

Reconstructing Presidential Legislative Authority: Analyzing the System and Strengthening Modern Democracy

Rismawati Nur

Gadjah Mada University, Yogyakarta, Indonesia

*Correspondence e-mail: rismawatinur@mail.ugm.ac.id

Submission

2025-Mar-24

Review

2025-Agust-15

Accepted

2025-Sept-10

Publish

2025-Oct-16

Abstract

This study aims to reconstruct the President's legislative authority within Indonesia's constitutional framework by reformulating Article 20 of the 1945 Constitution to align with the principles of modern presidentialism. The research employs a normative juridical method using conceptual, statutory, and comparative constitutional approaches. Comparative analyses are conducted with the presidential systems of the United States and Brazil to identify an institutional design that ensures an effective separation of powers and strengthens checks and balances. The findings indicate that limiting the President's legislative authority by transferring deliberative functions entirely to the House of Representatives, while maintaining the President's role in budget initiation and administrative assent, establishes a more accountable and balanced governance system. This model enhances public participation, ensures legislative transparency, and reinforces democratic legitimacy through the absolute majority voting principle and automatic approval mechanism. The study suggests that constitutional amendments should clearly separate executive and legislative powers and institutionalize public involvement in lawmaking to prevent executive dominance. Strengthening legislative independence through these reforms will promote a more participatory and responsive democratic system consistent with the rule of law and the principles of modern constitutional democracy.

Keywords: Presidential legislative authority; Constitutional reform; Separation of powers.

How to Cite: Rismawati Nur. "Reconstructing Presidential Legislative Authority: Analyzing the System and Strengthening Modern Democracy" *Jurnal Ilmiah Dunia Hukum*, 10 no. 1 (2025): 161-175. DOI : 10.35973/jidh.xxxxxx

1. Introduction

The governance of a nation guided by constitutional principles is a fundamental necessity in states that adhere to democracy and constitutionalism. In Indonesia, the 1945 Constitution of the Republic of Indonesia (called UUD NRI 1945) serves as the supreme legal framework, providing the foundational basis for governmental administration and ensuring the protection of citizens' constitutional rights.¹ As the state's fundamental law, the 1945 Constitution of the Republic of Indonesia has undergone four amendments carried out by the Working Committee of the People's Consultative Assembly (MPR). Factionsendments were conducted by Ad Hoc Committee III in 1999 and Ad Hoc Committee I from 1999 to 2002, comprising various

¹ A.M Fatwa, *Potret Konstitusi Pasca Amandemen UUD 1945* (Jakarta: PT Kompas Media Nusantara, 2009).

factions within the MPRT.² This process was undertaken as a response to the evolving challenges and dynamics of governance.

The primary and foremost demand among the six reform agendas for constitutional amendments was establishing a democratic government through a clear and definitive separation of powers among state institutions. This was driven by the perception that, at the time, the government was highly authoritarian and centralized.³ During the amendment process of the 1945 Constitution of the Republic of Indonesia, the People's Consultative Assembly (MPR) reached several fundamental agreements: (1) the preamble of the UUD NRI 1945 would remain unchanged, (2) the Unitary State of the Republic of Indonesia would be preserved, (3) the presidential system of government would be strengthened, (4) normative aspects previously included in the explanatory section of the 1945 Constitution of the Republic of Indonesia would be incorporated into the main body of the Constitution, and (5) amendments would be carried out through an addendum process.⁴

The presidential system of government was identified as a crucial aspect to be maintained without alteration, as it is considered capable of ensuring governmental stability and effectiveness. This is primarily due to the fixed presidential term, which prevents dependence on a parliamentary majority that may shift over time, potentially leading to governmental instability. The presidential system embodies representative democracy by establishing a clear separation of powers among the executive, legislative, and judicial branches.⁵ In Indonesia, this system was further reinforced during the political transition from 1999 to 2002 to ensure the implementation of a pure and consistent presidential system.⁶ The implementation of this system led to the direct election of the president by the people, granting the president dual roles as both Head of Government and Head of State. This characteristic distinctly differentiates the presidential system from the parliamentary system.

