

INDONESIA'S FUTURE ACTING PRESIDENCY: MAINTAINING OR REPLACING THE NEW ORDER LEGACY

Febriansyah Ramadhan
Fakultas Hukum, Universitas Brawijaya
email: mrfebri18@gmail.com

Setyo Widagdo
Fakultas Hukum, Universitas Brawijaya
email: widagdo@ub.ac.id

Aan Eko Widiarto
Fakultas Hukum, Universitas Brawijaya
email: widiarto@ub.ac.id

Riana Susmayanti
Fakultas Hukum, Universitas Brawijaya
email: r.susmayanti@ub.ac.id

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Abstract

The interim president anticipates the vacancy of the office of president and vice president; Indonesia calls it 'pelaksana tugas kepresidenan', which is filled by the minister of home affairs, foreign affairs, and minister of defense. This article explores the two actors (bureaucrats and legitimacy) who become interim presidents in the constitutions of the world's countries. Next, the Indonesian arrangement and accompanying problems in the 1945 Constitution will be reviewed. This article is aided by a doctrinal research method with historical, legislative, and comparative constitutional approaches. Indonesia has its peculiarities compared to the constitutions of world countries because it applies a compound position as interim President adopted from the New Order legal products (Tap MPR VII/1973) without going through a decontextualisation process, so it still applies the old features (bureaucratic actors) with compound/collegial executive positions in the new constitutional structure that seeks to purify the presidential system. In addition, there are conditions that the 1945 Constitution still cannot resolve and that cause paralysis of governance. This article offers one solution—which could alleviate two specific problems simultaneously—and that is to make the Speaker of the House of Representatives (DPR) the acting President of the future.

Keywords:

constitutional comparison; interim president; position filling

Abstrak

Presiden interim untuk mengantisipasi kekosongan jabatan Presiden dan Wakil Presiden; Indonesia menyebutnya sebagai 'pelaksana tugas Kepresidenan', yang diisi oleh menteri dalam negeri, menteri luar negeri, dan menteri pertahanan. Artikel ini mengeksplorasi dua aktor (birokrat dan legitimasi) yang menjadi pelaksana tugas kepresidenan dalam konstitusi negara-negara di dunia. Selanjutnya, pengaturan di Indonesia dan permasalahan yang menyertainya dalam Undang-Undang Dasar (UUD) 1945 akan diulas. Artikel ini menggunakan metode doktrinal dengan pendekatan historis, perundang-undangan, dan perbandingan konstitusi. Indonesia memiliki kekhasan dibandingkan dengan konstitusi negara-negara di dunia karena menerapkan jabatan majemuk sebagai pejabat sementara Presiden yang diadopsi dari produk hukum Orde Baru (Tap MPR VII/1973) tanpa melalui

proses dekontekstualisasi, sehingga masih menerapkan ciri-ciri lama (aktor birokrasi) dengan jabatan eksekutif majemuk/kolegial di dalam struktur ketatanegaraan yang baru yang berupaya memurnikan sistem presidensial. Selain itu, ada kondisi-kondisi yang masih belum dapat diselesaikan oleh UUD 1945 dan menyebabkan kelumpuhan pemerintahan. Artikel ini menawarkan satu solusi-yang dapat menyelesaikan dua masalah spesifik secara bersamaan yaitu menjadikan Ketua Dewan Perwakilan Rakyat (DPR) sebagai pelaksana tugas Presiden masa depan.

Kata Kunci:
perbandingan konstitusi; presiden sementara; pengisian jabatan

Introduction

The President, as head of state and government, is a 'unified actor' whose duty is to monitor and coordinate the actions of other actors so that they align with the direction of the President's movement as the highest command in a country.¹ In countries with a presidential system, the President must be responsive, from sensitivity to societal issues to global developments that will intersect with the country he leads, because there is no separation between the head of state and the head of government.² With such responsibilities, the Constitution establishes a 'framework for the government',³ Especially to organize the President's power so that it runs according to the corridor on the one hand and to limit that power from being abused on the other.

The Constitution does not allow the position to be vacant because if it is, the central and crucial role of the state led by the President will be lost.⁴ The government will be paralyzed, and the coordination pattern between state actors will be broken; the government's responsibility to the community will only run once irresponsible actors use momentum instantly. Therefore, many constitutions of the

¹ Fabian Burkhardt, Institutionalising Authoritarian Presidencies: Polymorphous Power and Russia's Presidential Administration, *Europe-Asia Studies* 73, no. 3, 2021, at 472-504, <https://doi.org/10.1080/09668136.2020.1749566>. (09-01-2024)

² David Dyzenhaus, Constitutionalism in an Old Key: Legality and Constituent Power, *Global Constitutionalism* 1, no. 2, 2012, at 229-60.

³ Cheryl Saunders. Constitution transformation. *Global Constitutionalism* (2021), 10:2, 237-255. Published by Cambridge University Press. See also Gould and Pozen's Structural Constitutional Law, in addition to regulating the workings of government, the constitution also provides rules for political competition. Jonathan Gould and David E Pozen, "Structural Biases in Structural Constitutional Law," *New York University Law Review* 97, no. 1, 2022, at 59-136, <https://ssrn.com/abstract=3797051>.

⁴ According to Calabresi and Prakash, as the sole holder of executive power, the President acts as the leader of government administrative agencies, having the power to annul their actions to the point of dismissing internal executive officials. Steven G. Saikrishna B. Prakash Calabresi, "The President's Power to Execute the Laws," *The Yale Law Journal* 104, no. 541, 1994, at 594-596, https://openyls.law.yale.edu/bitstream/handle/20.500.13051/8863/29_104YaleLJ541_December1994_.pdf?sequence=2. (12-01-2024)

world's countries prepare an 'Interim President'⁵ As a temporary replacement in the event of a vacancy in the office of President and Vice President.⁶ The Constitution charges the interim President with carrying out (at least) three things: leading the government, ensuring the stability of the country's government (as broad as possible), and overseeing the formation of a new government.⁷

In the political experience of the world, South Korea, Argentina, and Indonesia have a history of vacancies in the office of President and Vice President, whom an interim President then replaced. South Korea has experienced a vacancy in the office of the President and was replaced by the Prime Minister (South Korea does not have a Vice President)⁸ Due to impeachment in 2016, which occurred due to alleged abuse of influence related to chaebol/conglomerates.⁹ Argentina was also in a dramatic and unstable state from 2000 to 2003. Fernando de la Rúa resigned as President in 2001; a year earlier, his Vice President, Carlos Alvarez, also resigned. As a result, the positions of President and Vice President were vacant simultaneously, with Senate Speaker Ramon Puerta rising to become interim President.¹⁰ Indonesia experienced two Presidential vacancies. During the Dutch military aggression II, President Sukarno and Vice President Hatta were arrested. Then Sjafrudin Prawiranegara formed the Emergency Government of the Republic

⁵ This article applies general terminology used in the constitutions of the world states regarding 'Interim President' which defined as a president in a temporary term. Interim President is a terminology used in the literatures of Constitutional Law and political science, which meaning is a person appointed to 'substitute' the position of President and/or Vice President which simultaneously vacuum due to constitutional causes. Interim President I refer in this article has the same definition to 'Presidential Tasks Executor' in Indonesia according to Article 8 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This concept is similar to '*An officer ad interim: is one appointed to fill a temporary vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent.*' Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, ed. The Publishers Editorial Staff, Revised Fo. Saint Paul: West Publishing, 1968, at 57.

⁶ According to Calabresi and Prakash, as the sole holder of executive power, the President acts as the leader of government administrative agencies, having the power to annul their actions to the point of dismissing internal executive officials.

⁷ Emmanuel De Groof, *State Renaissance for Peace: Transitional Governance under International Law* (Cambridge University Press 2020), at 64.

⁸ The author uses 'and/or' in referring to the President-Vice President, because in practice in world countries there are Presidents who are not accompanied by a Vice President and there are also Presidents who are accompanied by a Vice President. Lihat J Mark Mobius, "The Japan-Korea Normalization Process and Korean Anti- Americanism," *Asian Survey*, 1966, at 241-248.

