



The Urgency of Establishing the Presidential Institution Law in Indonesian Constitutional System

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Abstrak

Lembaga kepresidenan merupakan institusi sentral dalam sistem pemerintahan presidensial Indonesia. Meskipun kedudukan dan kewenangan Presiden telah diatur dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, hingga saat ini Indonesia belum memiliki Undang-Undang yang secara khusus mengatur kelembagaan kepresidenan secara komprehensif. Kondisi tersebut menimbulkan berbagai persoalan hukum, terutama terkait batas kewenangan Presiden, hubungan Presiden dan Wakil Presiden, mekanisme akuntabilitas, serta efektivitas prinsip checks and balances dalam sistem ketatanegaraan. Penelitian ini bertujuan untuk menganalisis arah pengaturan Undang-Undang Kelembagaan Kepresidenan serta mengkaji implikasi ketiadaan pengaturan tersebut terhadap sistem ketatanegaraan Indonesia. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan terdiri atas bahan hukum primer, sekunder, dan tersier yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa pengaturan kelembagaan kepresidenan saat ini masih bersifat tersebar dan belum terintegrasi sehingga menimbulkan ketidakpastian hukum dalam penyelenggaraan kekuasaan eksekutif. Arah pengaturan Undang-Undang Kelembagaan Kepresidenan perlu mencakup pengaturan mengenai kedudukan dan fungsi Presiden serta Wakil Presiden, batas kewenangan Presiden dalam relasinya dengan cabang kekuasaan lain, organisasi pendukung kepresidenan, mekanisme pengisian kekosongan jabatan, masa transisi pemerintahan, pembatasan penggunaan fasilitas negara dalam pemilu, serta mekanisme pertanggungjawaban dan pemberhentian Presiden. Ketidadaan Undang-Undang Kelembagaan Kepresidenan berimplikasi pada melemahnya efektivitas mekanisme checks and balances, meningkatnya potensi penyalahgunaan kewenangan, dan belum optimalnya penerapan prinsip demokrasi konstitusional dalam sistem ketatanegaraan Indonesia.

Keywords: *Lembaga kepresidenan, checks and balances, demokrasi konstitusional, kekuasaan presiden*

Abstract

The presidential institution is a central Indonesian presidential system of government. Although the position and powers of the President stipulated in the 1945 Constitution of the Republic of Indonesia, to date Indonesia has not enacted a law that comprehensively regulates the

presidential institution. This situation has given rise various legal issues, particularly regarding the limits of the President's authority, the relationship between the President and Vice President, accountability mechanisms, and the effectiveness of the principle of checks and balances in the constitutional system. This research aims to analyze the direction of legislation on the Presidential Institution and examine the implications of the absence of such legislation in Indonesian constitutional system. This research is normative legal research employing both a legislative and a conceptual approach. The legal materials used consist of primary, secondary, and tertiary sources, which were analyzed qualitatively. The results of the research indicate that the current regulatory framework for the presidential institution remains fragmented and unintegrated, thereby creating legal uncertainty in exercise of executive power. The scope of the Presidential Institutional Law should include provisions regarding the position and functions of the President and Vice President; the limits of the President's authority in relation to other branches of government; presidential support organizations; mechanisms for filling vacancies; government transition period; restrictions on the use of state facilities during elections; and mechanisms for accountability and removal from office of the President. The absence of a Presidential Institutional Law has implications for the weakening of the effectiveness of the checks and balances mechanism, an increased potential for abuse of authority, and the suboptimal application of the principles of constitutional democracy in Indonesian system of government.

Keywords: *Presidential discretion, rehabilitation, corruption, checks and balances.*

INTRODUCTION

The Presidential Institution is a central institution in Indonesia's system of government because the President holds executive power according to Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In a presidential system of government, the President not only serves as head of state but also as head of government, responsible for the administration of the state and implementation of public policy.¹ According to Miriam Budiardjo, the

¹ Religia Sahidna Putri and Ratih Damayanti, "Kedudukan Dan Fungsi Presiden Dalam Sistem Pemerintahan Presidensial Di Indonesia," *Bookchapter Hukum Dan Lingkungan* 1 (2025): 1498–1514.

President is the core of executive power in a presidential system of government. This position grants the President broad authority in running the government while simultaneously positioning as a central figure with significant influence over the direction of state administration and lives of the people as a whole.²

However, the extensive powers inherent in the office of President have not been supported by an adequate legal framework to comprehensively regulate the presidential institution. As of today, Indonesia has not enacted a law specifically governing the Presidential Institution, so its regulations remain scattered across various constitutional provisions and piecemeal legislation. The absence of such comprehensive regulations creates a gray area in the governance of the presidential institution whether regarding organizational structure, relationships among supporting bodies of the President, or accountability mechanisms. Consequently, potential overlaps in authority, duplication of functions, and weak oversight of the exercise of executive power are difficult to avoid.³ Therefore, the existence of regulations specifically governing the Presidential Institution is an urgent necessity to ensure legal certainty, the effectiveness of governance and strengthening of the principle of checks and balances in the Indonesian constitutional system.