In a presidential system, the executive, legislative, and judicial branches hold equal authority, ensuring a system of checks and balances. This framework is designed to enable each branch of government to oversee and counterbalance one another, preventing the concentration of power and promoting institutional accountability.⁷ This principle is essential to prevent any branch of power from dominating and violating democratic principles or fundamental human rights. Therefore, the

² Mahkamah Konstitusi Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010).

³ Fatwa, *Potret Konstitusi Pasca Amendemen UUD 1945*.

⁴ Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia*.

⁵ Rendy Adiwilaga, Yani Alfian, and Ujud Rusdia, *Sistem Pemerintahan Indonesia* (Yogyakarta: Deepublish, 2018).

⁶ Idul Rishan, "Risiko Koalisi Gemuk Dalam Sistem Presidensial di Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 219–40, <https://doi.org/10.20885/iustum.vol27.iss2.art1>.

⁷ Mardhatillah Mardhatillah et al., "Kedudukan Hukum Tata Negara Dalam Menjamin Keberlangsungan Demokrasi Konstitusional," *Causa: Jurnal Hukum dan Kewarganegaraan* 5, no. 10 (2024): 1–9.

restructuring of state institutions was undertaken to ensure a democratic government capable of achieving national governance objectives. One significant reform was the shift of legislative authority, which was previously centered on the President, to the legislature in the law-making process⁸ to the House of Representatives⁹ Following the amendments to the 1945 Constitution, the President's legislative authority was not entirely abolished, nor was it fully transferred to the House of Representatives as the legislative body. This is because the constitution does not provide a fully clear division of legislative authority, allowing the President to retain the right to propose and participate in the deliberation of Draft Laws alongside the House of Representatives¹⁰ until a mutual agreement is reached.

Furthermore, the Draft Law on the State Budget can only be proposed by the President.¹¹ This condition indicates that the shift in legislative functions following the constitutional amendments was not absolute. Instead, it established a joint legislative function between the House of Representatives and the President.¹² Consequently, the legislative process, from drafting to reaching a mutual agreement, is carried out collaboratively by both the House of Representatives and the President. If a mutual agreement is not reached, the Draft Law cannot be reintroduced in the subsequent legislative session.¹³ However, if a mutual agreement is reached, the Draft Law shall be ratified by the President.¹⁴ The approval of a Draft Law by both the President and the House of Representatives constitutes a material ratification. In contrast, the ratification by the President after the mutual agreement has been reached is merely formal in nature.¹⁵

The involvement of the President in the legislative function indicates that the purely presidential system, which was intended to be maintained and implemented following the constitutional amendments, has not been fully realized. Instead, this model more closely resembles a parliamentary system, in which the executive plays a role in the legislative process. Moreover, there is a degree of interdependence between the executive and legislative branches, with no clear separation between the two.¹⁶ The implementation of the legislative function, which aligns more with the parliamentary concept, has undoubtedly had negative implications for state governance. Over the

⁸ Article 5, Section (1) of the 1945 Constitution Before the Amendment.

⁹ Article 20, Section (1) of the 1945 Constitution of the Republic of Indonesia

¹⁰ Article 5, Paragraph (1) and Article 20, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia

¹¹ Article 23, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

¹² Fahmi Ramadhan Firdaus, "Pencegahan Korupsi Legislasi Melalui Penguatan Partisipasi Publik Dalam Proses Pembentukan Undang-Undang," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 282–93, <https://doi.org/10.54629/jli.v17i3.679>.

¹³ Article 20, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

¹⁴ Article 20, Paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

¹⁵ Abdul Ghoftar, *Perbandingan Kekuasaan Presiden Indonesia Setelah Perubahan UUD 1945 Dengan Delapan Negara Maju* (Jakarta: Kencana Pranada Media Group, 2009).

