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IMPLEMENTATION OF PRESIDENTIAL POWER BASED ON THE 1945 STATE CONSTITUTION OF THE REPUBLIC OF INDONESIA

Baharudin,¹ Indah Satria,² Sopian Efendi³

Abstract

The unclear regulation on the power of President as the highst war Command of the Army, Navy And Air Force, raises the problems in the practices of Indonesian State. It has the scope and implementation of power of President based on Article 10 Constitution. The method of this research used this paper is juridical normative, juridical historic, and juridical comparative. The research was undertaken on library research to collect primary, and tertiary data. The result of research, showed that scope of President power based on article 10 of the 1945 Constitution include the financial, personal, and National defense. Implementation of President power based on Article 10 of the 1945 Constitution as long as the Presdiden government of Indonesia has implementatiton. The was Command, was used as power instrument.

Keywords : *Implementation, President, Power, Constitution*

I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia adopts a Division of Powers / Distribution of Powers system as reflected in the functions and relationships of the President as an executive institution with other high state institutions, namely the People's Consultative Assembly; People's Representative Council; Audit Board of the Republic of Indonesia; Supreme Court and the Constitutional Court. These functions and relationships, the presidential institution has greater power (although not in an unlimited sense) compared to other state institutions as a consequence of adopting the Presidential system of government in the 1945 Constitution which places the President as the sole executive.⁴

In the Presidential government system, the President, apart from functioning as Head of Government, also functions as Head of State. The President as the Head of Government has the authority to run the wheels of government as regulated in Article 4 paragraph (1) of the 1945 Constitution which states "The President of the Republic of Indonesia holds governmental power according to the Basic Law" Furthermore Article 4 paragraph (2) of the 1945 Constitution in

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⁴ Comelis Lay, *et al*, 1997, *Tidak Tak Terbatas : Kajian alas Lembaga Kepresidenan R.I.*, Cetakan I, Yogyakarta, Pandega Media with BEM UGM, p. 7-8

implementing the wheels of the President's government assisted by a representative of the President. "In addition, the President has a legislative function as regulated in Article 5 paragraph (2) of the 1945 Constitution. The President has the authority to make and stipulate government regulations to implement laws.

The provisions of Article 4 and Article 5 paragraph (2), if linked to the Explanation of the 1945 Constitution, show that, apart from functioning as an executive body, the President also functions as a legislative body. Daman Rozikin explained that the relationship between Article 4 paragraph (1) and the explanation of the 1945 Constitution shows that the President has executive power in the state.⁵ Furthermore, Daman Rozikin explained that the President as the Head of State in carrying out his authority and function acts on behalf of the State or represents the State in running the wheels of government. The President as the Head of State is a symbol of national unity and unity, has powers concerning ceremonial functions, greatness in state life, and concerns the dignity of the nation in international relations.⁶

In addition, according to Article 22 and Article 23 of the 1945 Constitution, the President has the right to establish Government Regulations in lieu of laws and determine state finances. These articles show how broad the powers of the President are not only in the executive sector, but also in the legislative and state finances. With regard to the function of the President as chief executive, Article 10 of the 1945 Constitution explains: "The President holds the highest power over the Army, Navy and Air Force". Normatively, this article does not explain or even wants 'a President to act as Supreme Commander' who can lead troops directly. However, in practice that had been in effect during the 1945 Constitution, the President acted as the Supreme Power Holder over the Army,

President Soekarno, appointed Trikora and Dwikora on December 19, 1961 in Yogyakarta in order to fight the Dutch to create a Papuan State in Irian Jaya. President Soeharto used the Army, Navy and Air Force (TNI) to serve as a tool of power, by establishing the dual function of ABRI. President Habibie, decided on the East Timor option, joining the Indonesian state or separating himself. President Abdurrahman Wahid participated in proposing a new position for Agus Wirahadikusumah in Jakarta as Commander of the Army Strategic Command.

