



MORFOSA LEMBAGA PERTIMBANGAN PRESIDEN: STUDI SEBELUM DAN SETELAH AMANDEMEN KONSTITUSI

Muhammad Kevin Setio Haryanto* dan Zainal Arifin Mochtar**

INTISARI

Historis-ketatanegaraan Indonesia mengalami 3 (tiga) fase perkembangan lembaga pertimbangan presiden. Fase pertama ditunjukkan dengan dibentuknya Dewan Pertimbangan Agung (DPA), diikuti oleh fase kedua ketika DPA dihapuskan dalam dua periode konstitusi (Konstitusi RIS dan UUD'S 1950), dan fase ketiga yang merujuk pada transformasi DPA menjadi Dewan Pertimbangan Presiden (Wantimpres). Penelitian ini berfokus pada fase pertama dan ketiga yang masing-masing bermorfosa pada garis waktu sebelum dan setelah amandemen konstitusi Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945). Dengan menggunakan metode yuridis-normatif dan menitikberatkan pendekatan historiografis-peraturan, penelitian ini mengkonstruksikan 2 (dua) rumusan masalah: i) bagaimana perkembangan lembaga pertimbangan presiden sebelum amandemen UUD 1945? dan ii) bagaimana perkembangan lembaga pertimbangan presiden setelah amandemen UUD 1945? Berpijak pada bahan hukum berupa risalah pembahasan dan perubahan UUD 1945 serta pengaturan-pengaturan kelembagaan terkait, fokus utama Penulis ialah untuk menelusuri i) diskursus konstitusional (*constitutional discourse*) terhadap Pasal 16 UUD 1945 (baik pembentukan DPA maupun perubahannya menjadi Wantimpres) dan ii) dinamika pengaturan DPA dan Wantimpres pada masing-masing periode keberlakuan UUD 1945 sebelum dan setelah amandemen.

Hasil penelitian ini menyimpulkan dua hal. **Pertama**, pembentuk konstitusi terinspirasi dari model lembaga pertimbangan ala Belanda (*Raad van State*) yang kemudian ditransplantasikan pada pembentukan Pasal 16 UUD 1945, meskipun terdapat perbedaan pada aspek ruang lingkup nasihat dan pertimbangan yang diberikan. Praktik ketatanegaraan DPA kala itu bermorfosa dengan bergantung pada 2 (dua) variabel utama, yaitu i) transisi sistem pemerintahan presidensial menjadi parlementer dan ii) tafsir pemerintah terhadap ruang lingkup fungsi pertimbangan DPA. **Kedua**, selama empat kali proses amandemen UUD 1945, Pasal 16 mengalami perdebatan konstitusional yang menjadi penentu nasib dipertahankan atau dihapuskannya Pasal *a quo*. Wantimpres yang lahir dari rahim Pasal 16 secara normatif menunjukkan tren pelemahan dari aspek kedudukan dan fungsinya. Bahkan dalam konteks *ius constituendum* yakni upaya amandemen kelima, Wantimpres semakin menunjukkan tren pelemahan, hingga di saat yang bersamaan menimbulkan pertanyaan mendasar: apakah struktur ketatanegaraan Indonesia membutuhkan lembaga pertimbangan presiden?

Kata kunci: Lembaga pertimbangan presiden, DPA, Wantimpres

* Mahasiswa Konsentrasi Hukum Tata Negara, Sarjana, Fakultas Hukum, Universitas Gadjah Mada

** Pengajar pada Departemen Hukum Tata Negara, Fakultas Hukum, Universitas Gadjah Mada

MORPHOSA OF THE PRESIDENTIAL ADVISORY COUNCIL: A STUDY BEFORE AND AFTER CONSTITUTIONAL AMENDMENT

Muhammad Kevin Setio Haryanto* dan Zainal Arifin Mochtar**

ABSTRACT

Indonesia's constitutional history has experienced 3 (three) phases of development of presidential consideration institutions. The first phase is indicated by the establishment of the Supreme Advisory Council (DPA), followed by the second phase when the DPA was abolished in two constitutional periods (RIS Constitution and UUD'S 1950), and the third phase which refers to the transformation of the DPA into the Presidential Advisory Council (Wantimpres). This research focuses on the first and third phases, which respectively morphed on the timeline before and after the constitutional amendment of the 1945 Constitution of the Republic of Indonesia (UUD 1945). By using the juridical-normative method and emphasizing the historiographical-rule approach, this research constructs 2 (two) problem formulations: i) how was the development of the presidential consideration institution before the amendment of the 1945 Constitution? and ii) how was the development of the presidential consideration institution after the amendment of the 1945 Constitution? Based on legal materials in the form of minutes of discussions and amendments to the 1945 Constitution as well as related institutional arrangements, the main focus of the author is to explore i) the constitutional discourse on Article 16 of the 1945 Constitution (both the establishment of the DPA and its change to Wantimpres) and ii) the dynamics of the DPA and Wantimpres arrangements in each period of the enactment of the 1945 Constitution before and after the amendments.

*The results of this study conclude two things. **First**, the framers of the Constitution were inspired by the Dutch model of a consideration institution (Raad van State) which was then transplanted into the formation of Article 16 of the 1945 Constitution, although there were differences in the scope of advice and consideration given. The DPA's constitutional practice at that time morphed depending on 2 (two) main variables, namely i) the transition of the presidential government system to parliamentary and ii) the government's interpretation of the scope of the DPA's consideration function. **Secondly**, during the four amendment processes of the 1945 Constitution, Article 16 experienced constitutional debates that determined the fate of the retention or elimination of the Article. The Wantimpres, which was born from the womb of Article 16, normatively shows a weakening trend in terms of its position and function. Even in the context of the *ius constituendum*, namely the fifth amendment effort, the Wantimpres is increasingly showing a weakening trend, which at the same time raises a fundamental question: does Indonesia's constitutional structure require a presidential advisory council?*

Keywords: *Presidential advisory council, DPA, Wantimpres*

* Constitutional Law Department Student, Bachelor Degree Program, Faculty of Law, Universitas Gadjah Mada

** Lecturer in the Constitutional Law Department at Faculty of Law, Universitas Gadjah Mada