In presidential system, the President serves as both head of state and government. The position of the President as head of government and state is the primary factor behind the broad scope of authority. As a result, the authority of President is not limited to executive branch alone but also extends to legislative branch and certain aspects of the judicial branch.⁴ According to Montesquieu, limiting the power of the President as the holder of executive power is an absolute requirement in a democratic state governed by the rule of law. The separation of powers serves as a mechanism to ensure that

² Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2008).

³ Sunarto, "Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia," *Masalah-Masalah Hukum* 45, no. 2 (2016).

⁴ Putri and Damayanti, "Kedudukan Dan Fungsi Presiden Dalam Sistem Pemerintahan Presidensial Di Indonesia."

power is not absolute and is not exercised arbitrarily.⁵ In line with this view, Mahfud MD emphasized that breadth of the President's authority must be balanced by clear legal regulations and effective accountability mechanisms. In his view, the power is not constrained by legal norms and adequate oversight system has potential to lead abuse of authority. Mahfud also emphasized that no political system is entirely immune to deviance including systems built upon democratic principle.⁶ Therefore, the existence of strong control mechanisms whether through legal instruments checks and balances mechanisms is crucial prerequisite for ensuring that the power of President is exercised in accordance with the principles rule of law and the public interest. Furthermore, Jimly Asshiddiqie emphasized the importance of the checks and balances system as concrete manifestation of power limitations. He stated that in a presidential system, the President receives direct endorsement from the public. In this regard, oversight of the President's power must be systematically regulated to prevent a drift toward authoritarianism. Such constraints can be achieved via constitutional norms, the formation of oversight agencies, to institutional regulations such as the Presidency Act.⁷

Unlike other state institutions such as the House of Representatives (DPR), regulated by Law Number 17 of 2014; the Constitutional Court, governed by Law Number 24 of 2003; and the Judicial Commission, under Law Number 18 of 2011 the Presidency paradoxically lacks a specific legal framework to guarantee institutional transparency, accountability, and efficiency. As the highest executive authority, the institutional regulation of the President is paramount to prevent overlapping authorities, organizational ambiguity, and weak public accountability mechanisms regarding its institutional performance.⁸

⁵ Montesquieu and Thomas Nugent, *The Spirit of Laws* (Cambridge: Cambridge University Press, 1989).

⁶ Mahfud MD, "Urgensi Undang-Undang Lembaga Kepresidenan" (Yogyakarta: Seminar Nasional Departemen Hukum Tata Negara UII, 2025).

⁷ Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, Cetakan Ke (Jakarta: Sinar Grafika, 2011).

⁸ Maria Farida Indrati, *Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muatan* (Yogyakarta: Kanisius, 2007).

In fact, the idea of law on the Presidential Institution had already been proposed in 2001 but was still in its very early stages. One of the factors preventing the prompt enactment of such a law, as explained by Budiman Tanuredjo, was, first, a lack of response from the government. This bill was an initiative of the House of Representatives, but it received no response from either President Abdurrahman Wahid or President Megawati Soekarnoputri. President Megawati stated that discussion of the bill should be postponed until the process of amending the 1945 Constitution was complete. Second, there was no constitutional mandate: the amendments to the 1945 Constitution did not explicitly mandate the enactment of a specific law regarding the presidential institution. This is in contrast to other state institutions such as the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representatives Council (DPD), the Supreme Court (MA), and the Constitutional Court (MK), which are specifically regulated by law.⁹

Therefore, the drafting of a Law on the Presidency is an urgent necessity in the context of institutional reform following the amendments to the 1945 Constitution. As Mahfud MD has stated, the urgency of this law on the presidential institution does not stem from the absence of specific regulations, but rather from the fact that in practice, numerous issues have arisen that are difficult to resolve under existing Administrative Law or Constitutional Law.¹⁰ This regulation is expected to provide a clear legal basis. Therefore, it is worth examining in greater depth the direction of the legislative framework governing the presidential institution, as well as the implications absence of such legislation. The existence of such legislation is crucial to ensuring the realization principle of checks and balances and to preventing the abuse of power in executive practices.

METHODOLOGY

This research is normative legal study using the statutory approach and the conceptual approach. The legal provisions applied to analyze the

⁹ Budiman Tanuredjo, "Urgensi Undang-Undang Lembaga Kepresidenan" (Webinar AIPI Indonesia, 2024), https://www.youtube.com/live/UfLe_LLrgXY.