¹⁶ Muhammad Taufik, "Dinamika Dalam Penerapan Sistem Pemerintahan Presidensial Dan Parlementer di Indonesia," *Qaumiyyah: Jurnal Hukum Tata Negara* 1, no. 2 (2020): 128–41.

past few decades, the President's legislative authority has demonstrated significant dominance (executive heavy), leading to a tendency toward authoritarian rule.¹⁷

With the President's strong dominance, the House of Representatives, as the legitimate holder of legislative power, risks being reduced to merely serving the executive branch¹⁸ to assist the ruling authority in expanding and perpetuating its power through legal mechanisms. This was evident in the issuance of Perppu 1/2020 by the government, which appeared to bypass and disregard constitutional procedures. Moreover, Perppu 1/2020 was issued without coordination with the House of Representatives, reinforcing the perception that the executive branch neglected the House of Representatives' role as the legislative body.¹⁹ Furthermore, the formulation of the Omnibus Law on Job Creation (*Cipta Kerja*), as one of the draft laws proposed by the government, also sparked controversy. This law significantly amended multiple existing laws and was drafted using a new method that was not explicitly regulated under Law Number 12 of 2011 concerning the Formation of Legislation. This phenomenon clearly illustrates the dominance of a single state institution and the failure of the checks and balances mechanism within the governance system.

Granting legislative power to the President poses a serious threat to the principles of democracy and the balance of power. In a well-functioning governance system, the executive, legislative, and judicial branches must remain independent and separate from one another to ensure effective oversight. However, when the constitution fails to explicitly assign full legislative authority to the House of Representatives and instead establishes it as a shared function between the House of Representatives and the President, the risk of power abuse emerges. This is because the President becomes involved in all stages of the lawmaking process, potentially undermining the checks and balances mechanism.

Leaders within such a system are also more likely to abuse their legislative authority to eliminate opposition, weaken oversight, and undermine the position of independent institutions through legal mechanisms that appear constitutionally legitimate (autocratic legalism). However, this practice results in constitutional restrictions that erode democratic principles and human rights. This phenomenon presents a serious challenge, as it is often justified under the pretext of maintaining national stability and public security. Yet, behind these justifications, various autocratic measures enacted through legislation have systematically weakened the role of independent institutions. Furthermore, granting legislative authority to the President has the potential to

¹⁷ Teguh Satrio Prakoso, "Pelaksanaan Hak Prerogatif Presiden," *DHARMASISYA: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 3 (2021): 1485–98.

¹⁸ Osbin Samosir and Indah Novitasari, "Hak Politik Warga Negara Dalam Cengkeraman Politik Identitas: Refleksi Menuju Pemilu Serentak Nasional Tahun 2024," *Jurnal Ilmu Hukum, Humaniora dan Politik* 2, no. 3 (2022): 332–46, <https://doi.org/10.38035/jihhp.v2i3.1052>.

¹⁹ Georgius Benny, "Meninjau Kekuasaan Legislasi Rumpun Eksekutif," rechtsvinding.bphn.go.id, Rechtsvinding.bphn.go.id, 2022, <https://rechtsvinding.bphn.go.id/media.php?page=artikel&berita=700>.

diminish the role of the legislature, which is supposed to represent the people's interests in parliamentary decision-making. Consequently, this situation poses a direct threat to democracy and legal justice.

Research related to the President's authority in the legislative process has been conducted extensively by academics and researchers, including Tamara Yuldhha and Husein Manalu²⁰ examining the President's authority in lawmaking from the perspective of Trias Politica. The results show that although legislative power formally rests with the House of Representatives, the President still plays a dominant role in the legislative process. Most bills originate from the government and are almost always approved by the House of Representatives without significant opposition. In addition, the President's authority to issue Perppu is considered too broad because the phrase "*matters of compelling urgency*" is subjective. This study concludes that the Indonesian system of government still tends to be executive heavy, so it is necessary to limit authority and strengthen the function of House of Representatives to create a balance of power. In addition, research conducted by Evi Oktarina²¹ emphasizes that the constitutional amendments have brought fundamental changes to Indonesia's constitutional system with a shift in the division of state powers, including giving the President the authority to participate in the legislative process, which will create executive dominance.

This dominance is reflected in the President's authority to propose, discuss, and pass draft legislation together with the DPR, which legally causes overlapping authority and obscures the principle of checks and balances in the presidential system. Empirically, this condition has weakened the supervisory function of parliament and led to the creation of regulations that reflect the interests of the executive rather than the aspirations of the public, as seen in the practice of issuing government regulations in lieu of laws (Perppu) and the use of omnibus laws with minimal public participation. This phenomenon reveals a gap between the ideal concept of a presidential system and its implementation in Indonesian state administration. Previous studies have been limited to normative studies on the division of power without offering new conceptual models to define the limits of presidential legislation based on comparisons with presidential systems in other countries. Therefore, this study attempts to fill this gap by analyzing the reconstruction of the President's legislative authority through a comparative constitutional approach, particularly in relation to practices in the United States and Brazil, to formulate a more balanced institutional design that is in line with the principles of modern democracy.

