

## SINGLE EXECUTIVE IN THE INDONESIAN RESIDENTIAL SYSTEM

**Sudirman<sup>1</sup>**

<sup>1</sup>Lecture at the Law and Citizenship Department Faculty of Social Sciences, Universitas Negeri Malang, Indonesia, sudirman.fis@um.ac.id.

Received: 2021-09-02; Reviewed: 2022-07-14; Accepted: 2023-03-05; Published: 2023-04-04

### Abstract

*This article discusses a single executive in the Indonesian presidential system. A single executive is power as head of state and power as head of government depends, on one hand, on the President. However, the 1945 Constitution does not explicitly discuss the concept of a single executive, so information about this concept is not collected properly, so this article discusses in depth the concept of a single executive in the Indonesian presidential system based on the 1945 Constitution. This study uses normative legal methods. The finding indicated that the single executive in the Indonesian presidential system was based on the 1945 Constitution, which can be seen from the position of the president hold the inherent power of a head of state; the chief of the army, holds the pardon power, making government regulations and presidential regulations; appointing and dismissing ministers; holding the administrative power; and holding the diplomatic power.*

**Keywords:** *Single Executive; Indonesian Presidential; System;*

### 1. INTRODUCTION

The single executive is a concept that is known in presidential systems.<sup>1</sup> The single executive refers to the power of the head of state and the power of the head of government is in the hands of the president.<sup>2</sup> The parliamentary system does not recognize the single executive concept because in the parliamentary system the two powers are separate, the power of the head of state is in the hands of the King or President, while the power of the head of government is in the hands of the Prime Minister. The discussion of the single executive conception indirectly is the discussion of the President's power, namely the power to implement laws or executive power.<sup>3</sup> Power of the President in the context of executive power, some experts interpret it as a position of power that contains two positions, namely President and Vice President.<sup>4</sup> However, Bagir Manan expressed a different view by saying that the President's power is single (single executive),

<sup>1</sup> Jimly Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*, 2nd ed. (Jakarta: Sinar Grafika, 2012).

<sup>2</sup> Juan J. (Juan José) Linz, 'The Perils of Presidentialism', *Journal of Democracy* 1, no. 1 (1990): 51-69; C.F. Strong, *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah Dan Bentuk-Bentuk Konstitusi Dunia. Diterjemahkan Dari Modern Political Constitution: An Introduction to the Comparative Study of Their History and Existing From* (Bandung: Nusa Media, 2008).

<sup>3</sup> Jazim Hamidi and Mustafa Lutfi, *Hukum Lembaga Kepresidenan* (Bandung: Alumni, 2010).

<sup>4</sup> *Ibid.*

the Vice President and the Minister are not the executors of the President's power, but only assistants to the President.

The power of the President in the Indonesian constitutional system is stated that "the President of the Republic of Indonesia holds the power of government according to the Constitution" as stated in Article 4 paragraph (1) of the 1945 Constitution. The provisions of this article indicate that Indonesia adheres to a presidential system. In a presidential system, there is no clear distinction between power as head of state and power as head of government. According to Jimly, the President is the President, namely the position that holds the power of state government according to the Constitution, because in the 1945 Constitution there are no provisions governing the existence of a head of state or head of government.<sup>5</sup> The distinction between the position of the President as head of government and as head of state appears explicitly in the explanation of the 1945 Constitution which was announced in the 1945 Newsletter of the Republic of Indonesia and was later made an integral part of the 1945 Constitution by a Presidential Decree dated 5 July 1959. Since then, there has also been a division of functions and authorities, but after the amendment to the 1945 Constitution, there is no difference between the President as the head of government and as the head of state and is only known as the President who has the authority described in the articles of the 1945 Constitution. With the authority possessed in the Constitution, some experts state that the President has power in three fields at once, namely power in the executive field, power in the legislative field, and power in the judicial field.<sup>6</sup>

Due to the absence of formal provisions that explicitly state that the President holds power as head of state and power as head of government, there is a need for a constitutional theoretical explanation regarding the single executive in the Indonesian presidential system. The formulation of the problem in this article is as follows: First, what is the power of the President as head of state? Second, what is the President's power as head of government? Third, what is the juridical evidence that a single executive is adopted in the Indonesian presidential system? The purpose of this article is to analyze the power of the President as head of state; analyze the power of the President as head of government, and analyze the juridical evidence of the adoption of a single executive in the Indonesian presidential system.

This research uses the normative legal method.<sup>7</sup> The scope of the discussion of this article includes legal principles, legal systematics, comparative law, and legal history.<sup>8</sup> This article analyzes the single executive adopted in the Indonesian presidential system, through statutory, conceptual, and comparative approaches. The countries that are used as a reference in the comparative approach are the United States, the Philippines, and South Korea. The United States was the first to adopt a presidential system, there are

<sup>5</sup> Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*.

<sup>6</sup> Hamidi and Lutfi, *Hukum Lembaga Kepresidenan*.