⁹ After being officially dismissed, Prime Minister Hwang Kyo-ahn immediately took over as President (interim President) at 7:30 pm local time and immediately occupied Cheong Wa Dae / Blue House (Presidential Palace). Park Geun-hye: South Korea lawmakers vote to impeach leader". BBC News. <https://www.bbc.com/news/world-asia-38259984>. Acces 29 Juni 2023. Jin Wook Kim, "Korean Constitutional Court and Constitutionalism in Political Dynamics: Focusing on Presidential Impeachment," *Constitutional Review* 4, no. 2 2018. at 222-48, <https://doi.org/https://doi.org/10.31078/consrev423>. (05-01-2024)

¹⁰ Javier Corrales, "The Politics of Argentina's Meltdown," *World Policy Journal* 19, no. 3, 2002, at 29-42, <http://www.jstor.org/stable/40209816>.

of Indonesia (PDRI).¹¹ Next came the transition from President Sukarno to President Soeharto in 1966, beginning with Soeharto's elevation to Acting President, followed by the Revocation of the Powers of State Administration from President Sukarno and Soeharto's election as Indonesia's second President in 1968.

These three cases inspired the author to look at the articulation of the idea of preventive constitutionalism in the constitutions of world countries,¹² which requires the constitution to provide methods that anticipate all kinds of problems in operating the government in the future. Preventive constitutionalism requires the constitution to think futuristically and predict all types of issues in the future,¹³ including difficulties in the event of a vacancy in the office of President and Vice President. The constitutions of the world's countries have regulated this matter and have anticipated if the President and Vice President simultaneously vacate, who the successor, how long the interim President serves, and the regulation of the mechanism for electing a new President. Although almost all of the world's constitutions have regulated the vacancy of the office of President and Vice President simultaneously, one exciting thing that the author finds is that the regulatory model needs to be uniformly arranged, one of which is regarding who becomes the interim President. In the world's constitutions, there are two variations of interim presidents, namely bureaucratic actors and legitimized actors.

A bureaucrat actor is an official who becomes the interim President. Previously, he was an official who came from a Presidential appointment

¹¹ Mestika Zed, *Pemerintahan Darurat Republik Indonesia: Sebuah Mata Rantai Sejarah Yang Terlupakan* (Jakarta: Pustaka Utama Grafiti, 1997). Lihat juga dalam Benda-Beckmann, Franz Von dan Keebet von Benda-Beckmann. *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation*. Cambridge: Cambridge University Press 2013., at 61.

¹² In this article, I limit the study on constitution (codified) in 18 countries: Indonesia (the 1945 Constitution of the Republic of Indonesia), The Philippines (Philippines 1987 Constitution), South Korea (Korean Republic of 1948, rev. 1987 Constitution), Algeria (Algeria 2020 Constitution), Azerbaijan (Azerbaijan 1995, rev. 2016 Constitution), France (France 1958, rev. 2008, Constitution), Poland (Poland 1997 Constitution), Romania (Romania 1991, rev. 2003 Constitution), Bulgaria (Bulgaria 1991, rev. 2015 Constitution), Mexico (Mexico 1917, rev. 2015 Constitution), Argentina (Argentina 1853, rest. 1983, rev. 1994 Constitution), Brazil (Brazil 1988, rev. 2017 Constitution), Chile (Chile 2022 Constitution), Angola (Angola 2010 Constitution), Nigeria (Nigeria 1999, rev. 2011 Constitution), South Africa (South Africa 1996, rev. 2012 Constitution), Egypt (Egypt 2014 Constitution), and the Constitution of The United States of America. This study is dominated by countries with the mechanism of presidential direct election and dual mandatory (President and Legislative), which is the characteristic of mainstream presidential thought in presidential. Furthermore, see Bidang David M. Golove and Daniel J JDavid M. Golove and Daniel j. Hulsebosch, "A Civilized Nation: The Early American Constitution, the Law of Nations and the Pursuit of International Recognition," *New York University Law Review* 85, no. 4, 2010, at.932.

¹³ Raymond Polin, *Plato and Aristotle on Constitutionalism: An Exposition and Reference Source* (Farnham: Ashgate Publishing, 1988).

(appointment official) such as the Prime Minister/Minister. The bureaucrat actor is considered a person who understands (professionally) how to lead the (interim) government because before the interim government, the bureaucrat actor was part of the executive power, working daily and familiar with government power. A state with a bureaucratic actor model does not care about legitimacy—whether the official has the people's votes or not—in leading the course of the interim government. The next variation is the legitimized actor, an official who becomes the interim President and was previously an elected official, such as the Speaker of the House of Representatives/Senate who moves to the office of the President. The use of legitimized actors emphasizes the democratic element, namely an executive led by a person who has the people's vote.

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The question is whether the adoption is relevant to the current system of government, which is more characterized by a presidential system with the position of President who has the people's vote. In the history of the Indonesian government, a legitimate actor, namely the Speaker of the DPR, was once used as an interim President as stipulated in Law Number 7 of 1949 and Law Number 29 of 1957. Over time, the regulation was annulled with a new model, which is to this day, the use of bureaucratic actors as interim presidents. The discourse around the acting

¹⁴ The current status of the Decree of the People's Consultative Assembly Number VII/MPR/1973 of 1973 on the State of Absence of the President and/or Vice President of the Republic of Indonesia is revoked and declared invalid by Article 1 of the Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia Number I/MPR/2003 on the Review of the Material and Legal Status of the Decrees of the Provisional People's Consultative Assembly and Decrees of the People's Consultative Assembly of the Republic of Indonesia from 1960 to 2002.

presidency can be said to be *'terra incognita'*¹⁵ in Indonesia: this is something that has yet to be studied and developed by Indonesian scholars. In the past, through his dissertation, Harun Alrasid criticized this in terms of the composition of the position; he argued that the interim President should be filled with a single position so that it would be more effective in leading the government.¹⁶ Most recently, through his dissertation Abdul Ghoffar favored bureaucratic actors as interim presidents for reasons of maintaining the separation of powers, which makes the logic of the US Presidential system a consideration.¹⁷ Unfortunately, one side of Abdul does not read in sufficient detail the construction of the United States which uses a 'line succession' model where the President's successor works until the end of the remaining term of the previous President, while the rest of the world uses 'temporary presidential succession' where the interim President works for a short duration (on average 30-60 days) until the election of a new President and Vice President. On the other hand, the United States currently makes the Speaker of the House of Representatives the President's successor on the pretext of maintaining the democratic element in the office of the President, which is the most principal republican identity in the United States.¹⁸ While all constitutions around the world make the position of interim President a single position, thus maintaining the position of interim President as a 'single chief executive' who is effective in making quick policy decisions, Indonesia is the only country that uses a plural/collegial executive, so the effectiveness of decision-making needs to be reviewed.

Based on a comparison of world constitutions, Indonesia's interim President arrangement has several weaknesses that will be described in the discussion section, including legitimacy issues vis a vis bureaucratic actors, leadership difficulties with compound models and several conditions can make the government paralyzed because the interim President filled by the ministry has not been formed.

¹⁵ Belley J-G, *Law as Terra Incognita: Constructing Legal Pluralism*, *Canadian journal of law and society* 12. No. 02. At. 17-24. Doi:10.1017/S0829320100005330. (07-01-2024)

¹⁶ Harun Alrasid. Masalah Pengisian Jabatan Presiden (Sejak Sidang Panitia Persiapan Kemerdekaan Indonesia 1945 Sampai Sidang MPR. 1993), *Disertasi*, 1993, Fakultas Hukum Universitas Indonesia.

¹⁷ Abdul Ghoffar. Pengaturan Pengisian Kekosongan Jabatan Presiden Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Disertasi*. Fakultas Hukum Universitas Brawijaya, Jakarta. at 29.

¹⁸ Lihat John D. Feerick. 1965. *From Failing Hands: The Story of Presidential Succession*. New York: Fordham University Press, at. 205.

The article is divided into several parts to discuss these issues: first, the regulation of who becomes the interim President in the constitutions of the world countries. Second, Problems in the position of interim President in Indonesia and proposals for improvement for the future.

