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Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices

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ABSTRACT

The history of the Indonesian constitution has implemented Parliamentary and Presidential systems at different times. However, in practice it creates ambiguity in system implementation. The presidential system currently implemented is experiencing a dilemma due to regulation and separation of powers which tends to still have a parliamentary nuance. This research is library research that examines and explores regulatory documents, books, journals and other scientific works that are relevant to the topic of discussion. The results of data collection were analyzed in depth and then presented descriptively analytically. This article aims to provide ideas for building a concrete government system based on the shift in power functions that has occurred. This article concludes the need to issue a Law on the Presidential Institution which contains concrete limits on the powers of the President and the DPR. The President's capacity as head of government is limited by the party coalition in parliament. Therefore, it is necessary to redefine the roles and relationships between the President, DPR and political parties, clarify the checks and balances mechanism, and support the effectiveness of concrete and proportional government.

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1. Introduction

Every modern country adheres to a different government system depending on the socio-cultural conditions of the people in that country, which are usually contained in the country's Constitution. Likewise, Indonesia, as a modern country, also has a constitution, namely the Constitution of the Republic of Indonesia in 1945 (1945 Constitution of the Republic of Indonesia), which is a reflection of its government system.

At the beginning of Indonesian independence, on 18 August 1945, the Indonesian government applied the presidential system, which was reflected in Article 4 paragraph (1) of the 1945 Constitution, which states that the President of the Republic of Indonesia holds government power according to the Constitution. Thus, since May 2017, the President, apart from being head of state, has also been head of government. The government system was based on the 1945 Constitution, then changed in 1949, marked by the enactment of the 1949 RIS Constitution (27 December 1949 - 17 August 1950), namely the parliamentary system. Article 69, paragraph (1) states, "The President is Head of State". Thus, those who carry out and are accountable for government duties are the Prime Minister and ministers. In a parliamentary government system, the government is responsible to parliament (DPR). Meanwhile, the position of the President is as Head of State.[1]

As the organizer of state government, the president has constitutional powers, which can be in the form of powers in the areas of legislation, judiciary, relations with foreign countries, appointing and dismissing ministers, as well as appointing, dismissing, appointing or inaugurating certain other state officials. Indonesia, as a country whose state administrator is the President, also has power. However, it has similarities and differences with other countries, such as the United States, Germany, Russia, Japan, China, South Africa, Kuwait, and Australia, which are based on the constitutions of these countries.[2]

A presidential system is a government system where the executive is not responsible to parliament. In other words, executive power is outside (direct) supervision by parliament. In principle, in this presidential government system, the President and Vice President are the institutions administering the highest state executive power as stipulated in the Constitution. In this presidential system, the head of state and head of government are in one hand, namely the President. In carrying out state government, political power and responsibility are in the hands of the President (concentration of power and responsibility upon the President).

A presidential government system has at least several characteristics, including:

1. The President is the chief executive who leads his cabinet, all of whom are appointed by him and are responsible to him. He is also the head of state (state symbol) with a term of office that has been determined exactly by the Constitution;
2. The president is not elected by the legislative body but is elected by a number of voters. Therefore, it is not part of the legislative body as in a parliamentary government system; and
3. The President is not responsible to the legislative body and cannot be overthrown by the legislative body.

In balance, the president cannot dissolve the legislative body. In general, the presidential government system has 3 (three) kinds of advantages. This advantage is executive stability, which is based on the President's term of office. This is different from a parliamentary government system where the executive position is very dependent on parliamentary support. On the other hand, the election of the head of government by the people can be seen as more democratic than indirect election, and the separation of powers means limited government protection of individual freedom over government tyranny.

[1] Muhammad Ibrahim Rantau, 'Penguatan Sistem Presidensial Di Indonesia: Analisis Terhadap Undang Undang No 7 Tahun 2017 Tentang Pemilihan Umum', *Pelita: Jurnal Penelitian Dan Karya Ilmiah, Universitas Islam Syekh Yusuf*, 19.2 (2019), 181–93. https://doi.org/10.33592/pelita.Vol19.Iss2.120.

[2] Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68–84. https://doi.org/10.20961/bestuur.v10i1.59098.

Apart from the several advantages of the presidential system, this presidential system also contains disadvantages, namely triggering stagnation or executive-legislative conflict, which can turn into a "deadlock," and "deadlock" is the result of the co-existence of 2 (two) independent bodies created by the presidential administration and that may conflict. This also leads to the creation of temporal rigidity. It will also be made worse by the provisions for the Vice President to replace the President automatically if the President is permanently absent (dies) or is no longer able to carry out his duties, and this system runs on the basis of the "winner controls all" rule which tends to make democratic politics a game with all its potential conflicts.[3]

The presidential system in the 1945 Constitution of the Republic of Indonesia before the amendment, as confirmed in the explanation of the 1945 Constitution, was as follows:

1. Indonesia is a country based on law;
2. Constitutional System;
3. Supreme State Power is in the Hands of the People;
4. The President is the Highest Organizer of the State Government under the Assembly;
5. The President is not responsible to the DPR (Parliament);
6. State Ministries are Assistants to the President, and State Ministers are not responsible for the DPR; and
7. The powers of the Head of State are not unlimited.

The government system adopted in the 1945 Constitution is a presidential government system with an emphasis on a balanced separation of powers. With demands for reform, amendments were made to the 1945 Constitution 4 (four) times. One of which had the aim of strengthening the presidential system as regulated in the 1945 Constitution.

This problem can also be seen from the regulations regarding the election of the President and Vice President after the amendment to the 1945 NRI Constitution, as stipulated in Article 6A of the 1945 NRI Constitution on space for the President and Vice President to be elected through a direct election mechanism supported by a political party or political combination. However, the spirit of reform and changes in the constitutional paradigm is not balanced with the provisions of Article 8, paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia on space for the People's Consultative Assembly to carry out the election of the President and/or Vice President in the event of a vacancy in the position of President and/or Vice President.[4]

In general, the government system implemented in democratic countries, including Indonesia, adheres to a system, either a presidential system, a parliamentary system, or a form of variation caused by different situations and conditions, giving rise to mixed (quasi) forms, for example, quasi-parliamentary and quasi-presidential.[5] The two main alternative models, the presidential government system and parliamentary government, have always been debated even longer than the implementation of modern democracy itself, which was not fully implemented in all corners of the world until the early 20th century. At least this debate arises when the presidential system of government often shows signs of returning to a dictatorial

[3] Jimly Asshiddiqie, 'Building a Constitutional Aware Culture to Create a Democratic Law State', *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 8.1 (2023), 1–11. https://doi.org/10.22373/petita.v7i2.128.

