

# accountability

*by* Hananto Widodo

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# 8 Accountability of the President of the Republic of Indonesia according to the 1945 Constitution of the Republic of Indonesia

1<sup>st</sup> Hanant Widodo  
Law Department, Faculty of Social  
Sciences and Law  
Universitas Negeri Surabaya  
Surabaya, Indonesia  
hanantowidodo@unesa.ac.id

2<sup>nd</sup> Hezron Sabar Rotua Tinambunan  
Law Department, Faculty of Social  
Sciences and Law  
Universitas Negeri Surabaya  
Surabaya, Indonesia  
hezron\_110288@yahoo.co.id

8  
3<sup>rd</sup> Elisabeth Septin Puspoayu  
Law Department, Faculty of Social  
Sciences and Law  
Universitas Negeri Surabaya  
Surabaya, Indonesia  
elisabethpuspoayu@unesa.ac.id

**Abstract**— The position as President not only places the President's obligation to be politically responsible for his performance, but also has consequences for the threat of dismissal of the President by the MPR, if the President is deemed by the state as determined by the MPR. Therefore, when there is a change in the 1945 Constitution, in which one of the substances that have changed is related to the presidential election system from the previous one by the MPR to be directly by the people, then of course there will be a change in the concept of the President's responsibility. This research will trace the concept of the President's responsibility in the 1945 Constitution of the Republic of Indonesia. The object to be examined in this study is the concept of the President's responsibility after the amendment to the 1945 Constitution. Article 1 number 3 states that maladministration is limited to public services. The authority to carry out public services is not on the President, but on administrative officials ranging from central level officials to regional level officials. Therefore, the President cannot be suspected of committing maladministration, so the President cannot be suspected of committing disgraceful acts in the category of maladministration. The President can only be suspected of committing disgraceful acts related to the issue of decency. Violation of moral norms committed by the President can be a despicable act.

**Keywords**— *President, Responsibility, Maladministration*

## 1 I. INTRODUCTION

One of the aims of amending the 1945 Constitution (the 1945 Constitution) is to strengthen the presidential system. The purpose of strengthening the presidential system is actually contrary to the spirit of change in the 1945 Constitution itself. The spirit of amending the 1945 Constitution is to reduce the power of the President, because historically at the time of the enactment of the 1945 Constitution the President has enormous power. The 1945 Constitution is considered as the base of the problem of the birth of dictatorial governments such as Sukarno and Suharto. During the enactment of the 1945 Constitution before the amendment, other branches of state power, namely the House of Representatives (DPR) and the Supreme Court (MA) under the control of the President. Parliament cannot exercise its authority to the maximum. The DPR at that time only functioned as a rubber stamp.[1]

The affirmation of the presidential system or by some constitutional law experts is called purification of the presidential system, because at the time of the enactment of the 1945 Constitution before the change, it had embraced the presidential system even though it was not originally intended to be so.

characteristics of the presidential system that existed in the 1945 Constitution prior to the amendment included the power of the President to appoint Ministers in the cabinet as his assistants. Meanwhile, there is one characteristic that makes Indonesia under the 1945 Constitution system which shows itself as a parliamentary system.

The responsibility of the President to the People's Consultative Assembly (MPR) at the end of his term of office is characteristic of the parliamentary system. Therefore, one of the purification of the presidential system in amending the 1945 Constitution is to eliminate the existence of the MPR as the highest state institution. The loss of the existence of the MPR as the highest state institution makes all state institutions whose authority is obtained attributeively through the Constitution have an equal position.

The existence of accountability of the President to the MPR during the coming into effect of the 1945 Constitution prior to the amendment because the President and / or Vice President are elected and appointed by the MPR. As a consequence of the mechanism for selecting the President and / or Vice-President through the MPR, the President and / or Vice-President must account for their performance with the MPR. In accounting for its performance the President and / or Vice President, in particular the President is guided by the Broad Guidelines of State Policy determined by the MPR. The President is obliged to carry out the State Policy Guidelines that have been determined by the MPR. The position of the President in implementing the Broad Guidelines of the State Policy is as a Mandatory of the MPR. Therefore, according to the 1945 Constitution, the President has 3 positions. First, as Head of Government. Second, as Head of State and Third as Mandatory of the MPR.