¹⁰ MD, "Urgensi Undang-Undang Lembaga Kepresidenan."

issues in this research are the 1945 Constitution of the Republic of Indonesia and the 2001 Draft Law on the Presidential Institution. The object of this research is the Presidential Institution Law.

This research falls under the category of normative legal research; therefore, the required data consists of secondary and primary data. Primary data in this research refers to data obtained directly from the research subject related to the issue under examination, namely the urgency of the Presidential Institution Act. Secondary data in this research was obtained through a literature review of legal sources consisting of: primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method used by the author in this research was a literature review to obtain secondary data through the analysis of various laws related to elections or literature related to the issue under study.

PREVIUS RESEARCH

Research on the urgency of enacting a Law on the Presidency has been conducted by several scholars. Muhammad Jodi Wiranto and Ahmad Redi concluded that the presidency is only primary state institution that lacks specific statutory regulation thus dedicated regulation necessary to provide legal certainty regarding the position and functions of the President within the Indonesian governance system.¹¹

Research by Zieyad Alfeiyad Ahfi emphasizes that the absence of a Presidential Law has the potential to lead to abuse of power and weaken the checks and balances mechanism. Therefore, the Draft Presidential Institution Law needs to be revived immediately as an instrument to strengthen Indonesia's presidential system.¹²

Rizki Mubarak states that the absence of clear regulations regarding the presidential institution leads to legal certainty issues and

¹¹ Muhammad Jodi Wiranto, "Urgensi Undang-Undang Tentang Lembaga Kepresidenan Dalam Sistem Pemerintahan Republik Indonesia Dikaitkan Dengan Eksistensi Undang-Undang Lembaga-Lembaga Negara Lainnya," *Jurnal Hukum Adigama* 4 (2021): 1895–1914.

¹² Zieyad Alfeiyad Ahfi, "Urgensi Rancangan Undang-Undang Lembaga Kepresidenan Sebagai Instrumen Penguatan Checks and Balances," *Lex Renaissance* 10, no. January (2026): 370–97.

potentially triggers jurisdictional conflicts with other state institutions. The enactment of a Law on the Presidency is deemed capable of clarifying the distribution of powers and reinforcing government accountability.¹³

Aditya Andela Pratama, Syaif Al Haq, and Adelia Mizani Qisti linked the urgency of enacting the Presidential Law to the integrity of elections. They argued that such legislation is necessary to clarify the limits of the President's authority during the electoral process and to prevent the misuse of state resources for specific political interests.¹⁴

Various studies on the presidential institution generally focus on the position and authority of the President in the presidential system of government following the amendments to the 1945 Constitution of the Republic of Indonesia, as well as the urgency of enacting a Presidential Institution Act as an instrument to strengthen the principle of checks and balances. However, most of this research are still limited to normative arguments regarding the importance of enacting a Presidential Institution Law and have not comprehensively identified the legal gaps arising from the absence of such regulations. Furthermore, there has been little research specifically examining the regulatory direction and substantive content that should be addressed in the Presidential Institution Act to ensure the accountability of executive power and strengthen constitutional democracy. Therefore, this research aims to fill this gap by analyzing the implications of the absence Presidential Institution Law while formulating the ideal regulatory direction for the enactment of a Presidential Institution Law in Indonesia.

RESULT AND DISCUSSION

The Presidential Institution After Amendment of the 1945 Constitution

¹³ Rizki Mubarak, "Penataan Lembaga Kepresidenan Melalui Undang-Undang Tentang Lembaga Kepresidenan," in *Prosiding Simposium Nasional Hukum Aktual* (Yogyakarta: Unievrstas Islam Indonesia, 2006), 1–12.

¹⁴ Aditya Andela Pratama, Syaif Al Haq, and Adelia Mizani Qisti, "Urgensi Pembentukan Undang-Undang Lembaga Kepresidenan Dalam Mewujudkan Pemilihan Umum Berintegritas Di Indonesia," *Journal of Indonesia Law* 5, no. 2 (2021), <https://doi.org/10.18326/jil.v5i2.2601>.

The position and authority of the President as the holder of state governing power are regulated under Chapter III of the 1945 Constitution of the Republic of Indonesia, which is specifically titled "The Executive Power". This regulation reinforces the central position of the President within the Indonesian constitutional system as the holder of executive power. This is reflected in Article 4, paragraph (1) of the 1945 Constitution, which states that "The President of Republic Indonesia holds executive power in accordance with the Constitution." Furthermore, Article 4, paragraph (2) of the 1945 Constitution stipulates that in exercising these duties, the President shall be assisted by a Vice President.

