

*Research Article***The Urgency of Presidential Institution Regulations in Strengthening the Presidential Government System**Widayati<sup>1\*</sup>, Mas Nooraini binti Haji Mohiddin<sup>2</sup>, Ratna Herawati<sup>3</sup>, Winanto<sup>4</sup><sup>1,4</sup>Faculty of Law, Universitas Islam Sultan Agung, Indonesia<sup>2</sup>Faculty of Shariah and Law, Universitas Islam Sultan Sharif Ali, Brunei Darussalam<sup>3</sup>Faculty of Law, Universitas Diponegoro, Indonesia

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**ABSTRACT**

The existence and authority of the executive, legislative and judicial institutions are regulated in the 1945 Constitution of the Republic of Indonesia, then regulated in more detail in the law, except for the President. There is no law on presidential institutions yet, so there is concern that the President will exceed or abuse his authority in carrying out his duties. This research discusses the importance of regulating presidential institutions in strengthening the presidential system. The research approach was normative juridical; examining legal rules or regulations as a building system related to a legal event. The data used were secondary data in the forms of primary and secondary legal materials. Based on the results of the analysis, it is concluded that: 1) the regulation of presidential institutions is only found in the Constitution. There is no description of the position and division of authority between the President and Vice President and other positions in the presidential institution. 2) The position of the Vice President is as assistant to the President, and the Vice President replaces the President when the President dies, resigns, is dismissed, or is unable to carry out his obligations during his term of office. 3) Regulation of presidential institutions in strengthening the presidential government system is very urgent to prevent arbitrary actions by the President and to provide clarity on the authority of positions within the presidential realm so that they can carry out their duties well in supporting the President as head of state and head of government. With clear arrangements, each person has responsibilities, and there will be no overlapping of authority.

**Keywords: Regulatory Urgency; Presidential Institution; Presidential Government System.**

**A. INTRODUCTION**

The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (1) determines that the Indonesian state is a unitary state in the form of Republic. In the Unitary State of the Republic of Indonesia, there are state institutions that hold and exercise executive, legislative and judicial powers. Apart from the 1945 Constitution of the Republic of Indonesia, these state institutions are

also regulated further in separate laws, except for the President.

Since the beginning of independence, the presidential institution in Indonesia has been the only state institution that the formation was not regulated by a separate law. It was only in the body of the constitution before the amendments to the 1945 Constitution, so it is commonly referred to as the executive heavy period. The president holds executive, legislative and judicial

powers. The President as the holder of executive power is contained in Article 4 paragraph (1) of the 1945 Constitution which states that the President of the Republic of Indonesia holds government power according to the Constitution. The President as the holder of legislative power is contained in Article 5 paragraph (1) which reads: The President holds the power to form laws with the approval of the House of Representatives. In the judicial realm, the provisions of Article 14 give the President the authority to grant pardon and rehabilitation without consideration by the Supreme Court, as well as granting amnesty and abolition without consideration by the House of Representatives.

After the amendment to the 1945 Constitution, there is a very fundamental change related to the presidential institution, which is commonly referred to as a shift in the concept of executive power from executive heavy to legislative heavy (Aryani, & Hermanto, 2018). The president is placed as executive, and he is no longer the holder of legislative power because based on Article 20 paragraph (1), the DPR (the House of Representatives) holds the power to form laws. Judicial power rests with the Supreme Court and the Constitutional Court. The President can grant pardon and rehabilitation by taking into account the considerations of the Supreme Court, and grant amnesty and abolition by considering the House of Representatives.

It is important to regulate the presidential institution because, when discussing the presidential institution, it is certainly not limited to

those relating to the President. In other hand, there is also the Vice President, the Cabinet Secretariat, the State Secretariat, and now there is the Presidential Staff Office (KSP). The authority of the Vice President is not strictly regulated. It is only stated in the 1945 Constitution of the Republic of Indonesia that: in carrying out his obligations, the President is assisted by one Vice President. The task of the Cabinet Secretariat based on the Presidential Regulation Number 55 of 2020 concerning the Cabinet Secretariat is to provide cabinet management support to the President and Vice President in administering the government. This task was previously given to the KSP based on the Presidential Regulation Number 83 of 2019 concerning the Presidential Staff Office. Meanwhile, the task of the State Secretariat based on Presidential Regulation Number 31 of 2020 concerning the Ministry of State Secretariat is to provide technical and administrative support as well as analysis of government affairs in the field of state secretariat to assist the President and Vice President in administering state government.