[4] Bambang Ariyanto and Rachman Maulana Kafrawi, 'Orderly Principles of State Administration in Selecting Ministers', *Legality: Jurnal Ilmiah Hukum*, 30.1 (2022), 12–28. https://doi.org/10.22219/ljih.v30i1.15868.

[5] R Ridwan, 'Eksistensi Dan Urgensi Peraturan Menteri Dalam Penyelenggaraan Pemerintahan Sistem Presidensial', *Jurnal Konstitusi*, 18.4 (2022), 828–845. https://doi.org/10.31078/jk1845.

regime, especially since the leadership comes from military elements. But can a presidential system not work effectively? Of course, can. However, there are six factors that must be met to create an effective presidential system. The first factor, the president and vice president must have strong legitimacy from the people. Second, the constitution gives adequate authority to the president to carry out legislative and budgetary functions so that he has access to prepare the budget, in this case it is necessary to form a law regarding the institution of the President. Third, the president and vice president have the support of a strong majority of political parties in the DPR. Fourth, political leadership is needed from the president to convince the public and the DPR, in this case communication between all political parties in the DPR needs to be built. The fifth factor that must be considered is that the president must be assisted by political staff who have expertise in the field of government and assist him in implementing the president's vision, mission and programs which are national strategic programs. Sixth, political staff must be able to control bureaucratic operations.

Therefore, it is not surprising that great attention to the presidential system of government and parliamentary government emerged at the same time as the wave of democratization, which certainly has never been as vibrant or widespread as it is now. In the context of the government system in Indonesia, the dynamics of the relationship between the executive and legislative power experience ups and downs due to changes in the government system and the power regime that controls the Indonesian government. Since Indonesia's independence, viewed from the aspect of constitutional history, Indonesia has implemented two systems of government at different times, namely a parliamentary system and a presidential system. Meanwhile, the power regime that controls the Indonesian government is divided into three periods, namely the old order era, the new order era, and the reformation era. In fact, it is this power regime that largely determines the structure of executive power in the Indonesian government system.

The debate that emerged regarding this issue was generally pioneered by the United Kingdom and the United States of America, which became the main models of parliamentary and presidential government and then spread to other countries, including Indonesia.[6] Specifically, for Indonesia, it has been a matter of debate to this day among experts in constitutional law and politics as to what form of government system Indonesia adheres to. Hanta Yuda stated that when the 1945 State Constitution of the Republic of Indonesia had not been amended, Indonesia's government style was often said to be a semi-presidential system. The amendment to the 1945 Constitution is very fundamental because it changes the principle of popular sovereignty which was previously fully implemented by the MPR to be implemented in accordance with the Constitution. These changes cause all state institutions in the 1945 Constitution to have the same position and exercise popular sovereignty within the scope of their respective authorities in accordance with the Law. Another change is from the very large power of the President (concentration of power and responsibility in the President) to the principle of mutual supervision and balance (checks and balances). The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is a basic reference regarding state regulations and is a legal basis for the Unitary State of the Republic of Indonesia. The 1945 Constitution is the highest source of law in Indonesia and is the embodiment of the foundation of the Indonesian

[6] Zulkarnain Ridlwan dan Zainal Arifin Mochtar, "Regulate DPR's Committees: Making Indonesian Presidential System Mo1re Representative," *Fiat Justisia: Jurnal Ilmu Hukum*, 13.2 (2019), 129–50. https://doi.org/10.25041/fiatjustisia.v13no2.1566.

state (ideology), namely Pancasila, which is mentioned in the Preamble of the 1945 Constitution.[7]

However, the practice of the Indonesian government system is actually closer to a parliamentary style, as was the case during the Constitution of the United Republic of Indonesia (RIS) and Temporary Law of 1950. After the third and fourth amendments to the 1945 Constitution of the Republic of Indonesia in 1999-2002, the Indonesian government system became a pure presidential system. This confirmation is contained in the basic agreement of the MPR regarding the direction of changes to the 1945 Constitution to maintain the presidential system of government, but there is no official confirmation in the Constitution, but we can find the characteristics of the presidential system in the 1945 Constitution. The Constitution after the changes, among others: Sovereignty is in the hands of the people and is implemented according to the Constitution (Article 1 Paragraph 2); The President of the Republic of Indonesia holds government power according to the Constitution (Article 4 Paragraph 1); The President and Vice President are directly elected by the people as candidate pairs (Ps.6A Paragraph 1); The President and Vice President serve for five years (Ps.7); The President and Vice President can be dismissed during their term of office by the MPR at the suggestion of the DPR, whether they are proven to have committed legal violations in the form of treason against the state, corruption, bribery and other serious acts. commits a criminal act, or disgraceful act, or if it is proven that he no longer meets the requirements to be President and/or vice president, by first submitting a request to the Constitutional Court to examine, try and decide on the opinion of the DPR (articles 7A and 7B); The President cannot dismiss and/or dissolve the DPR (Article 7c); The President's position as head of state (Articles 10-16); The President is assisted by state ministers, these ministers are appointed an dismissed by the President (Article 17); The DPR holds the power to form laws (Article 20 Paragraph 1), the Indonesian government system became a purely presidential system. Meanwhile, Bagir Manan said that the Indonesian government system adheres to a presidential system of government because he believes that the president's accountability to the People's Consultative Assembly Republic of Indonesia (MPR RI) is not an accountability to the legislative body. In this case, he added that the President's accountability to the MPR should not be equated with the cabinet's accountability to parliament (in a parliamentary system). In the context of changes to the 1945 State Constitution of the Republic of Indonesia, there is currently widespread debate regarding the government system that should be developed in Indonesia in the future. In fact, almost all political debates related to constitutional mechanisms are always linked to controversies regarding the uncertainty of the constitutional system, which originates from weaknesses in the formulation of the 1945 State Constitution of the Republic of Indonesia. One of the most debated issues is about the government system.