In practice it is difficult to distinguish between the position of President as Head of Government, Head of State and Mandatory of the MPR. The position of President as Head of Government and Head of State is easier to distinguish from the position of President as Head of Government and Mandatory of the MPR. As Head of Government, the President should have independent authority in deciding any state issues. The existence of the President's position as the Mandatory of the MPR will make a contradiction with the position of the President as Head of Government, because in his position as a Mandator, the President cannot escape the parameters set by the MPR.

The position as President not only places the President's obligation to be politically responsible for his performance,

but also has consequences for the threat of dismissal of the President by the MPR, if the President is deemed by the state as determined by the MPR. Therefore, when there is a change in the 1945 Constitution, in which one of the substances that have changed is related to the presidential election system from the previous one by the MPR to be directly by the people, then of course there will be a change in the concept of presidential responsibility.

## II. RESEARCH METHOD

This research will trace the concept of the President's responsibility contained in the 1945 Constitution after the change. The object to be examined in this study is the concept of the President's responsibility after the amendment to the 1945 Constitution. Based on the object of research to be examined, this research will be grounded in positive law. The object of study examined in this study is research in the field of constitutional law.

Based on the research object above, this type of research is included the type of normative or legal research. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to address the legal issues at hand. This is consistent with the prescriptive character of legal science.

Statute approach. The statute approach is an approach using statutory regulations, starting from the 1945 Constitution of the Republic of Indonesia and the laws relating to the discussion of this topic. Conceptual approach (conceptual approach) is an approach to concepts that are not clear in the legislation both the 1945 Constitution of the Republic of Indonesia and the laws relating to the discussion of this topic. In the 1945 Constitution of the Republic of Indonesia and other laws and regulations, there has never been an explicit regulation regarding the concept of accountability, specifically the responsibility of the President. The concept of accountability, specifically the responsibility of the President can only be found in the literature on state and administrative law and not much specifically addresses the responsibility of the President according to the 1945 Constitution of the Republic of Indonesia. Historical approaches are used to trace the history of the regulation of the President's power in historical trajectories. Starting from the 1945 Constitution, the RIS Constitution, the 1950 Constitution and the 1945 Constitution amended. The Comparative Approach will be used in this study because the responsibility of the President of Government will be very tied to the government system adopted by the 1945 Constitution after the change. The government system adopted by the 1945 Constitution as a result of the changes is certainly also influenced by the government system of other countries.

As a consequence of normative research, the legal material used in this study is primary legal material, secondary legal material, and tertiary legal material (non-legal). In normative research, legal material is very important. Primary legal materials in the form of legislation, secondary legal materials in the form of journals, books, papers and the internet, while tertiary legal materials in the form of dictionaries.

## III. RESULT AND DISCUSSION

The responsibility of the President in constitutional law always cannot be separated from the mechanism of terminating the President. Efforts to link the responsibility of the President and the mechanism for dismissing the President are reasonable, because the mechanism for dismissing the President is essentially in order to hold the President accountable. In the historical trajectory of Indonesian constitution, especially during the coming into effect of the 1945 Constitution before the changes and after the changes there are different reasons for making the dismissal of the President.

The Constitution of 1945 prior to the change emphasized the President's responsibility political matters. Responsibility for political aspects related to the implementation of the country's path by the President as determined by the MPR. In carrying out the country's mandate set by the MPR, the House of Representatives (DPR) has always overseen the implementation of the country's constituencies, as some MPR members are members of the House of Representatives. If the House considers the President to be in violation of the country's rules set by the Constitution and the MPR, then the House may invite the MPR to hold a special conference to ask for the President's responsibility.

