



The Role of the Vice President in the Republic of Indonesia's Administrative System (Post Amendment to the 1945 Constitution)

Trio Handoyo, Saefudin

Fakultas Hukum Universitas Islam Indonesia Yogyakarta, Indonesia. E-mail: handoyotrio@gmail.com

ARTICLE INFO

Keywords:

Vice President,
constitution of the
Republic of Indonesia,
1945 Constitution

How to cite:

Handoyo T. The Role of the Vice President in the Republic of Indonesia's Administrative System (Post Amendment to the 1945 Constitution). *Journal of Law Science* (Ext. 2022)

DOI:

[10.18196/jls.2018.0096](https://doi.org/10.18196/jls.2018.0096)

ABSTRACT

The purpose of this study was to find out and analyze the role of the Vice President in the state administration of the Republic of Indonesia after the amendments to the 1945 Constitution. The data collection method used in this study was a literature study. The approach method used in this study is a normative juridical approach, namely research based on data obtained from laws and regulations. The data analysis method used is descriptive qualitative. The results of the research are as follows: (1) in the 1945 Constitution before the amendment, the role of the Vice President could be considered as a "spare tire", which functions as a substitute if the President is unable to, as stipulated in Article 4 paragraph (2) which reads: "In carrying out his obligations the President is assisted by a Vice President" and strengthened in Article 8 of the 1945 Constitution which reads: "if the President dies, stops, or is unable to carry out his obligations during his term of office, he is replaced by the Vice President until his term expires", as well as Deputy The President as the 'representative' who represents the President carries out presidential duties in matters delegated to him by the President; (2) the role of the Vice President after the amendments to the 1945 Constitution remained unchanged, because Article 4 of the 1945 Constitution did not undergo changes, while a fundamental change occurred in the election of the President and Vice President, namely in Article 6A paragraph (1), which reads "President and Deputy The president is elected in a pair directly by the people" and Article 7 of the 1945 Constitution (First Amendment) reads: "The President and Vice President hold office for five years, and after that they can be re-elected in the same position, only for one term of office". Regarding the dismissal of the President, it became clearer after the addition of Article 7A. if the President is dismissed due to proven criminal elements as contained in Article 7A, then the Vice President will replace the President's position and be sworn in as President in accordance with Article 8 paragraph (1) of the 1945 Constitution (Third Amendment); and (3) The functions, duties and powers of the vice president are highly dependent on the wishes of the president and the performance of the vice president depends on the ability and willingness of the person concerned, not because of standard and clear rules.

1. Introduction

Discussing the problem of power limitation, cannot be separated from the concept of power sharing. The concept of division of power in the state cannot be separated from its use with

Montesquieu's theory which is popularly known as the teaching of "Trias politica". The core of the teachings of Trias politica is that there is a separation of powers within the state so that the administration of the state government is not in the power of one hand.¹

The teaching of separation of powers originates from Montesquieu which aims to limit the power of state administrators or officials within the boundaries of their respective branches of power, with this separation or division of powers it can prevent the accumulation of power in one hand (absolute) over a group of people. small number of people (oligarchy) which will lead to arbitrary administration of government². In fact, the notions of the division of powers are different from the notions of the separation of powers, the separation of powers means that the power of the state is divided into several parts, both in terms of persons and functions.

The theory of the division of powers was first put forward by John Locke who said that in a country powers are divided into three, namely legislative, executive and federative. Legislative power means the power to make laws, executive means the power to implement laws, while federative is the power that includes powers regarding war and peace, making unions and alliances and all actions with all people or agencies abroad³.

In pure Trias Politica constitutional practice it is difficult to carry out, because currently the legislature which is actually the legislative task also involves the executive. In practice, the doctrine of the separation of powers cannot be carried out absolutely between the branches of power which are not accompanied by or abolishes a system of control or balance between one branch of power and another which can lead to arbitrariness according to or within the spheres of each of these branches of power.⁴

In a presidential system of government, the President leads the government, heads the ministers and heads of agencies responsible for the departments or non-departmental institutions they lead. The ministers and heads of non-departmental bodies are assistants to the president. Therefore they are directly responsible to the president. During his term of office the president cannot be brought down by parliament, on the other hand the president cannot dissolve parliament.

Prior to the reformation in Indonesia, in practice the administration of the Indonesian state adopted a mixed government system in which the President was appointed by the MPR and appointed and dismissed ministers. However, after the reforms and amendments to the 1945 Constitution took place, since the 2004 general election the President and Vice President were directly elected by the people. This is based on Article 6A paragraph (1) of the third amendment of the 1945 Constitution, which reads "The President and Vice President are elected as a pair directly by the people".

