

The Urgency of Regulating the State Institution of The President in Indonesian Laws



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ABSTRACT: The regulatory framework and institutional structure are inherently unified, as institutions can be defined as a formalized structure of rules embodied in a set of legal products. In Indonesia, the state institution of the President has not yet been regulated in a specific law. The extensive powers held by the President necessitate further study on regulating the President's institution through a dedicated law. This study aims to explore and analyze the reasons why the state institution of the President is important to be governed by a specific law and what the framework of such a law should look like in the future. The research adopts a doctrinal approach, specifically a normative juridical method, with a descriptive research specification. The type of data used consists of legal materials, with library research employed as the method of data collection. This study discusses: (1) several reasons why the state institution of the President needs to be regulated in a dedicated law; (2) the fundamental reasons why such regulation must be established in law; and (3) several recommendations for the content of the Law on the State Institution of the President. The conclusion drawn from this study is that a national legal review on the Law of the State Institution of the President is highly important and should be conducted promptly, considering that the President is the only high state institution without specific regulations (laws) governing it.

KEYWORDS: Law; State Institution; President

I. INTRODUCTION

A modern legal state embraces democratic elements, as stated by Jimly Ashiddiqie, who argues that democracy and nomocracy, or the rule of law, are inseparable. A legal state requires democratic implementation, and likewise, a state that operates a democratic system must adhere to legal norms.¹ The relationship between regulations and institutions is essentially unified, as institutions can be defined as a structure of rules formalized within a set of legal products.²

Every state institution must have regulations (or laws) governing its operations. This can be seen in the laws regulating state institutions, such as Law No. 17 of 2014, which governs The People's Consultative Assembly known as Majelis Permusyawaratan Rakyat (MPR), House of Representatives known as Dewan Perwakilan Rakyat (DPR), Regional Representative Council known as Dewan Perwakilan Daerah (DPD), and Regional House of Representatives known as Dewan Perwakilan Rakyat Daerah (DPRD), as well as Law No. 14 of 1985 concerning the Supreme Court known as Mahkamah Agung (MA), and others. Therefore, each state institution has its own duties and authorities as stipulated in the 1945 Constitution of the Republic of Indonesia and relevant laws.

Indonesia has a state institution of crucial importance that is not regulated by law but is only stipulated in the 1945 Constitution of the Republic of Indonesia. This institution is the President. The 1945 Constitution, as the legal foundation for all the authorities vested in the President as the head of state and head of government in Indonesia, explicitly outlines the duties and powers of the President.³ In this context, the term "President" does not refer to the individual holding the position but rather to a state institution known as the Presidency (the Presidential Institution).

Indonesia has adhered to a presidential system of government from the very beginning. The presidential system positions the President not only as the center of executive power but also as the center of state power. This means that the President serves both

¹ Kurniawan, D., (2023), "Relevansi Penundaan Pemilihan Umum Tahun 2024 Dalam Perspektif Hukum Tata Negara Darurat", Jurnal Ilmiah Kebijakan Hukum, Vol. 17 No. 1, p. 100.

² Wayne Sandholtz, Globalization and the evolution of rules, dalam Aseem Prakash and Jeffrey A. Hart (Eds.), op cit., hlm. 81 dan 83. Quoted by Jimly Asshiddiqie, Konstitusi Bernegara: Praksis Kenegaraan Bermartabat dan Demokrasi (Malang: Setara Press, 2016), p. 147.

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³ Prayitno, C., (2020), "Analisis Konstitusionalitas Batasan Kewenangan Presiden dalam Penetapan Peraturan Pemerintah Pengganti Undang-Undang", *Jurnal Konstitusi*, Vol. 17 No. 3, p. 469.

as the head of government (chief of executive) and as the head of state (chief of state).¹ This dual role is one of the reasons why the President's authority extends beyond the executive domain to include legislative functions and even the judicial sphere.⁵

The vast and extensive scope of the President's powers makes the Presidential Institution itself the primary object of competition within the presidential system. This implies that, even though no single state institution holds exclusive power in a presidential system, the role and character of the Presidential Institution stand out more prominently compared to other groups, organizations, or political parties within the state.

Substantially, the 1945 Constitution underwent amendments or a complete overhaul. Over the course of four amendments, from 1999 to 2002, all changes aimed at purifying the presidential system are as follows:

First, purification of the Presidential/Vice-Presidential Election.⁶ In line with the logic of the presidential system, direct elections are not only about providing citizens with broad opportunities to make their choices directly but also serve as evidence of a direct mandate and real support from the people for the President. Since both the President and the representative institutions receive a direct mandate from the people, direct elections create a balance of checks and balances between the President and representative bodies. Based on this, it can be concluded that the amended constitution explicitly stipulates that the President and Vice President are elected directly by the people.