It has always been said that the 1945 State Constitution of the Republic of Indonesia adheres to a presidential government system. At least, this is the system that was originally envisioned as ideal by the drafters of the 1945 Constitution. However, if we examine it carefully, the presidential system adopted in the 1945 Constitution is not at all pure in nature. One of the main characteristics of the parliamentary system adopted in the 1945 Constitution is regarding the President's accountability to the MPR as a parliamentary institution that has the position of the highest state institution (supreme council). In its position as the highest state institution, MPR also has the authority to dismiss the president in the middle of his term of office for

[7] Rahmat Teguh Santoso Gobel, 'Rekonseptualisasi Ambang Batas Pencalonan Presiden Dan Wakil Presiden (Presidential Threshold) Dalam Pemilu Serentak', *Jambura Law Review*, 1.1 (2019), 94–119. https://doi.org/10.33756/jalrev.v1i1.1987.

alleged violations of state policy. Moreover, the definition of state policy is very broad since it may include political and legal meanings at the same time.

The parliamentary system is a government system where the relationship between the executive and the representative body (legislature) is very close. This is due to the accountability of ministers to parliament. Thus, every cabinet that is formed must receive the support of confidence with a majority vote from parliament. Thus, government or cabinet policies must not deviate from what parliament wants.

A government system is called a parliamentary system, if the executive (government) is completely dependent on the support of the majority in parliament and is directly responsible to the legislative body (the body that holds legislative power). The head of government (usually the prime minister) is a member of parliament who is also the leader of the majority party or majority coalition in parliament.[8] This explanation is interpreted as being directly responsible to parliament, meaning that the continuity of executive power depends on the trust and support of the majority of votes in the legislative body. Sometimes in certain situations, a minority government where the executive who regulates the results of the general election process does not get the support of a majority of members of parliament. From constitutional history, this parliamentary system is a continuation of the Constitutional Monarchy form of state, where the king's power is limited by the Constitution. In a parliamentary system, the president, king, and queen are heads of state.[9]

There are several characteristics of a parliamentary government system. First, the role of the head of state is only symbolic and ceremonial and has very limited political influence, even though the head of state may be the president. Second, the executive branch of power is led by a prime minister or chancellor who is assisted by the cabinet, which can be elected and dismissed by parliament. Third, parliament is elected through elections at varying times, which are determined by the head of state based on input from the prime minister or chancellor.[10]

Seeing these characteristics in a parliamentary government system, the position of the executive, in this case the cabinet, is lower than that of the parliament. Because of this weak position, to balance power, the cabinet can ask the head of state to dissolve parliament on the grounds that parliament is considered unrepresentative or unable to carry out their duties and functions in accordance with the Constitution. If that happens, then in a relatively short time, the cabinet will have to hold elections to form a new parliament.

A presidential system is a government system where the executive is not responsible to the legislative body. The holder of executive power cannot be overthrown by or through the legislative body even though the policy being implemented is not approved by the holder of legislative power. In a presidential government system, the executive and legislative bodies have an independent position. The two bodies are not directly related as in a parliamentary government system. They are elected by the people separately. The presidential system, also known as the congressional system, is a republican government system in which executive

[8] Eze Elekwachi and Henry Ufomba, 'Political Patronage and Bureaucracy: Studies in Nigeria and Indonesia', *Jurnal Mengkaji Indonesia*, 3.1 (2024), 1–26. https://doi.org/10.59066/jmi.v3i1.564.

[9] Soeleman Djaiz Baranyanan, 'Simplification of Law Regulations in Copyright Criminal Act Settlement', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 81–92. https://doi.org/10.53955/jhcls.v1i2.9.

[10] Faishal Aminuddin, 'Left-Right Spectrum and Democratic Backsliding: India, Indonesia, and the Philippines in Comparative Perspectives', *Jurnal Penelitian Politik*, 20.1 (2023), 17–33. https://doi.org/10.14203/jpp.v20i1.1376.

power is elected through elections and is separate from legislative power. According to Rod Hague, a presidential government consists of a President elected by the people, leading the government, and appointing relevant government officials. The president and the representative council have a fixed term of office. They cannot overthrow each other, and there is no overlapping status between the executive and legislative bodies.[11]

In a presidential system, the president has a relatively strong position and cannot be overthrown because of subjective lows such as low political support. However, there is still a mechanism to control the president. If the president commits violations of the Constitution, commits treason against the state, or is involved in criminal matters, the position of the president can be overthrown. If he is dismissed for certain violations, usually, a vice president will replace his position. In a presidential government system, a President is responsible to his voters.[12] Thus, a president is dismissed based on accusations from the House of Representatives (DPR) after being decided by the Senate. An example is the presidential government system in the United States.

Indonesia has been experimenting for quite a long time with implementing a parliamentary government system and a presidential government system, which currently seems to be mixed. However, both have proven to have failed to build democracy and manifest justice for all citizens. There are indeed many theories regarding this. Many experts also do not reject the conclusion that the parliamentary system has failed to be put into practice. However, in historical reality, the difficulties that arose as a result of implementing a parliamentary system at the beginning of independence cannot be denied that Indonesia has not fully succeeded in implementing an ideal parliamentary system.. Therefore, it is not easy to formulate other reasons to idealize the implementation of the parliamentary system in Indonesia in the future. In fact, it has never been seriously implemented in Indonesia, namely a pure presidential system, where the President is elected and politically responsible only to the people, not to parliamentary institutions. Even if the presidential election is chosen indirectly, for example, through the electoral college, like in the United States, the President's responsibility remains directly to the people, not to the electoral college, which functions as a parliament like in the MPR system.[13]

2. Research Method

This research is qualitative research that uses normative legal research methods. Normative legal research is legal research oriented to the relationship between principles, theories, concepts, doctrines and legal regulations. This research uses primary legal materials, including the 1945 Constitution of the Republic of Indonesia. This research also uses a legal approach, a conceptual approach and a doctrinal approach. Legal materials include all types of research that discuss government theory, government systems, political party theory, as well as the concept of separation of powers and also involve various studies regarding the practice of sharing power from other countries, multi-party system relations. and executive

[11] Alfonsus Ryan Widiono and Sheng Zhang, 'Party Institutional Perspectives on Open Proportional System Flaws', *Jurnal Mengkaji Indonesia*, 3.1 (2024), 27–40. https://doi.org/10.59066/jmi.v3i1.592.