President Habibie established the option for East Timor, without the approval of the DPR. President Megawati Soekarno Putri provided Presidential Assistance for the TNI, in the form of non-budgetary funds to build TNI housing, without going through the State Revenue Expenditure Budget (APBN). Based on Law no. 25 years which confirms that there are no more non-monetary funds used

⁵ Daman Rozikin, 1993, *Hukum Tata Negara (Suatu Pengantar)*, Issue 2, Printing 1, PT. Raja Grafiika Persada, Jakarta, p. 196

⁶*Ibid.*, p. 199

outside the APBN provisions, as well as TNI financing, must be budgeted in advance, in accordance with Law 3 of 2002 concerning State Defense Article 25 Paragraph (1) State Defense is financed from the Budget State Income and Expenditures. (2) State defense financing is aimed at building, maintaining, developing, using the Indonesian National Army and other defense components.

The regulation of the power of the President as "Supreme Commander" is regulated in the 1949 Constitution, especially Article 182 paragraph (1) which states that the President is the Supreme Commander of the United Republic of Indonesia Armed Forces, while paragraph (2) states that if necessary the government can put soldiers under a General Commander, The Minister of Defense can be appointed concurrently. (3) Officers are appointed, promoted and dismissed on behalf of the President, according to the rules established by federal law.

The regulation of the President's power over the Armed Forces is also regulated in Article 127 of the 1950 Provisional Law, namely the President holds the highest power over the Armed Forces of the Republic of Indonesia. Between the formulation of Article 10 of the 1945 Constitution and Article 127 of the 1950 Provisional Constitution, there is a difference. Article 10 of the 1945 Constitution reads: The President holds power over the Army, Air Force and Navy, the elements of the force are mentioned, while Article 127 paragraph (1) of the 1950 UUDS only states that the President is in charge of the Armed Forces of the Republic of Indonesia. The removal of the designation of Armed Forces under the leadership of a commander-in-chief was intended to confirm the President's formal position as the Armed Forces.⁷

Article 127 paragraph (2) of the 1950 Provisional Constitution states: In a state of war the government places the Armed Forces under the leadership of a Commander in Chief. Thus the President can place the Armed Forces under the leadership of a Commander-in-Chief (the highest leadership of the Armed Forces). In contrast to the formulation of Article 10 of the 1945 Constitution, here is emphasized by the President who holds the highest power over the Army, Navy and Air Force.

According to Moh. Kusnardi and Harmaily Ibrahim, the meaning of the power of the President Article 10 of the 1945 Constitution as the Head of State.⁸In connection with the position of the President as Supreme Commander, it has an influence and consequences on the scope of the President's powers. Based on Article 10 of the 1945 Constitution, the position of the President as Supreme Commander is closely related to the duties of the President as the holder of the highest power over the Army, Sea and Air, especially the powers regulated in

⁷ Ismail Suny, 1997, *Pergeseran kekuasaan eksekutif*, Aksara Bam, Jakarta, p. 131

⁸ Moh. Kusnardi and Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, Study Center, Constitutional Law, Faculty of Law, Universitas Indonesia, p. 207

Article 11 of the 1945 Constitution which states: President in declaring war, must obtain approval from the House of Representatives. Article 11 of the 1945 Constitution explicitly implies a limitation on the authority of the President in "declaring war". In this case the DPR can exercise control over the President's policies by approving or rejecting the will of the President.

The President as the holder of the highest power over the TNI is in danger, can use Article 12 of the 1945 Constitution which states: The President declares a state of danger. The conditions and consequences for the situation of danger are determined by law. According to Padmo Wahjono, the meaning of presidential power according to Article 10 of the 1945 Constitution, is referred to as power that is administrative in nature, because it is based on the implementation of a statutory regulation, as well as the advice of another high state institution. So it is not a special authority (prerogative) that is independent.⁹

In connection with the position of the President as the holder of the highest power over the Army, the Air Force and the Navy have an influence and consequences on the scope of the President's power based on Article 10 of the 1945 Constitution. The position of the President as the holder of the highest power over the Army, Air Force and Navy has a related link. closely related to the duties of the President as regulated in Article 11 of the 1945 Constitution, which states: In declaring war, the President must obtain the approval of the House of Representatives. Article 11 of the 1945 Constitution explicitly implies a limitation on the President's authority to declare war. In this case the DPR can exercise control over the President's policies by approving or rejecting the will of the President.