The theories used to analyze the problems were:

a. Legal state theory

A rule of law is a state that stands on law that guarantees justice. Legal regulations that exist in a country are intended to protect the rights of citizens from arbitrary actions by the authorities. Likewise, legal state regulations are made to prevent absolute power for the sake of

recognizing and protecting human rights. Therefore, the rule of law aims to protect the human rights of its citizens by limiting and monitoring the actions and powers of the state with laws (Azhari, 1995). In a legal state, this means that all state administrators, all state officials, and all citizens must comply with the applicable legal rules.

#### b. Legislative Theory

Maria Farida Indrati Soeprapto (2007) states that the term legislation (*legislation, wetgeving or gesetzgebung*) has 2 (two) different meanings: 1). Legislation is a process of establishing/ forming state regulations, both at the central and regional levels; 2). Legislation is all state regulations which are the result of the formation of regulations, both at the central and regional levels.

The duties of the Vice President and various presidential regulations that regulate institutions assisting the President are to assist the President in carrying out state government affairs. There is no clarity regarding which government affairs of each party is responsible for. Therefore, when examined, there is an overlap and has the potential to give rise to dualism in duties and functions between institutions within the presidency. It makes it difficult for the President to make a decision when the problems presented by these institutions to the President are different for the same thing. The lack of clarity in the duties and functions of each institution within the President's environment also causes unclear accountability. Every state

institution that is given authority is of course accompanied by the responsibilities in implementing its authority (Carlin, Love, & Martinez-Gallardo, 2015).

For example, when the President issued Presidential Regulation Number 26 of 2015 concerning the Presidential Staff Office which expanded the authority of the KSP by increasing the authority of the KSP to summon ministers, the formation of this presidential regulation did not involve the Vice President, Minister of State Secretary, and coordinating minister. Even though the formation of presidential regulations is within the President's authority, based on the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 2008 concerning State Ministries, the authority to summon ministers only belongs to the President, Vice President and Coordinating Minister. When the KSP is given the authority to coordinate by summoning and evaluating the performance of ministers, of course this overlaps with the authority of the Coordinating Minister .

Several studies had been conducted related to the presidential institution, but the results focused on the division of duties between the President and Vice President and did not discuss the duties of the State Secretariat, Cabinet Secretariat, and the KSP. There is a need for a strict division of duties between the president and vice president so that competition does not occur between the two (Wiranto, 2021). Then, Huda (2000) examined the division of duties of the President and Vice President during the administration of President Abdurrahman

Wahid. During the reign of Abdurrahmad Wahid, the division of duties of the President and Vice President was carried out by issuing Presidential Decree 121 of 2000 concerning the Assignment of the President to the Vice President to Carry Out Daily Technical Government Duties. This is considered a strategic and urgent step. This political and constitutive decision by the President is considered more appropriate because the handover of the technical duties of the President's government to the Vice President is only the internal portion (Huda, 2000). Muhammad Jodi Wiranto in his research stated that in order to "implement a healthy and effective presidential system, the relationship between the President Director and Deputy President Director needs to be regulated in detail and firmly, particularly with regard to the possibility of disharmony due to mutual competition for influence for political investment for personal interests" as well as political parties (Wiranto, 2021). The results of Johannes Johny Koynja's research are that the delegation of authority from the President to the Vice President through the mechanism of constitutional conventions is considered to be able to answer the problem of vague or unclear norms (*vague van norms*) regarding position, working relationships, and division of authorities between Presidents and the Vice President who have both been elected as a pair directly by the people. Constitutional conventions do not need to always be unwritten provisions arising from agreements, but they can be in written form

manifested in the form of Presidential Decrees (Keppres) (Koynja, 2015).

Regarding the presidential institution, according to Jazim Hamidi and Mustofa Lutfi, for the continuity of national and state life to run well, restructuring is needed through a bill on the presidential institution that is more aspirational and accommodating based on the understanding of constitutionalism (Hamidi, & Lutfi, 2008). Meanwhile, I Gede Yusa and Bagus Hermanto in their research focused more on strengthening the presidential government system by realizing strong leadership, integrity and ethical politics, simplifying the party system, and encouraging political cultural participation. Fourth, building a modern parliament realizes good governance and reforms bureaucracy (Yusa, & Hermanto, 2017).