<sup>7</sup> Mahmud Marzuki Peter, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

<sup>8</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 1995).

even experts who state that the presidential system originated in the United States.<sup>9</sup> The Philippines is a country that has an almost similar constitutional experience to Indonesia, and Korea has similarities judicial system.<sup>10</sup>

The collection of legal materials in writing this article are primary, secondary, and tertiary legal materials,<sup>11</sup> using legal material processing through legal reasoning in the form of authentic interpretations, grammatical interpretations, and systematic interpretations,<sup>12</sup> as well as using juridical analysis.

## 2. ANALYSIS AND DISCUSSION

A single executive is defined as the position of the state and government on one hand, inseparable from one another<sup>13</sup>. However, the two are not the same thing, in the sense that they can be identified from the power attached to them.<sup>14</sup> The concept of a single executive in the Indonesian presidential system is not stated explicitly in the Constitution, nor other laws and regulations. In the language of the Constitution, it is stated: “the power to run the government”. The purpose of the power to run the government is executive power.<sup>15</sup> Thus, the identification of a single executive conception in the Indonesian government system can be done by identifying the authority of the President in the articles that state the authority of the President as head of state and head of government in the 1945 Constitution.

### 2.1 President as Head of State

The president as head of state is a feature of the presidential system,<sup>16</sup> as well as the basis for the adoption of the single executive in the Indonesian government system. More clearly the power of the President as head of state can be described in the following discussion:

#### 1. Hold the Inherent Power of Head of State

A single executive in a presidential system can be identified if the President holds the inherent power of the head of state.<sup>17</sup> Under normal circumstances, this power is not visible, because this power is hidden by the limitations contained in the constitution. Based on the theory of constitutionalism, this limitation is carried out to avoid the abuse

<sup>9</sup> Hufron, *Pemberhentian Presiden Atau Wakil Presiden Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Malang: Disertasi Universitas Brawijaya, 2012).

<sup>10</sup> Jimly Asshiddiqie, *Peradilan Konstitusi Di 10 Negara* (Jakarta: SinarGrafika, 2012).

<sup>11</sup> Soekanto and Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*.

<sup>12</sup> Sunaryati Hartono, *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20* (Bandung: Alumni, 2006).

<sup>13</sup> Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*; Ismail Suny, *Pergeseran Kekuasaan Eksekutif: Suatu Penyelidikan Dalam Hukum Tata Negara* (Jakarta: Aksara Baru, 1983).

<sup>14</sup> Sudirman Sudirman, ‘Kedudukan Presiden dalam Sistem Pemerintahan Presidensial (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-undang Dasar NRI Tahun 1945)’, *Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya* (Journal: eArticle, Brawijaya University, 2014), <https://www.neliti.com/publications/34926/>.

<sup>15</sup> Bagir Manan, *Lembaga Kepresidenan* (Yogyakarta: Gama Media, 1999).

<sup>16</sup> Alan Siaroff, ‘Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction’, *European Journal of Political Research* 42, no. 3 (2003): 287–312; André Krouwel, ‘Measuring Presidentialism and Parliamentarism: An Application to Central and East European Countries’, *Acta Politica* 38, no. 4 (2003): 333–64. Semi-Presidential and Parliamentary Distinction\{i\}European Journal of Political Research} 42, no. 3 (2003

<sup>17</sup> Jimly Asshiddiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Pers, 2006); José Antonio Cheibub, Zachary Elkins, and Tom Ginsburg, ‘Beyond Presidentialism and Parliamentarism’, *British Journal of Political Science* 44, no. 3 (2014): 515–44.

of power by the head of state.<sup>18</sup> However, in an emergency, the original power of the head of state can reappear and can be used to justify all actions outside the norm that normally applies under normal circumstances, to prevent threats of danger, overcome and overcome dangerous situations, and restore to normal conditions.<sup>19</sup>

Thus, the original power of the head of state can emerge and be reused by the President as head of state if the state is in an emergency. The president can do anything in an emergency because in an emergency the system of norms is different from the norm in normal circumstances. In such an emergency, the President with his powers can take advantage of the rules that are commonly used in normal circumstances or create separate rules to deal with emergencies and protect common interests.<sup>20</sup> According to VinkatIyer, in an emergency, the head of state has the authority which is categorized into six categories, namely: *powers of arrest, powers of detention, powers imposing restrictions on fundamental freedom, powers concerning modification of trial procedures and punishment, powers imposing restrictions on access to the judiciary, dan powers concerning immunities enjoyed by the police and members of the security forces, and so on.*<sup>21</sup>

Normatively, the original power of the head of state is adhered to in the 1945 Constitution of the Republic of Indonesia, contained in two articles, namely Article 12 and Article 22 Paragraph (1). These two articles regulate the President's powers in a state of emergency. According to the 1945 Constitution of the Republic of Indonesia, there are two categories of emergencies, namely conditions of danger and matters of compelling urgency. An example of the use of the President's power in an emergency can be seen in the case of the dissolution of a democratically elected constituent body, and the Presidential Decree of 5 July 1959 carried out based on the state in a state of emergency.<sup>22</sup>

No provision in the United States Constitution explicitly authorizes the President to impose a state of emergency. In the United States constitution, matters relating to the state of peril are matters relating to war and other military actions, the powers of which are also more extensively in the hands of Congress.<sup>23</sup> In the Philippine Constitution, if there is an invasion or rebellion, which endangers the safety of the people, the President within sixty days, can declare a state of emergency (martial law). However, without the unanimous approval of members of Congress, the state of emergency can be lifted. In addition, the status of a state of emergency does not stop the validity of

<sup>18</sup> Sudirman, 'Kedudukan Presiden dalam Sistem Pemerintahan Presidensial (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-undang Dasar NRI Tahun 1945)'.