Analysis

Interim Presidents: Comparison of Constitutions

This article will describe how interim presidents are regulated in the constitutions of different states.¹⁹ The author will begin by outlining the general features of interim Presidential arrangements from pre-conditions, during office to post-office. Through a study of 17 constitutions of the world's countries, the author documents 11 features of the arrangements surrounding the interim President, which the author 'abstracts' from all the constitutions that are the object of this study.²⁰ Borrowing a term proposed by Richard Albert,²¹ The author categorizes this feature as 'Presidential Succession Law', which in Indonesian means 'Presidential Succession Law', which regulates in detail the transfer of power caused by a permanent vacancy in the office of the President and Vice President starting from: (1) types of legal products that regulate the office of interim President, (2) nomenclature of the office of interim President, (3) pre-conditions that cause a vacancy in the office of president (4) public officials who become interim President, (5) procession of oath of office of interim President, (6) tiered alternatives to anticipate if the interim President is also absent, (7) restrictions on the powers of the interim President, (8) duration of the interim President's term: temporary and the remainder of the term, (9) the mechanism for electing a new president and vice

¹⁹ Limited to 17 countries, namely: Indonesia, Filipina (*Philippines 1987 Constitution*), Korea Selatan (*Korea Republic of 1948, rev. 1987 Constitution*), Aljazair (*Algeria 2020 Constitution*), Azerbaijan (*Azerbaijan 1995, rev. 2016 Constitution*), Prancis (*France 1958, rev. 2008, Constitution*), Polandia (*Poland 1997 Constitution*), Rumania (*Romania 1991, rev. 2003 Constitution*), Bulgaria (*Bulgaria 1991, rev. 2015 Constitution*), Mexico (*Mexico 1917, rev. 2015 Constitution*), Argentina (*Argentina 1853, reinst. 1983, rev. 1994 Constitution*), Brazil (*Brazil 1988, rev. 2017 Constitution*), Chile (*Chile 2022 Constitution*), Angola (*Angola 2010 Constitution*), Nigeria (*Nigeria 1999, rev. 2011 Constitution*), Afrika Selatan (*South Africa 1996, rev. 2012 Constitution*) dan Mesir (*Egypt 2014 Constitution*).

²⁰ This article selects these countries because they represent each system of government, ranging from presidential, parliamentary and semi-between systems. The main consideration is that these countries have had succession arrangements at the constitutional level earlier than Indonesia, in addition, some countries have experienced the vacancy of the President and Vice President.

²¹ Albert, Richard. "The Constitutional Politics of Presidential Succession," *Hofstra Law Review*: Vol. 39: Iss. 3, Article 2. Available. 2011. at. 30: <https://scholarlycommons.law.hofstra.edu/hlr/vol39/iss3/2>. (11-01-2024)

president, (10) the nomination of candidates for the new president and vice president and (11) the term of office of the new president and vice president. These eleven features operate in three 'time arenas' that all run concurrently: (1) when the office of President and Vice President is declared vacant simultaneously; (2) when the interim government led by the interim President begins; and (3) when the process of electing a new President and Vice President begins.

In the case of Indonesia, the author ensures that none of these features are classified as sacred features of the 1945 Constitution of the Republic of Indonesia, which Yaniv calls "*unamendable provisions*",²² such as preamble, ideological identity, and so on. These eleven features qualify as "*constitutional pre-commitment*"²³ to strengthen the democratization of government on all fronts, including avoiding a power vacuum in Indonesia. The arrangements on the acting presidency presented can also be helpful to increase 'constitutional responsiveness' in dealing with various kinds of national political situations to keep the government away from paralysis.²⁴ In the opinion of Eko Prasajo and Laode Rudita, the Indonesian constitution is a never ending process (never ending process) so that this is an endeavor to complete the many shortcomings in Indonesian governance.²⁵ These eleven features open up opportunities for further research, especially testing the comprehensiveness of the 1945 Constitution of the Republic of Indonesia and various world constitutions, as this article will only discuss one scope, namely the '*interim President*'.

The system of government does not provide a specific framework when the government is faced with a vacancy in the office of President and Vice President, ranging from who is the ideal interim President, how long the duration of office is to what powers he has. This has led to many similarities between the models in the

²² Roznai, Yaniv, "Unamendability and the Genetic Code of the Constitution", New York University Public Law and Legal Theory Working Papers. Paper 514, 2015, http://lsr.nellco.org/nyu_plltwp/514. 09-02-2024

²³ Ferejohn, John and Lawrence Sager, 'Commitment and Constitutionalism', 81: 1929-63, *University of Texas Law Review*, 2003. At 50.

²⁴ Law, David S. and Versteeg, Mila, The Evolution and Ideology of Global Constitutionalism (June 13, 2011). *California Law Review*, Vol. 99, p. 1163, 2011, APSA Annual Meeting Paper, 5th Annual Conference on Empirical Legal Studies Paper, Washington University in St. Louis Legal Studies Research Paper No. 10-10-01, 2011. Available at SSRN: <https://ssrn.com/abstract=1643628>. (09-03-2024)

²⁵ Eko Prasajo dan Laode Rudita. Reformasi Administrasi Indonesia Menuju Pemerintahan Dinamis. *Jurnal Prisma: Jurnal Pemikiran Sosial dan Ekonomi (Merombak Birokrasi)*, Vol.33, No.2, 2014.

presidential and parliamentary systems. The system of government (as a theory) is limited to signposts that become the basis for determining the interim President, such as consistency in maintaining the separation of powers in the vacancy of the office of President and Vice President.²⁶ South Korea, Mexico, Azerbaijan, South Africa, Chile and Indonesia have uniformly used bureaucrats as interim presidents. Of these six countries, only South Africa is a country where the President is elected through the National Assembly. South Africa, which is characterized by a parliamentary system, has not used a prime minister since 1984. This indicates that there is no principled difference between presidential and parliamentary countries in determining the interim President.

Table 1: Bureaucratic Actors turned Interim President

Countries	President Election	Bureaucratic Actor Who Appointed to Become Interim President
South Korea	Directly by People	1. Prime Minister 2. <i>State council</i> ²⁷
Azerbaijan	Directly by People	1. Prime Minister 2. Chairman of Milli Majlis/National Assembly ²⁸
South Africa	National Assembly	1. Minister 2. Chairman of National Assembly ²⁹
Chile	Directly by People	Minister (In case of absent, will be substituted by other Ministers as in order) ³⁰
Indonesia	Directly by People	Minister of Foreign Affairs, Minister of Domestic Affairs and Minister of Defence ³¹
Mexico	Directly by People	Minister of Domestic Affairs ³²

Source: Author's independent search of the Constitutions of these countries, via <https://www.constituteproject.org/>

Next, countries that use legitimate actors as interim presidents tend to dominate over bureaucratic actors, namely the Philippines, Poland, Romania, Algeria, Argentina, Brazil, France, Bulgaria, Angola, Nigeria, and Egypt. These are countries with a primarily presidential system - where the President is directly elected by the people - and semi-presidential countries where the Prime Minister is

²⁶ Albert, Richard, *The Fusion of Presidentialism and Parliamentarism*, 57. 10.5131/ajcl.2008.0016, *American Journal of Comparative Law*, 2009.

²⁷ Article 71 "Korea Republic of 1948, Rev. 1987 Constitution," n.d.

²⁸ Article 101-105 "Azerbaijan 1995, Rev. 2016 Constitution," n.d.

²⁹ Article 90 "South Africa 1996, Rev. 2012 Constitution," .

³⁰ Article 285 "Chile 2022 Constitution."

³¹ Article 8 paragraph (3) "the 1945 Constitution of the Republic of Indonesia,".

³² Article 84 "Mexico 1917, Rev. 2015 Constitution," .

the head of government. Poland, Romania, France, Bulgaria and Egypt are countries that separate the President as head of state and the Prime minister as head of government, although there are prime ministers in these countries, interim Presidents are appointed from legitimate actors derived from legislative power.