The mechanism for the dismissal of the President by the MPR is set forth in detail in the Decree of MPR. III / MPR / 1978 on the Position and Relationship of National Higher Institutions With / or Between National Boards. Regulations on the mechanism of dismissal of the President are considered to be in violation of the country's rules as set forth in Article 7 of the TAP MPR. III / MPR / 1978 are as follows:

1. The House of Representatives whose members are all members of the Assembly shall always be responsible for monitoring the President's actions in the framework of the implementation of the National Roadmap.
2. When the House of Representatives considers the President to be in breach of the National Roadmap, the House of Representatives shall submit a memorandum commemorating the President.
3. If within three months the President has not considered the memorandum of the House of Representatives in paragraph (2) of this article, the House of Representatives shall submit a second memorandum.
4. If within three months the President has not considered the memorandum of the House of Representatives in paragraph (2) of this article, the

House of Representatives shall submit a second memorandum.

The model of political accountability as regulated in Article 7 of TAP MPR No. III / MPR / 1978 is an abstract responsibility. Political accountability as an abstract form of accountability can be seen in the President's accountability benchmarks. Benchmark 7 political accountability of the President as stipulated in Article 7 of MPR Decree No. III / MPR / 1978 is the direction of the state established by the MPR. The State Policy Outline was formed by the MPR, so the interpretation of the State Policy Outline itself will depend on the political interpretation of the MPR.

MPR is a political institution, because some of the MPR members are members of the DPR who are elected politically. Therefore, the interpretation used by the MPR is definitely a political interpretation. Benchmarks from political interpretation are very different from legal interpretations. Legal interpretation is an interpretation that is based on the ability of a person or law enforcement in preparing legal arguments so that legal arguments will be logical and can be justified legally. Meanwhile, political interpretation is based on the political interests of political forces in a political institution. How political interpretation will be used by the MPR will greatly depend on the extent of the relationship between the political forces in the DPR and the President. If the political forces in the DPR are more dominant as supporters of the President, it can be said that the position of the President will always be safe.

During President Soeharto's reign it could be said to be safe, because Suharto at that time succeeded in building a collusive relationship with the dominant political forces both in the DPR and in the MPR. Suharto had constitutional legality in building such a collusive relationship. Article 2 paragraph (1) of the 1945 Constitution prior to the amendment states "the People's Consultative Assembly shall consist of members of the People's Legislative Assembly, plus representatives from regions and groups, according to the rules established by law." 2 there is no requirement to fill the positions of DPR and MPR members through the general election mechanism.

Based on Article 2 paragraph (1) of the 1945 Constitution. 36 President with the approval of the DPR has formed Law No. 16 of 1969 concerning the Composition, Position of the MPR, DPR and DPRD. In this law, members of the DPR are not from political parties elected through general elections, but there are also other elements of political power from the Indonesian Armed Forces (ABRI) determined by the President through the appointment mechanism. The

MPR elements besides the members of the DPR, namely the Regional Envoy and Group Envoys, are also determined by the President through the appointment mechanism. Judging from the composition of political power in the DPR according to Law No. 16 In 1969, MPR members who filled their positions through the mechanism of appointment by the President, in quantity more than those elected through general elections. With the dominance of MPR members whose mechanism to fill their positions through the appointment mechanism, it is certain that the relationship between the President and the MPR / DPR is collusive. who is in the MPR. Suharto had constitutional legality in building such a collusive relationship. Article 2 paragraph (1) of the 1945 Constitution prior to the amendment states "the People's Consultative Assembly shall consist of members of the People's Legislative Assembly, plus representatives from regions and groups, according to the rules established by law." 2 there is no requirement to fill the positions of DPR and MPR members through the general election mechanism.

After Suharto resigned as President of the Republic of Indonesia in 1998, there was a change in the constellation of state administration. Before the amendment to the 1945 Constitution, the DPR made a replacement to the Election Law, because members of the MPR from the 1999 election would exercise their authority to amend the 1945 Constitution. 3 of 1999, all members of the DPR are elected through general elections, while members of the regional delegation are elected by the Provincial DPRD respectively from the regional representatives. After the members of the MPR / DPR result of the general election are formed, the stages of amendment to the 1945 Constitution begin to be carried out. Along with the stages of the amendment to the 1945 Constitution, the MPR also elects the President and Vice President to replace President B.J. Habibie. The President and Vice President chosen by the People's Consultative Assembly at that time were Abdurrahman Wahid as President and Megawati Soekarnoputri as Vice President.