In addition to exercising executive functions, the President is also granted authority in the fields of legislation and regulation. Article 5, paragraph (1) of the 1945 Constitution grants the President right to submit bills the House of Representatives (DPR). Meanwhile in Article 5, paragraph (2) of the 1945 Constitution affirms the President's authority enact government regulations as instruments for implementing laws. These provisions demonstrate that the Constitution provides ample room for the President to execute governing functions while simultaneously playing a pivotal role in the formation and implementation of law within the framework of state administration.

The amendment of the 1945 Constitution of the Republic of Indonesia has also brought fundamental changes to the regulation of presidential and vice-presidential powers, primarily through strengthening of constitutional limitation and oversight mechanisms. One form of such limitation is reflected in Article 7 of the 1945 Constitution, which stipulates that the President and Vice President shall hold office for term of five years and may only be reelected for one subsequent term. This provision serves as a constitutional instrument to prevent excessive concentration power in a single individual and to guarantee democratic circulation of leadership.¹⁵

In addition to term limits, the amendment of the 1945 Constitution also strengthens the accountability mechanisms for the

¹⁵ Rizki Rahayu Fitri and Agnes Fitryantica, "Transformasi Konstitusional Pertanggungjawaban Presiden Dalam Sistem Ketatanegaraan Indonesia Pasca Amandemen UUD 1945," in *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, 2025.

President and Vice President through provisions on removal from office (impeachment). Article 7A of the 1945 Constitution stipulates that the President and/or Vice President may be dismissed by the People's Consultative Assembly upon the proposal of the House of Representatives if they are proven to have committed legal violations, such as treason against the state, corruption, bribery, other felonies, or misconduct, or if they are found to no longer meet the qualifications to serve as President and/or Vice President.

Furthermore, Article 7B of the 1945 Constitution regulates the removal mechanism in detail through process involving the House of Representatives, the Constitutional Court and the People's Consultative Assembly. The involvement of these three state institutions demonstrates that the impeachment of the President and/or Vice President cannot be conducted solely on political considerations, but must instead undergo strict legal and constitutional processes. Consequently, the amendments to the 1945 Constitution have established a stronger system of checks and balances on presidential power while reaffirming the principle that the president is not above the law.¹⁶

Subsequently, Article 8 of the 1945 Constitution regulates presidential succession mechanism as part of the efforts to maintain government stability. This provision stipulates that if the President is permanently unable to perform their duties, the Vice President shall replace them until the end of the term of office. In the event of a vacancy in office of the Vice President, the People's Consultative Assembly (MPR) is authorized to elect a Vice President from two candidates proposed by the President within a maximum period of forty days. Moreover, if both the President and the Vice President are simultaneously unable to perform their obligations, the duties of presidency shall be exercised collectively by the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense until a new President and Vice President are elected by the MPR. This

¹⁶ Aura Zauja Devina, "Pemakzulan Terhadap Wakil Presiden Dalam Perspektif Konstitusionalisme Di Indonesia" (Universitas Malikussaleh, 2025).

provision demonstrates a constitutional design aimed at ensuring government continuity during an executive power emergency.¹⁷

Meanwhile, Article 9 of the 1945 Constitution regulates the oath or affirmation to be taken by the President and Vice President before assuming office. This oath or affirmation reaffirms a constitutional commitment to uphold the Constitution, consistently execute all laws and regulations, and dedicate themselves to the service of the nation and state. This provision also provides an alternative mechanism for taking the oath or affirmation if the People's Consultative Assembly (MPR) or the House of Representatives (DPR) is unable to hold a session, namely before the leadership of the MPR and witnessed by the leadership of the Supreme Court. Consequently, Article 9 strengthens the moral and constitutional legitimacy of the President and Vice President from the very inception of their term of office.¹⁸

As stipulated in Article 4, paragraph (1) of the 1945 Constitution, the President is the holder executive power of state. This provision reflects nature of the presidential system of government adopted by Indonesia which there is no separation between the President as head of state and the President as head of government. Thus, the Presidency is understood as a single, unified office that exercises executive functions comprehensively in accordance with the 1945 Constitution.

In text of the 1945 Constitution itself, there is no explicit provision distinguishing between the positions of head of state and head of government. However, in the Explanatory Notes to the 1945 Constitution drafted by Soepomo, there is a conceptual distinction between "head of state" and "head of government." This Explanatory Memorandum was subsequently officially published in the Official Gazette of the Republic of Indonesia in 1946 and was later enshrined as an integral part of the 1945 Constitution through the Presidential Decree of July 5, 1959.

¹⁷ Dirga Danuarta and Erman I Rahim, "Menteri Triumvirat Dan Kontinuitas Pemerintahan: Analisis Ketentuan Konstitusional Dalam Kekosongan Jabatan Kepala Negara," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 6930–42.