Table 2: Legitimacy Actors turned Interim President

Countries	President Election	Legitimate Actor who Appointed to Become Interim President
The United States of America	Directly by People	Speaker of House of Representatives Secretary of State, Secretary of the Treasury, dst.
The Phillipines	Directly by People	1. President of the Senate 2. Speaker of House of Representatives ³³
Poland	Directly by People	1. Marshal of the Sejm (Legislature) 2. Marshal of the Senate (Legislature) ³⁴
Romania	Directly by People	1. President of Senate (Legislature) 2. Head of Deputy (Legislature) ³⁵
Algeria	Directly by People	1. President of the Council of the Nation. 2. Chairperson of the Constitutional Court ³⁶
Argentina	Directly by People	1. Presidente Provisorio del Senado 2. Presidente de la Cámara 3. Presidente de la Corte Suprema de Justicia ³⁷
Brazil	Directly by People	1. Head of Deputy 2. President of Senate 3. Chairperson of the Supreme Court ³⁸
France	Directly by People	President of Senate ³⁹
Bulgaria	Directly by People	Chairperson of the National Assembly ⁴⁰
Angola	Directly by People	Chairperson of National Assembly ⁴¹
Nigeria	Directly by People	President of Senate ⁴²
Egypt	Directly by People	Speaker of House of Representatives ⁴³

Source: Author's independent search of the Constitutions of these countries, via <https://www.constituteproject.org/>

There are notes for South Korea, Azerbaijan and South Africa. Although South Korea uses a Prime Minister who actually exists as an incarnation of the Vice

³³ Article 7 paragraph (8) "Philippines 1987 Constitution".

³⁴ Article 128-131 "Poland 1997 Constitution,"

³⁵ Article 98 "Romania 1991, Rev. 2003 Constitution,"

³⁶ Article 98 "Algeria 2020 Constitution," n.d.

³⁷ In the constitution, Dalam Konstitusi, the substitution is Public official. No more elaboration (in the constitution) regarding what and who the public official is. (Art. 88) further provision is stipulated in "Ley 25.716 Acefalia Presidencial," n.d.

³⁸ Article 80 "Brazil 1988, Rev. 2017 Constitution."

³⁹ Article 7 "France 1958, Rev. 2008, Constitution," n.d.

⁴⁰ Article 97 "Bulgaria 1991, Rev. 2015 Constitution," n.d.

⁴¹ "Angola 2010 Constitution," n.d.

⁴² Article 136 "Nigeria 1999, Rev. 2011 Constitution," n.d.

⁴³ Article 160 "Egypt 2014 Constitution," n.d.

President who was removed in the fourth constitutional amendment in 1960.⁴⁴ Although the Prime Minister is part of the executive, his appointment still requires the binding approval of the National Assembly, so that he is a mandate of the people and has the political support of being elected through political mechanisms in the National Assembly—not a completely sterile bureaucrat—who is appointed without the voice of the people. Similarly, Azerbaijan, although the interim President is the Prime Minister, uses an alternative legitimizing actor, the Milli Majlis, if the Prime Minister is absent. Similar to Azerbaijan, South Africa also returns it to the National Assembly if the minister who is the interim President is absent. From all of this, the author argues that all actors who fill the interim President are inseparable from the legislative power either directly or indirectly, only Indonesia, Chile and Mexico whose interim Presidents are separated from the legislative power relationship.

Acting President in Indonesia (“*Pelaksana Tugas Kepresidenan*” in Indonesia)

Article 8A paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that if the President and Vice President are permanently absent, then the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense⁴⁵ 'jointly' acting as acting President to run the government until the formation of a new government.⁴⁶ At the same time as the President is running the government, the People's Consultative Assembly holds a session to elect a President and Vice President from the two pairs of candidates for President and Vice President proposed by the political party or coalition of political parties whose pair of candidates for President and Vice President received the first and second highest number of votes in the previous general election, until the end of their term of office.

⁴⁴ Since then, South Korea has not had a Vice President. The Prime Minister replaces the Vice President. The position of Prime Minister in South Korea is different from the position of Prime Minister in Parliamentary countries that separate the functions of Head of State and Head of Government. However, the Prime Minister's position in South Korea is as "Vice President". This is because historically, at the beginning of the South Korean government, there was a Vice President, but the name of the position was changed to Prime Minister. See in Mobius, at, 245.

⁴⁵ Kristopher Stenson, "Caesar, Pompey, and the CoLLapse of the First Triumvirate," PennState, 2010, [https://sites.psu.edu/firsttriumvirate/the-demise/#:~:text=The First Triumvirate saw its,men from an inevitable fight.\(28-01-2024\)](https://sites.psu.edu/firsttriumvirate/the-demise/#:~:text=The First Triumvirate saw its,men from an inevitable fight.(28-01-2024))

⁴⁶ The Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense are often called the 'triumvirate' in the literature. In terminology, triumvirate means a triumvirate. This refers to Samuel Willard Crompton's notes, in his work *100 Wars That Shaped World History*, the triumvirate pattern was introduced by Lycurgus in 625 BC. Etymologically, Triumvirate comes from Latin, meaning three men, and it is a political regime dominated by three rulers, each called the Triumvirate. Samuel Willard Crompton, *100 Peperangan Yang Berpengaruh Di Dalam Sejarah Dunia [100 Wars That Shaped World History]*, ed. Rahmat Herutomo, Tangerang: Kharisma Publishing Group, 2007.

In the process of candidacy in the MPR, candidates nominated by political parties/combination of political parties present their vision-mission to be campaigned before the MPR. The entire series/construction is written in Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.⁴⁷

From the construction of the article, there is no provision for the acting President to serve as the government for how long. The 1945 Constitution of the Republic of Indonesia does not explicitly determine how long the government will run, it only regulates the maximum limit of 'when' the MPR must begin convening to elect the President and Vice President, which is a maximum of 30 days calculated after the previous President and Vice President vacated simultaneously. The 1945 Constitution only regulates when to convene, it does not regulate how many days it takes for a new President and Vice President to be elected, leaving open the possibility of an acting President leading the government for quite a long time (up to months or even years like Soeharto).

Looking back at the regulatory trajectory of the Presidential Task Force, it turns out that it has experienced alternating models, which are also followed by the dynamics of the government system adopted. The historical trajectory closely relates to the composition of the Presidential task executor and the government system implemented then. In Law Number 7 of 1949 concerning the Appointment of Temporary Holders of the Office of the President of the Republic of Indonesia, the Acting President is filled by the Speaker of the House of Representatives with the title President is filled by the Speaker of the House of Representatives with the title '*Pemangku Jabatan Presiden*'. Next, in Law No. 29 of 1957 concerning Officials who Carry out the Work of the Office of the President, if the President Departs, Quits or is Incapacitated, while the Vice President is Absent or Incapacitated, the acting presidency is filled by the Speaker of the House of Representatives with the designation of '*Pekerjaan Jabatan Sehari-hari*'.

⁴⁷ "If the President and Vice President dies, ceases, is dismissed, or is unable to perform his/her obligations in his/her term of office simultaneously, the acting President is the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense jointly....".

In Perppu No. 10 of 1960 concerning Officials who Carry out the Work of the Office of the President, If the President Departs, Quits, or is Incapacitated, While the Vice President is Absent or Incapacitated, Acting. The First Minister fills President with the title '*Pekerjaan Jabatan Presiden*'. In the Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia No. XV/MPRS/1966 concerning the Election / Appointment of the Vice President and Procedures for Appointing Presidential Officials, the Acting President is filled by a person appointed by Sukarno through Supersemar-Soeharto. President is filled by a person appointed by Sukarno through Supersemar-Soeharto with the designation '*Pemegang Jabatan Presiden*'. Finally, in the Decree of the People's Consultative Assembly Number VII/MPR/1973 of 1973 concerning the State of Absence of the President and Vice President of the Republic of Indonesia, the acting presidency of the President was filled by the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense simultaneously and the first time using a model of replacing 3 (three) positions simultaneously (Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense) with the designation '*Pemangku Sementara Jabatan Presiden*'.

The historical contribution that has been retained- despite significant changes in the constitutional structure- is the composition of the acting president, namely the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense, who serve together. This material was initially regulated in the Decree of the People's Consultative Assembly Number VII/MPR/1973 of 1973 concerning the State of the President and Vice President of the Republic of Indonesia in Absence, which at that time mandated the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense to replace the President when the position was permanently absent.⁴⁸ Sri Soemantri said Article 8 paragraph (3) of the 1945 Constitution 'took a pass' on the substance of MPR Decree VII/MPR/1973.⁴⁹ An important note is that at that time, the President was the mandate of the MPR as the

⁴⁸ The current status of the Decree of the People's Consultative Assembly Number VII/MPR/1973 of 1973 on the State of Absence of the President and/or Vice President of the Republic of Indonesia is revoked and declared invalid by Article 1 of the Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia Number I/MPR/2003 on the Review of the Material and Legal Status of the Decrees of the Provisional People's Consultative Assembly and Decrees of the People's Consultative Assembly of the Republic of Indonesia from 1960 to 2002.