[12] Dian Latifiani, 'Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)', *Journal of Indonesian Legal Studies*, 6.1 (2021), 157–84. https://doi.org/10.15294/jils.v6i1.44450.

[13] David Landau, 'Presidential Term Limits in Latin America: A Critical Analysis of the Migration of the Unconstitutional Constitutional Amendment Doctrine', *The Law & Ethics of Human Rights*, 12.2 (2018), 225–49. https://doi.org/10.1515/lehr-2018-0013.

and parliamentary power, and other studies. related to the development of the constitutional and social political system in Indonesia. Analysis of legal materials is carried out by collecting existing legal materials (inventory), then carrying out legal analysis by prioritizing legal concepts and doctrines adapted to the formulation of the problem being discussed, and the results of the analysis then confirm the existence of a legal solution. (prescription) that answers legal issues. that's what's being talked about. The results of the discussion and analysis of the material are then compiled and presented in a descriptive analytical manner, thus providing a clear picture of the findings in this paper.

3. Result and Discussion

3.1 Problems of Executive and Legislative Power

The role of the executive and legislative can be literally interpreted as the role of "executive" as government, while "legislative" is as legislator/lawmaker at the parliament. However, in fact, the legislative function is only a part of the main task of parliament. The origins of the formation of parliamentary institutions in European history were motivated by the need to supervise and control the implementation of government tasks. Even the term parliament itself comes from the French word "*parle*," which means "to speak." This means that what is prioritized over parliament is basically the function of "controlling" instead of "legislating." Even though the legislative function is specified in the Constitution formally as the main function of parliament, in practice, the legislative function is still not effective in depicting a balance between the government and parliament. For example, we can see what happens in idealized countries practicing democratic systems, such as the United States of America and France, which clearly stipulate that legislative power resides in parliament.[14] One form of effort to balance the powers of the president and parliament is by regulating aspects of government in conducting consultations. The consultation referred to is that the President is obliged to ask for suggestions and advice from related institutions, especially the DPR, to obtain proposals for government regulations of a national strategic nature. The results of this consultation are used as the main consideration in deciding the final policy outcome.[15]

The magnitude of the President's power to use his weapon to veto bills that have been approved by parliament is also accompanied by a tendency to submit his initiative in drafting laws. It may be that the government actually knows the most about the need to make laws and regulations because the government bureaucracy has the most control over the information and expertise needed for this. Therefore, from the perspective of the relationship between parliament and the government in the future, the idea is to prioritize the "checks and balances" approach, which emphasizes supervision, rather than the "separation of power" approach, which prioritizes legislative tasks. The power to make laws itself tends to develop into a technical nature, while the more political functions of supervision and control

[14] M Nur Rasyid, Sri Maulina, and Manfarisyah Manfarisyah, 'The Decrease of Legislative Functions of The People's Representative Council of The Republic of Indonesia in The Reform Era', *Jurnal Penelitian Hukum De Jure*, 22.2 (2022), 219–28. https://doi.org/10.30641/dejure.2022.V22.219-228.

[15] Gugun El Guyanie and Aji Baskoro, 'The Constitutional Rights Of Indigenous Beliefs Adherents In Minority Fiqh Perspective', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 21.2 (2021), 155–75. https://doi.org/10.18326/ijtihad.v21i2.155-175.

tend to be considered increasingly important in efforts to build an effective image of parliament in order to portray its equality with the government.[16]

In both parliamentary and presidential government systems, there is often a deadlock if a conflict occurs between legislative and executive powers. One of the polemics that is present is related to the establishment of the Asset Confiscation Law and the Currency Restriction Law which aims to suppress criminal acts of money laundering and increase efforts to recover state losses resulting from criminal acts of corruption. The Legislative Council suggested to the President to issue a Regulation in Lieu of Law (PERPPU) as an alternative step to avoid conflicts of interest in the legislative body. However, the executive, in this case the government, is of the view that to strengthen the objective of asset confiscation, this law needs to be issued in the form of a law agreed by the executive and legislative. The government in a presidential system is rigid because it has limited office terms. Meanwhile, the weakness of the parliamentary system is that it does not provide protection to the people because the government comes from the majority party, so it is susceptible to conspiracy and thus denies the aspirations of the people. The government tends to be unstable because if a conflict occurs between the legislature and the executive, the government can be overthrown through a vote of no confidence by parliament.[17]

As an effort to purify the presidential system, it is deemed necessary to amend the provisions in Article 5, paragraph (1) of the 1945 Constitution, "The President has the right to submit the laws draft to the DPR," and Article 20, paragraph (1) of the 1945 Constitution of the Republic of Indonesia that reads "Representative Council hold power to form laws." Substantial changes to these two articles are considered a major shift in legislative power or the power to form laws, namely from the president to the DPR. The DPR is considered to have a stronger position in the use of legislative functions. If we look at the changes to the two articles above, there is indeed a major change in the legislative function, namely a shift in the dominance of the legislative function from the executive to the legislative.[18]

In the post-amendment regulation of legislative functions in the 1945 Constitution, there are still several provisions that show inconsistency with the presidential system adopted. One example is the multiparty system that Indonesia is practicing at the moment. It is less successful in creating an effective government and is even difficult to implement in a government that adheres to a presidential government system, considering that in a presidential system, the president and the legislative body are both directly elected by the people, although through different elections. This means that the legislature and the president both receive a direct mandate from the people. Multiparty systems often have the effect of splitting the vote so that the president's victory in the general election is not necessarily followed by the victory of the president's political party in the legislature. Even though the president wins the general election, it is not uncommon for the president's political party to be a minority force in the legislative body. The difference between the majority party in the legislative body and the president's political party is what often causes tension within these two institutions. Prolonged tensions can have negative consequences for

[16] Kristin McKie, 'Presidential Term Limit Contravention: Abolish, Extend, Fail, or Respect?', *Comparative Political Studies*, 52.10 (2019), 1500–1534. https://doi.org/10.1177%2F0010414019830737.