Partlett's research explains the presidential system of government and the semi-presidential system or what is called crown-presidentialism, where the elected president is the guardian powers to control the legislative branch as well as important judicial, prosecutorial, and integrity institutions and therefore an important tool in the super-presidentialism of many new authoritarian regime (Partlett. 2022). Kuswanto's research describes that the constitutionality of the presidential system in Indonesia contributes to the lack of specific constitutional rules in describing the relationship between the executive (president) and the legislature, including efforts at the level of legislative efforts that have a significant impact on the weakening of power President in the executive realm (Kuswanto, 2018).

Based on the description above, clarity and legal certainty are needed regarding the position, authority, division of duties between the President and Vice President, and clarity on the position and authority of the State Secretariat, Cabinet Secretariat, and KSP. This is because one of the important principles in the presidential system of government is that the ultimate responsibility for state government power lies in the hands of the President. The direct election of the President and Vice President by the people gives high legitimacy to the President. Impeachment of the President and/or Vice President is not only through a political process but also must go through legal process. The increasingly powerful position of the President requires clear regulation so that it does not fall into arbitrariness

Therefore, in this article we discuss the urgency of regulating the presidential institution in strengthening Indonesia's presidential government system.

## B. RESEARCH METHODS

This research was a legal research using scientific methods by carrying out a series of activities systematically, completely, and consistently to search for scientific truth (Irwansyah, 2021). The aim of this research was to provide ideas on the importance of regulating presidential institutions so that there is no overlapping authority of the institutions that assist the President. The approach method used was normative juridical; a legal research by placing the law as a building system of norms. The norm

system in question is on principles, norms, rules and regulations, and doctrine. Normative legal research examines legal rules or regulations as a building system related to a legal event (Fajar, & Achmad, 2010). The data used were secondary data consisting of primary legal materials in the form of statutory regulations and secondary legal materials in the form of books and journals. Secondary data collection was carried out using the literature approach method, literature study, review of scientific journals, scientific articles and scientific works. The secondary data collected were analyzed using normative methods which were then presented in a qualitative descriptive manner.

## C. RESULTS AND DISCUSSION

### 1. Indonesian Government System

Every modern country adopts a different government system, depending on the socio-cultural conditions of the people in that country. A country's government system is outlined in the constitution (Budiman, 2017). Government system consists of presidential and parliamentary government systems. The presidential system of government, also known as the congressional system, is a government system in which the executive and legislative bodies have independent positions (Taufik, 2020). Presidential Government System is a government system centered on the position of the President as head of government and head of state (Tamrin, 2023). President is elected by the people (or sometimes by an electoral college) for a certain period of

time. The president selects ministers to form the cabinet (Goel, & Nelson, 2020).

The presidential system of government requires President as head of state and head of government to have a strong position in government so that the President's programs can be implemented well (Aulia, Husen, & Gadjong 2021). The presidential system of government is referred to as the United States model. It was first used by British writers to express the political system in the United States before the Civil War (1861-1865). The head of the executive power in the United States is the President, and the President exercises his own power and is not accountable to the Congress. The president has political immunity and is accountable to the people (Ruslan, 2019).

Sri Soemantri states that Government System is a relationship between the legislative and executive institutions. There are clear differences between the presidential system of government and the parliamentary system of government (Yani, 2018). The relationship between the executive and legislature in a country shows the system of government adopted by the country concerned (Muhtadi, & Ridlwan, 2023). When the government system is parliamentary, the dominance and concentration of power lies in the legislature. The executive is subject to and responsible to the legislature (Humaidi, & Rahmadanti, 2023). However, when the government system is presidential, the concentration of power is in the executive (Indarja, 2018).

In a presidential system of government, the executive is not responsible to the people's representative body, meaning that executive power is out of the direct supervision of parliament (Sodikin, 2014). The advantage of the presidential system of government is that the government run by the executive runs relatively stably, and the term of office is stipulated in the constitution. Meanwhile, the weakness is that every government policy decision is a bargaining position between the legislature and the executive (Octovina, 2018). Meanwhile, Linz believes that the parliamentary system is superior to the presidential system in maintaining political stability. One reason is that in a presidential system there is double legitimacy because the President and the legislature are directly elected so that no one can claim to be the sole representative of the people (Bünthe & Thompson, 2018). In presidential system, according to Juni Makita's view, it encourages the development of LSA to the executive-legislative separation based on Lijphart's criteria. In parliamentary system, it inherently has characteristics that inhibit the development of LSA (Makita, 2023).

The characteristics of a presidential system of government according to Scott Mainwaring are (Saraswati, 2012):

- a. The President is both head of state and head of government;
- b. The president and members of the legislative body are elected by the people;
- c. The executive institution is not part of the legislative institution, so it cannot be dismissed

by the legislative institution, except for the impeachment mechanism;

d. The president cannot dissolve parliament.