¹⁸ Fitri and Fitryantica, "Transformasi Konstitusional Pertanggungjawaban Presiden Dalam Sistem Ketatanegaraan Indonesia Pasca Amandemen UUD 1945."

Thus, from a historical and conceptual perspective both terms are recognized; however, in the development of Indonesia's post-amendment constitutional system, the President remains positioned as a single office that simultaneously performs the functions of both head of state and head of government within the framework of a presidential system.¹⁹

The Position, Authority, and Limitation of Presidential Power Under the 1945 Constitution

The amendment of the 1945 Constitution of the Republic of Indonesia has brought fundamental changes to the position and authority design of the President within the Indonesian constitutional system. This amendment not only reinforces the President's position as the holder of executive power but also simultaneously establishes power limiting mechanisms by strengthening the principles of checks and balances among state institutions.²⁰

From the perspective of governmental functions, a significant change has occurred in the structure of the President's legislative authority. Prior to the amendments, the President held the power to enact laws with approval the House of Representatives (DPR). However, following the amendments, this role has shifted significantly; the President is no longer the primary holder of legislative power but is only authorized to submit draft laws to the DPR. This shift reflects a strengthening of the DPR's legislative function while simultaneously limiting the President's dominance in the lawmaking process, although the President retains regulatory authority through the issuance of government regulations to implement laws.²¹

The limitation of presidential power is also evident in the regulation of the term of office. Article 7 of the amended 1945 Constitution reinforces that the President and Vice President shall hold office for term of five years and may only be reelected for one

¹⁹ Jimly Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Sinar Grafika, 2012).

²⁰ Arie Elcaputera, "Desain Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Berdasarkan Sistem Ketatanegaraan Indonesia," *Univ Jambi*, 2024.

²¹ Khairul Umam and dkk, "Rekonstruksi Prinsip Checks And Balances Antar Lembaga Negara Berdasarkan Pancasila," *Jatishwara* 38, no. 2 (2023).

subsequent term. This provision serves as a constitutional instrument to prevent the long-term concentration of power and to ensure a democratic circulation of leadership.²²

Furthermore, a significant change has also occurred in the presidential succession mechanism as regulated under Article 8 of the 1945 Constitution. While the previous succession arrangement was relatively simple, the post-amendment mechanism has become more detailed and systematic. The Constitution regulates a tiered replacement of the President by the Vice President, the mechanism for filling a vacancy in the office of the Vice President by the People's Consultative Assembly and emergency mechanism should both offices become concurrently vacant, through collective acting presidency by specified ministers. This arrangement demonstrates constitutional efforts to guarantee government continuity in various crisis situations.²³ From the perspective of the legitimacy of office, Article 9 of the 1945 Constitution reaffirms the importance of the oath or pledge taken by the President and Vice President before assuming office. This provision is not merely symbolic; it also carries a normative dimension in the form of a constitutional commitment to uphold the 1945 Constitution, enforce the law, serve the nation and the state. In addition, alternative mechanisms are also provided for in the event that a session of the MPR or DPR cannot be held, demonstrating both the flexibility and resilience of the constitutional system.

In the realm of foreign relations and international treaties, Article 11 of the 1945 Constitution reveals a shift from the President's relatively exclusive authority toward a more controlled power. The President retains the authority to declare war, make peace, and enter into international treaties; however, their implementation requires the approval of the DPR, particularly for treaties that have broad and strategic impacts on the lives of the people and state finances. This reinforces the DPR's position in its oversight function over executive foreign policy.

²² Pataniari Siahaan, *Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945* (Jakarta: Konstitusi Press, 2012).

²³ Danuarta and Rahim, "Menteri Triumvirat Dan Kontinuitas Pemerintahan: Analisis Ketentuan Konstitusional Dalam Kekosongan Jabatan Kepala Negara."

The strengthening of power limiting mechanisms is also apparent in Articles 13 and 14 of the 1945 Constitution. In appointing and receiving ambassadors, the President is required to consider the advice of the DPR, which was previously the President's exclusive prerogative. Meanwhile, in granting clemency and rehabilitation, the President must consider the advice of the Supreme Court, whereas amnesty and abolition are granted with due regard to the advice of the DPR. This differentiation reflects the distinct character of these powers, where clemency and rehabilitation are individual and judicial in nature, while amnesty and abolition are collective and political, thus requiring different institutional approaches.²⁴

Moreover, the amendment to Article 15 of the 1945 Constitution reinforces that the granting of titles, decorations, and honors by the President must be regulated by law. This demonstrates shift from discretionary authority toward an authority based on formal legality, ensuring that every conferment of state awards must have a clear legal basis and be objectively accountable.²⁵

Another amendment is found in Article 16 of the 1945 Constitution, which abolishes the Supreme Advisory Council and replaces it with an advisory council formed by the President. This transformation reflects a change in the nature of advisory bodies from constitutional institutions to administrative bodies dependent on the President, thereby reinforcing the restructuring of the state system following the amendments.