Apart from Article 11, Article 10 has a relationship with Article 12 of the 1945 Constitution which states: The President declares a state of danger. The conditions and consequences for the situation of danger are determined by law. In contrast to Article 11, Article 12 of the 1945 Constitution states that "a state of force" is controlled through law. There are certain conditions and conditions that must be met, so that a situation can be said to be "dangerous." This is intended to prevent arbitrary action. In contrast to Article 11, Article 12 of the 1945 Constitution states that a state of force (danger) is controlled through law. There are certain conditions and conditions that must be met, so that a situation can be said to be dangerous for the state.

According to Clinton Rassiter¹⁰, There are 3 (three) conditions to say a compelling situation, namely: war, "rebellion" and economic depression. The criteria stipulated in a law, both from the content and the process of its formation,

⁹ Padmo Wahjono, 1982, *Negara Republik Indonesia*, Rajawali, Jakarta, p. 131

¹⁰ Clinton Rassiter in I Gde Panca Astawa, 1982, *Ruang Lingkup dan Pelaksanaan Wewenang Presiden Berdasarkan Ketentuan Pasal 22 UUD 1945*, Thesis, UNPAD Postgraduate Program, p. 27

constitute a limitation on the authority of the President, everything must be approved by the DPR. Bearing in mind, the DPR is a reflection of the will of the people, although in practice, especially during the reign of President Abdurrahman Wahid, the determination of a situation of danger was carried out without obtaining prior approval from the DPR.

In addition, there are facts that the Indonesian National Army participated in removing the baleho, which was instructed by the Commander of the Regional Military Command Jaya, this was the removal of the baleho, not the authority of the Indonesian National Army. The authority to remove Baleho is the victory of the special regional government for the Capital City of Jakarta, namely the authority of the Governor and the Minister of Home Affairs, to assign the removal task. billboards to the civil service police unit. Local civil service police unit. Based on the description above, it is unclear the scope and implementation of the President's powers as the highest authority over the Navy and Air Force.

II. DISCUSSION

Concept of President as Chief Executive

In the presidential government system, the President functions as the sole chief executive. According to CF Strong, the chief executive is appointed to the Head of Government and in the United States it is always held by the President, as can be seen from his opinion that he said: "sometime to designate merely the chief minister, as for example the President in the United States, sometime includes the whole body of public servants, civil and military. Based on CF Strong's opinion, the President is the chief executive in charge of the duties and authorities of the ministers (cabinet) and employees, as the head of civilian and military government. In article 2 paragraph (1) of the United States Constitution, it is stated that: "Executive power must submit to the President. The power must carry out its duties for 4 years,."

Seeing the article above, it is as if the United States constitution distinguishes between the President and the Chief Executive. Based on CF Strong's opinion above, what is meant by executive power is power that is in the hands of the cabinet or ministers who in carrying out their duties must submit to the President as Chief Executive, so that there is no difference between executive power and the President. The President as the chief executive who in carrying out government tasks is assisted by the ministers and the ministers are responsible for carrying out his duties to the President. In the constitutional system, the President in addition to functioning as Chief Executive also serves as the Head of State whose duties and powers are between one another.

According to John Locke and Montesque in the Trias Politica doctrine, executive power is the power that has the duty to implement laws. This opinion by Wynes is extended that: "executive power as power within the state that enforces

laws, administers government affairs and maintains order and security, both at home and abroad.¹¹The difference between the opinions above lies in the way in which the executive duties are described, it does not mean that there is a significant difference. According to the Trias Politica doctrine, there needs to be a division of tasks between state agencies, namely between the legislative, executive and judiciary. This is to prevent the control of government tasks being within one state organ. Therefore it is necessary to have a division or separation of power as stated by Robert E. Cushman and Robert F. Cushman¹²

Based on the above opinion, the United States constitution, especially Article 2 paragraph (1) as above, clearly describes the position of the President as Chief Executive. Setting the position of the President as Chief Executive indicates the existence of legal oversight through the constitution. Thus it can be interpreted that in the United States the President is the Chief Executive.

Implementation of the President as the Holder of Supreme Power over the Army, Navy and Air Force based on Article 10 of the 1945 Constitution.