⁴⁹ Sri Soemantri M, *Hukum Tata Negara Indonesia: Pemikiran Dan Pemandangan*, PT Remaja Rosdakarya 2015, at 189.

highest state institution, which was a characteristic of the parliamentary system. The product of the system is still adopted by the perpetrators of the 1945 Constitutional amendment, which on the one hand requires popular sovereignty through a direct electoral process by the people in electing the President directly (presidential) but on the other hand hands over the duties of the Presidency to the Presidential task executor who is not directly elected by the people. In the official minutes of its preparation, Djalil Abdullah conveyed the Stemmotivering of the United Development Faction in the March 1973 General Session of the MPR-RI, which contained the following contents:⁵⁰

“... In order to overcome the vacuum in the leadership of the country, our Assembly has produced a Rantap (Draft Ketetapan) that regulates this matter, which we fully agree with. The sequence of officials who must perform if the President or Vice President is absent either permanently or temporarily, starting from the Vice President to the triumvirate of Ministers of Home Affairs, Foreign Affairs and Defense is intended to prevent a vacuum in the highest leadership of the country, something that should not happen, for the sake of continuity of development.”

From Djalil Abdullah's presentation, it is clear that in the March 1973 General Session of the MPR-RI, members were presented with cooked material in Rantap that had already been written, if the President and Vice President were permanently absent. There was no in-depth discussion recorded in the minutes of the session and Djalil Abdullah conveyed Stemmotivering just to justify what was presented in the Rantap. There are no other official state documents that can be traced, which are able to explain why the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense substitute for the President when permanently absent, because if you read the entire Set of Results of the March 1973 General Session of the MPR RI and the Structure of the Development Cabinet II. This faction discusses the point about the vacancy of the office of President and Vice President, only the United Development Faction. For this reason, to find out why the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense are substitutes for the President

⁵⁰ Dewan Pimpinan Daerah Golongan Karya Daerah Tingkat I Jawa Timur, 'Himpunan Hasil-Hasil Sidang Umum MPR RI Maret 1973 Dan Susunan Kabinet Pembangunan II', at, 303.

during a permanent absence, a special in-depth investigation is needed through historical research to read the political context behind the regulation.

Sri Soemantri gave reasons why the three ministries became the executors of presidential duties, namely the three ministers (considered) understood, the ins and outs of government affairs—a reason similar to the use of bureaucratic actors as interim Presidents—next, the Minister of Foreign Affairs was considered to run daily foreign affairs and was closely related to state sovereignty in the eyes of the international community, the Minister of Home Affairs was supposed to be the controller of domestic government including local government, and the Minister of Defense as the controller of defense politics.⁵¹ What Sri Soemantri says is more of a functional approach that does not include the political context of the regulation. Like the MPR Decree, the regulatory model that places the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense as officials to take extraordinary measures in a 'state of emergency' is found in Article 75 of the Constitution of the Republic of Indonesia.⁵²

With all the political context that is still hidden behind the regulation, the Minister of Foreign Affairs, the Minister of Home Affairs and the Minister of Defense, who serve together, are still maintained as executors of Presidential duties with an increase in level from the MPR Tap to the 1945 Constitution. Is this model still relevant to the contemporary constitutional structure? The 1945 Constitution of the Republic of Indonesia as a result of the 1999-2002 constitutional reform is the product of an agreement motivated to strengthen Presidentialism by direct election of the President as a manifestation of popular sovereignty. The use of the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense as the executor of Presidential duties shows that the features of new order parliamentarian still exist in the presidential of the 1945 Constitution of the Republic of Indonesia, it can

⁵¹ Soemantri, at, 190.

⁵² Article 75 of the RIS Constitution: 1. The ministers who are required to head the Departments of Defense, Foreign Affairs, Internal Affairs, Finance and Economic Affairs, as well as the Prime Minister, even if he is not required to head any of these departments, have a special position as described below. 2. The constituting ministers shall normally each preside over one of the departments mentioned in the preceding paragraph. 3. In matters requiring immediate action and in cases of emergency, the specialized ministers together shall have the power to take decisions which shall, in such cases, with equal force, supersede the decisions of the full Council of Ministers. In making their decisions, the Ministers shall endeavor to reach an agreement.

be seen because the 1945 Constitution of the Republic of Indonesia still uses the element of 'minister' as the executor of Presidential duties.

If we trace the history of government, Indonesia is indecisive about applying for a parliamentary or presidential system of government. Before the reformation, some scholars such as Sri Soemantri considered that Indonesia adopted a mixed system because the President was elected by the MPR. On the other hand, the 1945 Constitution did not regulate cabinet accountability to parliament. After the reformation, according to Sulardi⁵³ dan Saldi Isra,⁵⁴ Although there is a commitment to strengthen the presidential system with the direct election of the President by the people, parliamentary nuances still exist, such as not giving the President the right to veto legislation proposed by parliament. The author argues that although Indonesia has not yet fully embraced pure presidential reform, it is in a phase of 'moving forward' towards presidential, or in the words of Fitrah Asril, 'leaning' towards presidential rather than parliamentary.⁵⁵

The acting Presidency with the composition of the Minister of Home Affairs, Minister of Foreign Affairs, and Minister of Defense, who stepped up to replace the President running the government, has parliamentary nuances because the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense are not directly elected by the people which is the main characteristic of the presidency, the people directly elect the President. Suppose you trace the Comprehensive Text of the Amendment to the 1945 Constitution of the Republic of Indonesia. In that case, there is no apparent reason why the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense appear as the acting President. There was no serious debate about the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense being the acting President; in the formulation process, all actors justified and agreed with each other. The actors of the amendment only moved the content material from MPR Tap VII/1973 into Article 8 paragraph (3) of the 1945

⁵³ Sulardi, Rekonstruksi Sistem Pemerintahan Presidensiil Berdasar Undang-Undang Dasar 1945 Menuju Sistem Pemerintahan Presidensiil Murni, *Jurnal Konstitusi* 9, no. 3, 2012, at 515-30.

⁵⁴ Saldi Isra, *Pergeseran Fungsi Legislasi*, Rajawali Press, 2018, at, 56.

⁵⁵ Asril, at, 123.

Constitution of the Republic of Indonesia without synchronizing it with the new constitutional structure in the 1945 Constitution of the Republic of Indonesia.

The inclusion of the minister of foreign affairs, minister of interior and minister of defense in the 1945 Constitution indicates that this design is adaptive to various government systems. The New Order placed the MPR as the highest state institution attached to the power to elect the President, which indicates that the 1945 Constitution is more identical to the parliamentary system because it makes the MPR the centrality of political activities.⁵⁶ The parliamentary design in the 1945 Constitution slowly began to be changed with a new design that emphasized the presidential system,⁵⁷ some of them such as the office of President directly elected by the people ⁵⁸ which also changes the focus of attention to the candidate's figure (candidate-centered) no longer based on political issues (political issues based),⁵⁹ separation of powers with checks and balances, ⁶⁰ There is no longer any accountability of the President to the MPR, until ministers assist the President and is accountable to the President.⁶¹ Various efforts towards refining the presidential system have been widely applied in the 1945 Constitution of the Republic of Indonesia. The most important of these variables is the role of the President as chief executive as well as an increasingly central political actor (political agency).⁶²

In the significantly changed structure, the acting presidency still uses the minister of foreign affairs, home affairs and defense minister. The institutional implications of such a design eventually transformed—during the concurrent vacancies of the President and Vice President—the office of the President from an

⁵⁶ Marcus Mietzner, *Comparing Indonesia's Party Systems of the 1950s and the Post-Suharto Era: From Centrifugal to Centripetal Inter-Party Competition*. *Journal of Southeast Asian Studies* Vol 39 No3, 2008. at, 57 <http://www.jstor.org/stable/27751535> (15-03-2024)

⁵⁷ Although today's reforms are not yet purely presidential, Indonesia is in a phase of 'moving forward' towards presidentialism, or in Fitrah Asril's language 'leaning' towards presidential rather than parliamentary. See in Fitrah Asril. *Teori Sistem Pemerintahan, Pergeseran Konsep dan Saling Kontribusi, Antar Sistem Pemerintahan di Berbagai Negara*. Depok: PT. Raja Grafindo Persada, 2015, at. 123.