Overall, the amendments to the 1945 Constitution demonstrate a consistent pattern: strengthening the President's position as an effective holder of executive power, while simultaneously balancing it with limitations through legal mechanisms and oversight among state institutions. Consequently, post amendment constitutional design aims not only to enhance government effectiveness but also to ensure that presidential power remains within the corridors of the rule of law and the principles of constitutional democracy.

²⁴ Karima Douaisia, "Constitutional Democracy: Principles and Dimensions," *Journal of Science and Knowledge Horizons* 5, no. 1 (2025).

²⁵ Umam and dkk, "Rekonstruksi Prinsip Checks And Balances Antar Lembaga Negara Berdasarkan Pancasila."

The Direction of Legislative Regulations on the Presidential Institution in Indonesia

The amendment of the 1945 Constitution of the Republic of Indonesia has brought significant changes to the design of presidential power within the Indonesian constitutional system. In general, constitutional amendments are often understood as efforts to limit presidential power by strengthening checks and balances mechanisms. However, this view is not entirely accurate, as in certain aspects, the amendments conversely reinforce the President's position within the state power structure.

Iwan Satriawan states that post amendment limitations on presidential power are evident, among others, through two term limit, the reinforcement of the principle of popular sovereignty via the direct election of representative bodies, and the strengthening of selection and appointment mechanisms for state officials by independent agencies as well as the House of Representatives (DPR).²⁶ However, at the same time, the amendments to the 1945 Constitution also reinforce the President's position through the direct election of the President by the people, the strengthening of electoral legitimacy, and constraints on impeachment that require strict legal and political procedures. Furthermore, the President maintains significant influence over the legislative process, policymaking, and appointment of several strategic state officials.²⁷

In addition, the President also plays a significant role in various public office appointment processes, such as appointment the Chief of the Indonesian National Police and the Attorney General, as well as involvement in the selection committees for independent agencies such as the Corruption Eradication Commission (KPK), the General Elections Commission (KPU), and the Elections Supervisory Agency (Bawaslu). This condition demonstrates that structurally, the President maintains a highly powerful position within the Indonesian

²⁶ Iwan Satriawan, "Urgensi Undang-Undang Lembaga Kepresidenan" (Webinar AIPI Indonesia, 2024), https://www.youtube.com/live/UfLe_LLrgXY.

²⁷ Nina Andriana, "Pemilu Dan Relasi Eksekutif Dan Legislatif," *Jurnal Penelitian Politik* 11, no. 2 (2014): 28.

constitutional system, thereby opening avenues for the concentration of power if it is not balanced by effective control mechanisms.²⁸

From a normative perspective, the provisions regarding the President in the 1945 Constitution remain general in nature and do not provide detailed regulations on the presidential institutional framework. Article 4, paragraph (1) of the 1945 Constitution merely states that the President exercises executive power in accordance with the Constitution, without elaborating on institutional structure subordinate to the President. As a result, the internal governance of the presidential institution is largely regulated through presidential regulations and presidential decrees of an administrative nature.²⁹

Within the context of a presidential system, the presidency is understood as a single, unified office that does not separate the roles of head of state and government. Although in Indonesian constitutional history, particularly in the Elucidation of the 1945 Constitution drafted by Soepomo, a distinction was made between the leader of the state and leader of the government, modern constitutional developments no longer explicitly differentiate between these two functions. Thus, the President is the sole holder of executive power, which encompasses all governing functions of the state.³⁰

In the legislative field, a significant change occurred between the periods before and after the amendment of the 1945 Constitution. Before the amendments, the President held the power to enact laws with the approval of the House of Representatives (DPR). After the amendments, this role shifted significantly; the President is only entitled to propose bills to the DPR, while the power to enact laws resides with the DPR together with the President. Nevertheless, in practice, the President retains substantial influence over legislative process, including through the authority to issue Government Regulations in

²⁸ Muhammad Rianda Fahlevi, "Urgensi Pembentukan Undang-Undang Lembaga Kepresidenan Di Indonesia" (Universitas Jambi, 2024).

²⁹ Rizki Mubarak, "Penataan Lembaga Kepresidenan Melalui Undang-Undang Tentang Lembaga Kepresidenan," in *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, 2025.

³⁰ Dody Nur Andriyan, *Hukum Tata Negara Dan Sistem Politik: Kombinasi Presidensial Dengan Multipartai Di Indonesia* (Deepublish, 2016).

Lieu of Laws (Perpu), which opens avenues for executive discretion in formulating legal norms.