The problem that occurred in Indonesia is that since before the reformation and after the reformation the role of the Vice President is not clear. The 1945 Constitution only states that the Vice President is the assistant to the President. As a written legal basis, the 1945 Law only regulates matters of a principal nature or only outlines regarding the position, work mechanism or working relationship between state institutions. Specifically regarding the Vice President, the constitutional provision is Article 4 paragraph (2) which stipulates that "In carrying out his

¹ Dahlan Thaib, *Implementation of the State Administration System According to the 1945 Constitution*, Yogyakarta, 1998, p.18.

² Bagir Manan, *Presidential Institute*, FH UII Press, Yogyakarta, 2003, p.8.

³ Moh. Kusnardi, Harmily Ibrahim, *Introduction to Indonesian Constitutional Law*, Sinar Bakti, Jakarta, 1983, p. 140.

⁴ Bagir manana, *op. cit.*

obligations the President is assisted by one Vice President". Regarding the term "assisted" and the extent of that assistance, the 1945 Constitution does not explain it.⁵

If the position of the President is related to the MPR institution, it is clear that the position of the Vice President is under the assembly. But if it is related to the President, the 1945 Constitution does not provide clarity, because it is only referred to as an assistant to the President. There are two possibilities for the position of the Vice President, (1) having an equal position with the President; (2) his position is under the President.

2. Method

2.1 Research Object

The objects studied in this research are: the role of the vice president in the state administration of the Republic of Indonesia before the amendments to the 1945 Constitution; The role of the Deputy President in the state administration of the Republic of Indonesia after the amendments to the 1945 Constitution.

2.2 Data source

The data used in this research is secondary data. Secondary data is data obtained by means of literature study. Secondary data consists of primary, secondary and tertiary legal materials. The method is optional for original research articles. This method is written in descriptive and should provide a statement regarding the methodology of the research. This method as much as possible to give an idea to the reader through the methods used. This Method is optional, only for original research articles.

2.3 Method of collecting data

The data collection tool used in this research is literature, namely research conducted by collecting various data contained in literature books, papers, newspapers, scientific articles, and laws and regulations related to the object to be studied.

2.4 Approach method

In this case the author uses a juridical approach, believing that he examines the juridical aspect. And as a support for the juridical approach, a political approach is used, namely analyzing problems from the point of view of political experts.

2.5 Data analysis

The data analysis technique was carried out qualitatively, namely the data obtained was presented descriptively and qualitatively analyzed (content analysis) to obtain an overview of the role of the Vice President in the constitutional system of the Republic of Indonesia after the amendments to the 1945 Constitution.

3. Analysis and Results

3.1 The Role of the Vice President in the Administrative System of the Republic of Indonesia Based on the 1945 Constitution Before the Amendment

The constitutional provision regarding the position of the Vice President is Article 4 paragraph (2) of the 1945 Constitution, which reads: "In carrying out his obligations the President is assisted by one Vice President". When examined further, the words assisted in Article 4 paragraph (2) of the 1945 Constitution prove that the President is still "the first man" while the Vice President is only "the second man". Only then can the Deputy appear as the first person in the absence of the President.

⁵Dahlan Thaib, op. cit.

The important role of a Vice President in relations with the President is primarily as a substitute or "spare tire". (reserved power). As a substitute for the President, the Vice President can act for a temporary period or can also act permanently until the President's term of office expires. The Vice President's second role is as a „representative’ representing the President carrying out presidential duties in matters explained to him by the President. In this case, the Vice President acts as a state officer who carries out presidential duties on behalf of the President’. That is, the quality of the Vice President's actions is the same as the quality of the President's own actions. For example, in signing a legal document, the Vice President's signature is of the same quality or legal status as the signature of the President he represents. Thus, a Vice President may sign certain legal documents. Third, the Vice President can also act to assist the President in carrying out all the duties and obligations of the President. The quality of the Vice President's assistance is clearly different in level from the assistance provided by the Ministers who are also commonly referred to as assistants to the President.