Second, reorganizing The People's Consultative Assembly (MPR).² Before the amendments, the 1945 Constitution stated that the MPR was the holder of the people's sovereignty, emphasizing that the highest state power resided in the MPR (*die gesamte Staatsgewalt liege allein bei der Majelis*). Therefore, the MPR was referred to as the highest state institution. As part of the purification of the presidential system, the amended 1945 Constitution removed and abolished the MPR as the highest state institution to logically escape the trap of a confusing constitutional design in establishing checks and balances between state institutions. This removal was accompanied by a new composition of the MPR, consisting of members of the DPR and DPD, who are also elected through general elections. Consequently, this change repositioned the MPR from the highest state institution to an institution equal in status to other state institutions.

Third, clarifying the Requirements and Mechanisms for the Dismissal (Impeachment) of the President and/or Vice President During Their Term of Office.³ The requirements and mechanisms for the impeachment of the President and/or Vice President are outlined in Article 7A of the amended 1945 Constitution.

Based on the explanation above, the absence of the MPR as the highest state institution within the presidential system results in the President being the only high-ranking state institution with very broad authority and power. In fact, within the presidential system, there is an unwritten rule stating that if a certain authority is not regulated by law, that authority automatically falls under the President's jurisdiction. Therefore, it can be said that the President's power encompasses both what is explicitly regulated in the 1945 Constitution of the Republic of Indonesia and any authority outside the law (not yet regulated by legislation).

The extensive powers held by the President necessitate further study on the institutional regulation of the Presidency in a dedicated law. Considering that all state institutions at the same level as the President are also regulated by law, the establishment of such a law governing the Presidency would further strengthen the President's position.

Based on the explanation above, this study will address the following questions: first, Why is it important for the Presidency as a state institution to be regulated by law? dan second, How should future legislation on the Presidency as a state institution be structured?

II. RESEARCH METHODS

The research method employed in this legal writing is a doctrinal approach, specifically juridical-normative. The doctrinal approach focuses on research aimed at obtaining normative information through literature studies⁴ regarding the importance of regulating the Presidency as a state institution in law and how the legislation on the Presidency should be structured in the future. The research specification used to collect data and develop this legal writing is descriptive. Descriptive research specification provides an overview of the object of study (the issues). The type of data used to support this legal writing is secondary data, which consists of

¹ Saldi Isra, *Lembaga Negara: Konsep, Sejarah, Wewenang, dan Dinamika Konstitusional* (Depok: Rajawali Pers, 2020), p. 132. ⁵ Denny Indrayana, 2007, "Mendisain Presidensial yang Efektif: Bukan "Presiden Sial" atawa "Presiden Sialam", *Makalah Bukittinggi*, 11-13 Mei, hlm. 3. Quoted by Saldi Isra, *loc.cit.* ⁶ Saldi Isra, *op.cit.*, p. 194.

² *Ibid.*, p. 195.

³ *Loc.cit.*

⁴ Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel Edisi Revisi* (Yogyakarta: Mira Buana Media, 2020), p. 98.

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primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique applied in this legal writing is library research. Library research is a technique of studying the substance of reading materials.

III. RESULT AND DISCUSSION A. Reasons Why the Presidency as a State Institution is Important to Be Regulated by Law

The provisions contained in the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) essentially regulate the limits of authority for the Presidency as a state institution. According to Harun Alrasid in his book titled "Pengisian Jabatan Presiden" (Filling the Presidential Office),⁵ the reason why the legal norms regarding the filling of the Presidential office are regulated in the constitution is that the Presidency is considered a highly important position, where the role of the President in a republic is akin to that of a King or Queen in a monarchical system of government. Therefore, the regulation of the Presidential office is stipulated in the highest state regulation, namely the constitution. Harun Alrasid's statement above is specifically directed at the regulation of the process for filling the Presidential office. However, if interpreted more broadly, the reasoning put forward by Harun Alrasid can also be applied to the regulation of the Presidency as a state institution in general.

According to the UUD NRI 1945, the position of the President is formally included among the ranks of high state institutions, standing on equal footing with other high state institutions such as the Dewan Perwakilan Rakyat (House of Representatives), Majelis Permusyawaratan Rakyat (The People's Consultative Assembly), Dewan Perwakilan Daerah (Regional Representative Council), Mahkamah Agung (Supreme Court), and Mahkamah Konstitusi (Constitutional Court). However, within Indonesia's governmental structure, the President's position is perceived as the highest, as the President acts as both Head of State and Head of Government. Therefore, it can be said that the core of all governmental authority lies in the hands of the President. This indicates that the President wields a significant amount of power.

In addition to the authority explicitly granted to the President in the UUD NRI 1945, other factors contribute to the importance and critical nature of the President's role. A person serving as President undoubtedly possesses substantial influence over the entire governance structure in Indonesia. While the Constitution clearly defines the boundaries of authority for high state institutions, the influence and legacy of an individual serving as President cannot be overlooked. Someone who attains the Presidency is unquestionably a remarkable individual. They have succeeded in winning the hearts of a significant portion of the Indonesian people, supported by their strategies and political lobbying.