²⁰ Tamara Yuldhha and HUsein Manalu, "Analisis Kekuasaan Presiden dalam Proses Pembentukan Undang-Undang Ditinjau dari Perspektif Trias Politica," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (June 2024), <https://doi.org/10.47467/as.v6i2.6954>.

²¹ Evi Oktarina, "Dinamika Kewenangan Presiden Republik Indonesia Di Bidang Legislatif Pasca Perubahan Undang-Undang Dasar 1945," *Lex Librum: Jurnal Ilmu Hukum* 11, no. 2 (2025): 243–50.

2. Research Method

This study employs a legal research methodology, specifically doctrinal research, which systematically analyzes legal rules, principles, and doctrines to comprehensively respond to the identified legal issues.²² This study employs three primary approaches: the conceptual approach, which seeks to understand theoretical concepts related to the presidential system; the statute approach, which involves analyzing relevant regulations, particularly those related to the constitution (the 1945 Constitution of Indonesia); and the comparative approach, which examines similar legal frameworks in other jurisdictions to provide a broader analytical perspective²³ to compare the implementation of legal systems and the presidential system across different countries. This methodology aims to provide a comprehensive analysis of the legal issues under study while offering solutions based on established legal principles.

3. Research Results and Discussion

3.1. The Implementation of Legislative Functions in a Presidential System

The doctrine of the separation of powers is fundamentally designed to prevent the concentration of authority within a single branch of government. According to John Locke, this principal functions as a safeguard against the rise of totalitarianism by imposing limitations on state power through its division into three distinct categories: legislative power, executive power, and federative power. This framework aims to ensure a balanced distribution of governmental functions, thereby promoting accountability and preventing the abuse of power.²⁴ This concept was later expanded by Montesquieu, who divided governmental authority into three branches: legislative power, executive power, and judicial power.²⁵ This division aimed to establish a system of checks and balances to prevent the abuse of power and ensure the effective functioning of a constitutional government. In Indonesia's constitutional system, the distribution of powers is assigned to state institutions whose authorities are regulated by the constitution. The President holds executive power, functioning as the head of government and state, responsible for implementing laws and administering governance under constitutional provisions,²⁶ the People's Representative Council (DPR) holds legislative power,²⁷ and judicial power is fully vested in the

²² Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2008).

²³ Ishaq Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Bandung: Afabeta, 2017).

²⁴ Wirjono Prodjodikoro dalam Fajlurrahman Jurdi, *Teori Negara Hukum* (Malang: Setara Press, 2016).

²⁵ Anfal Kurniawan and Shofa Zulfikar Rizza, "Political Triad Dogmatism Case Study of Indonesian State Institutions in the Implementation of Philosophische Grondslag: Dogmatisme Trias Politika Studi Kasus Kelembagaan Negara Indonesia Dalam Penerapan Philosophische Grondslag," *Constitutional Law Society* 3, no. 1 (2024): 49–60, <https://doi.org/10.36448/cls.v3i1.67>.

²⁶ Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia

²⁷ Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia

Supreme Court (MA) and the judicial bodies under its authority, as well as in the Constitutional Court (MK).²⁸

This distribution of powers aligns with the concept of the presidential system of government implemented in Indonesia. According to S.L. Witman and J.J. Wuest, as cited in Syafii²⁹ that the presidential system of government is distinguished by specific indicators that set it apart from the parliamentary system, serving as fundamental characteristics and defining features of the presidential model, namely: *"It's based upon the separation of power; the executive has no power to dissolve the legislature nor must be resign when he loses the supp of the majority of its membership; there is no mutual responsibility between the president and his cabinet, the latter is wholly responsible to the chief executive; and the executive is chosen by the electorate"*