The President as the holder of the highest authority over the Army, Navy and Air Force, in carrying out his duties, he must not leave the scope of his authority. The scope of the President's authority as Supreme Commander of the Army, Navy and Air Force includes: a. State Defense Sector. Determine TNI personnel, regulate the rights and obligations of the TNI, c. regulate and establish financial policies (State Defense Budget) ..

An important topic in this sub-chapter concerns the function of the President over the armed forces, which in its implementation in State defense, must go through the State Policy Guidelines and MPR Decrees (before the third amendment), namely the field of State defense. The President must seriously take a firm stand on all forms of separatism that threaten the territorial integrity of the Unitary State of the Republic of Indonesia based on law, accelerate the implementation of regional autonomy, specifically Aceh and Irian Jaya. b. Resolving horizontal conflicts and enforcing the law, such as Maluku, Poso and other regions, c. Repositioning the TNI / POLRI, in the interest of national defense, needs to complete the reposition of the TNI and POLRI, and to restore their authority and abilities so that they can carry out the functions and roles of the TNI optimally.

The president as the holder of power over the TNI and POLRI has gained formal legitimacy through the nation's agreement in the 2000 MPR Annual Session, especially through the MPR IV and VII MPR / 2000 TAP, the roles of the TNI and POLRI have been separated, so that there is no overlap in carrying out their duties,

¹¹ Wynes in Ismail Suny, 1983, *Pergeseran Kekuasaan Eksekutif*, Jakarta, New Aksara, p. 50.

¹² Robert F. Cushman and Robert F. Cushman. 1968, *Cases in Constitutional Law*, Third Edition, New York, Appleton Cropt. p. 74.

where the TNI as a means of defense of the State, while the POLRI is a means of security and public order and law enforcement. According to Agus Widjoyo, the TNI has a role in the field of national defense which is linked to threats coming from abroad. However, this does not mean that the TNI cannot be used in the security sector, it must be focused on using it in the capacity to assist POLRI.¹³

The president as the holder of the highest power over the TNI, cannot be used for political purposes, because: "The TNI must be neutral in political life, and not involve itself in practical political activities, and must support the upholding of democracy, uphold law and human rights."

In the financial sector, the TNI's budget must be transparent and first budgeted in the APBN. The 3 areas of determining personnel and regulating the rights and obligations of the TNI are properly regulated in accordance with the provisions of law. In the conceptual order (normative rules) as stipulated in article 10 of the 1945 Constitution and described operationally through TAP MPR NO.VII / MPR / 2000, there is no provision that states that the President can use his army (Indonesian National Army) effectively. The position of highest power holder is more of a formal position attached to a President.

The Indonesian constitutional convention has noted that President Soekarno once used an army that gave direct command to the Indonesian Armed Forces such as Commander in Chief in the context of Tri Komando Rakyat and Dwi Komando Rakyat in his position as Supreme Commander. The actions taken by President Soekarno at that time were considered contrary to the 1945 Constitution, because according to the Pancasila Democracy, a President according to the 1945 Constitution does not have the position of Commander in Chief as found in the United States, but rather the highest power over the Armed Forces. Army, Navy and Air Force as a consequence of the position of the President as head of state.

In fact, normatively implementing Article 10 of the 1945 Constitution according to the grammatical terms of the article, the opinion that says the President of Indonesia does not have the authority of the Commander in Chief as in the United States is understandable. The problem that arises after that is whether this understanding can solve the problem entirely, or whether this opinion has been effective. Theoretically, to understand the meaning of articles or to understand the constitution of a country cannot be seen only from the sound of the articles, because a constitution contains values other than legal values. . Strong argues, "The study of political constitution is a branch of political science or the science of the State. Political science, being the science of the structure and government of political communities, is a study of society viewed from a special standpoint, and is, therefore, intimately related to the other sciences, which may be

¹³ Agus Wijoyo, 2001, *Dalam Sistem Pertahanan Keamanan Negara, Analisis Potensi dan Problem*, Editor Indra Samego, Habibie Center, Jakarta, p. 49.