Factors beyond the written laws in the UUD NRI 1945, including the political ethics of a President, should be regulated in a specific law to prevent actions that may be deemed as violating Presidential political ethics. This necessity is evident in the current state of governance in Indonesia, where the political influence of a President significantly affects the entire political and governmental atmosphere of the country.

Therefore, this study will elaborate on the reasons why the Presidency as a state institution is important to be regulated by law.

The first reason is to prevent the misuse of power by the President, particularly in harmonizing all laws and regulations governing Presidential authority. The democratic system under the UUD 1945 before the amendments referred to the election of the President and Vice President by the MPR as the highest state institution representing the sovereignty of the people (Article 6 in conjunction with Article 1(2) of the UUD 1945). Meanwhile, the democratic system under UUD NRI 1945 refers to the direct election of the President and Vice President by the people through general elections. This signifies a shift in the implementation of popular sovereignty concerning the election of the President and Vice President.

Referring to the explanation above, this shift in the exercise of sovereignty means that the President is no longer accountable to the MPR through a General Assembly Report at the end of their term but is instead directly accountable to the people. The absence of a mechanism for reporting accountability results in a lack of sanctions for the President regarding the execution of their authority during their term of office. Consequently, the President can easily misuse their authority for personal or group interests.

Thus, it cannot be ruled out that a President may engage in actions that could be indicated as an abuse of power. Therefore, the only way to prevent the institution of the Presidency from being swayed by personal or group interests is to restrict and regulate it through clear, rational, and impersonal legal norms that formalize all provisions related to Presidential authority in an official legal document. The President's authority is outlined in several laws. Some of the laws governing Presidential authority are as follows:

- 1) Law No. 12 of 2011 on the Formation of Laws and Regulations: regulates the President's authority in the legislative process, including proposing draft laws (RUU) and approving laws that have been passed by the DPR.
- 2) Law No. 39 of 2008 on State Ministries: regulates the President's authority in establishing, modifying, and dissolving ministries, as well as appointing and dismissing ministers.
- 3) Law No. 9 of 2015 on Regional Governance: regulates the President's authority regarding the relationship between the Central Government and Regional Governments, including the authority to appoint and dismiss regional heads under certain conditions.
- 4) Law No. 7 of 2017 on General Elections: regulates the President's authority in the context of elections, including the process for electing the President and Vice President.

⁵ Harun Alrasid, *Pengisian Jabatan Presiden* (Jakarta: Pustaka Utama Grafiti, 1999), p. 2.

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- 5) Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI): regulates the President's authority as the Supreme Commander of the TNI, including authority over the mobilization and use of TNI forces.
- 6) Law No. 2 of 2002 on the Indonesian National Police: regulates the President's authority in providing policy directives to the Indonesian National Police.
- 7) Law No. 24 of 2000 on International Treaties: regulates the President's authority in making and ratifying international treaties with the approval of the DPR.
- 8) Law No. 17 of 2014 on the MPR, DPR, DPD, and DPRD: regulates the relationship and authority of the President in the context of interactions with the MPR, DPR, and DPD.
- 9) Law No. 14 of 2008 on Public Information Disclosure: regulates the President's authority in setting policies related to public information disclosure.
- 10) Law No. 6 of 2008 on Health Quarantine: regulates the President's authority in establishing national policies related to health quarantine to address public health emergencies.
- 11) Law No. 24 of 2004 on the Deposit Insurance Corporation (LPS): regulates the President's authority in appointing and dismissing members of the Board of Commissioners of the Deposit Insurance Corporation.
- 12) Government Regulations and Presidential Decrees: In addition to laws, the President's authority is also outlined in various government regulations and Presidential decrees that provide more specific guidelines for daily governmental operations.

Although these scattered regulations indicate that the President's authority is comprehensively governed across various aspects of state affairs, ensuring that every Presidential action has a clear and structured legal basis, consolidating these regulations into a specific law dedicated to the Presidency as a state institution would enhance effectiveness and efficiency.

The second reason is the ambiguity regarding the duties and authority of the Vice President. In the (UUD NRI 1945, there is an inconsistency between the provisions in Article 6A and those in Articles 7A and 7B. Article 6A of the UUD NRI 1945 states that the President and Vice President are elected as a single pair directly by the people or nominated as a pair by political parties or coalitions of political parties. In this context, the President and Vice President are considered an inseparable unity.

Meanwhile, Articles 7A and 7B of the UUD NRI 1945 concern the dismissal of the President and/or Vice President, where in this context, the President and/or Vice President appear to be two separate institutions. This creates the impression that only one of the institutions is held accountable for their position. This is inconsistent, as during the nomination process, the President and Vice President are presented as a unified pair by political parties in elections. However, in the accountability process, it seems that the responsibility lies solely with the President.