This perspective highlights the fundamental principle of the presidential system, which necessitates a strict separation of powers among state institutions. Under this framework, each branch of government operates with distinct functions while maintaining an equal standing, ensuring a system of checks and balances. Consequently, the executive branch lacks the authority to dissolve the legislature, and the president, as the head of the executive, is not obligated to resign upon losing parliamentary support. This is because the president is directly elected by the people for a fixed term, thereby maintaining institutional stability and democratic legitimacy. Moreover, the president is not politically accountable to the legislature, reinforcing the autonomy of executive authority. In contrast, the parliamentary system is characterized by the selection of the head of government (prime minister) by the legislature, with direct accountability to parliament. As a result, the loss of majority support in parliament can lead to government dissolution, often causing political instability and governance disruptions.

The presidential system implemented in Indonesia exhibits ambiguity and a tendency toward institutional overlap, as the president retains legislative authority, ranging from the initiation of bills to their deliberation and enactment. This involvement encroaches upon the legislative domain, which should primarily fall within the jurisdiction of the House of Representatives (DPR) as the legislative body. In contrast, the presidential system in the United States establishes a clear separation of powers among governmental branches, ensuring that the president is not directly involved in the legislative process. In the U.S. system, the president's role in legislation is limited to the process of executive communications, wherein proposed bills are submitted to the Senate and the House of Representatives without direct participation in their

²⁸ Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia

²⁹ Ribkha Annisa Octovina, "Sistem Presidensial Di Indonesia," *CosmoGov* 4, no. 2 (2018): 247, <https://doi.org/10.24198/cosmogov.v4i2.17065>.

deliberation.³⁰ In the American constitutional system, the president is not involved in the legislative deliberation process; however, the president holds the power of veto to reject bills passed by Congress as a mechanism of checks and balances, particularly when a bill is deemed unrepresentative. Nevertheless, the final decision ultimately rests with Congress, which retains the authority to override the presidential veto through a supermajority vote, thereby ensuring a balance of power between the executive and legislative branches.³¹ In addition to the United States, Brazil also adopts a presidential system that restricts legislative functions exclusively to the parliament. However, certain bills may still be proposed by the president, particularly those concerning the size of the armed forces and matters related to the organization of the state. This demonstrates a nuanced application of the separation of powers, wherein the executive's legislative involvement is limited to specific areas deemed crucial to national governance while preserving the primary legislative authority of the parliament.³² Additionally, the President of Brazil is granted the authority to review a bill before its enactment. If the president rejects the bill, it must undergo further deliberation by the parliament before it can ultimately be approved.

This mechanism serves as an additional check within the legislative process, ensuring that executive oversight is maintained while preserving the supremacy of the legislative branch in lawmaking.³³ Such mechanisms contribute to the establishment of a checks and balances system within the government, ensuring that no single branch wields excessive power.

A comparative analysis of these legislative systems can be outlined as follows:

Table 1
Comparison of Presidential Involvement in the Legislative Process

Presidential Involvement in the Legislative Process		
Indonesia	United States	Brazil
a) Proposing Bills	a) Proposing Bills	a) Proposing Bills
b) Deliberation (The president is involved through ministers or	b) Exercising Veto Power	b) Reviewing Bills
	c) Enacting Laws	c) Rejecting Bills
		d) Enacting Bills

³⁰ Pataniari Pataniari, *Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945* (Jakarta: Konstitusi Press, 2012).

³¹ A. Junaedi Karso, *Buku Ajar Hukum Tata Pemerintahan* (Yogyakarta: Penerbit Samudra Biru, 2022).

³² Anthony Robert Pahnke and Marcelo Milan, "The Brazilian Crisis and the New Authoritarianism," <https://monthlyreview.org/articles/the-brazilian-crisis-and-the-new-authoritarianism/>, Monthlyreview, 2020, <https://monthlyreview.org/articles/the-brazilian-crisis-and-the-new-authoritarianism/>.

