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**Reviewing Montesquieu's Thoughts on Trias Politica and Its Relevance to Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia: Securing Freedom and Preventing Authoritarianism**

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**ABSTRACT**

Many legal researchers have published studies on Trias Politica, but few have applied it clearly in government and democratic systems, especially in Indonesia which has a mixed government system, namely the Presidential System and the Multiparty System which are regulated clearly in Article 6A paragraph (2) of the 1945 Constitution. , which causes uncertainty in government practices in Indonesia. This research aims to review how the concept of separation of powers in Montesquieu's Trias Politica develops in the legal and government system in Indonesia. This research uses a doctrinal method with a statutory and conceptual approach. The research results show that Indonesia has not implemented the Trias Politica concept firmly, and the application of Article 6A paragraph (2) has the potential to lead to abusepower.

**Keywords :** Trias Politica, Multiparty, Article 6A paragraph (2), Presidential System, Confusion

**INTRODUCTION**

Montesquieu was a (French philosopher-1748) who taught the concept of Trias Poltica, where Trias Politica comes from the Greek "Tri" meaning three, "As" meaning axis/center, and "Politica" meaning power. The trias politica concept divides state power into three branches of power, namely legislative, executive and judicial powers. Legislative Power plays the role of making laws, Executive Power implements laws and Judicial Power is the power to judge violations of laws(1). The concept of Trias Politica is a normative principle that powers should not be handed over to the same person to prevent abuse of power by those in power as written by Montesquieu in his book L'esprit des lois (The Spirit of Laws). This separation of powers is expected to create a system that balances and controls each other (checks and balances), so that power is not concentrated in one person or group which can lead to arbitrariness.(2).

Indonesia constitutionally adheres to a clear presidential system, but the current government situation raises questions about the government system being implemented. Even though there are variations in the system developed within the framework of the presidential system, such as the general election, Indonesia also still maintains several parliamentary features, such as the multiparty system.(3). If you look at Article 7C in the 1945 NRI Law, it is very clear that the President cannot suspend and/or dissolve the DPR, then it is also very clear that Indonesia adheres to a presidential system.(4). Several conditions that support the statement that Indonesia adheres to a presidential system include: first, the use of the term "President" as head of government and state. Second, the principle of separation of powers is regulated in Article 1 paragraph (2) of the 1945 Constitution, which shows that no institution is superior to another. All institutions are in the same position with their respective functions. Third, the election of the President and Vice President through direct election by the people in accordance with Article 6A paragraph (1)(5). This shows consistency with the Trias Politica concept. However, there is a mixture of features of the parliamentary system due to the presence of many political parties in politics today.

According to Arif(6) This phenomenon did not happen suddenly, because the presidential election system implemented is difficult to avoid a multiparty system. This is reinforced by the normative basis contained in Article 6A paragraph (2) of the 1945 Constitution, thus providing space for political party combinations to participate in elections. This article is then according to Firdinal(7) changed its meaning when Law Number 23 of 2003 concerning the General Election of President and Vice President was presented to the public, precisely through the provisions of Article 5 paragraph (4) which states that: "Candidate Pairs as referred to in paragraph (1) can only be proposed by political parties or coalitions political parties that obtain at least 15% (fifteen percent) of the total seats in the DPR or 20% (twenty percent) of the valid votes nationally in the DPR member elections."

In fact, this provision, known as the Presidential Threshold, is also not much different, which also appeared again in the election law in subsequent years, such as in Law Number 42 of 2008, then continued in Law Number 15 of 2011, Law Number 7 2017 and now updated with a Perpu issued in December 2022(8). Then from here we begin to see confusion in the model of our democratic system and state, as if everything was just mixed up indiscriminately by taking advantage of loopholes in positive law, thus creating conditions that are prone to abuse of power. It is several of the ambiguous things above that ultimately underlie the author's interest in studying how the principle of separation of powers in Montesquieu's Trias Poltica teachings should be able to prevent two state institutions (Legislature & Executive) from being mixed up and its relevance to Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia. which obscures the practice of the Presidential System in Indonesia.

## RESEARCH METHODS

This research is doctrinal legal research carried out by examining library materials or secondary data, consisting of two types, namely primary legal materials consisting of Legislation, and secondary legal materials consisting of literature, journals, research results and other journalism products related to this research. The approach used is a statutory and conceptual approach. The analytical method used is literature study. The data obtained will be processed qualitatively by classifying the data according to the problems in the research, compiling the results of data qualifications systematically, and analyzing the data that has been systematically arranged to serve as a basis for drawing conclusions.