The inconsistency in terminology between these articles must be clarified in a law regulating the Presidency as a state institution. It must be explicitly stated that the President and Vice President, from their initial nomination through to the final accountability process, are an inseparable unity. This ensures that the accountability process belongs jointly to both the President and the Vice President, rather than solely to the President.

As stated in the UUD NRI 1945, the only provision that can be interpreted as the "role" of a Vice President is Article 4, paragraph (2), which states that the President, in carrying out their duties, is assisted by a Vice President. In other words, the offices of the President and Vice President form an inseparable unity, and both must maintain a harmonious relationship and avoid conflicts of interest during their term to prevent domestic political instability (in the administration of state governance), which could ultimately harm national interests.

Conflict of interest can arise when both the incumbent President and Vice President run as presidential candidates in the following election period. This situation occurred during the 2009 presidential election when President Susilo Bambang Yudhoyono and Vice President Jusuf Kalla both ran as candidates. Clashes of interest and even competition between the two were possible. This was exacerbated by Indonesia's multiparty system, where the President and Vice President candidates typically come from different political parties that are forced to form a coalition to meet the requirements for candidacy.

For example, President Susilo Bambang Yudhoyono ran as a presidential candidate while also serving as the Chairman of the Board of Trustees of the Democratic Party (which, at the time, was the ruling party). Meanwhile, Vice President Jusuf Kalla also ran as a presidential candidate and held a strategic position in the Golongan Karya (Golkar) Party as its General Chairman. Both were incumbents and held influential positions in their respective political parties.

From this scenario, it can be observed that while the Democratic Party and Golkar Party initially formed a coalition under the SBY-JK administration, they later competed against each other in the 2009 presidential election. The conflict of interest was highly evident here, as both parties were part of the ruling government, making it highly likely that they utilized available resources to secure victory in the 2009 election.

Therefore, to achieve a healthy and effective presidential system, the relationship between the President and Vice President needs to be explicitly regulated, particularly concerning potential disharmony between them due to clashes of personal political interests or party politics.

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Moreover, the absence of detailed regulations in the UUD NRI 1945 regarding the authority of the Vice President has rendered the concept of the Vice President's role somewhat ambiguous. As is widely known, the position of the Vice President has increasingly gained significance within the Indonesian constitutional system. However, due to the lack of clarity regarding the duties of the Vice President, it is not uncommon for the Vice President to be perceived merely as a "spare tire" or as a vote-getter during presidential elections. This was evident in the 2019 Presidential Election, where two pairs of candidates competed: Joko Widodo (incumbent) – Ma'ruf Amin and Prabowo Subianto – Sandiaga Salahuddin Uno.

The reason President Joko Widodo chose Ma'ruf Amin as his running mate for Vice President was to secure and attract the votes of Muslim communities to support him in the 2019 Presidential Election.⁶ Additionally, Ma'ruf Amin's selection was influenced by his background, as he had no history of conflicts with the political parties backing Joko Widodo (in this case, Ma'ruf Amin was a religious figure unaffiliated with any political party/independent).⁷ On the other hand, Prabowo Subianto selected Sandiaga Salahuddin Uno as his Vice Presidential candidate to appeal to "emak-emak" (housewives or mature women) and millennial voters.¹³ Moreover, Sandiaga Uno's background as a successful and wealthy businessman was seen as a significant "bonus" to fund the campaign and ensure victory in the 2019 election⁸ (as presidential elections inevitably require substantial financial resources, making presidential candidates compete for support from business circles to finance their campaigns).

A similar dynamic is evident in the 2024 Presidential Election, with three pairs of candidates running: Anies Baswedan – Muhaimin Iskandar, Prabowo Subianto – Gibran Rakabuming Raka, and Ganjar Pranowo – Mahfud MD. Some of these candidates are part of President Joko Widodo's administration.

The pairing of Anies Baswedan and Muhaimin Iskandar was a "forced marriage" intended to unify the Muslim vote, which was previously divided in the 2019 Presidential Election between Nahdlatul Ulama (NU) voters, the base of the National Awakening Party (PKB), and conservative non-NU Muslim voters, the base of the Prosperous Justice Party (PKS). Moreover, the primary and rational reason behind this pairing lies in electoral considerations, particularly the presidential threshold requirement.⁹ Under this rule, a political party or coalition must secure at least 20% of parliamentary seats or 25% of the national vote in the previous House of Representatives (DPR) election to nominate a presidential and vice-presidential candidate.¹⁰ In this context, PKB garnered a significant 10.62% of the vote, making it a key player in any coalition.¹⁷

Prabowo Subianto chose Gibran Rakabuming Raka as his running mate because all the political parties supporting Prabowo Subianto agreed on selecting Gibran.¹¹ This decision was influenced by Gibran's status as the son of the incumbent President Joko Widodo, which was expected to attract the loyal supporters of Joko Widodo to vote for the Prabowo-Gibran ticket. Furthermore, all the political parties backing Prabowo were also supporters of the Joko Widodo – Ma'ruf Amin administration, with hopes of continuing the legacy and power already established.¹²

The examples above illustrate that although the primary role of the Vice President is to complement the President, the existing conditions often appear to exploit the Vice President's position for personal interests without considering their capacity, capability, or the needs of Indonesia. Therefore, the urgency of regulating the position and authority of the Vice President is intended to clarify the concept of the roles of the President and Vice President within Indonesia's system of governance. To achieve a competent Presidential Institution, it must be supported by individuals who are truly qualified and possess the necessary capacity and capability to execute and formulate the country's development agenda.