[17] Fatimatuz Zakiya Makmun and Sholahuddin Al-Fatih, 'Extension Time Presidential Office Through Delay General Elections in A Constitutional Democracy Perspective', *Audito Comparative Law Journal (ACLJ)*, 4.3 SE-Articles (2023), 118–33. https://doi.org/10.22219/aclj.v4i3.26940.

[18] Mahesa Rannie, Retno Saraswati, and Fifiana Wisnaeni, 'Does the Reform of the Parliamentary and Presidential Threshold Strengthen the Presidential System in Indonesia?', *Sriwijaya Law Review*, 8.1 (2024), 133–51. https://doi.org/10.28946/slrev.Vol8.Iss1.3157.pp133-151.

democratic stability and effective governance.[19] This then becomes a problem between the legislature and the executive in constitutional practice in Indonesia.

3.2 Presidential Prerogative and Interference with Legislative Power

Prerogative Rights are special rights because these rights are only owned by the head of state or president.. According to the Large Dictionary Indonesian (KBBI), rights are the power or authority to do something. Prerogative rights are defined as powers or rights possessed by the head of state (in this case, the president) that are special, independent, and absolute, given by the Constitution within the scope of government power.

Prior to the amendment of the 1945 State Constitution of the Republic of Indonesia, the president's prerogative rights could be seen in Article 11, Article 12, Article 13, Article 14, Article 15, and Article 17. Through the provisions stipulated in these articles, the president had the freedom to run the government without intervention from other institutions, such as the DPR. In other words, this provision seems to provide absolute legitimacy to the president's authority.[20]

This view underlines the important role of the DPR in monitoring the president's decisions and actions so that there is no abuse of executive power. Checks and balances are a basic principle in a democratic system that aims to prevent excessive consolidation of power in one branch of government. In this context, the involvement of DPR to give approval to certain decisions or steps taken by the president is considered a positive step to maintain the balance of power. The importance of this mechanism is to ensure that each branch of government operates within the limits of its powers and to avoid abuse of authority. Thus, the view of the majority of judges emphasized that the request for approval from the DPR by the president was a form of implementing checks and balances in accordance with the democratic principles embedded in the 1945 Constitution of the Republic of Indonesia.

So far, the President's prerogative is not purely practiced to fulfill the President's constitutional obligations, but it is often used as a political reward, meaning that it is given as a gift to those who have politically contributed to the President. At other times, the prerogative is also used to get rid of people who are good but not in line with the President's policies. An example of political remuneration is the appointment of someone as a minister in the cabinet because he has provided strong support during the presidential candidacy. In contrast, an example of political removal is the dismissal of a minister who, according to the public, is quite good and honest.[21]

Through the legislative function, the president's power in running the government is limited and balanced through laws drafted by the DPR together with the president and in certain fields involving the Regional Representative Council (DPD) as regional representation. Balancing the president's power also occurs in the process of creating the State Revenue and Expenditure Budget (APBN), which serves as a guideline for government administration and development. In this context, every APBN Draft State Revenue and Expenditure Budget Plan

[19] Nabitatus Sa'adah, "Persoalan yang Tersisa dalam Sistem Presidensiil Pasca Amandemen UUD 1945," *Masalah-Masalah Hukum*, 48.3 (2019), 275–82. https://doi.org/10.14710/mmh.48.3.2019.275-282.

[20] Oksep Adhayanto, Irman Irman, and Fithriatus Shalihah, 'Comparison of the President Prerogative Rights in Indonesia Constitutions', *Fiat Justisia: Jurnal Ilmu Hukum*, 12.3 (2018), 192–205. https://doi.org/10.25041/fiatjustisia.v12no3.1329.

[21] Micha Wiebusch and Christina Murray, 'Presidential Term Limits and the African Union', *Journal of African Law*, 63.S1 (2019), 131–60. https://doi.org/10.1017/S0021855319000056.

(RAPBN) must receive approval from the DPR, with input from the DPD for certain areas, so that it can be designated as an APBN. Thus, the DPR and DPD have a significant role in determining government program policies and budget allocations included in the APBN.

These measures create a strong mechanism of checks and balances on executive power. The DPR and DPD act as legislative institutions that not only make laws but also supervise and evaluate government policies through the formation of budget laws. By involving the DPD, regional representation in the decision-making process becomes stronger, ensuring that policies and budget allocations reflect the needs and aspirations of regional communities. Overall, through their legislative function, the DPR and DPD play an important role in limiting the president's power and ensuring a healthy balance and participation in determining government policies and budget allocation through the APBN.

Through their supervisory function, the DPR and DPD will always supervise the implementation of laws and policies. This supervision is intended to ensure that the laws and policies that have been made are actually implemented and that abuse of power does not occur. Supervision is not intended to overthrow the government because one of the characteristics of the presidential system being built is determining the presidential office term with certainty (fixed term) except for reasons of violation of the law and inability to hold office as regulated in the 1945 Constitution. Presidential prerogatives are no longer an exclusive authority of the president because they are shared with other institutions, and it has been regulated in the 1945 Constitution of the Republic of Indonesia, and statutory regulations to make it more accurate and called constitutional power or statutory power, no longer a prerogative.