³³ Brazil Constitution of 1988, Article 66, Accessed via <https://codices.coe.int/codices/documents/constitution/FAD0640C-B8CA-453E-AA11-5E514BC898D1?lang=eng>

government representatives in discussions with the legislature) c) Enactment		
--	--	--

Source: Author

This mechanism serves as an additional check within the legislative process, ensuring that executive oversight is maintained while preserving the supremacy of the legislative branch in lawmaking.³⁴ Such mechanisms contribute to the establishment of a checks and balances system within the government, ensuring that no single branch wields excessive power

An analysis of the table above indicates that while presidential systems do not always implement a rigid separation of powers, they generally impose clear restrictions on the president's involvement in the legislative process. This stands in contrast to Indonesia, where the president plays a significant role in nearly all stages of lawmaking, particularly during the deliberation process. Such extensive presidential involvement necessitates a critical evaluation to establish clearer limitations, thereby mitigating the risk of power abuse, which could undermine the fundamental principles of democracy.

The comparison with the United States and Brazil provides important insights into how presidential systems can establish a clearer separation of powers, the Indonesian context presents a distinct constitutional and political dynamic. The President's involvement in all stages of legislation in Indonesia is not merely a matter of constitutional text but also a result of political pragmatism and coalition-based governance that blurs institutional boundaries. Unlike the United States, where Congress holds full legislative power, or Brazil, where presidential intervention is constitutionally limited, Indonesia's hybrid practice reflects the persistence of an executive-heavy culture rooted in its historical transition from an authoritarian to a democratic regime. Therefore, the reconstruction of the President's legislative authority cannot rely solely on adopting foreign models but must focus on strengthening internal mechanisms of accountability within the DPR, clarifying constitutional limits under Articles 5 and 20 of the 1945 Constitution, and institutionalizing public participation in the law-making process. This reconstruction aims to restore the spirit of separation of powers while ensuring that the Indonesian presidential system evolves toward a more democratic and balanced governance framework.

³⁴ Brazil Constitution of 1988, Article 66, Accessed via ["https://codices.coe.int/codices/documents/constitution/FAD0640C-B8CA-453E-AA11-5E514BC898D1?lang=eng"](https://codices.coe.int/codices/documents/constitution/FAD0640C-B8CA-453E-AA11-5E514BC898D1?lang=eng)

3.2. The Ideal Model of Legislative Authority in a Presidential System and Modern Democracy

In a presidential system, legislative authority should be fully vested in the legislature to promote democratic governance and prevent the emergence of authoritarian rule by restricting the president's involvement in the legislative process. If the president must participate in legislation, such involvement should be limited to proposing bills related to the state budget (APBN), as fiscal policy is crucial in determining the course of governance and, therefore, should be initiated by the president as the head of government. Additionally, before a bill is enacted into law, the president should be granted the authority to review it, ensuring an additional layer of oversight in the legislative process.

As an effort to improve the legislative system in Indonesia, it is essential to amend the constitutional provisions that grant legislative authority to the president, specifically Articles 5 and 20 of the 1945 Constitution. This proposed reform can be conceptualized as follows:

Table 2
Amendment to Article 20

<i>Ius Constitutum</i>	<i>Ius Constituendum</i>
(1) The House of Representatives holds the power to enact laws* (2) Every bill shall be deliberated by the House of Representatives and the President to obtain joint approval* (3) If a bill fails to obtain joint approval, it may not be reintroduced in the same legislative session of the House of Representatives* (4) The President shall enact a bill that has been jointly approved into law* (5) If a bill that has been jointly approved is not enacted by the President within thirty days from the date of approval, the bill shall become law and must be promulgated. **	(1) The House of Representatives holds the power to enact laws. (2) Every bill shall be deliberated by the House of Representatives with broad, transparent, and accountable public participation, the forms of which shall be regulated by law. (3) If a bill fails to obtain an absolute majority support from the members of the House of Representatives, it may not be reintroduced in the same legislative session. (4) A bill that has received joint approval from most of the members of the House of Representatives shall then be submitted to the President for administrative enactment within thirty (30) days. (5) If the President does not enact the bill within thirty days, the bill

	shall automatically become law and must be promulgated.
--	---

Source: Author

The comparison between *Ius Constitutum* and *Ius Constituendum* in Article 20 reflects a paradigm shift in the legislative process from a model emphasizing collaboration between the House of Representatives and the President toward a more democratic and participatory framework. *Ius Constituendum* introduces new principles of transparency, accountability, and public participation, which were absent in *Ius Constitutum*. Furthermore, the transformation of the concept from “joint approval” to “absolute majority support” strengthens the institutional authority of the House of Representatives, rendering it more independent in the law-making process while limiting the President’s role to administrative enactment. This reformulation demonstrates an effort to reinforce the separation of powers and to prevent executive dominance in legislation, while simultaneously ensuring public involvement as a form of democratic oversight in the creation of national laws.