The term "assisted" in the 1945 Constitution it is also used in Article 17 paragraph (1) which stipulates "The President is assisted by State Ministers". If you look at the formulation of Article 4 paragraph (2) and Article 17 paragraph (1) there is almost no difference. Only the principal difference is about the meaning and duties; The Vice President assists the President in terms of the President carrying out his obligations. The word "helper" in relations the position of the Vice President is also the Deputy Head of State. The Vice President is appointed and dismissed by the MPR (provisions of Article 6 paragraph (2)). In the event that the President is unable to carry out his obligations (stipulations in Article 8), the Vice President becomes the Head of State as well as the Head of Government. Meanwhile, even though the Minister functions as "Assistant" to the President, he cannot replace the President, even if in this case the President is unable to do so. That right only belongs to the Vice President. Ministers are also not appointed and elected by the MPR, but by the President in accordance with the provisions of Article 17 paragraph (2)⁶.

Even though the position of the Vice President is always identified with the "spare tire", people always hope that one day the Vice President will get a more strategic position in the government. This was proven when the Vice President was held by BJ Habibie in May 1998 when reforms erupted that demanded President Soeharto step down from the presidency, BJ Habibie appeared to replace Suharto until 1999. Likewise with Deputy President Megawati Soekarno Putri, who replaced President Aburrahman Wahid through the 2001 MPR Special Session⁷.

The division of tasks between the President and the Vice President cannot be carried out in the form of a law, but must be handed over to the President and assisted by the Vice President. This is in accordance with MPR Decree No. III/MPR/1978 concerning the position and working relationship of the Highest State Institutions with/or between State Higher Institutions, which in Article 8 paragraph (2) instructs the President and Vice President to make "provisions" of work relations. The President is not regulated in the 1945 Constitution; so it is the President

⁶Dahlan Thaib, *Implementation of the Constitutional System According to the 1945 Constitution*, Liberty, Yogyakarta, 1998, p. 37-38.

⁷Ni'matul Huda, *Indonesian Constitutional Politics Study of the Dynamics of Changes to the 1945 Constitution*, FH UII Press, Yogyakarta, pp. 64-65

who determines it. If there is a division of tasks between the President and the Vice President it is in the sense of "delegation of authority" not "sharing of powers".

In Article 7 of the 1945 Constitution before the amendment was determined, "The President and Vice President hold their positions for a period of five years, and after that they can be re-elected". According to Bagir Manan, there are two concepts contained in this provision. First, the President and Vice President are elected periodically, namely every five years. Second, it can be re-elected.

Article 8 of the 1945 Constitution before the amendment contains provisions regarding the absence of the President. In Article 8 of the 1945 Constitution it is emphasized, "If the President dies, stops, or is unable to carry out his obligations during his term of office, he is replaced by the Vice President until his term expires". This means, if the President is absent (temporary/permanent), it is the Vice President who naturally has to carry out the President's powers⁸.

Article 8 of the 1945 Constitution regulates the condition of the President who can no longer carry out the presidency for the remainder of his term of office. TAP MPR Number VII/MPR/1973 categorizes this situation as being in a permanent state of absence. According to the 1945 Constitution, there are three categories of circumstances in which the President can no longer hold office for the remainder of his term of office, namely: death during the term of office; stop in office; unable to perform obligations during his term of office.

The Vice President must also take an oath or make a solemn promise before the MPR or the DPR as stipulated in Article 9 of the 1945 Constitution. The requirements for a candidate for Vice President and the procedure for election are not specified in the 1945 Constitution. In the 1945 Constitution it is stated that Indonesians must be native only the President; while the Vice President is not mentioned must be a native Indonesian. However, if the provisions of Article 8 occur, whereby the Vice President replaces the President's position, then the requirements as a native Indonesian must be fulfilled. Thus, the Vice President must also be a native Indonesian.

The 1945 Constitution and its Elucidation as well as MPR decrees do not regulate the accountability mechanism of the Vice President. The elucidation of the 1945 Constitution emphasizes that in running the state government, power and responsibility are in the hands of the President. From this explanation, it can be seen that the power of the ruling state government is the President, so the responsibility is also automatically in the hands of the President.

The Vice President is responsible to the President on the basis of being an assistant to the President, so that the responsibility of the President to the MPR becomes western, because apart from being accountable for each of his policies, he also has to bear the responsibility (actions) of the Vice President.

The Vice President is not responsible to the MPR (thus the prevailing view) and is also not responsible to the President because the Vice President is not elected and appointed by the MPR by the President. That the Vice President is not responsible to the President is quite natural. But this is not the case with the MPR, because: the Vice President is elected and appointed by the

⁸Ni'matul Huda, op. cit.