3.3. Dynamics of Presidential Relations and Parliamentary Power

Indonesia's presidential democratic system during the reformation era was associated with various problems because of the lack of a compatible party system. The application of presidentialism in a pragmatic multiparty context or compromise presidentialism tends to lead to political party intervention in the president and conversely the president tends to accommodate the interests of political party coalitions in forming the cabinet. Formation of the cabinet was initially the prerogative of the president, in this compromise presidential system the president also involved the role of political parties. The implications of this pattern of intervention and accommodation cause the government support coalition model that was built to become a fragile coalition. The fragility of the party coalition system is because political parties in a multiparty system generally do not have ideological closeness, and the composition of political parties in a coalition tends to change. The post-reformation party system in Indonesia implements an extreme multiparty system, namely a very large number of parties in parliament and the absence of a dominant party. The formation of this extreme multiparty system was caused by a proportional electoral system that applied a relatively small threshold. Therefore, creating a stable presidential democracy through a party system can be done by establishing a moderate or simple multiparty system that increases the threshold in parliament. If the electoral system cannot form a moderate multiparty system and form a dominant party in parliament, then a coalition is the best solution.[22]

[22] Muhtadi Muhtadi and Zulkarnain Ridlwan, 'Reinstatement of National Guidelines of State Policy Within Indonesian Presidential System: The Possibility', *Fiat Justisia: Jurnal Ilmu Hukum*, 17.2 (2023), 133–44. https://doi.org/10.25041/fiatjustisia.v17no2.2909.

Since independence in 1945, Indonesia has experienced several leadership changes from the Old Order era, the New Order era, and now the Reformation era. Accordingly, every era of Indonesian presidential leadership has always produced laws. The process of creating a law in Indonesia originates from the executive or presidential power and is discussed in the legislative body or the DPR. In the Reform Era since 1998, the relationship between the President of the Republic of Indonesia and the DPR of the Republic of Indonesia has changed along with the amendments to the 1945 Constitution. Several articles in the 1945 Constitution that regulate the relationship between the executive and the legislature include Article 5, paragraph 1, which regulates that the President of the Republic of Indonesia can submit draft laws. To the DPR RI, Article 20 Paragraph 2 on Draft Laws are discussed and approved by the President of the Republic of Indonesia and the DPR RI, based on Article 22 Paragraph 2 of the 1945 Constitution, that Government Regulations in Lieu of Law (Perpu) must be approved by the DPR at the next session. Thus, it can be interpreted that the first session of the DPR was held after the Perpu was promulgated.

In the era of democratic reform, the relationship between the President and the DPR RI is both strong and synergistic. Before the Reformation era, executive power exceeded legislative power, and the principle of checks and balances, which had always been a reference for democratic countries, could not work well. The Reform Era in a presidential government system is how the relationship between the executive and the legislature corrects and supervises each other. The President of the Republic of Indonesia and the DPR RI are two state institutions that have the same responsibility for making the government's work programs discussed together a success.[23]

Presidency with expanded legislative powers tends to produce executive and legislative immobility and deadlock rather than parliamentary or two-party systems. The existence of immobility and deadlock in the government system usually occurs due to the lack of a strong position of the head of government in a political system in a country. In countries that implement a collaborative presidential system and multiparty system, deadlock often occurs between the president (executive) and the parliament (legislature). This is because, in this system, even a presidential candidate from a small party can win the presidential election, so when the elected president proposes a policy to a parliament inhabited by a large party that does not support him, this is where deadlock often occurs, because of conflicts of interest between both existing political camps.[24]

Since the 1998 Reformation era, the relationship between the President and the DPR RI has experienced ups and downs due to the nature of the president and the strength of political parties in the DPR RI, starting from President B.J. Habibie, Abdurrahman Wahid, Megawati Soekarnoputri, Susilo Bambang Yudhoyono, and Joko Widodo. Apart from that, the DPR RI also continues to experience changes in the political parties that make up the majority of the parliament. Since the 1998 Reformation era, every time a general election is held, the winning party in the DPR RI always changes, starting from the Indonesian Democratic Party of Struggle in 1999, the Golongan Karya Party in 2004, the Democratic Party in 2009, and the PDIP in 2014. Formation of drafting a law into law is also one of the processes in which the

[23] Muhammad Mutawalli Mukhlis, Maskun, Zainal Amin Ayub, and others, 'Legislative Elections: An Overview of Closed Proportional System', *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 8.2 (2023), 93–109. https://doi.org/10.22373/petita.v8i2.200.

[24] Fuqoha Fuqoha, Arif Nugroho, dan Indrianti Azhar Firdausi, 'Stabilitas Pemerintahan Pasca Pemilihan Umum di Indonesia antara Checks and Balances dan Demokrasi Transaksional', *Ajudikasi: Jurnal Ilmu Hukum*, 3.2 (2019), 153–66. https://doi.org/10.30656/ajudikasi.v3i2.1893.

presidential system operates in Indonesia. The process of forming a law in the Reformation era was not as easy as it was in the New Order era because the power of the executive or the President of the Republic of Indonesia at that time was very strong so that he could control the DPR RI.[25]

In sharp contrast to the parliamentary system, the presidential system does not have a mechanism whose purpose is to measure the legislative majority. In a parliamentary system, it is very clear that the person chosen as head of government is the chairman or one of the cadres of the party that wins the legislative election, who has the dominant vote. So, in running the government, the head of government always has support from parliament, so there is little chance of immobility or deadlock.

Apart from that, in this combination of systems, the presidential system is less able to solve problems because the president's power is very strong on the one hand but very weak on the other. In the executive, the president has full power over ministers and ranks in his cabinet. However, in the legislature, the president cannot do anything when the majority party questions the policies he proposes. Usually, if there is frequent immobility or deadlock, the solutions that are often implemented are constitutional amendments to expand powers, issuing decrees, or mass mobilization to pressure parliament to compromise with the president.[26]

Expansion of legislative power is more likely to produce ideological polarization than bipartisanship. Mainwaring theorized about the relationship between the government system and the party system, where in a country that adheres to a presidential government system, it is considered more suitable to use a 2 or 2 ½ party system due to a lack of excessive ideological diversity in the system. The complexity of the number of ideological diversity, or high ideological polarization, has increased competition and escalation in the political game, becoming the driving force for polarization.