To provide a clearer and more comprehensive understanding of the structural transformation contained in the proposed amendment to Article 20, the following table presents the detailed stages of the legislative process as outlined in the *Ius Constituendum*. This table elaborates on each procedural step, beginning with the authority of the House of Representatives in lawmaking and extending to the mechanisms of public participation, absolute majority voting, presidential approval, and automatic promulgation. Each stage demonstrates a systematic shift toward greater legislative transparency, accountability, and inclusiveness, emphasizing the principle that lawmaking must be based on democratic legitimacy rather than executive dominance.

The restructured legislative process mandates public participation as a legal and procedural requirement, fostering openness and deliberate decision-making. The absolute majority voting principle strengthens legitimacy through broader parliamentary consensus. The President’s role is confined to administrative approval, preventing veto abuse and ensuring legislative continuity. Additionally, the automatic approval clause safeguards against executive inaction. Collectively, these reforms reinforce checks and balances while advancing democratic governance in Indonesia’s legislative framework.

Table 3
Legislative Stages

Stages	Description	Clarification
The Authority of the House of Representatives in Lawmaking	The House of Representatives holds the power to enact laws.	This authority encompasses the entire legislative process, from planning to approval.
Discussion of Draft Laws with Public Participation	Each draft law is deliberated by the House of Representatives with broad, transparent, and accountable public participation.	The forms of public participation are regulated by law to ensure a clear and structured process.
Absolute Majority Voting in the House of Representatives	If a draft law fails to secure an absolute majority vote from the members of the House of Representatives, it cannot be reintroduced.	An absolute majority ensures strong support for the draft law to be enacted.
Approval by the President	A draft law that has secured an absolute majority vote is submitted to the President for administrative approval within 30 (thirty) days.	The President's role is limited to administrative approval to prevent substantive veto power.
Automatic Approval	If the President does not approve the draft law within 30 days, it automatically becomes law and must be promulgated by the House of Representatives.	Ensures that the legislative process is not hindered by executive inaction.

Source: Author

The limitation of the President's legislative authority serves to reinforce the presidential system as originally intended. A clear separation of powers between the legislative and executive branches in the lawmaking process is essential in preventing the concentration of power that may lead to authoritarian governance. Furthermore, the incorporation of meaningful public participation in the legislative process enhances transparency and accountability. This approach aligns with the principles of a democratic rule of

law, as the degree of public involvement in lawmaking is a fundamental indicator of a law's democratic legitimacy.³⁵ A democratic state inherently fosters the creation of responsive laws by ensuring public participation, thereby strengthening the rule of law. Conversely, when a state exercises its authority in an authoritarian manner and concentrates legislative power within the executive branch, it tends to produce orthodox legal frameworks, both in their formulation and enforcement.³⁶

4. Closing

4.1. Conclusions

In a presidential system of government, the executive, legislative, and judicial branches possess distinct powers. Legislative authority is vested in the House of Representatives (DPR) as stipulated in the constitution. However, in practice, legislative power has become a shared authority between the President and the DPR, creating ambiguity in the implementation of the presidential system in Indonesia. The President's involvement in the legislative process should be minimized to prevent the emergence of authoritarian governance, which would be fundamentally incompatible with the principles of a democratic rule of law. Therefore, it is necessary to reconstruct the President's legislative authority within Indonesia's governmental system to eliminate this power and establish a more balanced distribution of authority among the executive, legislative, and judicial branches.

4.2. Suggestions

A more inclusive and transparent legislative process is essential to strengthening public participation in lawmaking. In the context of amending Article 20 of the 1945 Constitution, transferring legislative authority from the President to the House of Representatives (DPR) is considered a strategic step to ensure better representation and enhance accountability in policymaking. By reinforcing public participation in the legislative process, Indonesia's democratic system can evolve in alignment with modern democratic principles, which prioritize citizen involvement in public policy formulation. Consequently, this reform is expected to create a more effective and responsive government that better addresses the needs of the people.