MPR. It's natural to be responsible to the MPR; Freeing the President from a system of accountability violates the principles of democratic state government. In a democratic country, every position or official must have accountability and a place of responsibility. If the Vice President's position is classified as a political position, there should be a political accountability forum.

3.2 The Role of the Vice President in the Administrative System of the Republic of Indonesia Based on the 1945 Constitution After the Amendments

After the Third Amendment in 2001 Article 3 of the 1945 Constitution was amended and added to three paragraphs, the formulation of which is as follows:

- 1) The People's Consultative Assembly has the authority to amend and enact the Constitution.
- 2) The People's Consultative Assembly appoints the President and/or Vice President.
- 3) The People's Consultative Assembly can only dismiss the President and/or Vice President during their term of office according to the Constitution.

From the provisions of Article 3 of the 1945 Constitution (Third Amendment of 2001) it appears that the dismissal of the President and/or Vice President must comply with the provisions of the Constitution. Prior to the change, in Article 3 of the original text of the 1945 Constitution it was only formulated that: "The People's Consultative Assembly establishes the Constitution and the Outlines of State Policy". From the provisions of Article 3 after the amendment, it is increasingly regulated regarding how to dismiss the President and/or Vice President, namely according to the Constitution. Provisions regarding the dismissal of the President and/or Vice President are further regulated in Articles 7A and 7B of the 1945 Constitution (Third Amendment of 2001).

The role of the Vice President, who is only "the second man" or "spare tire" for the position of President, has not changed, because Article 4 paragraph (2) of the 1945 Constitution has not been amended. Thus the role of the Vice President as assistant to the President continues to apply, even though the 1945 Constitution has undergone amendments up to the fourth.

Regarding the requirements for candidates for President and Vice President it became clearer after the Third Amendment to the 1945 Constitution was carried out, by amending Article 6 of the 1945 Constitution, so that it reads as follows:

- 1) Candidates for President and candidate for Vice President must be an Indonesian citizen since birth and have never accepted another nationality of their own free will, have never betrayed the country, and are mentally and physically able to carry out their duties and obligations as President and Vice President.
- 2) The requirements to become President and Vice President are further regulated in law.

The provisions in Article 6 of the Third Amendment to the 1945 Constitution no longer include the requirement that candidates for President and Vice President must be "native" Indonesians, but require "must be Indonesian citizens from birth and have never received another citizenship.

A fundamental change occurred in the election of the President and Vice President, namely in Article 6A paragraph (1), which reads "The President and Vice President are directly elected as a pair by the people". Since the entry into force of this Article, the President and Vice President are not elected by the MPR, but are directly elected by the people through general elections, so that in 2004 the Indonesian people directly elected the pair of President and Vice President.

With the change in the procedure for electing the President and Vice President as stipulated in Article 6A of the 1945 Constitution (after the amendment), MPR Decree No. IV/MPR/1999 concerning Procedures for the Nomination and Election of the President and Vice President of the Republic of Indonesia was revoked through MPR Decree No. IV/MPR/2002, because the

material has been integrated into the Articles of the 1945 Constitution. Further provisions regarding the Election of the President and Vice President are regulated in Law Number 23 of 2003 concerning the General Election of the President and Vice President (State Gazette of the Republic of Indonesia of 2003 Number 93), which was ratified on July 31, 2003.

Changes also occurred in terms of the term of office of the President and Vice President. Article 7 of the 1945 Constitution (First Amendment) reads: "The President and Vice President hold office for five years, and after that they can be re-elected in the same position, only for one term of office". Thus, there are job restrictions. According to this provision, the President and Vice President can only hold office for a maximum of two consecutive terms.

In the 2001 and 2002 MPR Annual Sessions, amendments were made to Article 8 of the 1945 Constitution through the third and fourth amendments, which read as follows:

- 1) If the President dies, stops, is dismissed, or is unable to carry out his obligations during his term of office, he is replaced by the Vice President until his term of office.
- 2) In the event of a vacancy for a Vice President, the MPR shall hold a meeting within sixty days at the latest to elect a Vice President from the two candidates proposed by the President.
- 3) If the President and Vice President die, resign, are dismissed, or are unable to carry out their obligations during their term of office simultaneously, the Implementation of Presidential Duties is the Minister of Foreign Affairs, Minister of Home Affairs, Minister of Defense together. convened to elect the President and Vice President from two packages of candidates for President and Vice President proposed by a political party or a coalition of political parties whose candidate packages for President and Vice President won the first and second most votes in the previous election, ending their term of office.