The third reason is the need for strict regulation concerning the ethical and moral boundaries of the President. The role of the President is a public office that is deeply tied to the morals and ethics of the position. Someone holding the office of President becomes, by default, a figure closely observed by the public in all their actions. Furthermore, the immense power held by the President can lead to significant issues and disasters if exercised without adherence to proper ethics and morals. The ethical and

⁶ Laksono Hari Wiwoho, (13 Agustus 2018), "Mengapa Jokowi Pilih Ma'ruf dan Prabowo Pilih Sandiaga?", *Kompas.com*, URL: <https://nasional.kompas.com/read/2018/08/13/20113061/mengapa-jokowi-pilih-maruf-dan-prabowo-pilih-sandiaga?page=all>.

⁷ CNN Indonesia, (10 Januari 2023), "Panda Nababan Ungkap Alasan Jokowi Pilih Ma'ruf Ketimbang Mahfud MD", *CNN Indonesia*, URL: <https://www.cnnindonesia.com/nasional/20230110085558-32-898258/panda-nababan-ungkap-alasan-jokowipilih-maruf-ketimbang-mahfud-md>.¹³ Laksono Hari Wiwoho, *loc. cit.*

⁸ Laksono Hari Wiwoho, *loc. cit.*

⁹ Eka Yudha Saputra, (4 September 2023), "Sudirman Said Beberkan Alasan Anies dan Surya Paloh Pilih Cak Imin", *Tempo.co*, URL: <https://www.tempo.co/politik/sudirman-said-beberkan-alasan-anies-dan-surya-paloh-pilih-cak-imin-148191>.

¹⁰ Ketentuan Pasal 222 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.¹⁷ PKB News, (21 Maret 2024), "Dahsyat! Pemilu 2024, PKB Raih 16.115.655 Suara", *PKB.id*, URL: <https://pkb.id/read/12411/dahsyat-pemilu-2024-pkb-raih-16115655-suara/>.

¹¹ Tatang Guritno dan Icha Rastika, (26 Oktober 2023), "Fahri Hamzah Ungkap Alasan Gibran Dipilih Jadi Cawapres Prabowo", *Kompas.com*, URL: <https://nasional.kompas.com/read/2023/10/26/16273511/fahri-hamzah-ungkap-alasan-gibran-dipilih-jadicawapres-prabowo?page=all>.

¹² *Ibid.*

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moral boundaries for public officials, especially the President, need to be tightened and regulated, as the Indonesian people highly value Eastern cultural principles, particularly those regarding ethics and morality.

Regulations concerning the ethical and moral boundaries of the President can refer to the People's Consultative Assembly Decree (Ketetapan MPR) Number VI/MPR/2001 on the Ethics of National Life. This decree outlines matters related to the ethics of national life, specifically the Ethics of Politics and Governance. However, the enactment of a Presidential Institution Law could serve as a continuation of this MPR decree, providing a specific foundation to regulate the ethical and moral standards for the office of the President, with more detailed provisions.

The fourth reason is to address constitutional crises related to presidential succession during critical and emergency situations. A constitutional crisis in political science refers to an issue or conflict within the functioning of government where the political constitution or governing laws are deemed incapable of resolving a problem.¹³ Political and legal observers generally divide constitutional crises into four categories:²¹ (1) the Constitution doesn't say what to do, (2) the Constitution's meaning is in question, (3) the Constitution tell us what to do, but it's not politically feasible, and (4) institutions themselves fail.

A constitutional crisis can occur at any time. In this context, it may involve anything related to the office of the President, such as conflicts of authority, political instability, or issues of national leadership succession if the President is unable to carry out their duties. To prevent such situations, it is essential to establish regulations in advance.