Jimly Asshiddiqie explains the characteristics of a presidential government system as follows (Asshiddiqie, 2004):

a. The term of office is certain, for example four, five, six, or seven years, so that the President and Vice President cannot be dismissed in the middle of their term for political reasons. In some countries, the terms of office of the President and Vice President are usually strictly limited, for example only one term of office or only two consecutive terms of office.

b. The President and Vice President are not responsible to a particular political institution commonly known as parliament but are directly responsible to the people. The President and Vice President can only be removed from office for reasons of violation of the law which are usually limited to the cases of certain criminal acts which, if left unaccounted for, could give rise to serious legal problems such as treason against the state, clear violations of the constitution, and so on.

c. Therefore, it is generally determined that the President and Vice President are elected directly by the people or through certain intermediary mechanisms which are not permanent representatives as is the nature of parliamentary institutions. In a parliamentary system, even if a Prime Minister is elected through a general election, for example, his

election as Prime Minister is not by the people directly, but the Prime Minister concerned is elected as a member of parliament who controls a certain majority of seats.

d. In relation to parliamentary institutions, the President does not submit to parliament and cannot dissolve parliament, and vice versa, parliament cannot overthrow the President and dissolve the cabinet as is the practice in a parliamentary government system.

e. In a presidential system of government, there is no distinction between the head of state and the head of government. Meanwhile, in a parliamentary system of government, it is common to differentiate or even separate the positions of head of state and head of government.

f. Responsibility for government lies with the President, and in principle the President has the authority to form the government and the cabinet and to appoint and dismiss Ministers and public officials whose appointment and dismissal are carried out based on political appointment. Therefore, in a presidential government system, it is usually called concentration of governing power and responsibility upon the president. Above the President, there is no other higher institution except the constitution. Therefore, in the constitutional state system, politically the President is considered responsible to the people, while legally the President is responsible to the constitution.

The Indonesian government system before the amendment to the 1945 Constitution did not state explicitly (verbally expressively) that the country's government system is a presidential government system (Sianipa et al., 2022). One of the changes made to the 1945 Constitution is to purify the presidential system. The efforts to purify the presidential system are carried out in the form of holding direct elections for the President and Vice President, limiting the terms of office of the President and Vice President, regulating the impeachment of the President and/or Vice President, and the President cannot dissolve the DPR (the House of Representatives) (Yusdiyanto, 2018). First, It is holding the elections for the President and Vice President directly by the people as stipulated in Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the President and Vice President are elected as a pair directly by the people. Second, there is a limitation on the terms of office of the President and Vice President as stated in Article 7 which states that the President and Vice President hold office for five years, and after that they can be re-elected in the same position only for one term of office. Third, there are provisions for the impeachment of the President and/or Vice President as stipulated in Article 7A which states that the President and/or Vice President can be dismissed during their term of office by the People's Consultative Assembly on the recommendation of the People's Representative Council, whether they are proven to have committed a violation of the law in the

form of treason against state, corruption, bribery, other serious criminal acts, or disgraceful acts or when it is proven that he no longer meets the requirements as President and/or Vice President. Fourth. The President cannot dissolve the DPR as regulated in Article 7C which states that the President cannot freeze and/or dissolve the People's Representative Council (Yusdiyanto, 2018). The President of Indonesia has the position of head of state and head of government. The President as head of state is regulated in Articles 10 to 15 of the 1945 Constitution of the Republic of Indonesia, while the President as head of government is regulated in Articles 4 and 5. The President of Indonesia has the position of head of state and head of government. Political power and responsibility rests with the President (concentration of power and responsibility upon the President). Ministers are appointed and dismissed by the President so that ministers are responsible to the President, as regulated in Article 17 of the 1945 Constitution of the Republic of Indonesia. Apart from that, the President as head of government also has the authority to appoint Deputy Ministers as stated in Law Number 39 of 2008 concerning State Ministries (Sukma, & Saraswati, 2013). In Indonesia's presidential system, the DPR and the President are equally strong, so they cannot dissolve each other (Aritonang, 2010).

Indonesia's presidential government system is implemented with a multiparty political construction (Tomsa, 2018). Indonesia implements a multiparty system because its



society is very pluralistic. In theory, combining a presidential system with multiparty system could cause problems (Santosa, & Suardita, 2015) . Combining a presidential system with a multi-party system is not suitable because it can cause unstable government. It is possible that the elected President will be a President who comes from a political party or combination of political parties that is not supported by a parliamentary majority so that the President's policies may have difficulty getting parliamentary support. Theoretically, a multi-party system is not conducive to presidential system (Widayati, & Winanto, 2018).