classified as follows: Sociology, which is the study of all form, civilized and uncivilized of human association. Economic, which is the science of mans material well being. Ethics, which is the science of what mans conduct ought to be, and why. Sosial psychology, which is the science of the behavior of the human animal in his social relationship. "

Gradually it can be interpreted that the constitution does not only contain normative values which are interpreted or translated according to the sound of the article. A constitution also contains social values, economics, a code of ethics and social psychology. A holistic understanding of constitutional science is very important, so that President Soekarno's actions to use the army effectively cannot simply be interpreted as having deviated from the 1945 Constitution. In connection with this issue, Adnan Buyung Nasution said that constitutional government was not a government that is simply in accordance with the constitution's sound which contains the essence of constitutionalism.¹⁴Related to the actions of President Soekarno above, this action was not a deviation, moreover, this action was carried out in the framework of maintaining territorial integrity and national unity, because Irian Jaya is the territory of the Republic of Indonesia. Therefore, the measure that can be used is the benefit of the people at large.

During the reign of President Soeharto, who clearly deviated from the principles of the 1945 Constitution, especially protecting his interests as a ruler, used the position of the President as the highest power holder of ABRI to maintain his power, so that the bureaucracy from the President to the Regent was held by ABRI. ABRI's entry into the government system is a reflection of ABRI's dual function.

Initially, according to AH Nasution, the concept of ABRI's dual function was intended as an explanation that the military, in addition to functioning to fight and win wars in order to maintain the existence of the State, must also strive to create or maintain people's lives to be well developed. Thus, what is meant by the dual function of ABRI in addition to carrying out its conventional duties of fighting and fighting the military also carries out the function of fostering territory / society, both in the context of national defense / defense. Still according to AH Nasution, the idea of ABRI's dual function is not without a constitutional basis. because the Republic of Indonesia according to the 1945 Constitution must be interpreted as an organization of all Indonesian people with the objectives contained in the fifth principle of Pancasila, namely realizing social justice for all Indonesian people. In fact, this concept was proposed by Soeharto, who in fact ABRI appeared in various sectors of activity, especially in the economic and political sectors.

¹⁴ *Ibid.*

Implementation of Presidential Power Based on Article 10 of the 1945 Constitution

It cannot be denied that the state government system was influenced by the military, especially during the New Order government. The nuances of militarism in government were very visible in the 1960s. The nuances of militarism also exist in the governments of newly independent countries, such as in Asia and Africa, because they are ruled by the military. Indonesia under the New Order government, the military as the main actor, and featured the military as the main actor in the political scene in Indonesia. This military role has entered various fields of life in Indonesia, both economically and so on. According to Arif Budiman, this situation was marked by the birth of the ABRI (now TNI) dual function concept.¹⁵This is intended as an explanation that the military, in addition to functioning to fight and win wars, also maintains the existence of the State.

In the next development, the role of the military is getting bigger, here the army which is based on ABRI's dual function is used as an institution in the development of the area (society). The point is that the wheels of government and community functions can run properly. Therefore, the armed forces carry out non-combat activities called work and are scattered in various economic and socio-cultural fields. The influence of the President's power on the armed forces is in fact interpreted as controlling the armed forces, in addition to that the President as the Head of Government with the two functions of ABRI has opened opportunities for the army to enter into activities in various fields of life, even the military has managed various companies,

In fact, prior to the enactment of the dual function of ABRI (two functions of the armed forces) in real terms it had been seen in political activities since the inception of the Republic of Indonesia, although initially through unofficial means. In the revolutionary era the limitation of power for the military and civilian fields was obvious. This fact can be seen from the results of deliberations between government leaders and military leaders, often the army has a voice in politics, rather than talking about defense and security.

The tendency for the military to enter the political field was getting stronger after the post-independence year because it had to overcome various threats, both threats from outside (the Netherlands) as well as the political crisis and the PKI (Indonesian Communist Party) Madiun 1948 rebellion. The military had participated openly in entering the political field in 1948. 1952. This was marked by the confrontation with the parliament, on the grounds that the civilian leadership was considered selfish, irresponsible, completely ineffective, corrupt and failed to govern the newly independent nation.