In this context, Ni'matul Huda assesses that although there has been a formal shift in legislative power from the President to the DPR, the President still exerts significant influence over the lawmaking process. This indicates that constitutional changes do not automatically reduce executive dominance in the practice of state governance, particularly due to the existence of Perpu as an instrument that can be utilized under certain conditions.³¹

Regarding judicial power, the President also holds a strategic role within the law enforcement system, although intervention in judicial independence is prohibited. Nevertheless, the President maintains a constitutional responsibility to uphold the effectiveness of the legal system, including in anti-corruption policies. In practice, the effectiveness of anti-corruption policies is heavily influenced by the President's political commitment as the head of government.³²

In addition, within the field of elections and democratic integrity, a serious issue persists regarding the potential abuse of power by the incumbent President or Vice President. The absence of specific regulations concerning restrictions on the use of state resources during campaign periods creates a gray area that can be exploited for electoral gain. Therefore, there is a need to strengthen regulations governing the neutrality of the presidency during political contests, including oversight by independent bodies, mandatory campaign leave arrangements for incumbents, and strict sanctions against electoral violations.³³

Budiman Tanuredjo also points out that the presidential institution contains a vast complexity of functions, serving not only as head of state and head of government, but also as a political actor, supreme commander of the armed forces, as well as a family and public figure. This complexity potentially gives rise to conflicts of interest if it is not clearly regulated within a legal framework. Furthermore, the relationships between the President and the Vice

³¹ Ni'matul Huda, *Hukum Tata Negara Indonesia* (Jakarta: Rajawali Pers, 2013).

³² Satriawan, "Urgensi Undang-Undang Lembaga Kepresidenan."

³³ MD, "Urgensi Undang-Undang Lembaga Kepresidenan."

President, family members, former Presidents, and other political actors also constitute crucial issues in constitutional practice that have not been comprehensively regulated.

Other issues include problems during power transition periods (the lame-duck period), the status of acting officials during a power emergency, and presidential dominance in strategic decision-making involving other institutions. This condition demonstrates that although power has been normatively limited, in practice, the President still maintains a broad realm of discretion.³⁴

Based on these various issues, it can be concluded that the regulation of the presidential institution within the Indonesian constitutional system remains scattered, unintegrated, and uncomprehensive. Therefore, the enactment of a Law on the Presidential Institution has become an urgent necessity. This statute is expected to provide legal certainty regarding the structure, functions, authorities, limitations, and accountability mechanisms of the presidential institution, while simultaneously strengthening checks and balances system among state institutions.

Consequently, the regulatory direction of the Law on the Presidential Institution is not merely administrative in nature; rather, it constitutes part of the efforts to fortify the constitutional democratic system, ensuring that presidential power remains effective yet firmly within the corridors of law and the principles of the rule of law (*rechtsstaat*).

The Implications of the Absence of a Law on the Presidential Institution

Power is inherently an ambivalent instrument that can be utilized for the public interest, yet at the same time has the potential to be abused if not accompanied by adequate checks and balances.³⁵ Power is often analogized to a knife, whose utility or danger depends heavily on who wields it and how it is used. Therefore, a legal system is required as a limiting instrument to prevent power from developing into an arbitrary tool of dominance. In this context, Lord Acton famously warned that

³⁴ Tanuredjo, "Urgensi Undang-Undang Lembaga Kepresidenan."

³⁵ Erman I Rahim and M SH, "Pemerintahan Dan Kekuasaan: Struktur," *Politik Dan Pemerintahan* 49 (2025).

“power tends to corrupt, and absolute power corrupts absolutely,” emphasizing that the concentration of power without effective checks and balances has the potential to lead to the abuse of authority.³⁶

Based on this principle, in a modern democracy, state power is distributed through the concept of separation of powers (*trias politica*), which is further reinforced by checks and balances mechanisms. This system aims to ensure that each branch of government monitors and limits the others, thereby preventing the dominance of any single institution. Within the framework of the rule of law, the checks and balances mechanism functions not only as an instrument for controlling power but also as the foundation for achieving accountable, transparent, and democratic governance.³⁷

The principle of checks and balances is essentially a fundamental mechanism within the constitutional system that demands a balance and mutual oversight between the legislative, executive, and judicial branches of power.³⁸ Through this mechanism, each branch of power not only executes its respective functions but also plays a role in control to prevent the abuse of authority. Thus, this principle becomes an essential element in preventing the concentration of power in a single institution or individual.

However, in the Indonesian context, the absence of a law specifically regulating the presidential institution carries serious implications for the effectiveness of the checks and balances mechanism. Regulations concerning the President that are scattered across various provisions of the 1945 Constitution, sectoral laws, and implementing regulations lead the lack of unified and integrated legal framework regarding the structure, functions, and boundaries of the presidential institution's authority. As a result, oversight over the executive branch becomes suboptimal and tends to rely on political mechanisms rather than a systematic legal mechanism.