During Abdurrahman Wahid's administration, conflicts often occurred between the executive and the DPR. Abdurrahman Wahid finally had to be dismissed by the MPR, because of accusations of corruption in the Bulog and the Brunei Sultan's Grant Fund. Politically, Abdurrahman Wahid could be dismissed by the MPR, because the composition of political power in the MPR / DPR was not appointed by the President, so members of the MPR / DPR could be said to be politically autonomous from the President's power. The relationship between the President and the Parliament in the



aftermath of the fall of Soeharto h<sup>21</sup> changed from being collusive to confrontational and because the President was elected and appointed by the MPR at the time, while the President was unable to consolidate with the political power in the MPR / DPR, it is certain that the President will under the control of the MPR / DPR. If the President refuses to be controlled by the MPR / DPR, the President will be easily dismissed by the MPR.

As is known, Abdurrahman Wahid was elected during the 1945 Constitution before the change. Therefore, President Abdurrahman Wahid is a mandate of the MPR, so President Abdurrahman Wahid must submit to and comply with the policies set by the MPR through the State Policy Guidelines. However, Abdurrahman Wahid's dismissal as President was not because Abdurrahman Wahid did not implement the State Policy Guidelines outlined by the MPR, but because Abdurrahman Wahid was alleged to h<sup>18</sup> violated criminal law. The MPR should not have the authority to dismiss the President on the grounds that the President is s<sup>9</sup>ubjected of violating criminal law. The MPR only has the authority to dismiss the President on political grounds, that is, not to implement the state pol<sup>9</sup>y set by the MPR.

The third amendment to the 1945 Constitution began to have a clear descriptio<sup>1</sup>n of the President's responsibility model. Based on Article 7A of the 1945 Constitution of the Republic of Indonesia, the President and / or Vice President may be dismissed during their term of office by the People's Consultative Assembly on the proposal of the House of Representativ<sup>3</sup>e, both if proven to have violated the law in the form of betrayal of the state, corruption, bribery, other serious criminal offenses, or a disgraceful act or if it is proven that it no longer meets the requirements as President and / or Vice President.

With th<sup>2</sup>e provision of Article 7A, the reasons for dismissing the President or Vice President are limited to violating criminal law or misconduct. The President cannot be dismissed bec<sup>2</sup>ause of his policy alone. The birth of Article 7A on the reasons for the dismissal of the President and Vice President, because the MPR v<sup>21</sup>ith has the authority to make changes to the 1945 Constitution, intends to purify the presidential system. In a presidential system, the President as Head of Government can only be dismissed if it is proven to violate criminal law or an improper act.

To better understand th<sup>16</sup>e presidential system, at least one must understand the characteristics of the presidential system. The characteristics of presidential systems according to C.F. Strong is as follows:

- a. The President has a dual function, in addition to being the Head of Government as well as 38 Head of State. As Head of Government, the President has great power;
- b. The president is not electe<sup>17</sup>d by the legislative power holder, but is elected directly by the people or by the electoral council as in the United States;
- c. The President does not include the holder of legislative powers;
- d. The president cannot dissolve legislative power holders and cannot order general elections. Usually the president and legislative power holders are elected for 5 fixed term of office.[3]

From the characteristics of the presidential system above, the position of the President and the DPR is equal, therefore the President cannot dissolve the legislative power holder (DPR).[4] This equality of position between the President and the Parliament makes the President has no obligation to be accountable politically, his performance towards the legislative body, be it the MPR or the DPR. Unlike the presidential system, where the President and the legislature have the same position, so the President cannot be dismissed on political grounds, then in the parliamentary system, the position of Head of Government is under the authority of parliament. To better understand the parliamentary system, below are the characteristics of the parliamentary system, namely:

- a. Position of Head of State cannot be contested;
- b. The Cabinet headed by the Prime Minister is responsible to Parliament;
- c. The composition, personnel and cabinet programs are based on the most votes in parliament;
- d. The term of office of the cabinet is not determined permanently or exactly how long;
- e. The cabinet can be dropped at any time by parliament otherwise the parliament can be 25 dissolved by the government.[5]