¹⁵Arif Budiman, *Negara Kelas dan Formasi Sosial: Kearah Analisa Struktural Historis*, Justice Magazine, Faculty of Law, UII, No.1 / 1985, p. 65.

The entry of the army into politics in 1952, when it was wrestling against civilian forces (against the PKI) which Soekarno thought was protected. Then in 1966 when the birth of the New Order became the culmination and end of the struggle with victory, the military succeeded in gaining power with the issuance of a March 11th warrant from President Soekarno to President Soeharto. The exit of Supersemar was a major event that had led to the emergence of the Indonesian army in the field of executive power. When the transfer of power is always associated with a situation of danger, there is a strong reason to be integrated nationally with the reason for development as the first factor and a companion to technocrats who depart from chaos and chaos politically and economically.

The role of the military in making policy has been proven by the presence of approaches to the technocratic and bureaucratic circles that are not democratic. Technocratic circles and bureaucratic structures that are not democratic have greatly influenced the policy-making process implemented by the Government. In the New Order government, it was seen that there were attempts at depoliticization, creating floating masses and the view that political activities that did not accompany the ruling party (Golkar) were considered unprofessional and outdated activities. By perpetuating the power of the authoritarian bureaucratic regime it also seeks to achieve limited plurality by using a revision of ownership, class as a corporatist network so that there is a control mechanism as an opposition.

If we look at the incidents described above, that the power of the President as regulated in the 1945 Constitution, especially the power based on Article 10, has enormous implications, in fact since the enactment of the 1945 Constitution, it has not fully represented a democratic government. This can be seen from the period of the enactment of the 1945 Constitution, namely the first period from 18 August to 27 December 1949, the second period starting from the Presidential Decree on 5 July until now. Periodization of the Indonesian Constitution, namely: 1. UUD 1945 Period, August 18 1945-27 December 1949 2. RIS 1949 Constitutional Period, December 27 1949-17 August 1950 3. UUDS Period 1950, August 17-July 5 1959 4. Period UUD 1945, until now.

Seeing also that the 1945 Constitution was re-enforced through a Presidential Decree on July 5, 1959, then what emerged was an authoritarian government led by Soekarno, as well as being arbitrary with the concept of guided democracy, as well as the New Order government as well as being behind The 1945 Constitution. Based on the above description, a conclusion can be drawn that the logical implications of the President's power over the army, especially during the New Order era, were that the New Order power structure was very strong after the presidency was held by the military or from the armed forces, which dominated the political role. Then with the implementation of ABRI's dual function, ABRI's dominance was increasingly felt in the Indonesian political

process and in the state administration. This is manifested in the form of the placement of a number of high ranking officers of the armed forces in the executive ranks, starting from the head of a high state institution, Ministers from a number of Departments, a number of Director General / Inspectorate General, and a number of Governors, and a number of Regents, besides that it also takes other forms, namely: First, it provides a very large portion of the army in the membership of the Council. Second, in the administration of the State for very strategic positions, such as the Secretary General in a Department, many of them are delegated to the armed forces. At the regional level, it is almost certain that the head of the socio-political office, both provincial and district, sub-district, sub-district / village level, is almost certain that important positions are transferred to the armed forces.

Starting from the chairperson of high state institutions, Ministers from a number of Departments, a number of Director General / Inspectorate General, and several Governors, and a number of Regents, besides that it is also manifested in other forms, namely: First, giving a very large portion to the armed forces in membership Board. Second, in the administration of the State for very strategic positions, such as the Secretary General in a Department, many of them are delegated to the armed forces. At the regional level, it is almost certain that the head of the socio-political office, both provincial and district, sub-district, sub-district/ village level, is almost certain that important positions are transferred to the armed forces (TNI). starting from the chairperson of high state institutions, Ministers from a number of Departments, a number of Director General/ Inspectorate General, and several Governors, and a number of Regents, besides that it is also manifested in other forms, namely: First, giving a very large portion to the armed forces in membership Board. Second, in the administration of the State for very strategic positions, such as the Secretary General in a Department, many of them are delegated to the armed forces.