Mainwaring describes the difficulty of combining presidentialism with multi-partyism because of the risk of increasing ideological polarization and the potential for deadlock between the executive and legislative branches (Tomsa, 2018). In political activities, of course, political parties will form coalitions (Mietzner, 2016). In Indonesia's constitutional history, especially during the reform period, political party coalitions were pragmatic and very fragile. In the presidential institution, it may happen that the political parties of the President and Vice President are different. This will certainly disrupt the harmonization of relations between the President and Vice President and will even affect the solidity and cohesiveness of the cabinet (Suparto, 2021).

Indonesia and America both implement a presidential system of government. Before the amendment to the 1945 Constitution, the

characteristics of Indonesia's government system were almost the same as America's. Some of these characteristics include the president as the holder of executive power and administrator of government. The president is not responsible to congress and cannot be subject to a vote of no confidence because the president is elected by the people. The president in office can only be elected for two terms, and the president can be terminated if he commits a violation (Adinda, Fatmala, & Hijrie, 2023) .

## 2. Presidential Institution

President is different from the presidential institution. President is always associated with office holders, while presidential institution is always associated with office environment (Mochtar, & Afkar, 2022). Presidential institution is an institution or position organization in the Indonesian government system based on the 1945 Constitution of the Republic of Indonesia consists of two positions; President and Vice President. Each country regulates the requirements for candidates for President and Vice President in its constitution (Sorik, Arsil, & Ayuni, 2023). In the United States, the President and Vice President are elected through elections. The powers of the President and Vice President are regulated in the United States Constitution. Article II paragraph 1 states that Executive power shall be vested in a President of the United States (Fortin, 2013). The President shall serve a term of four years, together with the Vice President, who is elected for the same term. Regarding the Vice President, Article 1 paragraph 3 states that the

Vice President of the United States will be Chairman of the Senate, but will not have voting rights, unless their votes are divided equally.

Regarding the authority of the Vice President, based on Amendment 25 of the United States Constitution, the Vice President of the United States replaces the President:

- a. To be the President in the event of the President's removal from office or his death or resignation
- b. To be the President when the President declares in writing his inability to carry out the powers and duties of the presidency.
- c. To be the President and nominates a Vice Presidential candidate who must be ratified by the Senate and the Speaker of the House of Representatives. The application must be made through a written declaration.
- d. To be the President when the Vice President and several Ministers or a council of Congress declare in writing the President's inability to carry out the powers and duties of the presidency.

Based on Amendment 25, it can be interpreted that the Vice President, supported by ministers, has the authority to declare the inability of the President of the United States to carry out the powers and duties of the presidency. However, on the other hand, the President can submit a statement that contradicts the Vice President's statement. In the event of a conflict between the two presidential officials, the United States Constitution leaves the resolution to the United States Congress (Martínez, 2017).

From this constitutional practice, the duties of the Vice President still depend on the President of the United States even though it is constitutionally stipulated that the Vice President serves as Chairman of the Senate. The President's leadership style can give the Vice President a more prominent role in administering the government (Firdayanti, 2020).

Apart from the Vice President and ministers, the United States presidential institution also has the Executive Office of the President which supports the President's work as an executive body. The Executive Office of the President consists of several positions such as the White House Staff who work directly to the President, and there are advisors to the President such as the National Security Advisor, Budget and Management Advisor, Personnel Management, Special Counsel, and General Services Administration (Lewis, 2011).

Teehankee (2016) states that in the Philippines, the President and Vice President are elected in separate elections. The term of office of the President and Vice President is six years and only one term of office. Based on Article VII Section 1 of the Philippine Constitution, the President is the holder of executive power. Meanwhile, the Vice President's duties and authority still depend on the President. The authority of the Vice President is regulated in Article VII Section 3 of the Philippine Constitution, that the Vice President can be appointed as a cabinet member by the President. In Article VII

Section 7, the Vice President replaces the President with the following provisions:

- a. The Vice President of the Philippines replaces the position of President if the elected President fails to fulfill the specified requirements. The Vice President acts as President until the elected President qualifies;
- b. The Vice President of the Philippines replaces the position of President if at the beginning of the President's term of office, the elected President dies or is unable to carry out his duties for a long period of time;
- c. The Vice President of the Philippines replaces the position of President if the President submits to the Chairman of the Senate and the Speaker of the House of Representatives a written statement regarding his inability to carry out the powers and duties of the presidency, until the president sends a written statement canceling it.