⁵⁸ See Article 6A of the 1945 Constitution: (1) The President and Vice President shall be elected in one pair directly by the people.

⁵⁹ Hamdi Muluk, *Demokrasi Presidensial: Sebuah Assessment Awal*. *Jurnal Prisma* Vol 35 No. 3, 2016.

⁶⁰ For example, the MPR has been downgraded from the highest state institution to a state institution. The elucidation of the 1945 Constitution was removed which explained: The People's Consultative Assembly is the highest state organ. In the body, Article 1 was also changed, which previously read: "Sovereignty is in the hands of the people, and is exercised entirely by the People's Consultative Assembly" was changed to "Sovereignty is in the hands of the people and is exercised according to the Constitution.

⁶¹ See Article 17 of the 1945 Constitution: (1) The President is assisted by state ministers. (2) The ministers are appointed and dismissed by the President.

⁶² Hamdi Muluk, *Loc.cit*.

elected official to one filled by appointees.⁶³ In this situation, the composition of the acting presidency needs to be reviewed with the current Indonesian government system, which is identical to the presidential system. Thus, this article proposes that the acting presidency should be filled by an official whose source is elected by the people, namely the Speaker of the House of Representatives (Speaker of the DPR), so as to create synchronization between the source of filling the President and the acting presidency.

An acting Presidency with a ministerial element that does not receive a direct vote from the people will be faced with several potential problems in the future, mainly due to its composition which is filled with a compound that is ineffective in deciding policies so that it needs to be changed to a single position/leadership. The main advantage of a single presidency is that it increases the efficiency and effectiveness of government one hand so that all actions taken are not faced with a series of processes in the collegial executive. The acting presidency will be faced with unpredictable situations. Whatever the problem, the logic defended in this dissertation is to create an acting presidency that can act responsively to the needs of the government. An acting presidency that still maintains the collegial executive is difficult to respond to some state needs, such as declaring a state of danger and following up on conditions of compelling urgency.⁶⁴ The primacy of sole leadership by the Speaker of the House of Representatives increases the time efficiency and effectiveness for policy making, states of danger and force majeure that may at any time hit Indonesia, as the process of deliberation and unanimity in current law has the potential to create a protracted process between the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense. Birnbaum, R. & Eckel provide a specific analysis of the institutional nature of the presidential system in decision-making, which he calls an 'anarchist organization', which prioritizes political considerations in the single figurehead of government.⁶⁵

⁶³ Indonesia implements direct election of the President, see Article 6A of the 1945 Constitution: (1) The President and Vice President shall be elected in one pair directly by the people.

⁶⁴ See Article 22 of the 1945 Constitution: (1) In cases of compelling urgency, the President has the right to enact government regulations in lieu of laws.

⁶⁵ Birnbaum, R. & Eckel, P.D, *The Dilemma of Presidential Leadership*. In Altbach, P.G., Berdahl, R.O., & Gumpert, P.J. (Eds.), *American Higher Education in the Twenty-First Century*, 2nd edition, 340-365. Johns Hopkins University Press, 2005.

The issue of efficiency and effectiveness of decision-making of the presidential task force using the collegial executive model is increasingly visible in the case of the operation of state tools that require rapid response, complex to realize if the presidential task force as the highest leader official is still bound by the process of achieving unanimity among fellow Ministers of Foreign Affairs, Home Affairs and Defense. The President holds supreme power over the Army, Navy, and Air Force,⁶⁶ It is a manifestation of civil supremacy where the government is elected by the people and is considered the legitimate representative of the people's will.

Therefore, to maintain civilian supremacy, military power must be subject to the civilian authority led by the President.⁶⁷ The President and the civilian government have the legitimacy granted by the electorate to control the armed forces, and the President as commander-in-chief has a strategic vision for national security and the interests of the country as a whole. The President can formulate and execute military policies that align with national objectives by controlling the armed forces.⁶⁸ The principle of civilian supremacy is outlined in Law Number 34 of 2004 concerning the National Army of the Republic of Indonesia:⁶⁹

“Civil supremacy is the political power owned or attached to the state leader elected by the people through general elections by the principles of democracy. In relation to the TNI, civil supremacy means that the TNI is subject to every policy and political decision made by the President through the constitutional mechanism process.”

In the case of Indonesia, the existence of the President as the supreme power of the armed forces is guaranteed in the 1945 Constitution of the Republic of Indonesia, in more detail the dominant role of the President over the Armed Forces is regulated in Law Number 34 of 2004 concerning the National Army of the Republic of Indonesia which places the National Army of the Republic of Indonesia (TNI) under the President.⁷⁰

⁶⁶ Article 10 of the 1945 Constitution: The President holds supreme power over the Army, Navy and Air Force.

⁶⁷ Kemp, Kenneth W, and Charles Hudlin, “Civil Supremacy over the Military: Its Nature and Limits.” *Armed Forces & Society* 19, no. 1, 1992: 7-26. <http://www.jstor.org/stable/45346480>. (23-02-2024)

⁶⁸ *Beehner, Lionel, Risa Brooks, and Daniel Maurer (eds), Reconsidering American Civil-Military Relations: The Military, Society, Politics, and Modern War (New York, 2021; online edn, Oxford Academic, 19 Nov. 2020, <https://doi.org/10.1093/oso/9780197535493.001.0001>, (10-01-2024)*

⁶⁹ See the explanation section of Law Number 34 of 2004 concerning the National Army of the Republic of Indonesia

⁷⁰ See Article 3 (1) of Law No. 34/2004 on the National Army of the Republic of Indonesia In the deployment and use of military force, the TNI is under the President. (2) In defense policy and strategy and administrative support, the TNI

To operate the Armed Forces for war purposes, the President must obtain prior approval from the House of Representatives.⁷¹ In addition to the need for military war operations, Law No. 34/2004 on the National Army of the Republic of Indonesia details that in carrying out various 'military operations other than war', the President must also cooperate with the DPR through the scheme of 'state policy and political decisions'. The main tasks of the TNI have a reasonably broad scope ranging from military operations for war and military operations other than war.⁷² When a collegial executive model leads the acting presidency, there are many processes required, starting from the deliberation of fellow ministers in the acting presidency, then having to cooperate with the DPR to obtain state political decisions,⁷³ together in carrying out TNI tasks both in military operations and military operations other than war, which in the logic of decision making, the operationalization of these tasks must be decided in a fast time to overcome actions that occur in an unexpected time.

In case of force majeure, which does not allow for a political process with the approval of the House of Representatives, the President - who the acting presidency will hold can take 'deployment' action without the approval of the House of Representatives.⁷⁴ In emergencies or crises, quick and decisive decisions are

is under the coordination of the Ministry of Defense. Explanation of Article 3 Paragraph (1) What is meant by being under the President is that the TNI is under the authority of the President.

⁷¹ Article 11 of the 1945 Constitution: (1) The President with the approval of the House of Representatives declares war, makes peace and treaties with other countries.

⁷² Military operations other than war: overcoming armed separatist movements, overcoming armed rebellions, overcoming acts of terrorism, securing border areas, securing strategic national vital objects, carrying out world peace duties in accordance with foreign policy, securing the President and Vice President and their families, empowering defense areas and supporting forces early in accordance with the universal defense system, assisting government duties in the regions, assisting the Indonesian National Police in the context of security and public order tasks regulated in law, helping to secure state guests at the level of heads of state and representatives of foreign governments who are in Indonesia, helping to cope with the effects of natural disasters, refugees, and providing humanitarian assistance, assisting search and rescue in accidents (search and rescue); and assisting the government in securing shipping and aviation against piracy, piracy, and smuggling). See Article 7 of Law Number 34 of 2004 concerning the National Army of the Republic of Indonesia.

⁷³ See the Explanation of Article 5 of Law No. 34/2004 on the National Army of the Republic of Indonesia: What is meant by state political policies and decisions is the political policy of the government together with the House of Representatives formulated through the mechanism of working relations between the government and the House of Representatives, such as consultation meetings and working meetings in accordance with laws and regulations.