At the regional level, it is almost certain that the head of the socio-political office, both provincial and district, sub-district, sub-district / village level, is almost certain that important positions are transferred to the armed forces. In addition, it is also manifested in other forms, namely: First, it is given a very large portion of the army in the membership of the Council. Second, in the administration of the State for very strategic positions, such as the Secretary General in a Department, many of them are delegated to the armed forces. At the regional level, it is almost certain that the head of the socio-political office, both provincial and district, sub-district, sub-district / village level, is almost certain that important positions are transferred to the armed forces. In addition, it is also manifested in other forms, namely: First, the provision of a very large portion of the armed forces in the membership of the Council. Second, in the administration of the State for very strategic positions, such as the Secretary General in a Department, many of them are delegated to the armed forces. At the regional level, it is almost certain that the

head of the socio-political office, both provincial and district, sub-district, sub-district / village level, is almost certain that important positions are transferred to the armed forces. such as the Secretary General in a Department, many of which are left to the army. At the regional level, it is almost certain that the head of the socio-political office, both provincial and district, sub-district, sub-district / village level, is almost certain that important positions are transferred to the armed forces. such as the Secretary General in a Department, many of which are left to the army. At the regional level, it is almost certain that the head of the socio-political office, both provincial and district, sub-district, sub-district / village level, is almost certain that important positions are transferred to the armed forces.¹⁶

The entry of the military as a functional group in the MPR and DPR because the 1945 Constitution stipulates that the President holds the highest power over the army, navy and air force.¹⁷ This means that in the Indonesian constitutional system according to the 1945 Constitution, the President who holds the highest command over the armed forces is the President, the President has the power to regulate and manage the armed forces, especially control recruitment.

With the command of the armed forces by the President, theoretically it will also affect the members who sit in the MPR and DPR even though the law stipulates temporary exemption of organic positions for members of the armed forces in the People's Consultative Assembly and the DPR, still wearing military clothes and their membership remains. under the control of the presidency through the commander of the army, so that if they fall outside the desired line, the recalling mechanism will be put in place (for the army).

The role of the army became even stronger when on September 30, 1965 there was a PKI rebellion, the army, more precisely the army, was considered to have saved the country from a national disaster from the rebellion. With the strengthening of the position of the armed forces, the bargaining process of other political forces which is supported by the highest position of the ruler of the State is held by the army, this bargaining is known as the national consensus.

This maneuver of the armed forces is in order to perpetuate their power, namely to be able to include more members in the DPR and not to change the 1945 Constitution. This is an excuse in the framework of constitutional safeguards against the possibility of wanting to change the 1945 Constitution by using the provisions of Article 37 of the 1945 Constitution. Paragraph (1) of this article reads: to change the Constitution at least 2/3 of the number of members of the Consultative Assembly present.

With the appointment of 1/3 the number of members of the MPR the armed forces can constitutionally secure the possibility of using Article 37 of the 1945

¹⁶ Affan Gaffar, 1993 *Konfigurasi Politik Menjelang Pemilu*, MPR SU, Paper presented at the strengthening of the Jurkan national level, DP PPP, Cisarua Bogor, p. 7.

¹⁷*Ibid.*

Constitution by not attending the MPR session. This absence will make it difficult for the trial to make decisions. The influence on the formation of the law can be seen by the issuance of Law no. 16 of 1969, which was clearly a distortion made by officials of President Soeharto and the Mutual Cooperation Council during the years of the September 30, 1965 Movement incident. As is well known, the situation at that time could be said to be an emergency situation.

General Soeharto disbanded the PKI on behalf of the President and declared to eradicate the PKI to its roots, due to chaos throughout Indonesia, which was carried out by the PKI. As such, the armed forces held the powers of war, mainly by land forces. All people accused of being PKI and their allies were purged from the government and DPRGR. Then replaced by people who were allies of the army, especially President Soeharto's officials, those who challenged were accused of being PKI and fired. In such a situation, a government with a militarist nuance will not find it difficult to carry out its will. On the other hand, the DPRGR which has been cleared seems to be insufficient to control the President who submitted the Bill which was a deviation from the 1945 Constitution.