As a result, these conditions stabilize the democratic system and give the president a better opportunity to design solid public policies backed by cabinet and parliamentary support. This process also supports the better representation of various segments of society. However, there are pessimistic notes, especially when this principle is applied to countries with a presidential government system. In countries that adopt a presidential system, there are concerns that this principle may not be appropriate, especially if the elected chief executive comes from a minority party. This can create tension between the executive and legislature. Therefore, the president's high self-confidence and extraordinary political communication skills are very important to overcome this dilemma.[27]

The ability to negotiate and establish good relations with the legislature is the key to maintaining stability and the smooth running of government. In such a context, strong leadership and the ability to build consensus become critical elements for maintaining the balance of power and running an effective government. Therefore, while this principle can

[25] Muhamad Haris Aulawi and others, 'Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?', *Bestuur*, 11.1 (2023), 26–42. https://doi.org/10.20961/bestuur.v11i1.69178.

[26] C A Satriya, 'Karakteristik Pemakzulan Presiden Di Indonesia', *Jurnal Konstitusi*, 19.3 (2022), 528–553. https://doi.org/10.31078/jk1932.

[27] Yordan Gunawan and Hanna Nur Afifah Yogar, 'Indonesia E-Hailing Taxi: The Competition between Law and Technology', *Handbook of Research on Innovation and Development of E-Commerce and E-Business in ASEAN*, 2 (2020), 594–606. https://doi.org/10.4018/978-1-7998-4984-1.

bring stability, its implementation needs to be tailored to specific characteristics of a country's governance system.[28]

The combination of multiparty and presidential also creates complications in the difficulty of building an inter-party coalition. In a multiparty system where political power tends to be fragmented, the main way to achieve a majority in parliament is to form a party coalition. However, the construction of a party coalition in a presidential system is not strong when compared to a parliamentary system. There are at least three factors that cause the weakness of political party coalitions in a presidential system.

First, because the presidential and parliamentary elections are held separately, the possibility of being elected is a president who does not have the support of a majority of parliament. Second, in presidential systems, individual commitment to support agreements negotiated by party leaders is often invisible. Expanding the cabinet portfolio does not always mean support for the president. This is, of course, different if implemented in a parliamentary system.[29]

Third, the party leadership maintains a distance from the government. By remaining 'silent partners' in the governing coalition, party leaders fear they will lose their identity, share the blame for the government's mistakes, and not reap the benefits of its achievements. Even in a more extreme case, coalition partners are afraid to bear the costs of elections without enjoying the benefits. In a parliamentary system, the composition of the government is determined by the winning party in parliament, so they tend not to follow the logic as explained above. [30]

Another problem with the presidential system, when combined with an immoderate multiparty system, is the potential for political instability. This was stated by Mainwaring and Linz, who believe that the problems or weaknesses of the presidential system arise when it is combined with a multiparty system that is not simple. Multiparty is not simple, and presidentialism will produce government instability. [31] This happens because the fragmentation of political forces in parliament will occur very often, and the potential for a "dead end" if there is a conflict in executive-legislative relations. Therefore, the suggestion is that a presidential system will produce democratic stability if it is a dual-party system. By using this biparty system, the effectiveness and stability of a presidential government is relatively more guaranteed.[32]

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[28] Nur Afti Aulia and Agussalim A Gadjong, 'The Presidential System with a Multiparty System Is Based on the 1945 Constitution of the Republic of Indonesia', *Sovereign: International Journal of Law*, 3.1 (2021), 1–19. https://doi.org/10.37276/sijl.v3i1.34.

[29] Charles Simabura and others, 'Ministerial Authority in Formulating Regulations Related to Presidential Lawmaking Doctrine', *Constitutional Review*, 9.2 (2023), 297–331. https://doi.org/10.31078/consrev924.

[30] Yordan Gunawan and others, 'Command Responsibility Of Autonomous Weapons Under International Humanitarian Law', *Cogent Social Sciences*, 8.1 (2022), 1–16. https://doi.org/0.1080/23311886.2022.2139906.

[31] Taufiq Yuli Purnama and Ramalina Ranaivo Mikea Manitra, 'The Proposal for the Implementation of Elections in Indonesia: A Framework Based on the Presidential System', *Wacana Hukum*, 29.2 SE-Journal's Articles (2023), 181–205. https://doi.org/10.33061/wh.v29i2.9815.

[32] Muhammad Mutawalli Mukhlis, Maskun, Muhammad Saleh Tajuddin, and others, 'Regional Government According to the 1945 Constitution: Ideas Refinements and Law Reform', *Journal of Law and Legal Reform*, 5.2 (2024), 495–530. https://doi.org/10.15294/jllr.vol5i1.3125.

The coalition that has been built so far is part of the consensual democracy model, as stated by Arend. The problem with ineffective government so far is because of the form of the coalition itself. One of the criticisms that have arisen in the form of coalitions so far is the absence of a permanent grand coalition in parliament, so every decision made by the government is almost always met with obstacles and challenges from parliament. The coalitions practiced by our political parties today tend to be instantaneous because they are based more on short-term political interests and not yet based on mutually agreed political platforms and programs.[33]

The presidential system in Indonesia in the Reformation era, especially in the era of President Jokowi, proves that the influence of the power of political parties in the presidential system process is very large. It turns out that the presidential system, which is synonymous with the president's great power or prerogative rights, cannot be fully implemented in Indonesia because the president needs the support of political parties to be able to run government programs smoothly. The strength of political parties in the legislature also greatly influences the process of forming laws, and even though the coalition has a majority in the legislature, in fact, passing a law takes a long time because of the debate between the executive and the legislature.[34]

3.4. Ideal Model of Presidential Power Disparity According to the Presidential System

As an idea to strengthen the disparity of presidential and parliamentary power proportionally, which in this case can also balance the power tendencies that parliament has over the executive, borrowing an idea from Prof. Retno Saraswati that, First, there is a need for parliamentary institutional design, namely simplifying the polarization of political power in parliament, such as reducing the number of factions and the effectiveness of coalitions so that political processes in parliament become simpler. Second, the design of the presidential institution is also directed at strengthening the president's position, namely with a clear division of authority between the president and vice president. The design of the presidential institution is also directed at strengthening the president's political position before parliament so that parliament's power is not above the president but also to avoid making the president's position too strong. Apart from that, it also aims for a solid cabinet so that the government can run effectively.[35]

Therefore, there are several institutional engineering agendas, including restructuring the legislative system, the president does not have the power to form laws but is given veto rights, clarity on the vice president's authority and the relationship between the president and vice president, and regulations prohibiting concurrent positions for cabinet members.[36]

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[33] S Wiyono and others, 'The Effectiveness of Presidential Cabinet in a Multi-Party System in Indonesia', *European Journal of Political Science Studies*, 4.1 (2020). https://doi.org/10.46827/ejpss.v4i1.904.