³⁶ Lusia Inrastuti and Susanto Polamolo, “Hukum Tata Negara Dan Reformasi Konstitusi Di Indonesia,” *Journal Unsri*, 2019.

³⁷ Sunarto, “Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia.”

³⁸ Yumna Fahira, “Sistem Checks and Balances Dalam Menjaga Prinsip Demokrasi Di Indonesia,” *Jurnal Media Akademik (JMA)* 3, no. 6 (2025).

Under these conditions, the President's position has potentially become highly dominant within the constitutional structure. This dominance is reflected not only in executive functions but also in its influence over other branches of power, particularly the legislature, which in practice may experience a weakening of its oversight function. This situation risks reducing the legislative branch to a mere formal instrument for rubber stamping executive policies, thereby disrupting the balance of powers.

A number of academic perspectives also emphasize that the lack of comprehensive regulations concerning the presidential institution has the potential to repeat past constitutional problems, namely the occurrence of unchecked concentration of power, overlapping authorities, and weak government accountability.³⁹ In the long term, this condition can also open avenues for practices to abuse of power, including corruption, collusion, and nepotism, if it is not accompanied by an effective and legally binding oversight system.

Furthermore, the absence of a Law on the Presidential Institution also demonstrates an inconsistency with the principles of constitutional democracy. Constitutional democracy essentially demands the limitation of power through the constitution, the distribution of authority among state institutions, and the protection of citizens' rights.⁴⁰ Within this framework, the state must not only practice procedural democracy but also establish an institutional system that adheres to the principles of the rule of law and the limitation of power. Theoretically, constitutional democracy encompasses several core principles, including guarantee of equality among citizens respect for pluralism, the existence of legal norms binding on all state officials, and mechanisms for the legal resolution of disputes. These principles are subsequently institutionalized through recognition of human rights, the separation of powers, judicial independence, judicial review

³⁹ Mubarak, "Penataan Lembaga Kepresidenan Melalui Undang-Undang Tentang Lembaga Kepresidenan," 2025.

⁴⁰ Herdi Munte and Christo Sumurung Tua Sagala, "Perlindungan Hak Konstitusional Di Indonesia," *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (2021): 183–92.

mechanisms, and the enforcement of the principle of legality in every governmental action.⁴¹

In this context, the absence of specific regulations concerning the presidential institution causes these principles to lack an adequate operational foundation within the executive power structure. Consequently, provisions regarding the limits of authority, oversight mechanisms, and standards of presidential accountability become unclear and fragmented, thereby reducing the effectiveness of applying the rule of law in constitutional practice.

Therefore, it can be concluded that the absence of a Presidential Institution Act has significant implications for the design of Indonesia's constitutional system. This situation not only weakens the effectiveness of checks and balances mechanism but also has the potential to disrupt the balance among the branches of government. Therefore, the enactment of a Presidential Institution Law is an urgent normative necessity to strengthen the system of checks and balances, enhance government accountability, and ensure the realization of a constitutional democracy grounded in the rule of law.

CONCLUSION

This research found that although the amendments to the 1945 Constitution of the Republic of Indonesia have strengthened the mechanism for limiting presidential power through the principle of checks and balances, the regulations concerning the presidential institution remain partial and scattered across various laws and regulations. This situation has resulted in the absence of a comprehensive legal framework regarding the structure, functions, limits of authority, and accountability mechanisms of the presidential institution. This regulatory gap is evident in the lack of clear provisions regarding the relationship between the President and the Vice President, presidential supporting organizations, government transition periods, restrictions on the use of state facilities by incumbents during elections, and oversight mechanisms for the exercise of presidential authority.

⁴¹ Inrastuti and Polamolo, "Hukum Tata Negara Dan Reformasi Konstitusi Di Indonesia."

Based on these findings, the regulatory direction of the Presidential Institutional Law should focus on establishing an integrated legal framework. This framework should govern the positions and functions of the President and Vice President, the limits of presidential authority in relation to the legislative and judicial branches, the organizational structure of the presidency, mechanisms for filling vacancies in office, government transition periods, ethical standards for holding office, as well as the mechanisms for presidential accountability and dismissal. These regulations are necessary to provide legal certainty, strengthen the accountability of executive branch, and prevent excessive concentration of power.

The absence of the Presidential Institutional Law has resulted in suboptimal implementation of the principle checks and balances, the potential for overlapping authorities, and weak oversight mechanisms over the executive branch. Therefore, the enactment of Presidential Institutional Law is an urgent constitutional necessity as an instrument to strengthen constitutional democracy, guarantee the rule of law, and realize a more accountable governance within the Indonesian constitutional system.

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