<sup>19</sup> Asshiddiqie, *Hukum Tata Negara Darurat*.

<sup>20</sup> *Ibid.*

<sup>21</sup> Venkat Iyer, *States of Emergency: The Indian Experience* (Butterworths India, 2000).

<sup>22</sup> Sudirman, 'Kedudukan Presiden dalam Sistem Pemerintahan Presidensial (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-undang Dasar NRI Tahun 1945)'.

<sup>23</sup> 'The Constitution of the United States: A Transcription', National Archives, 4 November 2015, <https://www.archives.gov/founding-docs/constitution-transcript>; Mark Tushnet, *The Constitution of the United States of America: A Contextual Analysis* (Bloomsbury Publishing, 2015).

the Constitution, replaces the function of civil courts or legislative bodies, nor grants jurisdictional authority to military courts and institutions outside of civilian institutions if civilian courts can function, nor automatically terminates court hearing orders.<sup>24</sup>

According to the South Korean constitution, in the event of internal turmoil, external threats, natural disasters, or financial or economic crises, the President can take necessary financial and economic rescue measures for problems that arise, in this case, the President can issue regulations equivalent to laws, only when it is necessary to take urgent measures for the maintenance of national security or peace and public order, and there is no time to wait for the convening of a National Assembly.<sup>25</sup> The President must obtain National Council approval. Then if it is necessary to address military needs or to maintain public safety and order by mobilizing the armed forces in times of war, armed conflict, or the same national emergency, the President may declare a state of emergency (martial law) based on the provisions of the law. If the Council unanimously declares that it must lift the state of emergency, the President must comply.<sup>26</sup>

Compared to the constitutional provisions of the three countries above, the regulation on the state of emergency in the 1945 Constitution of the Republic of Indonesia is the most assertive and clear. This also proves that the adoption of a single executive in the Indonesian government system is the most assertive because the original power of the head of state in an emergency is a feature of the adoption of the single executive.

## 2. Chief of Army

What is meant by the Chief of Army is that the President becomes the commander of the Army, Navy, and Air Force of the Indonesian National Army. Power over the armed forces is a consequence of a single executive. This is because the power of the supreme commander of the armed forces is the power of the President as head of state. The armed forces in a country play a very vital role. The armed forces are state equipment equipped with special skills and equipped with weapons. This state equipment is intended to maintain the existence of the state's sustainability. Therefore, the armed forces must be led by the head of state. No other institution can head the armed forces. If the power as the supreme commander of the armed forces is in the hands of the President, the country certainly adopts a single executive.

The President's power over the Armed Forces is explicitly stated in Article 10 of the 1945 Constitution of the Republic of Indonesia. Furthermore, the Army, Navy, and Air Force are referred to as the Indonesian National Army. The consequence of being commander in chief is that the President has the power to mobilize military forces in

<sup>24</sup> 'The Constitution of the Republic of the Philippines', Official Gazette of the Republic of the Philippines, accessed 12 December 2022, <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

<sup>25</sup> Constitution of the Republic of Korea', accessed 12 December 2022, [https://korea.assembly.go.kr:447/res/low\\_01\\_read.jsp?boardid=1000000035](https://korea.assembly.go.kr:447/res/low_01_read.jsp?boardid=1000000035).

<sup>26</sup> *Ibid.*

maintaining the country's sovereignty, efforts to participate in world peace, and other missions justified by law, such as dealing with disasters and others. Thus, it can be said that the President is the Head of State if the President is attached to the power as the head of the armed forces. Only the President is authorized and responsible for deploying the strength of the Indonesian National Armed Forces, although, under the provisions of the Constitution, the deployment of TNI forces in the face of armed threats requires the approval of the House of Representatives (DPR). This agreement is an effort of checks and balances that does not reduce the President's power in mobilizing the armed forces. In the absence of a direct armed threat, the President can deploy the armed forces without the approval of the DPR.