Thus, even though the Vice President and the Minister are both assistants to the President, the first priority in the event of the President's absence lies with the Vice President. That is one of the differences in position between the Vice President and the Ministers regulated in the Indonesian state administration, in addition to other differences.

strengthen and reinforce the adopted presidential government system, namely by determining that the President and Vice President who are directly elected by the people and the President and Vice President can only be dismissed during their term of office if they are both proven to have violated the law in the form of insulting the state, corruption, bribery, criminal acts other serious crimes, or disgraceful acts; or if it is proven that they no longer fulfill the requirements as President and/or Vice President of the Republic of Indonesia⁹.

Taking into account the provisions of Article 7A of the 1945 Constitution, there are five types of law violations that can be used as reasons (basis) to dismiss the President during his term of office, namely: a) insult to the state; b) corruption; c) bribery; d) other serious crimes; e) disgraceful acts. If the President is dismissed because it is proven that there were elements of a crime contained in Article 7A, then the Vice President will replace the President's position and be sworn in as President in accordance with Article 8 paragraph (1) of the 1945 Constitution (Third Amendment).

Article 9 paragraph (1) of the 1945 Constitution (First Amendment) states, "Before taking office, the President and Vice President swear an oath according to religion, or make a solemn promise before the People's Consultative Assembly or the People's Representative Council...". Paragraph (2) states "If the People's Consultative Assembly or the People's Representative Council cannot hold a session, the President and Vice President swear an oath according to religion, or make a

⁹Hamdan Zoelva, *Impeachment President Reasons for the Crime of Dismissal of the President According to the 1945 Constitution*, Constitution Press, Jakarta, 2005. p. 6-7

solemn promise before the leadership of the People's Consultative Assembly witnessed by the leadership of the Supreme Court."

The change in Article 9 was motivated by the rise of BJ Habibie from Vice President to President replacing President Soeharto, who stepped down due to pressure from the wider community through the 1998 reforms. BJ Habibie was sworn in as President at the State Palace because the MPR could not hold its session, the MPR building was occupied by the public.

If the position of the Vice President is connected with the MPR institution, it is clear that the position of the Vice President is under the Assembly. But when it comes to the President, the 1945 Constitution does not provide clarity, because it is only referred to as an assistant to the President. There are two possibilities for the Vice President's position, (1) His position is equal to that of the President; (2) his position is under the President. First possibility; can be seen from the juridical approach to Article 6, Article 6A, Article 7, Article 8, Article 9 of the 1945 Constitution in conjunction with Article 7, Article 22, Article 24 and Article 25 MPR Decree No. VI/MPR/1999. From this approach it can be concluded that between the President and the Vice President there is no hierarchy of relations between superiors and subordinates, which only appears to be the division of priorities in carrying out government power, where the President holds the first power, while the Vice President holds the second priority. If the President is absent (temporary/permanent), it is the Vice President who naturally has to carry out the powers of the President.

The second possibility, can be known through the interpretation of Article 4 paragraph (2) in conjunction with Article 5 of the 1945 Constitution in conjunction with Explanation of Point IV in conjunction with MPR Decree No. III/MPR/1978 Article 8 paragraph (1). Here it turns out that the President is the only highest administrator of government, which carries the consequence that all responsibilities regarding the administration of the highest government are in the hands of the President. The Vice President cannot act alone, because he is solely an assistant to the President whose duties and obligations depend on the granting and/or delegation of power from the President. As happened during Abdurrahman Wahid's administration, there was delegation of day-to-day technical administrative tasks from the President to the Vice President through Presidential Decree No. 121 of 2001.

If the interpretation of the Vice President's position refers to the first possibilities as expressed by Ni'matul Huda, the President and Vice President do not have a relationship as superiors to subordinates, so that it can lead to differences of opinion between the President and Vice President. In addition, in forming a Cabinet, even though the President has prerogative rights, he cannot be separated from the influence of the Vice President, as seen in the administration of Susilo Bambang Yudhoyono - Jusuf Kalla (SBY - JK), after the President and Vice President were directly elected by the people.

4. Conclusion

The role of the Vice President as assistant to the President remains unchanged, because Article 4 of the 1945 Constitution has not changed. The functions, duties and powers of the vice president are highly dependent on the wishes of the president and the performance of the vice president depends on the ability and willingness of the person concerned, not because of standard and clear rules.

Acknowledgments

To avoid further confusion that leads to violations of the constitution, it is necessary to immediately draft a Law on Presidential Institutions which limits the powers of the vice president, even though both are directly elected by the people in elections.

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