⁷⁴ See Article 17 of Law Number 34/2004 on the National Army of the Republic of Indonesia: (1) The authority and responsibility for the deployment of TNI forces rests with the President. (2) In the deployment of TNI forces as referred to in paragraph (1), the President must obtain approval from the House of Representatives. Article 18: (1) In a state of force to deal with military threats and/or armed threats, the President may directly deploy TNI forces. (2) In the case of direct deployment of TNI forces as referred to in paragraph (1), within 2 X 24 hours as of the issuance of the decision to deploy forces, the President must report to the House of Representatives. (3) In the event that the House of Representatives does not approve the deployment as referred to in paragraph (1) and paragraph (2), the President must stop the deployment of the TNI force.

essential. A single leadership facilitates the acting presidency to take immediate action without the constraints of a lengthy consultation process.⁷⁵ A few illustrations on the issue of legitimacy and effectiveness of decision-making of the acting presidency: in the case of a President shot dead by a separatist group during his visit to a conflict-prone area. At the same time, the previous Vice President turned out to be vacant.⁷⁶ As a result, there was a concurrent vacancy in the positions of President and Vice President, and the acting presidency rose. In such a situation, the TNI, which felt 'missed', wanted to follow up with a military operation against the shooting quickly. However, when the commander went to the acting presidency, it turned out that a unanimous decision on the move had not been agreed upon because of cross-opinions between fellow ministers in the acting presidency. The defense minister wanted a '*scorched earth*' operation against the separatists, while the foreign and interior ministers opposed it on the grounds of human rights and international attention.

In this condition, there is an opportunity for the TNI Commander to take action outside the instructions of the acting presidency because of the complexity of the decision-making process of the acting presidency. The TNI's pretext used is 'national defense'; on the other hand, the TNI 'could have' assessed that the acting presidency does not have the legitimacy of the people directly so that the principle of civilian supremacy can be overridden.⁷⁷ This illustration is not just a fictional

⁷⁵ Kaufmann WW, *The Crisis in Military Affairs, World Politics*, 1958;10(4):579-603. Doi:10.2307/2009278. (17-02-2024)

⁷⁶ Several cases of vacancies in the office of President and Vice President were initially caused by the vacancy of the Vice President. In Indonesia in 1966, it happened because the post of Vice President had not been filled since Hatta resigned as Vice President in 1996. On October 6, 2000 Carlos Alvarez, who was Vice President, resigned for moral reasons because President Fernando de la Rúa was hit by a bribery scandal in passing the Argentine Labor Law. The Vice-Presidency became vacant and there was no new election process due to domestic conflicts. With the erosion of political support for President Fernando de la Rúa, on December 20, 2001, the President also resigned. In the end, the positions of President and Vice President of Argentina were vacant at the same time. See in Mugambi Jouet, *The Failed Invigoration of Argentina's Constitution: Presidential Omnipotence, Repression, Instability, and Lawlessness in Argentine History*, 39 U. MIA INTER-AM. L. REV. 409 (2008). Available at: <https://repository.law.miami.edu/umialr/vol39/iss3/2> (18-02-2024)

⁷⁷ It should be noted that the principle of civilian supremacy in Law No. 34/2004 on the National Army of the Republic of Indonesia, only limits the military's obedience to state leaders elected by the people through general elections. It reads: "civilian supremacy is the political power possessed by or attached to state leaders elected by the people through general elections in accordance with the principles of democracy. Civilian supremacy in relation to the TNI means that the TNI is subject to every policy and political decision made by the President through the constitutional mechanism process". The principle of civilian supremacy in the law does not cover the acting presidency, potentially, the TNI uses this as an excuse to disobey the acting presidency, because they are not elected by the people through general elections. See the elucidation section of Law No. 34/2004 on the National Army of the Republic of Indonesia.

story; some countries such as the United States of America,⁷⁸ Argentina⁷⁹ and Sudan⁸⁰ have experienced such tense phases, the Sudanese Constitution failed to navigate the government and resulted in a military junta due to conflicts among actors in the presidential administration.⁸¹ Yusril Ihza Mahendra warned that in a power vacuum situation, it is very vulnerable to power struggles.⁸² This symptom is emphasized by Agus Widjojo's opinion who said:⁸³

“The practices and norms of objective civil-military relations are not necessarily free of deviations, especially in a young democracy. According to the author, the deviations that occur take the form of civilians' lack of confidence and incompetence in handling defense and military matters”.⁸⁴

Agus also cited a case in the United States; President Barack Obama once replaced General McChrystal because he was not in line with his defense policy.⁸⁵ General McChrystal was replaced by General Petraeus in 2010.⁸⁶

In a democratic system, keeping the military under civilian control is essential. The acting presidency can ensure that the military does not make independent political decisions by having sole control over the armed forces. The military can only be deployed by the civilian political authority, which in a presidential democracy is in the hands of the acting president, as the people have never elected the TNI and, therefore, have no political authority.⁸⁷ The Speaker of the House of Representatives, who is the sole acting president, has incentives that the Minister of Foreign Affairs, the Minister of Home Affairs and the Minister of Defense do not: he is a democratically elected official with democratic legitimacy and

⁷⁸ Wallenfeldt, Jeff, *assassination of John F. Kennedy Encyclopedia Britannica*, 1 Jan. 2024, <https://www.britannica.com/event/assassination-of-John-F-Kennedy>. Accessed 7 March 2024. (19-02-2024)

⁷⁹ See Mugambi Jouet, *The Failed Invigoration of Argentina's Constitution: Presidential Omnipotence, Repression, Instability, and Lawlessness in Argentine History*, 39 U. MIA INTER-AM. L. REV. 409, 2008, Available at: <https://repository.law.miami.edu/umialr/vol39/iss3/2> (19-02-2024)

⁸⁰ See Sudan's military coup, Prime Minister Abdalla Hamdok-who was interim President in the transitional government-was overthrown by the military under General Abdul Fattah and took over the government. See in Welle D, "Militer Sudan Kudeta Pemerintahan Transisi," dw.com, 2021, <https://www.dw.com/Indonesia/militer-sudan-kudeta-pemerintahan-transisi/a-59615407>. (19-02-2024)

⁸¹ Id.

⁸² Yusril Ihza Mahendra, Sengketa Pemilihan Presiden dan Wakil Presiden di Mahkamah Konstitusi, Kuliah Umum Hukum Tata Negara, 22 Februari 2024, Fakultas Hukum Universitas Indonesia.

⁸³ Agus Widjojo, *All The President's Men: Pembentukan Kebijakan Publik dalam Sistem Demokrasi Presidensial*. Jurnal Prisma, Vol. 35, Indonesia, 3, 2016.

⁸⁴ Agus Widjojo, *All The President's Men: Pembentukan Kebijakan Publik dalam Sistem Demokrasi Presidensial*. Jurnal Prisma, Vol. 35, Indonesia, 3, 2016.

⁸⁵ *Robert M Gates, Duty: Memoirs of a Secretary at War*, Knopf Doubleday Publishing Group, 2014.

⁸⁶ Id.

⁸⁷ Agus Widjojo, *All The President's Men: Pembentukan Kebijakan Publik dalam Sistem Demokrasi Presidensial*. Jurnal Prisma, Vol. 35, Indonesia, 3, 2016.

therefore has the political capacity to control the Armed Forces from abuse of power and unstable opportunities. Gardner narrows the criteria for democratic legitimacy in leadership by distinguishing between 'direct and indirect leaders':⁸⁸ direct leaders have a direct relationship with the community so that they establish an excellent loyalty relationship as leadership capital, support for direct leaders comes in various forms and sizes to strengthen their position.⁸⁹

On the other hand, indirect leaders do not have that loyalty because their relationship is established with the person who appointed them.⁹⁰ The Speaker of the House, as a direct leader, has an incentive to avoid a democratic recession and maintain the principle of civilian supremacy about the Armed Forces in a situation of interim government due to the vacancy of the office of President and Vice President.⁹¹ Alfred reminded that regime stability in relatively young post-democratic transition countries is vulnerable to disruptions and coups from military forces working through various democratic channels in the name of defense and security,⁹² such as socio-political chaos and power vacuum.⁹³ The military will make every effort to re-establish civilian supremacy over all domains in such situations,⁹⁴ so that the Speaker of the House's figure plays an effective antidote dealing with this.