Another important thing is that the power of the armed forces is in the hands of the President in the single executive conception because his position as commander of the armed forces provides legitimacy to a strong position for the President as head of state. It can even be said that the real strength of a President is the armed forces because can be faced with all kinds of threats that come. In addition, the strength of the armed forces can also be a stabilizer for the government. The grip of the President's power over the armed forces will minimize the occurrence of an illegal succession of power which is usually termed a coup. The most effective coup tool in the world is to use military force so that military power in the hands of the President will give the President legitimacy of power. If the President loses military support, he will be vulnerable to a coup d'état, just like the Morsi government in Egypt. Morsi's power as President fell due to the loss of military support,<sup>27</sup> but on the other hand, Maduro's government in Venezuela did not fall despite facing waves of protests and international pressure, because President Maduro had military support.<sup>28</sup>

In Indonesia, in some cases, the support of the armed forces can even influence some of the President's policies even though they are considered controversial, as happened when President Sukarno issued a Decree of 5 July 1958, although some argued that it was unconstitutional because one of them dissolved a democratically elected constituent body, it could still be implemented. with the support of the Army (TNI), in contrast to the decree that was to be issued by President Abdurrahman Wahid in response to his impeachment by the Parliament (MPR) in 2002, could not be implemented because there was no support from the TNI.

<sup>27</sup> Marco Pinfari, 'The EU, Egypt and Morsi's Rise and Fall: 'Strategic Patience' and Its Discontents', *Mediterranean Politics* 18, no. 3 (2013): 460–66; Emma H. MacFarlane, 'Egypt at a Crossroads: An Analysis of Morsi's Strategies of Military Control in the Post-Revolutionary State', 2012.

<sup>28</sup> Javier Corrales, 'Authoritarian Survival: Why Maduro Hasn't Fallen', *Journal of Democracy* 31, no. 3 (2020): 39–53; Ana Vanessa Herrero, Neil MacFarquhar, and Vladimir Padrino López, 'Russia Warns US Not to Intervene in Venezuela as Military Backs Maduro', *The New York Times*, 2019.

When traced to countries that adhere to a presidential system of government, in this case, the United States,<sup>29</sup> the Philippines,<sup>30</sup> and South Korea<sup>31</sup> all adopt the concept of the President as commander of the armed forces. This is influenced by the concept of a presidential government system, where the President is the single executive, namely the President as head of state and head of government. The position of the President as head of state is what brings consequences for the President as the supreme commander of the armed forces because it represents the name of the country. Even Bagir Manan said that the President's power as Commander of the Armed Forces was not symbolic, but active.<sup>32</sup>

Thus, the support of the armed forces is one of the factors in the adoption of the single executive concept and also strengthens the stability of the government. In a presidential system based on the 1945 Constitution of the Republic of Indonesia or the 1945 Constitution before the amendment, it is not possible to take power by the military. One of the reasons is the provision that the President is the supreme commander so that from a command point of view, it will be difficult to find the armed forces taking over the leadership of the highest command.<sup>33</sup> The position of the President as the supreme commander of the armed forces with the conception of a single executive has a symmetrical relationship.

### 3. Hold the Pardon Power

The power to grant pardons in the hands of the President is a hallmark of the adoption of a single executive because this power is attached to the power as head of state. This means that in the context of the state, the head of state is entitled to grant pardons. If the President has the power to grant pardons, then the President is automatically the head of state. A country led by a president who has the power to grant pardons is a country that adheres to a single executive conception. In the provisions of the Constitution, there are four known pardons, namely clemency, rehabilitation, amnesty, and abolition as stated in Article 14 of the 1945 Constitution of the Republic of Indonesia. The power to grant pardons by the President is part of the power of the executive.<sup>34</sup> Pylee also states that pardons are sometimes characterized as the judicial power of the executive and, thus, executive power,<sup>35</sup> but some experts argue that the power to grant pardons is in the realm of judicial power.<sup>36</sup>

Based on the provisions of the constitution, the President has the right to grant clemency and rehabilitation with the consideration of the Supreme Court, and to grant

<sup>29</sup> The Constitution of the United States'

<sup>30</sup> The Constitution of the Republic of the Philippines

<sup>31</sup> Constitution of the Republic of Korea

<sup>32</sup> Manan, *Lembaga Kepresidenan*.

<sup>33</sup> Muhammad Sholeh (Ed), 'Mengapa Kudeta Militer Tak Terjadi Di Indonesia?', 2012, <https://www.merdeka.com/peristiwa/mengapa-kudeta-militer-tak-terjadi-di-indonesia.html>.

<sup>34</sup> Manan, *Lembaga Kepresidenan*.

<sup>35</sup> Moolamattom Varkey Pylee, *Constitutional Government in India* (S. Chand Publishing, 2003).

<sup>36</sup> Suny, *Pergeseran Kekuasaan Eksekutif: Suatu Penyelidikan Dalam Hukum Tata Negara*.

amnesty and abolition based on the considerations of the House of Representatives (DPR). The terms of consideration are suggestions, not approvals that can cancel the policy if it is not approved. Thus, granting pardons is essentially only owned by the President and is attached to the authority of the President as head of state. This means that the pardon is the prerogative of the President. The President with his considerations and discretion as head of state can grant clemency, rehabilitation, amnesty, and abolition to anyone deemed entitled by the President.