## RESULTS AND DISCUSSION

### A. Implications of Montesquieu Thought in Building a Balanced and Democratic Government System

Montesquieu's thoughts on Trias Politica as described at the beginning have been implemented in the presidential government system in Indonesia, with the separation of powers to each state institution based on the constitution.

This separation of powers is horizontal in the sense that power is divided into functions that are manifested in equal and balanced state institutions (checks and balances). Meanwhile, vertical distribution of power means that the realization of power is distributed vertically downwards to high state institutions under the mechanism of popular sovereignty. Even though they exercise their authority independently, each institution of power must still carry out supervision and balance between institutions of power.(9). According to Montesquieu, when the legislative and executive powers are united in the same person or institution, there will no longer be freedom because there is a risk that the same king or legislative body will enact tyrannical laws and execute them in a tyrannical manner, thus the three powers It must be separate, both in function and in the institution that organizes it.

The emergence of the idea of separation of powers was driven by a concept introduced by Montesquieu, namely that political freedom (political liberty) is difficult to maintain when state power is controlled or monopolized by one ruler or political institution, so limiting power becomes important

to guarantee this freedom.(10).

The principle of checks and balances is a constitutional principle which aims to ensure that legislative, executive and judicial powers are equal and control each other. State power can be regulated, limited and even controlled as well as possible, so that abuse of power by state administrators or individuals who currently occupy positions in state institutions can be prevented and dealt with.(11). According to Sunarto, efforts to realize checks and balances in the Indonesian constitutional system have been carried out through amendments to the 1945 Constitution, there are no longer any institutions that are considered the highest state institutions. The president is elected directly by the people so he has great power. Making laws is the main authority of the DPR, although it still requires the President's approval. Then laws made by the DPR and the President can be corrected by the Constitutional Court through a judicial review mechanism. Finally, when there is a dispute over authority between state institutions, the Constitutional Court has the authority to decide(12). In line with Sunarto, this is also what Sulardi & Sastra said(13)Checks and Balances are a very important principle, especially in countries that use a presidential system. This principle ensures that government runs stably and effectively, as long as these mechanisms are implemented correctly. If state institutions can control and balance each other, then the presidential system of government will work well. However, Sulardi added that the implementation of checks and balances in Indonesia by the President and DPR is often not in accordance with the mechanisms regulated in the constitution. Therefore, a coalition between political parties in the context of presidentialism is very important to strengthen the presidential system in Indonesia. The percentage of political party support in parliament is one way to increase the effectiveness of the presidential system. However, the DPR's power being too strong can make the Executive Agency hesitate in making decisions, so that the checks and balances mechanism does not work effectively in practice. Even further, the power of the DPR, which seems too strong, seems to be nothing compared to the power of the chairman of a political party, as was recently conveyed by the Chairman of Commission III of the DPR RI, Bambang Wuryanto (Bambang Pacul) in the Working Meeting of Commission III with Coordinating Minister for Political, Legal and Security Affairs Mahfud MD as quoted by the Kompas editorial team(14).

Meanwhile Azed(15), holds the view that in a pure presidential system of government, the parliamentary institution has full authority in forming laws, while the President does not have the power to be involved in the process of forming bills. However, the President is given veto power to reject a law made by parliament. To implement a pure presidential system in Indonesia, the constitution needs to be changed so that the DPR has full authority in forming laws and the President is given veto rights to reject them if they do not agree. Azed emphasized the importance of a system of mutual control and balance between branches of state power to prevent state institutions exercising power from becoming too powerful, arbitrary, authoritarian or even dictatorial.

From this it can be seen that Montesquieu's thoughts on Trias Politica conceptually have had an impact in realizing a stable and democratic Indonesian presidential system even though in the constitution there is still an unclear separation of powers and in practice it is still not effective.