[34] S Polamolo, 'Presidensialisme Di Indonesia Antara Amanah Konstitusi Dan Kuasa Partai', *Jurnal Konstitusi*, 13.2 (2016), 321–347. https://doi.org/10.31078/jk1325.

[35] Muhammad Mutawalli Mukhlis, Achmad Ruslan, A. M. Yunus Wahid, and others, 'Ius Constituendum Regulates the Cadre-Based Recruitment of Candidates for Members of the House of Representatives Through Political Parties', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 7.1 (2024), 139–55. https://doi.org/10.24090/volksgeist.v7i1.10830.

[36] Widayati Widayati, Ratna Herawati, dan Winanto Winanto, "The Urgency of Presidential Institution Regulations in Strengthening the Presidential Government System," *Law Reform*, 19.2 (2023), 199–220. https://doi.org/10.14710/lr.v19i2.57880.

In this case, the authors quite agree with the proposal and idea of strengthening the president's power, but if we look at it in the context of making regulations by the president, it needs to be strengthened by proposing that the president's authority in the regulatory aspect is limited. The limited regulations referred to are that the president has the authority to make regulations that have the character of a vacuum of norms covering all aspects of the government's interests in the context of state needs that have not been regulated in statutory regulations. This limited authority is based on aspects of fulfilling presidential prerogatives, which are not similar to the authority to make PERPPU, Presidential Decrees, and Government Regulations. This is necessary as an effort by the government to respond to global changes that can have an impact on the country's stability, such as in aspects of the global economy, the climate crisis, accelerating the handling of environmental management, and the ratification of international agreements. This authority will later become Government Regulatory Plans, which can be discussed further and used as proposals for improving regulations. Constitution, Perpu, and Government Regulations can be used as a reference for regional regulations.[37]

Second, the formation of the government cabinet must be based on the principle of legality, not just based on the meaning of presidential prerogatives. The Law of the State Ministry needs to be revised. The involvement of political parties, in this case ministers who can come from elements of political parties, must be eliminated.[38] When ministers are always associated and occupied by political party cadres so that there is a lot of party involvement, this actually tends to lead to Governance by Party Interests (government based on party interests). It is important to readjust the Law on State Ministries because the head of state, in this case, the president, after going through the general election process and being elected, from the aspect of constitutional doctrine the president no longer carries the vision and mission of the party, let alone the interests of the party, but the position of president needs to be interpreted as a mandate to the people so that the president no longer represents the interests of the party but the interests of the people. The influence of political parties needs to be limited within the scope of executive power. Political parties only have complete space in the parliamentary sphere of power.[39]

Third, the importance of regulating the presidential institution to regulate the President's performance as head of the cabinet and also clarify the position, authority, rights, and obligations of the President as well as the relationship between the presidential institution and other state institutions, also needs to be regulated therein.[40] Presidential institutional arrangements need to be carried out fairly and implemented well. Looking at the current practice of exercising presidential power, regulations that concern all aspects of presidential power are needed. It is hoped that future presidential institutional arrangements will clarify

[37] Muhammad Mutawalli Mukhlis, Paul Atagamen Aidonojie, Zulhilmi Paidi, and others, 'Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia', *Fenomena*, 23.1 (2024), 1–14. https://doi.org/10.35719/fenomena.v23i1.155.

[38] Yordan Gunawan, Ghiyats Amri Wibowo, and Mohammad Hazyar Arumbinang, 'Foreign Fighters in the Ukrainian Armed Conflict: An International Humanitarian Law Perspective', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.2 (2023), 145–57. https://doi.org/10.24090/volksgeist.v6i2.9315.

[39] M. Wildan Humaidi and Inna Soffika Rahmadanti, 'Constitutional Design of State Policy as Guidelines on Indonesia's Presidential System Development Plan', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.1 (2023), 61–76. https://doi.org/10.24090/volksgeist.v6i1.7981.

[40] Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, 'Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse', *Jurnal Media Hukum*, 30.1 (2023), 21–32. https://doi.org/10.18196/jmh.v30i1.19322.

the President's prerogatives as head of state and government, especially in appointing and dismissing ministers. Likewise, it also regulates the prohibition of holding concurrent positions for the President.[41]

4. Conclusion

Indonesia adheres to a presidential system, where the President and parliament (DPR) are each elected through elections and receive strong legitimacy from the people. However, in Indonesian constitutional practice, parliament has a very big influence on the running of the government (parliamentary heavy). This causes ambiguity in the implementation of state power. Parliament's dominance in this practice occurs due to the design of the political system, which gives great power to the DPR. The DPR has the right to interpellate rights), ask questions, and supervise the running of the government. On the other hand, the President's capacity as head of government is limited by the party coalition system in parliament. The president becomes very dependent on the support of political parties in parliament. This ambiguity has the potential to cause government instability and conflict between state institutions. As an effort to improve and provide future thinking, it is necessary to issue a Law on the Presidential Institution which contains concrete limitations regarding the powers of the President and the DPR, where this Law certainly concerns all aspects related to executive and parliamentary powers. mutually agreed on the limits. limits of authority which constitute the concrete authority of executive power and legislative power. The President's capacity as head of government is limited by the party coalition in parliament. Therefore, it is necessary to redefine the roles and relationships between the President, DPR and political parties to clarify the checks and balances mechanism and support concrete and proportional government effectiveness.It is important to maintain a balance between parliamentary and executive powers to ensure that government is effective, accountable, and in accordance with democratic principles. This requires strong law enforcement, close supervision from civil society, and active involvement of all parties involved in the political process to achieve sustainable agreements in the common interest.

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[41] Matthew B Lawrence, 'Subordination and Separation of Powers', *Yale Law Journal*, 131 (2021), 78. https://doi.org/10.2139/ssrn.3831227.

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