In addition to the legal framework of the Presidential task force not having the legitimacy of the people, this problem is exacerbated because the 1945 Constitution is not sufficiently accommodating in dealing with specific situations that result in the paralysis of the government. This can happen where when the President and Vice President have finished swearing-in on October 20, but the cabinet of ministries still needs to be formed. For example, right after the inauguration, it turns out that the President and Vice President experienced

⁸⁸ Gardner H. 1995. *Leading Minds: An Anatomy of Leadership*. New York: Basic Books.

⁸⁹ Burns, J.M. (2007). *A Tale of Two Bushes: Standing Alone Versus Standing Together*. In: Price, T.L., Wren, J.T. (eds) *The Values of Presidential Leadership*. Jepsen Studies in Leadership. Palgrave Macmillan, New York. https://doi.org/10.1057/9780230609334_6

⁹⁰ Gardner H. 1995. *Leading Minds: An Anatomy of Leadership*. New York: Basic Books

⁹¹ Alfred Stepan. Berbagai Jalur Menuju Demokratisasi: Sejumlah Pertimbangan Teoritis dan Komparatif. Dalam Guillernmo O'Donnell, Philippe C.S, Laurence W, (ed), *Transisi Menuju Demokratisasi: Tinjauan Berbagai Perspektif*, Jakarta: LP3ES, at , 117.

⁹² *Id.*

⁹³ Alan Rouqies, *Militer di Amerika Latin*. Dalam Guillernmo O'Donnell, Philippe C.S, Laurence W, (ed), *Transisi Menuju Demokratisasi: Tinjauan Berbagai Perspektif*, Jakarta: LP3ES, at. 186.

⁹⁴ *Id.*, at 207.

simultaneous events that resulted in the President and Vice President being permanently absent (death, terrorist attacks, and so on). When the cabinet ministries have yet to be formed/installed, who will become the acting president? The Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense cannot serve because they have not been legally appointed/installed (the cabinet has not been formed), while the previous ministries also cannot because their terms of office have expired at the same time as the term of office of the last President.

This is problematic because in previous inaugurations of the President and Vice President, there was always a 'time lag' between the inauguration of the President and Vice President and the appointment of the cabinet. When President Susilo Bambang Yudhoyono was in his first term, he was inaugurated on October 20, 2004, at 10:00 a.m. WIB⁹⁵ and ministerial cabinet appointments were made in the afternoon.⁹⁶ In Susilo Bambang Yudhoyono's second term, the inauguration was held on October 20, 2009, and the cabinet appointment was held the next day, October 21, 2009.⁹⁷ In the era of President Joko Widodo period I, the President was inaugurated on October 20, 2014, and the cabinet appointment was held one week after the inauguration on October 27, 2014.⁹⁸ In the era of President Joko Widodo period II, he was inaugurated on October 20, 2019, then the cabinet appointment was held on October 23, 2019.⁹⁹

Imagine, if Poland had used bureaucratic actors, it would have been paralyzed when its President suffered a plane crash in 2010 with executive officials. Bronisław Komorowski, who served as Marshal of the Sejm (legislature) then, rose as interim President to continue the government. He played an essential role in continuing the government, especially appointing officials who also died along with

⁹⁵ Delvira Hutabarat, "SBY Dilantik Menjadi Presiden Pertama Yang Dipilih Langsung Rakyat Pada 17 Tahun Silam," *liputan6.com*, 2021, <https://www.liputan6.com/news/read/4688997/sby-dilantik-menjadi-presiden-pertama-yang-dipilih-langsung-rakyat-pada-17-tahun-silam>. (20-03-2024)

⁹⁶ Presidential Decree of the Republic of Indonesia 187/M Year 2004 on the Formation and Appointment of the Minister of State of the United Cabinet.

⁹⁷ Presidential Decree of the Republic of Indonesia 84/P of 2009 on the Formation of the United Indonesia Cabinet II.

⁹⁸ Presidential Decree of the Republic of Indonesia 121/P of 2014 on the Formation and Appointment of State Ministers of the Working Cabinet for the 2014-2019 Period.

⁹⁹ Presidential Decree of the Republic of Indonesia 113/P of 2019 on the Formation and Appointment of Ministers of State of the Working Cabinet for the 2019-2024 Period.

the President.¹⁰⁰ As described earlier, this is the main incentive for a legitimate actor to become an interim President in dealing with a government vacuum.

A rational option to address both problems –as proposed by the authors—is to make the Speaker of the House of Representatives (DPR) the acting President. This one solution can directly address the weaknesses in the 1945 Constitution. First, politically, it is appropriate for the Speaker of the House of Representatives to be the acting President because they have the people's votes directly elected through general elections. He has strong legitimacy and political support - generally based on Indonesia's political history as the Speaker of the House of Representatives is a legitimate actor from the majority parliamentary party, so when he moves into office as acting President, he can ward off external political interference throughout the relatively short duration of his office. Despite being a legitimate actor, the Speaker of the House is also experienced in politics and leadership, having previously served and led the MPR. With strong political support from both the people and the legislative political parties, he led a stable interim government. He consolidated the other state institution charged with electing a new President, the MPR, which he had previously led.

Secondly, when the President and Vice President are vacant right after their inauguration on October 20 - at the same time the cabinet has not yet been formed so that the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense have not been formed the Speaker of the House of Representatives can replace them as the acting President. This is because, long before the inauguration of the President and Vice President on October 20, the DPR, DPD, and MPR had already been elected and inaugurated on October 1.¹⁰¹ This means that when the President and Vice President are inaugurated. If a tragedy causes a vacancy in the office of the President and Vice President, the Speaker of the House of

¹⁰⁰ *Acting President in Poland Wins a Narrow Victory* (Published 2010). *The New York Times*. <https://www.nytimes.com/2010/07/05/world/europe/05poland.html>. Published 2023. (20-03-2024)

¹⁰¹ Puan Maharani Becomes Speaker of the House: Achieving the Most Votes in Pileg, Asking for Mother's Blessing, to Wanting to Be an Inspiration. Halaman all - Kompas.com. By Icha. Rastika Container: KOMPAS.com Publisher: Kompas.com Year: 2019 URL: https://nasional.kompas.com/read/2019/10/02/08490851/puan-maharani-jadi-ketua-dpr-raih-suara-terbanyak-pileg-minta-restu-ibu?page=all#google_vignette. (21-03-2024)

Representatives can take over the Presidential duties. Thus, the constitution can ensure the continuation of government by giving presidential duties to the right person to ensure the stability of the government until the formation of a new government.

Conclusion

Continuing the government is not limited to ensuring that the interim President fills the interim government it is also about ensuring that the government is stable. The interests of the community are not disrupted. The world's constitutions have two models of filling the interim President, namely bureaucratic actors and legitimized actors. In this article, the author concludes that, despite the two actor models, the majority of countries show parliamentary involvement in the filling of the interim President, both directly through a legitimized actor from parliament who then rises to become interim President, and indirectly where the appointment and accountability of bureaucratic actors by the (previous) President through political mechanisms in parliament. Only Indonesia, Chile, and Mexico had interim presidents detached from parliament. The detachment of parliamentary relations during a presidential vacancy will make it challenging to resolve various problems that are difficult to predict under normal circumstances when a vacancy occurs. Hence, the models of Indonesia, Chile, and Mexico need to be abandoned to maintain the legitimacy that is the principal capital of the interim President.

Indonesia has a unique character that is different from other countries, namely an interim President (acting President) filled with multiple positions (Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense). This is a contribution from the past - adopted from MPR Decree VII/1973, without a process of decontextualization and alignment with the current constitutional structure. As a result, the mandate to purify the presidential system in the process of amending the 1945 Constitution of the Republic of Indonesia is difficult to achieve because the interim President is faced with a crisis of legitimacy, political support and difficulties in deciding responsive policies due to the working process of decision-making in a plural/collegial executive. The 1945 Constitution also still does

not fully guarantee the continuation of government because it does not provide a way out in the event of a vacancy in the office of President and Vice President, while the cabinet of ministers has yet to be formed. Future improvements can be made in one step, namely giving the position of acting President to the Speaker of the House of Representatives.

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