The pardon power possessed by the President based on the 1945 Constitution of the Republic of Indonesia is almost similar to the authority also possessed by the President of the United States which also does not require the approval of the Senate or the House,<sup>37</sup> while in the Philippines<sup>38</sup> and South Korea<sup>39</sup> the granting of pardons by the President requires parliamentary approval, the three countries exclude the granting of pardons in impeachment cases. So, the prerogative right, better known in the presidential government system, is directly related to the president's position as head of state as well as head of government. Although in a parliamentary system of government, the king also has prerogative rights, this is passive because the king or queen is only a symbol of the state, in contrast to the President who actively controls the running of the government. So that the President's prerogative can be used at every opportunity. Thus the power of the President to grant pardons is a characteristic of the adoption of the single executive in the Indonesian government system.

## 2.2 President as Head of Government

The president as head of government is the other side of the single executive in addition to the president as head of state. Head of government means that the President has the authority to enforce the laws. Executing the law means an effort to achieve state goals because every policy to carry out state goals is contained in the law as the executor of the Constitution. But more narrowly, the power to run the law can be interpreted as the power to make government regulations and presidential regulations as implementing regulations of the law. In addition, there are other powers attached to the President as head of government. According to Ismail Suny, among the powers of the President as head of government are administrative power, legislative power, judicial power, military power, and diplomatic power.<sup>40</sup> However, this opinion needs to be reviewed because the legislative power is not the power of the President as the head of government, but separate, namely legislative power. If the president has this power, it means that the President has legislative power, not as the head of government, but because it is mandated by the Constitution as part of the shift in the concept of a presidential system of government, considering that in a presidential government system, the President does not hold legislative power. Judicial power is also not the authority of the President.

<sup>37</sup> 'The Constitution of the United States'.

<sup>38</sup> 'The Constitution of the Republic of the Philippines'.

<sup>39</sup> 'Constitution of the Republic of Korea'.

<sup>40</sup> Suny, *Pergeseran Kekuasaan Eksekutif: Suatu Penyelidikan Dalam Hukum Tata Negara*.



Granting clemency and rehabilitation is not the authority of the President as head of government, but the authority of the President as head of state, because both are included in the authority of the President to grant pardons as head of state. Likewise, military power is not the power of the President as the head of government, but the power of the President as the head of state.

If formulated, the actual powers of the President as the head of government include the authority to make government regulations and presidential regulations, appoint and dismiss ministers, administer state administration, and the authority for foreign relations.

#### 1. Making Government Regulations and Presidential Regulations.

The authority to make government regulations is the authority in carrying out the law. This authority is based on the provisions of Article 5 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This regulation is mentioned as an implementing regulation, meaning that the President in implementing the law, the legal instrument is this regulation. Making government regulations is the prerogative domain of the President. The President has the right to make such implementing regulations by the delegation given by law. The President has no right to make government regulations and presidential regulations if there is no law, except for regulations instead of law (*Perpu*).<sup>41</sup>

Making government regulations, from a material point of view, is purely the domain of the President. The president can make government regulations according to his prerogatives, meaning that his authority is free from the control of other institutions. One of the control mechanisms for making government regulations can only be carried out by a judicial review mechanism at the Supreme Court if it is indicated that the regulations made by the President are contrary to the law. However, as long as it is not indicated to be contrary to the law, the President may have the right to make government regulations according to the will of the President as long as they do not conflict with the law.

Presidential regulations also have the same position as government regulations, namely implementing regulations. However, the Presidential regulation is only intended to carry out state administration which is not constitutional. Based on Article 13 of Law no. 12 of 2012, it is stated that the Presidential regulation contains material ordered by law and to implement government regulations to exercise government power. As part of the implementation regulations, the President also has prerogative rights in making presidential regulations and is free from the control of other institutions. Similar to government regulations, the only control mechanism can only be carried out through a judicial review mechanism at the Supreme Court if it is indicated that it is contrary to laws and/or government regulations.

<sup>41</sup> Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Rajawali Pers, 2010).

The two regulations are also a means to actualize the vision and mission of the President and Vice President in carrying out the people's mandate during their leadership. In the era of direct elections, the people can judge for themselves the President and Vice President they will elect in the general election. The President's vision and mission become a means for the people to consider their choices. In carrying out his term of leadership, government regulations and Presidential regulations are legal instruments used to fulfill the President's promises during his tenure as President. Aside from being a means of realizing the President's visions and missions, government regulations, and presidential regulations as well as other technical regulations, are also an empirical manifestation of the President's efforts to realize the country's goals.

In the constitutions of the United States and the Philippines, the authority to implement regulations is not explicitly stated. The President's authority in making laws and implementing regulations is attached to the provision that the President holds executive power which has the understanding that the president has the authority to implement laws which means that the President also has the authority to make laws and implement regulations.<sup>42</sup> Explicit provisions are only found in the South Korean constitution which states that the President has the authority to make the President's decisions to implement the law.<sup>43</sup>

Analyzed from this explanation, the President in a presidential system has full authority in running and controlling the running of the government through government regulations and presidential regulations. Thus, this authority is proof of the adoption of a single executive, because it places the President as the controller of the running of the government.

