Indonesia, the 1945 Constitution sovereignty paradigm changed or transformed into a paradigm of state sovereignty for the purpose of power. In the 1945 Constitution Amendment sovereignty paradigm changed or transformed into a paradigm of the rule of law or the Constitution for the purpose of power. In the Constitutional ideology, based on Pancasila and the 1945 Constitution became paradigms or schools of repressive laws. occurred multiple interpretations (vague of norm), conflict norms and there is a norm vacuum, and the 1945 Constitution Amendment Presidential threshold is not set. Based on the theory of the democratic constitutional state, materially counter productive (controversial) whose application always depends on the will power. Theoretical arguments Succession President of Indonesia, theoretically democratic constitutional state, there was a paradigm constitutional sovereignty of the people at the hands of the Assembly, there are no restrictions on the position of President. Being popular sovereignty held by the Constitution. There are restrictions on the position of President, but the President nominated by political parties, the implementation is not democratic.
2. Based on the theory of democracy, President Succession mechanism of representative democracy (representative democracy) based on the 1945 Constitution implementsinya undemocratic (always produce a single Presidential candidate). Constitutionally created to maintain power democratically. Succession mechanism President directly (direct democracy) based Constitution Amendment of 1945, set by implementation undemocratic Political Party or coalition of political parties, the recruitment of candidates for President are not open and transparent, Presidential candidate of the dominant political party officials.

3. Legal implications affect the legality of the President based on the theory Succession Presidential election, not legitimate that prior to the 1945 Constitution Amendment, recruiting members of the People's Consultative Assembly using a mixed system, elected and appointed as President of the voters. Legitimacy Succession President, system representations, there are deviations between the aspirations of the people and their representatives in the Assembly. The 1945 Constitution Amendment in the turn of the President is not legitimate is not set (Presidential Threshold). System directly, the Presidential election determined political party or coalition of political parties. The President's happening paradigm based on the 1945 Constitution, the President is responsible to the Assembly, after the 1945 Constitution Amendment Presidential directly responsible to the people, no longer to the People's Consultative Assembly.

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