The Prime Minister as the leader of the cabinet, reports to the parliament, implies that the position of the Prime Minister and the parliament is not equal. Thus, politically, the cabinet can be dismissed or dissolved by parliament through a no-confidence motion. Historically, Indonesia had adopted a p<sup>23</sup>arliamentary system when Indonesia adopted the 1949 Constitution of the United Republic of Indonesia (RIS) and the Provisional Constitution of 1950. Based on historical experience in the period 1949-1959, the MPR finally wanted to purify the presidential system, because it considered a presidential system more suited to the culture of Indonesian society than the parliamentary system.[6]

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The concept of accountability of the President, after the amendment of the 1945 Constitution has experienced a substantive shift in institutional terms, which was previously from political 5 accountability to the MPR, because the President was elected and appointed by the MPR to be responsible for violating 5 the law.[7] Political accountability still exists, but not to the 11 MPR but to the people directly, since the President is directly elected by the people, his political responsibility is directly to the people who choose him.

In the administrative law literature there is the concept of responsibility by officials. The responsibilities of officials in carrying out their functions are distinguished between the responsibilities of office and personal responsibility. Job responsibilities regarding the legality of governmental acts. In administrative law, the legality of government actions is related to the approach to government power. Personal responsibility relates to functional and behavioral approaches.[8]

The difference between position and personal responsibilities is related to the settlement. Job responsibilities usually lead to accountability both in the State Administration and in relation to unlawful acts by the authorities. The administrative responsibility 20 of the State Administration relates to the birth of a state administration decision which is considered 20 to be detrimental to the party who is the object of the state administrative 20 sion. State administrative disputes arising from the issuance of state administrative decisions are resolved in the state administration court. Meanwhile, accountability related to unlawful acts by the authorities is a claim against the authorities whose object is not a state administration decision. Accountability for unlawful acts by the authorities is settled in public justice.

Personal responsibility is divided into two, namely personal responsibility. First, criminal responsibility. Criminal liability arises from violations of criminal law allegedly committed by officials. This criminal liability is related to the behavior of officials who are suspected of misusing authority for their interests. Second, official responsibilities related to maladministration carried out by the officials concerned.

Comparison between 49 job responsibilities and personal responsibilities can be seen in the table below:

Table I.

Department Responsibility	Personal Responsibility
Focus: Legality	Focus: Maldives

(validity) of government actions - Authority - procedure - substance	Bad behavior of the apparatus in carrying out their duties --- misconduct Among others: - arbitrary - abuse of authority
Parameters - Regulations - General Foundations of Good Governance	Parameters 1. Regulations 2. General Fundamentals of Good Governance 3. Code Of Good Administrative Behavior
Legal question Are there juridical defects involving: - Authority - procedure - substance	Legal question Is there any maladministration in this action? Legal question Is there any maladministration in this action?
The principle of praesumptio iuste causa Every government decision must be considered valid until there is a revocation or cancellation	If it is related to a crime, then the presumption of innocence is applied
There is a basis of vicarious liability	The basis of vicarious liability does not apply
Sanctions: administration and civil	Sanctions: administrative, civil, criminal

As Head of Government, the President functions as the leader of all matters relating to government affairs. Starting from the Minister to the lowest bureaucracy. Therefore, the President also has two responsibilities, namely office responsibilities and personal responsibilities. During the administration of President Susilo Bambang Yudhoyono, he had received a lawsuit from the community in the state administration court related to his decision to appoint Patrialis Akbar as judge of the Constitutional Court from the President's proposal, without involving public participation as regulated in the Constitutional Court law. The state administration court granted a lawsuit from the community because President Susilo Bambang Yudhoyono's decision was contrary to the constitutional court law. President Joko Widodo has also received a civil suit related to forest fires in

Palangkaraya. Palangkaraya district court finally granted the lawsuit from the community.