The President and Vice President are elected through elections. The election for President and Vice President is not just a fight between two candidates, but also between diametrically opposed concepts of power and visions for Indonesia's future (Mietzner, 2014).

The election of the President and Vice President is carried out directly by the people in one pair. This provision regarding one pair shows that the positions of President and Vice President are one pair and constitute a dual or unified presidential institution. Even though they are one unified presidential institution, they are two separate constitutional positions. Therefore, even

though on the one hand they are one unit, on the other hand they are two state organs that are different from each other. This means two organs that are inseparable but can and must be distinguished from each other (Indrastuti, 2010).

The direct election of the President and Vice President by the people indicates the desacralization of the presidential institution. The President and Vice President no longer only belong to the elite, but anyone can have contact with the presidential institution (Musa, 2009). The consequence of direct election is that if there is a violation committed by the President and/or Vice President because there is no longer a relationship of accountability between the President and the People's Consultative Assembly, and then the institution of impeachment is needed in connection with the concept of action against violations by the President and/or Vice President (Manan, & Asshiddiqie, 2006).

The presidential institution, which consists of the position of President and the position of Vice President, is essentially one inseparable institution politically. The Vice President plays a very important role in his relationship with the President. The Vice President is a substitute for the President if the President is unable to carry out his duties and obligations for a certain period of time or for a period of time until the term of office of the President he replaces expires or ends. The role of a Vice President is so important, the requirements for being a President and Vice

President are the same because at any time the Vice President can replace the President.

The term of office of the President and Vice President is five years, and thereafter they can be re-elected once in the same position. The term of office is limited to prevent abuse of power. This limitation of power is as stated by Lord Acton that "Power tends to corrupt, but absolute power corrupts absolutely" (Budiardjo, 1985). The presidential institution regulations in the 1945 Constitution of the Republic of Indonesia are not yet comprehensive. The division of duties and authority between the President and Vice President is unclear. The Vice President is only positioned as an assistant to the president because the 1945 Constitution of the Republic of Indonesia does not provide clear guidelines for what the Vice President must do, so the Vice President's duties are only dependent on the President's provision (Husen, 2017). Because of this lack of clarity, the question often arises, namely, what exactly is the Vice President's duties. In the history of Indonesian constitutional affairs, the duties and authority of the Vice President do not have standard legal norms and state ethics. This means that legally there is no obligation for a President to delegate his duties to the Vice President if the President is temporarily absent. This task can be given to the Vice President, or it can also be given to the triumvirate of ministers, namely the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense. However, there is no specific regulation on the performance mechanism for

delegation of duties as intended, so it is seen that there has been a legal vacuum in the practice of state administration (Arsa, 2019). To fill this legal vacuum, it is necessary to establish a law regarding the presidential institution.

### **3. The Urgency of Presidential Institution Regulations in Strengthening Indonesia's Presidential Government System**

The president is the head of government (holding executive power) and also the head of state. In carrying out his duties and obligations, the President is assisted by one Vice President and Ministers. The relationship between the President and the Vice President and the relationship between the President and the Ministers are different because the Vice President is elected together with the President directly by the people, while the Ministers are appointed and dismissed by the President. Even though the Vice President is elected together with the President, the working relationship between the President and the Vice President has been determined by the President. There are no regulations regarding the working relationship between the President and the Vice President or the division of duties between the President and the Vice President, either in the 1945 Constitution of the Republic of Indonesia, or in other statutory regulations. The 1945 Constitution of the Republic of Indonesia only stipulates that when the President is temporarily unable to carry out his duties and obligations, the Vice President carries out the President's duties and obligations, and when the President is permanently absent or is dismissed,

he is replaced by the Vice President until the end of his term of office.

In the Indonesian constitutional system, the President is not only an executive but also exercises legislative power together with the DPR to form laws (Asrinaldi, Yusoff, & Karim, 2022). The President also exists in the realm of judicial power; the President grants pardon, amnesty, abolition and rehabilitation. The duties and obligations that must be carried out by the President are highly extensive. There are many articles in the 1945 Constitution of the Republic of Indonesia that regulate the President. However, the Constitution is a basic law, of course the content regulated in it is also fundamental. Further elaboration of the articles in the Constitution is needed into laws and regulations under the Constitution, including regulations regarding the presidential institution.