#### **B. The Influence of Article 6A paragraph 2 of the 1945 Constitution of the Republic of Indonesia in Realizing Individual Freedom and Abuse of Power**

Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia clearly states that "Pairs of candidates for President and Vice President are proposed by political parties or combinations of political parties participating in the general election before the general election is held." From this article it can be seen that Indonesia implements a multi-party system because those who have the right to nominate pairs of candidates for president and vice president are political parties or combinations of political parties. This means that at least two political parties join forces to nominate the president to compete with other candidates put forward by other political parties(16). Hasan added that the multi-party system does not really affect the presidential system of government

because the President is not responsible to the Parliament/DPR. The president is elected directly by the people in general elections and holds office for a certain period of time. In a presidential system, the President is only responsible for carrying out executive duties, while legislative duties lie with Parliament as the legislative body. Even though a multi-party system can have a positive influence if the party that supports the government/President has a majority of votes in Parliament, there are negative consequences in the relationship between the President and Parliament, especially difficulties in making laws that are intended to regulate people's lives because each political party has a different political program. different things that you want to put into law.

In contrast to Hasan, Bambang stated that combining a multiparty system with a presidential system is actually not appropriate because the two are not compatible, a multiparty system is more suitable to be implemented in a consensus democratic system, where the prime minister serves as the executive head of government.(17). In line with Bambang, there is another view which states that if a presidential system is combined with a multiparty system, especially with a relatively high level of fragmentation and polarization, there will be differences in support. Direct presidential election by the people does not necessarily provide strong enough political support in parliament. It is feared that this will cause deadlock and immobilism in a pure presidential system, because the president will have difficulty obtaining stable support from the legislature, making it difficult for policies to be realized. Even though the presidential system does not actually depend on parliament, in Indonesia, after the reform of the Constitution, the parliament/DPR has a strong position and great authority (Legislative Heavy), so the current parliamentary style is a parliamentary system style, which can be a serious problem in implementing the system. presidential in Indonesia(18).

In the context of democracy, political parties are a very important pillar because the President and Vice President as government leaders have control over the running of the government. With Article 6A paragraph (2), only political parties have the exclusive right to nominate President and Vice President(19). However, Sudarsa emphasized the need to evaluate the role of political parties and the system implemented after reform, whether political parties have played a role as effective pillars of democracy and promoted stable government or not. If not, then there is an error in the system implemented.

In line with the role and function of political parties which are so clear in Article 11 paragraph (1) of Law Number 2 of 2008, in reality the dynamics of social and political life in Indonesia today have caused people to lose their trust in political parties. In fact, political parties should carry out their ideal functions and roles for the interests and welfare of the people as their constituents. The failure of political parties to implement mechanisms of cadreization, ideology and political education in society also has long-lasting effects on the expected democratic order.(20). Based on these facts, political parties should be fighting for the interests of the community or at least their constituents, but in fact it doesn't happen that way. On the other hand, political parties appear to be more busy fighting for power and wealth, even though in fact the function of political parties is to seek power minus wealth. This causes more important and crucial problems faced by society, such as poverty and injustice, to be ignored(21).

Not to mention, if we look at the further elaboration in the existing Election Implementation Law with the application of a presidential threshold, in fact, according to the author, it only shows how presidential and vice presidential candidates are limited by existing regulations, this of course further degrades the meaning of freedom. people to choose and be elected. At the same time, if you examine it critically, you will certainly see a confusion, the existence of threshold regulations as a form of expanding the meaning of Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia also seems to show that the Presidential and Vice Presidential candidates are just people entrusted by political parties. with the highest percentage obtained, so that when the Presidential candidate and Vice Presidential candidate are then elected, it is not impossible that there will be abuse of power between the Executive and the Legislature in the future. So, indirectly, this is

something that is confusing, even though the people can directly elect the President and Vice President as mandated by Article 6A paragraph (1), but in practice we seem to be biased and know which candidate pair will be elected because it is promoted by the party. politics and coalitions are limited to just those people. Although it cannot be denied that the flow of politics in Indonesia is very dynamic.

### CONCLUSION AND SUGGESTION

From the description above several conclusions can be drawn that; First, the Trias Politica concept put forward by Montesquieu regarding the separation of powers has had quite broad implications for the development of law and politics in Indonesia, conceptually it has had an impact in realizing a stable and democratic Indonesian presidential system even though in the constitution there is still an unclear separation of powers and in practice still running and not effective. Second, the application of Article 6A paragraph (2) is increasingly degrading the meaning of people's freedom to choose and be elected. At the same time, confusion arises regarding this article which is prone to abuse of power.

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