## 2. Appointing and Dismissing Ministers

Appointing and dismissing ministers in the cabinet of a presidential system by the President is evidence of the adoption of a single executive. The position of the minister is as an assistant to the President in carrying out government power. Even though they have the status of assistants, ministers in the presidential system play a very important role. As Shiddiqie said that the real day-to-day executor of executive/government power is the minister who is responsible to the President.<sup>44</sup> Because the main task of the minister is to assist the President, the President as head of government has the right to appoint, hold accountable, and dismiss ministers. This authority is attached to the authority of the President as head of government as part of the adoption of the single executive conception.

<sup>42</sup> 'The Constitution of the United States'; 'The Constitution of the Republic of the Philippines'.

<sup>43</sup> 'Constitution of the Republic of Korea'.

<sup>44</sup> Jimly Asshiddiqie, *Lembaga Negara Pasca Reformasi* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006).

The success of the running of the government depends on the performance of the ministers.<sup>45</sup> Therefore, a President with prerogative rights can appoint ministers, based on the capability and integrity of the person who will be appointed as minister. Ministers in the Indonesian government system play a very important role. In real terms, the day-to-day executor of government is the minister. Therefore, the sustainability of the wheels of government depends on the performance of the ministers. The ministers can be said to be the key to the success of running the government so the key must be held by the President as the head of government.

In presidential government systems in several countries, especially in the United States, the President's prerogative in the appointment of ministers requires the approval of the Senate.<sup>46</sup> This is possible because ministers occupy such strategic positions so that their appointments require control and balance from the Senate. However, the approval of the Senate does not eliminate the prerogative of the President himself. In the Philippines, the appointment of ministers and other public officials becomes the prerogative of the President with the approval of the appointment board.<sup>47</sup> Meanwhile in South Korea, in the exercise of executive power the President is assisted by the prime minister, so the President appoints the Prime Minister with the approval of the National Council, and appoints ministers with the approval of the Prime Minister.<sup>48</sup>

In Indonesia's presidential system, the potential for ineffectiveness in the appointment of ministers may occur, if the appointment of ministers is built within the framework of a coalition, even the existence of a coalition is referred to as an anomaly.<sup>49</sup> Normatively, there are no provisions governing the existence of a coalition, both in the 1945 Constitution of the Republic of Indonesia and other laws and regulations, but in real practice, coalition administration is carried out.

Thus, the building of Indonesia's presidential system, in terms of the appointment of ministers, can be evidence of the adoption of the single executive, because building government stability depends on the solid performance of the President which is supported by ministers with abilities in their respective fields. If the government system building based on the 1945 Constitution of the Republic of Indonesia is expected to be in line with the single executive, then the President's prerogative in appointing and dismissing ministers in real terms must be implemented.

### 3. Hold the Administrative Power

The other characteristic of the adoption of a single executive is the power of the President in carrying out state administration. The power of state administration is a broad power that covers all government affairs in carrying out public affairs.

<sup>45</sup> *Ibid.*

<sup>46</sup> 'The Constitution of the United States'.

<sup>47</sup> 'The Constitution of the Republic of the Philippines'.

<sup>48</sup> 'Constitution of the Republic of Korea'.

<sup>49</sup> M. Yasin Al-Arif, 'Anomali Sistem Pemerintahan Presidensial Pasca Amandemen UUD 1945', *Jurnal Hukum Ius Quia Iustum* 22, no. 2 (2015): 238-54.

The President is the only holder of state administrative power so the position of the President is very strong and free from the intervention of any institution in carrying out the power of state administration. The placement of state administrative power in the hands of the President as a consequence of his position as head of government is also intended to ensure that the implementation of government runs stable.<sup>50</sup> The power of state administration is entirely in the hands of the President. Given the wide range of powers of state administration, ranging from small actions such as correspondence to the implementation of general problems, namely the welfare of the people, the president can share authority with the vice president. Referring to the provisions of Article 4 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is stated that the President in exercising the power of government does not stand alone, constitutionally the Vice President is prepared as an assistant to the President in carrying out his obligations to carry out the power to run the government. This means that the President and the Vice President become one unit in the presidential institutions in carrying out government power.

In constitutional practice, the Vice President only has the authority to exercise government power when the President is abroad. The dynamics of the relationship between the President and the Vice President, there was a significant division of authority during the reigns of President Abdurrahman Wahid and Megawati. Through Presidential Decree No. 121 of 2000 concerning the Assignment of the President to the Vice President to Carry out the Technical Duties of Daily Government, the Vice President gets a clear delegation of authority by the President, namely carrying out daily technical government duties, as well as the delegation of other authorities such as awarding services and implementing government during the President. abroad.<sup>51</sup>

In the constitutions of other countries, the power of state administration is not explicitly stated in the constitutions of the United States, the Philippines, and South Korea. This means that this power is automatically attached to the position of the President as head of government. Likewise, in the 1945 Constitution of the Republic of Indonesia, it is not explicitly stated. Administrative power is attached to the provisions of Article 4 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that the President holds the power to exercise government power. The centralized state administrative power in the hands of the President indicates that the Indonesian government system adheres to a single executive.