Until recently, there is no law that regulates the presidential institution, while other state institutions already have laws that regulate it. The state institutions such as the MPR, DPR, DPD have been regulated and described in more detail in their duties and authorities in Law Number 17 of 2014. The Supreme Court is regulated by Law Number 14 of 2005, and the Constitutional Court is regulated by Law Number 24 of 2003. Then, the Judicial Commission is regulated by Law Number 22 of 2004, and the Financial Audit Agency (BPK) is regulated by Law Number 15 of 2006.

The existence of laws governing state institutions is a mandate of the 1945 Constitution of the Republic of Indonesia.

- a. Law Number 17 of 2014 is a mandate from: Article 2 paragraph (1), Article 20A paragraph (4), Article 22B, Article 22D paragraph (4)
- b. The Law on the Supreme Court is a mandate from Article 24A paragraph (5)
- c. The Law on the Constitutional Court is a mandate from Article 24C paragraph (6) and Article 25.
- d. The Law on Judicial Commissions is a mandate from Article 24B paragraph (4)
- e. The Law on the Financial Audit Agency is a mandate from Article 23G paragraph (2)

In the American and Philippine constitutional systems, the authority of the President and Vice President is regulated in the constitution. Although the authority of the Vice President still depends on the President, the constitution also regulates the position and other powers of the Vice President in more detail. For example, the Vice President of the United States becomes President of the Senate even though he does not have voting rights (Inácio, 2016). When the Vice President replaces the President, the reasons are also regulated. Likewise in the Philippines, the Vice President is a member of the Cabinet, and he can also replace the President for reasons specified in the constitution. Of course, each country implements a different constitutional system, in accordance with the integrity of the country concerned. For example, party systems, government systems, electoral

systems and systems will differ from one country to another. What needs to be noted is that when a country implements a certain constitutional system, the hope is that the system can be implemented well, there is no overlap in authority, and it is oriented towards the goals of the country (Teehankee, 2016).

The Indonesian constitutional system must also be oriented towards the basic goals and ideals of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia because the Constitution is the highest law and has the highest position in the country of Indonesia (Marwiyah et.al, 2023). The basic ideals of the Indonesian state are to create an Indonesian state that is free, united, sovereign, just and prosperous based on the values of divinity, humanity, unity, deliberation and justice (Abrianto, Ibrahim, Nugraha, 2020).

The mandate of the 1945 Constitution relating to the President is contained in Article 6 paragraph (2) which reads: The requirements for becoming President and Vice President are further regulated by law. As a follow-up to the provisions of Article 6 paragraph (2), the Law concerning the General Election of the President and Vice President was established, namely Law Number 23 of 2003 which was later revoked by Law Number 42 of 2008. In the regulations regarding the election of the President and Deputy, in its development, the President has made it into one law with the elections for members of the DPR, DPD and DPRD, namely Law Number 7 of 2017 concerning General

Elections. This law also regulates election organizers, election crimes and other matters related to elections.

Law Number 7 of 2017 relating to the President and Vice President only regulates the holding of elections for President and Vice President and the conditions for becoming President and Vice President which does not regulate other things. This is different from the regulations of other state institutions which is not limited to the requirements for becoming a member of a state institution and the procedures for filling out membership but also regulates rights, obligations, duties, authority, and so on.

Regulation regarding the presidential institution in a separate law is very important because although the 1945 Constitution of the Republic of Indonesia has many articles that regulate the presidential institution, there is no separate law yet, which is *lex specialist* like other state institutions. The President has broad powers so that the President does not take arbitrary actions, and the President's power can be controlled and limited by law. Apart from that, to strengthen the presidential government system, arrangements or regulations governing the presidential institution are a necessity.

The urgency of establishing the Law on the Presidential Institution is based on historical, juridical and empirical reality considerations. In order to implement a healthy and effective presidential government system, the relationship between the President and the Vice President needs to be regulated in detail and firmly,

especially the matters relating to the possibility of disharmony due to conflicting interests as part of political investments aimed at personal interests. as well as the interests of political parties in Indonesia (Wiranto, 2021).

Apart from the Vice President, in the presidential institution there are other positions such as Ministers, State Secretariat, Cabinet Secretariat, and Presidential Staff Office (KSP). The position of Vice President in the Indonesian government system so far can almost be said to be like a *banserep*, which will only function when the President is absent, whether temporarily or permanently (Huda, 2000). The State Secretariat, Cabinet Secretariat, and KSP have main tasks and organizational functions that are related to each other. KSP was formed by Presidential Regulation Number 83 of 2019 concerning the Presidential Staff Office which is chaired by a Presidential Chief of Staff. KSP was formed with the aim of providing support to the President and Vice President in controlling the implementation of three strategic activities, namely the implementation of national priority programs, activities related to presidential political communication, and management of strategic issues (Suyadi, 2018).