Another maneuver of the army occurred in 1971, when the TNI organized the Karya Group in a joint secretariat with the existing Golongan Karya (Sekber Golkar). Election victories are used to carry out deviations using Law no. 16 of 1969 concerning Sususna and the Position of the MPR, DPR, and DPRD. Article 1 paragraph (1) regulates the composition of the MPR. Article 1 paragraph (1) Law no. 16 of 1969 is the implementation of Article 2 of the Constitution (1) states that the MPR consists of members of the DPR, plus delegates from regions and groups. In accordance with the idea of participation and equality, DPR members should be elected by the people. In this way, DPR members can truly represent the people to participate in the decision-making process in law making and government oversight. Likewise, regional delegates and group representatives must be elected by the DPRD. Article 1 paragraph (2) Law no. 16 of 1969 reads as follows: The MPR consists of members of the DPR plus representatives from the regions, political groups and work groups. According to this law, the DPR consists of members of political groups and groups of work.

Furthermore, it is also stipulated that filling out the membership of the DPR is carried out by means of general elections and appointments. The number of DPR members is set at 460 people, consisting of 360 people who are elected in general elections and 100 people appointed. Those who consist of the Karya Group of the armed forces, whose appointment is determined at the recommendation of the Minister of Defense and Security and formalized by a Presidential decree, the Karya Group is not an armed force whose appointment by the President is carried out either at the suggestion of the organization concerned or on the President's initiative. The number of each is determined by the President (Article 10). Class delegates consist of two elements, namely political groups participating in the

election. Their number is determined based on the balance of the election results. Election Contesting Organizations (OPPs) that do not get representatives in the DPR are guaranteed to get one representative in the MPR and the Armed Forces Group of Work and Work Groups are not armed forces which are determined based on appointment. The Armed Forces Group of Work is appointed by Presidential Decree upon the recommendation of the Minister of Defense and Security. The non-armed forces Work Group is appointed by the President either on the recommendation of the organization concerned or on the President's initiative (Article 1 paragraph (3) and (4)). The number of class delegates appointed is 1/3 of all DPR members. The non-armed forces Work Group is appointed by the President either on the recommendation of the organization concerned or on the President's initiative (Article 1 paragraph (3) and (4)). The number of class delegates appointed is 1/3 of all DPR members. The non-armed forces Work Group is appointed by the President either on the recommendation of the organization concerned or on the President's initiative (Article 1 paragraph (3) and (4)). The number of class delegates appointed is 1/3 of all DPR members.

By observing these articles, people can actually understand that Law Number 16 of 1969 has deviated from the democratic ideas contained in the 1945 Constitution as described above. The composition of the MPR which is regulated by Article 2 of the 1945 Constitution is intended to make the MPR truly the incarnation of all Indonesian people, both individually and in groups. This article contains the idea of people's participation through the MPR and accountability, these ideas have not been clearly regulated in Law Number 16 of 1969, but instead have received restrictions that hinder their implementation.

Irregularities occurred in connection with the procedure for the appointment of 100 DPR members. This means that one hundred members of the DPR do not represent the people, but instead represent the President and the Minister of Defense and Security and related organizations, even though Article 2 of the 1945 Constitution places the DPR as people's representatives. So it can be said that the regulation regarding MPR members from DPR elements according to Law Number 16 of 1969 is an inconsistent implementation of Article 2 of the 1945 Constitution. President Habibie granted East Timor's option to be independent without the approval of the House of Representatives, so the President's actions violated the Constitution, article 10 of the 1945 Constitution. Chief of Army Strategy. Appointment Dismissal of PANGKOSTRAD is the authority of the Commander of the Indonesian National Army. President Megawati, handed over non-Bajetter Fund assistance to build TNI dormitories, without prior budgeting in the APBN and without the approval of the DPR. This deviates from the provisions of Article 10 of the 1945 Constitution.

III. CONCLUSION

Based on the description in the previous section, it can be concluded that the implementation of the power of the President of the Republic of Indonesia as the highest authority over the Army, Sea and Air, must obtain the approval of the DPR. Unless the State is in a state of emergency. In contrast to the implementation of the president's power of the United States as the holder of the highest power over the army and navy. It does not have to get congressional approval, because the position of the president is as commander in warfare, to maintain the security of the United States of America.

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