#### 4. Hold the Diplomatic Power

The last characteristic of the adoption of another single executive conception is that the President holds diplomatic power. What is meant by diplomatic power is the power to enter into agreements, declare war, make peace, appoint ambassadors and

<sup>50</sup> Sudirman, 'Kedudukan Presiden dalam Sistem Pemerintahan Presidensial (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-undang Dasar NRI Tahun 1945)'.

<sup>51</sup> Agus Suroso, *Hubungan Presiden Dan Wakil* (Jakarta: Fakultas Hukum Universitas Al-Azhar Indonesia, 2008).

consuls, and receive ambassadors and consuls from other countries. Bagir Manan said that the diplomatic power was the original power of the executive body.<sup>52</sup> No other institution in a country has the right to carry out diplomatic relations. This power indirectly becomes the prerogative of the President. Although in Articles 11 and 13 of the 1945 Constitution of the Republic of Indonesia, the President must obtain the approval of the House of Representatives in making agreements with other countries. This model is also found in the United States and the Philippines where the President must obtain parliamentary approval in making agreements with other countries.

Another power of diplomacy is to declare war and make peace. What is meant by a declaration of war is a war against a foreign country or a war between countries. Civil wars and foreign invasions do not require a declaration of war, the President can immediately mobilize the armed forces to resolve them and deal with all the consequences.<sup>53</sup> Besides being included in the power of foreign relations, the declaration of war is also related to the position of the President as head of state, namely as the supreme commander of the armed forces. War with other countries will have far-reaching consequences for the life of the nation and state, so a declaration of war requires the approval of the House of Representatives. While the power to make peace is power related to war, besides being intended to end the war, the power to make peace also includes maintaining peace, and entering into a defense pact to create or maintain peace.<sup>54</sup>

Meanwhile, the power to appoint ambassadors and consuls and accept the placement of ambassadors and consuls is closely related to diplomatic relations. This power is an implied power of diplomatic relations, or in other words, the placement of ambassadors and consuls is a sign of diplomatic relations between the two countries. So that the power to appoint and receive ambassadors and consuls also includes the power to establish, cancel, temporarily freeze, or cut off diplomatic relations altogether. In some cases, in various countries, if there is a strain in diplomatic relations, the countries concerned will withdraw their ambassadors, or expel the ambassadors of other countries.

When viewed as a whole, the diplomatic power in the Indonesian government system places the President as the holder and controller of the diplomatic power, so this indicates that the Indonesian government system adheres to the single executive concept. This is also similar to the presidential system of government in the United States<sup>55</sup> and the Philippines<sup>56</sup> placing the diplomatic power in the hands of the President with the approval of Parliament, while the South Korea<sup>57</sup> places diplomatic power in

<sup>52</sup> Manan, *Lembaga Kepresidenan*.

<sup>53</sup> *Ibid.* "publisher": "Gama Media", "publisher-place": "Yogyakarta", "title": "Lembaga Kepresidenan", "author": [{"family": "Manan", "given": "Bagir"}], "issued": {"date-parts": [{"1999"}]}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"

<sup>54</sup> *Ibid.*

<sup>55</sup> 'The Constitution of the United States'.

<sup>56</sup> 'The Constitution of the Republic of the Philippines'.

<sup>57</sup> 'Constitution of the Republic of Korea'.

the hands of the President without the approval of Parliament. The point is that in a presidential system, regardless of whether there must be Parliamentary approval or not, the diplomatic power is in the hands of the President, so this power signifies the adoption of the single executive.

### 2.3 Juridical Evidence of the Adoption of a Single Executive

As explained earlier that the concept of a single executive in the Indonesian presidential system is not stated explicitly. The adoption of a single executive can only be analyzed implicitly in the normative rules that explain the powers of the president as head of state and head of government. Juridical Evidence Presidents hold the inherent power of a head of state are Article 12 and Article 22 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. President as Chief of Army is Article 10 of the 1945 Constitution of the Republic of Indonesia. President holds the pardon power is Article 14 of the 1945 Constitution of the Republic of Indonesia

President making government regulations and presidential regulations are Article 5 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 13 of Law no. 12 of 2012, it is stated that the Presidential regulation contains material ordered by law and to implement government regulations to exercise government power. President appointing and dismissing ministers is Article 17 of the 1945 Constitution of the Republic of Indonesia. President holds the administrative powers are Article 4 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. President holds the diplomatic power are articles 11 and 13 of the 1945 Constitution of the Republic of Indonesia, the President must obtain the approval of the House of Representatives in making agreements with other countries. This provision explicitly indicates that the Indonesian presidential system adheres to a single executive.

## 3. CONCLUSION

The single executive is adopted in the Indonesian Presidential government system. Although it is not explicitly explained formally in the provisions of the 1945 Constitution of the Republic of Indonesia, the adoption of a single executive can be examined from the authority possessed by the President in the 1945 Constitution of the Republic of Indonesia. Based on the provisions of the constitution, the President holds all powers as head of state and powers as head of government. Both powers are in the hands of the President and no other institution is involved. Vice presidents and ministers also participate in carrying out government powers but are limited to assisting the President's authority.