Position responsibilities only relate to the validity of a decision issued by the President, while personal responsibility is not only related to whether a decision is valid or not, but also related to the problem of violation of criminal law. With the formulation of Article 7 A regarding the reasons for dismissing the President and Vice President, the reason for dismissing the President only related to the personal responsibility of the President and Vice President.

If seen from the formulation of Article 7A, then at least the reasons for dismissing the President can be categorized into 3 things:

1. Violation of criminal law. Violation of the law in the form of betrayal of the state, corruption, bribery and other serious crimes is a violation of criminal law;

2. Despicable acts;

3. If it is proven that it no longer meets the requirements as President and / or Vice President.[9]

The three categories of reasons for dismissing the President above, the category of blameworthy acts is the most vague form of norms. Meanwhile, violations of criminal law and no longer fulfilling the requirements of President and Vice President are more concrete norms because they can directly refer to relevant laws and regulations, such as corruption eradication laws and general election laws. Article 10 paragraph (3) letter d of law No. 24 of 2003 concerning the Constitutional Court only states that "misconduct is an act that can demean the President and / or Vice President".

The problem of interpretation of the phrase "reprehensible acts" becomes more difficult, because there is no jurisprudence that has decided on this case. Therefore, this interpretation is only in the area of academic debate and the majority of the opinions of experts say that the phrase "blameworthy" is a vague phrase. Despicable acts can indeed be categorized as a form of personal responsibility, but the meaning of the phrase "reprehensible deeds" must still be elaborated so that it becomes clearer.

Despicable acts in administrative law are related to the personal responsibility of an ordinary state administration official with regard to maladministration. Article 1 number 3 of Law no. 3 of 2008 concerning the Ombudsman of the Republic of Indonesia states "maladministration is behavior or actions against the law, exceeding authority, using authority for other purposes than those intended for authority, including negligence or neglect of legal obligations in the administration of public services carried out by State Administrators and governments that govern cause

material and / or immaterial losses to the community and individuals." [10]

Article 1 number 3 above, the definition of maladministration is limited to public services. The authority to carry out public services is not on the President, but on administrative officials ranging from central level officials to regional level officials. Therefore, the President cannot be suspected of committing maladministration, so the President cannot be suspected of committing disgraceful acts in the category of maladministration. The President can only be suspected of committing disgraceful acts related to the issue of decency. Violation of moral norms committed by the President can be despicable act. For legal certainty, a code of ethics for the President and Vice President should be formed as a parameter for the President and Vice President in implementing their government. Law No. 30 of 2014 concerning Government Administration has set the general principles of good governance as a parameter for government officials in exercising their authority, but the general principle of good governance are aimed only at the guidelines of government officials in exercising their authority and judges in state administrative courts as a measurement tool in assessing government decisions that are being sued. General principles of good governance, as regulated in Law No. 30 of 2014, can not be used as a measurement tool to assess the behavior of the President and Vice President related to the actions carried out by the President and Vice President, included in the category of disgraceful acts or not.

#### IV. CONCLUSION

From the discussion above, conclusions can be drawn as follows:

1. There are differences in the responsibility of the President in the coming into force of the 1945 Constitution before the changes and after the changes. During the enactment of the 1945 Constitution prior to the amendment, political accountability could lead to the dismissal of the President, because the President at that time was a mandate from the MPR, so the President had to implement the state's direction stipulated by the MPR. Political accountability implies that the President can be dismissed on political grounds. Meanwhile, during the coming into effect of the 1945 Constitution, the President cannot be dismissed on political grounds. A new president can be dismissed if he is proven to have violated criminal law and committed a misconduct. Dismissal on the grounds of violating criminal law and committing disgraceful acts is a consequence of the President's personal liability.

2. Despicable acts are a vague norm. In Law No. 24 of 2003 only states that despicable acts are actions that can demean the President and Vice President.

#### Recommendation

Based on the conclusions above, the suggestions that can be given by the author are as follows:

1. A Code of Ethics must be established as a benchmark if the President and Vice-President are suspected of committing disgraceful acts;

2. The Code of Ethics can be included in the laws of the Constitutional Court or by establishing a law on the Presidency.

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