In Indonesia, constitutional crises have occurred several times but remained manageable thanks to the primary legal foundation enshrined in the Constitution. However, many regulations were established only after the President had taken specific actions. Some of the constitutional crises in Indonesia include:

- 1) The Dissolution of the 1955-elected DPR by Sukarno in 1960. At that time, there were no rules explicitly prohibiting or allowing the President to dissolve the DPR. Sukarno's Presidential Decree was successfully implemented because, despite the lack of authority or prohibition for the President to dissolve the DPR, support from the military helped stabilize the situation.
- 2) The Removal of Sukarno from the Presidency and the Appointment of Soeharto as Acting President by the MPR in 1967. At that time, the President was still elected and inaugurated by the MPR. However, since Sukarno had no Vice President, Soeharto was appointed Acting President, and the MPR decree regarding the presidential succession was only issued afterward.
- 3) Soeharto's Resignation from the Presidency in 1998. This was triggered by the 1998 monetary crisis and the May 1998 riots, after which Vice President BJ Habibie immediately succeeded him as President.
- 4) The Presidential Decree of July 23, 2001, by President Abdurrahman Wahid. This decree contained three main points: (1) the dissolution of the MPR and DPR, (2) the return of sovereignty to the people and the formation of a body to organize elections, and (3) the dissolution of the Golkar Party on the grounds of affiliation with the New Order regime. At that time, the Constitution did not specifically regulate the prohibition of the President dissolving the MPR or DPR. Political instability ensued as MPR-DPR members opposed the decree, claiming the President had no authority to dissolve these state institutions. There was also massive opposition from Golkar Party members and no military support for the decree, rendering it unsuccessful and deemed unconstitutional. This was in stark contrast to Sukarno's Presidential Decree of July 5, 1960, which succeeded due to military backing.
- 5) The Removal of Abdurrahman Wahid from the Presidency and the Inauguration of Vice President Megawati by the MPR in 2001. This followed the failure of Abdurrahman Wahid's July 23, 2001, decree. His actions later inspired MPR members to establish Article 7C in the post-amendment Constitution, stating that the President cannot freeze or dissolve the DPR.

These examples demonstrate that specific regulations were often created after the President had taken an action. Fortunately, Indonesia has never experienced a severe constitutional crisis that could render the government non-functional.

The UUD NRI 1945 provides provisions for leadership succession if the President is unable to perform their duties. Article 8(1) states that the Vice President has the right to become the next President if the incumbent President is unable to fulfill their obligations. Furthermore, Article 8(3) specifies that if both the President and Vice President are simultaneously unable to fulfill their duties, the acting Presidential authority is collectively held by the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense.

It is essential to emphasize that the acting Presidential duties must be carried out jointly by all three ministers; in other words, it cannot be undertaken by just one or two of them. Consequently, these three ministers are referred to as the Triumvirate Ministers. According to Samuel Willard Crompton in his work *100 Wars That Shaped World History*, the concept of a triumvirate was introduced by Lycurgus in 625 BC. Etymologically, "triumvirate" derives from Latin, meaning "three men," a political regime dominated by three rulers, each referred to as a *Triumvir*.¹⁴

¹³ Julia Azari and Seth Masket, (9 Februari 2017), "The 4 Types of Constitutional Crises", *FiveThirtyEight* by *abcNews*, accessed on 10 Juli 2024, URL: <https://fivethirtyeight.com/features/constitutional-crisis/>. ²¹ *Ibid*.

¹⁴ Samuel Willard Crompton. *100 Wars That Shaped World History*. Diterjemahkan oleh Rahmat Herutomo, dkk. 100 Peperangan Yang Berpengaruh Di Dalam Sejarah Dunia (Tangerang: Kharisma Publishing Group, 2005). Lihat juga dalam Kristopher

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However, further questions arise: If one of the Triumvirate Ministers cannot perform their duties, does it mean the government cannot function? Is there no exception allowing one or two ministers to act as the Presidential authority? Moreover, if all three ministers are unable to carry out their duties simultaneously, who then has the right to assume the role of acting President? Would the government collapse immediately? Could other ministers take over the responsibility? Or would the military step in and take control of the government?

These scenarios remain unanswered by any existing regulations, including the UUD NRI 1945. Therefore, further provisions regarding leadership succession need to be incorporated into a Law on the Presidential Institution. This would ensure that in the event of such a constitutional and national crisis, a clear solution is already in place.

This regulation is also necessary to prevent constitutional violations in the aftermath of a crisis. Historically, actions taken by officials or the military during crises and urgent situations often become contentious later and are deemed unconstitutional by some parties. This is primarily because such actions are based solely on state governance theories or other theories adopted by the respective parties. These theories arise due to the absence of binding, definitive rules. Hence, it can be concluded that a Law on the Presidential Institution is a crucial instrument for managing state governance, ensuring that the government operates according to principles of law, democracy, and justice.

B. The Future Regulation of the Presidential Institution Law

The Drafting of the Presidential Institution Law is crucial as it aims to further elaborate on the duties, authorities, and powers of the President as stated in the UUD NRI 1945, thereby preventing future legal issues. The regulation concerning the Presidential Institution must be enacted as a law and not through other regulations for the following fundamental reasons:

1) The Position of Law as the Highest Legal Instrument After the Constitution

In the hierarchy of Indonesian legislation as outlined in Article 7, paragraph (1) of Law No. 12 of 2011, laws rank third after the UUD NRI 1945 and TAP MPR. In other words, laws have a higher standing compared to other regulations, such as Government Regulations (one level below laws), Presidential Regulations (two levels below laws), Provincial Regulations (three levels below laws), and Regency/City Regulations (four levels below laws). The regulation of the Presidential Institution addresses fundamental aspects of governance and constitutional law, necessitating a strong and stable legal foundation. Only a law can provide a legal basis proportional to the importance of the President's functions and authority.