The powers of the President which signify the adoption of the single executive in the Indonesian presidential system include the President as Head of State and the President as Head of Government. The President's powers as head of state are: 1) Hold the Inherent Power of Head of State; 2) Chief of Army, and 3) Hold the Pardon Power. Among the powers of the President as head of government are 1) Making Government

Regulations and Presidential Regulations; 2) Appointing and Dismissing Ministers; 3) Holding the Administrative Power; 4) Holding the Diplomatic Power.

## REFERENCES

- Al-Arif, M. Yasin. 'Anomali Sistem Pemerintahan Presidensial Pasca Amandemen UUD 1945'. *Jurnal Hukum Ius Quia Iustum* 22, no. 2 (2015): 238–54.
- Asshiddiqie, Jimly. *Hukum Tata Negara Darurat*. Jakarta: Rajawali Pers, 2006.
- . *Lembaga Negara Pasca Reformasi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006.
- . *Peradilan Konstitusi Di 10 Negara*. Jakarta: SinarGrafika, 2012.
- . *Perihal Undang-Undang*. Jakarta: Rajawali Pers, 2010.
- . *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*. 2nd ed. Jakarta: Sinar Grafika, 2012.
- Cheibub, José Antonio, Zachary Elkins, and Tom Ginsburg. 'Beyond Presidentialism and Parliamentarism'. *British Journal of Political Science* 44, no. 3 (2014): 515–44.
- Constitution of the Republic of Korea'. Accessed 12 December 2022. [https://korea.assembly.go.kr:447/res/low\\_01\\_read.jsp?boardid=1000000035](https://korea.assembly.go.kr:447/res/low_01_read.jsp?boardid=1000000035).
- Corrales, Javier. 'Authoritarian Survival: Why Maduro Hasn't Fallen'. *Journal of Democracy* 31, no. 3 (2020): 39–53.
- Hamidi, Jazim, and Mustafa Lutfi. *Hukum Lembaga Kepresidenan*. Bandung: Alumni, 2010.
- Hartono, Sunaryati. *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20*. Bandung: Alumni, 2006.
- Herrero, Ana Vanessa, Neil MacFarquhar, and Vladimir Padrino López. 'Russia Warns US Not to Intervene in Venezuela as Military Backs Maduro'. *The New York Times*, 2019.
- Hufron. *Pemberhentian Presiden Atau Wakil Presiden Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Malang: Disertasi Universitas Brawijaya, 2012.
- Iyer, Venkat. *States of Emergency: The Indian Experience*. Butterworths India, 2000.
- Krouwel, André. 'Measuring Presidentialism and Parliamentarism: An Application to Central and East European Countries'. *Acta Politica* 38, no. 4 (2003): 333–64.
- Linz, Juan J. (Juan José). 'The Perils of Presidentialism'. *Journal of Democracy* 1, no. 1 (1990): 51–69.
- MacFarlane, Emma H. 'Egypt at a Crossroads: An Analysis of Morsi's Strategies of Military Control in the Post-Revolutionary State', 2012.
- Manan, Bagir. *Lembaga Kepresidenan*. Yogyakarta: Gama Media, 1999.
- Peter, Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011.

- Pinfari, Marco. 'The EU, Egypt and Morsi's Rise and Fall: 'Strategic Patience' and Its Discontents'. *Mediterranean Politics* 18, no. 3 (2013): 460–66.
- Pylee, Moolamattom Varkey. *Constitutional Government in India*. S. Chand Publishing, 2003.
- Sholeh (Ed), Muhammad. 'Mengapa Kudeta Militer Tak Terjadi Di Indonesia?', 2012. <https://www.merdeka.com/peristiwa/mengapa-kudeta-militer-tak-terjadi-di-indonesia.html>.
- Siaroff, Alan. 'Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction'. *European Journal of Political Research* 42, no. 3 (2003): 287–312.
- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 1995.
- Strong, C.F. *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah Dan Bentuk-Bentuk Konstitusi Dunia. Diterjemahkan Dari Modern Political Constitution: An Introduction to the Comparative Study of Their History and Existing From*. Bandung: Nusa Media, 2008.
- Sudirman, Sudirman. 'Kedudukan Presiden dalam Sistem Pemerintahan Presidensial (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-undang Dasar NRI Tahun 1945)'. *Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*. Journal: eArticle, Brawijaya University, 2014. <https://www.neliti.com/publications/34926/>.
- Suny, Ismail. *Pergeseran Kekuasaan Eksekutif: Suatu Penyelidikan Dalam Hukum Tata Negara*. Jakarta: Aksara Baru, 1983.
- Suroso, Agus. *Hubungan Presiden Dan Wakil*. Jakarta: Fakultas Hukum Universitas Al-Azhar Indonesia, 2008.
- Official Gazette of the Republic of the Philippines. 'The Constitution of the Republic of the Philippines'. Accessed 12 December 2022. <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.
- National Archives. 'The Constitution of the United States: A Transcription', 4 November 2015. <https://www.archives.gov/founding-docs/constitution-transcript>.
- Tushnet, Mark. *The Constitution of the United States of America: A Contextual Analysis*. Bloomsbury Publishing, 2015.