To clarify its existence and authority, as well as the relationship between the institutions included in the presidential institution, a law is needed that regulates it. Likewise regarding the differences in position between Ministers and the President, and the position of the Vice President and the President, further explanation is needed

in the law, considering that Ministers are appointed and dismissed by the President, while the Vice President together with the President are elected directly by the people in election. It is necessary to clarify the relationship and position between the President and the Vice President so that an unharmonious relationship between the President and the Vice President can be avoided. With this clarity, there will be no overlapping of authority and of course it will also make it easier to account for the institutions within the presidential institution.

The content of the law regarding the presidential institution is about the position, functions, duties, authority, rights, obligations, prohibitions of the President, Vice President, Ministers and other institutions determined to be included in the presidential institution. Likewise, it is necessary to regulate the relationship between the President, Vice President, Ministers and other institutions. What institutions exist within the realm of the presidential institution are clearly determined in law, so that the President does not add to institutions that have already been determined. In the executive sector, there needs to be a clear division between the authority of the President and the Vice President. In the legislative field, because the President is given the right to submit draft laws to the DPR, a special institution can be formed to assist the President in preparing academic texts and draft laws.

The content of the presidential institution's laws must not conflict with Pancasila by taking into account the values of divinity, humanity,

unity, deliberation and the value of justice, and must not conflict with the 1945 Constitution of the Republic of Indonesia. In forming laws regarding the presidential institution, one must also pay attention to the principles of forming statutory regulations and the principles of the content of statutory regulations. The principles for forming statutory regulations are clarity of purpose, appropriate institutions or forming officials, suitability between type, hierarchy and material content, can be implemented, effectiveness and usefulness, clarity of formulation and openness. The material principles of the content of statutory regulations, namely protection, humanity, nationality, kinship, archipelago, unity in diversity, justice, equality of position in the law and government, order and legal certainty, and/or balance, harmony, and alignment. Based on legislative theory, the formation of laws regarding the presidential institution is also in accordance with the procedures for forming laws starting from planning, drafting, discussing, ratifying and promulgating. What must not be left out in the formation of laws is community participation, because Indonesia is a country with people's sovereignty.

#### **D. CONCLUSION**

Based on the analysis described above, it can be concluded that the regulation of the presidential institution in Indonesian constitutional history is only found in the 1945 Constitution of the Republic of Indonesia. In relation to the presidential institution, the material content is

limited to regulating the President, Vice President and Ministers. The content material in the constitution only stipulates that in carrying out his obligations the President is assisted by one Vice President, and does not regulate the division of authority between the President and the Vice President so that the position of the Vice President seems to be only a spare tire, whose role will be seen when The President is absent.

The position and authority of the President and Vice President in Indonesia's presidential government system throughout Indonesia's constitutional history has not changed. The Vice President has the position of assistant to the President, and the Vice President will replace the President if the President dies, resigns, is dismissed or is unable to carry out his obligations during his term of office. The Constitution only regulates the authority of the President but does not regulate the authority of the Vice President.

Based on the theory of the rule of law, power must be limited, and limitations on power are carried out by law. Therefore, it is urgent to regulate presidential institutions in strengthening Indonesia's presidential government system to prevent arbitrary actions by the President and to provide clarity on the authority of institutions within the realm of the presidency; the Vice President, Ministers, State Secretariat, Cabinet Secretariat, including currently the KSP. Each of these institutions should ideally be given clear and firm authority so that there is no overlap in authority. To clarify authority, this is done by forming a law regarding the presidential



institution. With clarity of authority, these institutions can carry out their duties well in supporting the President, both as head of state and head of government. These institutions are responsible for the authority they have been given, and there will be no shifting of responsibility if problems occur.

Based on the description above, it is recommended that the DPR and the President as state institutions that are given the authority by the 1945 Constitution of the Republic of Indonesia to form laws immediately set an agenda for drafting a law regarding the presidential institution. In the process of forming a law, of course, you have to pay attention to the procedures for its formation starting from planning, drafting, discussing, and ratifying, up to promulgation. Apart from the formation procedures, what must also be taken into account are the principles of formation and the material principles of the content of the legislation. At every stage of the formation of the law, of course, there must be public participation so that the resulting law can be accepted by the public, and the public can assess the performance of institutions within the realm of the Presidential Institution.

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