Although laws are positioned below the UUD NRI 1945 and TAP MPR and are equivalent to Government Regulations in Lieu of Law, the regulation of the Presidential Institution cannot be governed under these instruments due to the following: a. In the UUD NRI 1945

Amending the constitution requires a lengthy process involving constitutional amendments, which often encompass multiple provisions rather than a single rule. History shows that constitutional amendments in Indonesia typically involve several changes and/or deletions of articles or paragraphs. The amendment process requires broad support from MPR members, including DPR members representing political parties and DPD members representing regional interests. Civil society support is also necessary to ensure a smooth amendment process. Furthermore, since the regulation of the Presidential Institution requires detailed provisions, it is impractical to include such detailed rules in the UUD NRI 1945. Drafting a law is a more appropriate solution. b. In MPR Decrees:

Before the constitutional amendments, the MPR held the status of the highest state institution, granting it the authority to issue binding legal regulations (*regeling*). After the amendments, the MPR's status was redefined as an equal state institution alongside the President, DPR, DPD, MA, and MK. Consequently, post-amendment MPR Decrees no longer have binding legal authority and are limited to declaratory acts (*beschikking*), such as appointing the President and Vice President.

1) Legislative Approval for State Institution Regulations

The principle of checks and balances is essential in a democratic system, requiring legislative approval for state institution regulations, including those concerning the President. Laws must be approved by the DPR, ensuring public participation and oversight through their representatives. This guarantees that the law is representative and not created unilaterally.

2) Higher Legal Certainty

Laws provide a higher level of legal certainty than other regulations. Given that rules concerning the President involve rights, obligations, and responsibilities critical to national governance and citizens' welfare, it is vital to establish such rules through laws that ensure legal clarity.

Stenson, 2002, "Caesar, Pompey, and the Collapse of the First Triumvirate", URL: https://rex.libraries.wsu.edu/esploro/outputs/essay/Caesar-Pompey-and-the-collapseof/99900590550701842?institution=01ALLIANCE_WSU. Quoted by Febriansyah Ramadhan, "Penataan Ulang Kedudukan Menteri Triumvirat dan Majelis Permusyawaratan Rakyat Dalam Masa Pergantian Presiden dan Wakil Presiden Bersamaan", *Jurnal Majelis*, 12 no. 6 (Desember 2019): 130-131.

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- 3) Preventing Abuse of Power Laws offer stronger and more transparent mechanisms for controlling the President's authority. The legislative process involving the DPR prevents arbitrary changes and potential abuses of power by the President or other executive officials.
- 4) Regulating Inter-Institutional Relationships
The inclusion of Presidential Institution regulations in a law ensures balance and clarity in relationships among state institutions. This alignment minimizes potential conflicts between the President and other bodies, such as the DPR, DPD, Constitutional Court, and Supreme Court.
- 5) Protecting Citizens' Rights
As the President wields significant power, robust legal regulations are essential to ensure that such power does not infringe upon citizens' rights. Laws guarantee that the President's policies and actions adhere to fair legal boundaries.
- 6) Strict Amendment Procedures
Laws require rigorous legislative processes for amendments or replacements, providing stability and continuity in the regulation of the Presidency and preventing impulsive or short-term changes.
- 7) Transparency and Public Participation
The law-making process is more transparent than other regulatory processes, allowing for public participation through their representatives in the DPR. This is particularly crucial for matters involving high state institutions like the Presidency, where public oversight and input are essential.

Drafting a specific law governing the Presidential Institution requires comprehensive consideration to ensure the law serves as a robust and effective legal foundation for regulating the roles, authorities, responsibilities, and functions of the President. Below are some recommendations for the content of such a law:

1. Consolidation of Presidential Authorities. The Presidential Institution Law should consolidate all Presidential authorities currently dispersed across various laws. This aims to enhance the effectiveness and efficiency of legal regulations concerning the Presidency.
2. Clarification of the President-Vice President Relationship. The law should clearly explain and emphasize that the duties and authorities of the President are also delegated to the Vice President. This would reaffirm the consistency of the President and Vice President as a unified pair, starting from their candidacy by political parties in elections to their joint accountability in office.
3. Ethical and Moral Boundaries. The law should include provisions on the ethical and moral boundaries of the President's role as a public official. This would ensure that the President exercises power within the ethical and moral constraints of the Presidency, adhering to the principles of state ethics.
4. Succession Mechanisms in Emergencies. The law should provide a clear and detailed process for leadership succession in emergencies when both the President and Vice President are unable to perform their duties, and the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense cannot collectively act as Acting President. Proposed Structure and Content for the Presidential Institution Law:
 1. Introduction
 - a. Purpose and Scope: Explain the purpose of drafting the law and its scope, covering all aspects related to the Presidential Institution.
 - b. Legal Basis: Outline the legal foundations used, such as the UUD NRI 1945 and related laws and regulations.
 2. Position of the President
 - a. Role in State Structure: Describe the President's role as the head of state and government.
 - b. Relations with Other State Institutions: Regulate the interactions between the President and other state institutions, including legislative, judicial, and other governmental bodies.
 3. Election and Inauguration
 - a. Eligibility and Election Procedure: Explain the requirements for Presidential and Vice Presidential candidates, along with a democratic and transparent election process.
 - b. Inauguration: Detail the inauguration process and the oath or pledge taken by the President and Vice President.
 4. Presidential Duties and Authorities
 - a. Executive Powers: Regulate the President's authority in governance, including appointing and dismissing ministers, formulating policies, and enacting government regulations.
 - b. Legislative Powers: Outline the President's authority to propose bills, approve laws, and issue government regulations in lieu of laws.

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- c. **Judicial Powers:** Govern the President's powers regarding granting clemency, amnesty, abolition, and rehabilitation.
 - d. **Security and Defense Powers:** Define the President's role as the Supreme Commander of the Armed Forces (Tentara Nasional Indonesia-TNI) and in establishing national defense and security policies.
 - e. **Foreign Affairs Powers:** Cover the authority to forge international agreements, appoint ambassadors and consuls, and declare war with legislative approval.
5. **Presidential Obligations and Responsibilities**
 - a. **General Obligations:** Carry out duties honestly, fairly, and transparently in the people's interest.
 - b. **Specific Obligations:** Uphold laws and regulations, respect the constitution, adhere to ethics and morals, and maintain the nation's integrity and stability.
 6. **Oversight and Accountability Mechanisms**
 - a. **Reporting and Transparency:** Require the President to submit annual reports to the legislature (DPR) and the public.
 - b. **Oversight by State Institutions:** Define the role of DPR, the Audit Board of Indonesia (BPK), and other bodies in supervising Presidential actions.
 - c. **Legal Accountability:** Establish procedures for addressing Presidential misconduct, including impeachment.
 7. **Presidential Rights and Protections**
 - a. **Legal Immunity:** Provide protections for the President in executing duties, with clearly defined limitations.
 - b. **Facilities and Security:** Regulate the facilities provided to the President and security measures.
 8. **Term of Office and Succession**
 - a. **Term of Office:** Set the term length and term limits for the President and Vice President.
 - b. **Succession Procedures:** Establish mechanisms for Presidential succession in cases of vacancy due to death, resignation, or impeachment.
 9. **Enactment and Amendment Procedures**
 - a. **Enactment Procedure:** Outline the procedure for enacting the law and its implementing regulations.
 - b. **Amendment Procedure:** Define mechanisms for revising or amending the law in response to evolving needs.
 10. **Transitional and Final Provisions**
 - a. **Transitional Provisions:** Address the transition from previous laws to the new law.
 - b. **Final Provisions:** Include other necessary measures to ensure the effective implementation of the law.

In addition to the ten points above, the law should detail the position, duties, and functions of the Vice President. Since the President and Vice President are an inseparable unit, the law must address both roles comprehensively. This ensures the law remains consistent with its title as the "Presidential Institution Law."

By incorporating these elements, the Presidential Institution Law would provide a clear and comprehensive legal framework to support the President's duties effectively, aligned with democratic principles and the rule of law.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusions

1. The Presidential Institution is crucial to be regulated in a separate law for several reasons: (1) the necessity to prevent abuse of power by the President through harmonization of all regulations governing Presidential authority; (2) the ambiguity surrounding the duties and authority of the Vice President's office; (3) the need for strict regulation of the ethical and moral boundaries of the President; and (4) addressing constitutional crises related to Presidential leadership succession in critical and emergency situations.
2. A dedicated law must be drafted with comprehensive consideration to ensure it serves as a strong and effective legal foundation. Below are several suggestions for the content of the Presidential Institution Law: (1) The Presidential Institution Law should accommodate all Presidential authorities scattered across various laws; (2) The law should include provisions clarifying and emphasizing that the duties and authorities of the President are also the responsibilities of the Vice President, as delegated to them; (3) It should strictly regulate the ethical and moral boundaries of the President's role as a public official; and (4) The law must provide a clear and detailed process for leadership succession in cases where, under critical and emergency conditions, the President and Vice President are unable to carry out their duties, and the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense are collectively unable to perform their responsibilities as Acting President.

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B. Suggestion

1. A national legal study on the Presidential Institution Law is crucial to be conducted promptly, considering that the President is the only high state institution without specific (legislative) regulations governing it.
2. The government must exercise caution in drafting the Presidential Institution Law, as this law regulates all matters related to the position of the President, who, under Indonesia's system, serves as both the head of government and the head of state.

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