³⁵ Muhamad Khoirul Wafa, "Peran dan Partisipasi Masyarakat dalam Pembentukan Undang-undang," *Siyasah Jurnal Hukum Tatanegara* 3, no. 1 (June 2023): 85–100, <https://doi.org/10.32332/siyasah.v3i1.6883>.

³⁶ Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2014).

REFERENCES

- Adiwilaga, Rendy, Yani Alfian, and Ujud Rusdia. *Sistem Pemerintahan Indonesia*. Yogyakarta: Deepublish, 2018.
- Benny, Georgius. "Meninjau Kekuasaan Legislasi Rumpun Eksekutif." *Rechtsvinding.bphn.go.id*. *Rechtsvinding.bphn.go.id*, 2022. <https://rechtsvinding.bphn.go.id/media.php?page=artikel&berita=700>.
- Fatwa, A.M. *Potret Konstitusi Pasca Amandemen UUD 1945*. Jakarta: PT Kompas Media Nusantara, 2009.
- Firdaus, Fahmi Ramadhan. "Pencegahan Korupsi Legislasi Melalui Penguatan Partisipasi Publik Dalam Proses Pembentukan Undang-Undang." *Jurnal Legislasi Indonesia* 17, no. 3 (September 2020): 282–93. <https://doi.org/10.54629/jli.v17i3.679>.
- Ghoffar, Abdul. *Perbandingan Kekuasaan Presiden Indonesia Setelah Perubahan UUD 1945 Dengan Delapan Negara Maju*. Jakarta: Kencana Pranada Media Group, 2009.
- Ishaq, Ishaq. *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*. Bandung: Afabeta, 2017.
- Jurdi, Fajlurrahman. *Teori Negara Hukum*. Malang: Setara Press, 2016.
- Karso, A. Junaedi. *Buku Ajar Hukum Tata Pemerintahan*. Yogyakarta: Penerbit Samudra Biru, 2022.
- Kurniawan, Anfal, and Shofa Zulfikar Rizza. "Political Triad Dogmatism Case Study of Indonesian State Institutions in The Implementation of Philosophische Grondslag: Dogmatisme Trias Politika Studi Kasus Kelembagaan Negara Indonesia Dalam Penerapan Philosophische Grondslag." *Constitutional Law Society* 3, no. 1 (March 2024): 49–60. <https://doi.org/10.36448/cls.v3i1.67>.
- Mahkamah Konstitusi, Mahkamah Konstitusi. *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010.
- Mardhatillah, Mardhatillah, Yusra Fajriyah, Gamaliel Ekklesius Purba, and Rahma Fitri. "Kedudukan Hukum Tata Negara Dalam Menjamin Keberlangsungan Demokrasi Konstitusional." *Causa: Jurnal Hukum dan Kewarganegaraan* 5, no. 10 (2024): 1–9.
- Marzuki, Peter Mahmud. *Pengantar Ilmu Hukum*. Jakarta: Kencana, 2008.
- MD, Moh. Mahfud. *Politik Hukum Di Indonesia*. Jakarta: Rajawali Press, 2014.
- Octovina, Ribkha Annisa. "Sistem Presidensial Di Indonesia." *CosmoGov* 4, no. 2 (October 2018): 247. <https://doi.org/10.24198/cosmogov.v4i2.17065>.

- Oktarina, Evi. "Dinamika Kewenangan Presiden Republik Indonesia Di Bidang Legislatif Pasca Perubahan Undang-Undang Dasar 1945." *Lex Librum: Jurnal Ilmu Hukum* 11, no. 2 (2025): 243–50.
- Pahnke, Anthony Robert, and Marcelo Milan. "The Brazilian Crisis and the New Authoritarianism." <https://monthlyreview.org/articles/the-brazilian-crisis-and-the-new-authoritarianism/>. Monthlyreview, 2020. <https://monthlyreview.org/articles/the-brazilian-crisis-and-the-new-authoritarianism/>.
- Pataniari, Pataniari. *Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945*. Jakarta: Konstitusi Press, 2012.
- Prakoso, Teguh Satrio. "Pelaksanaan Hak Prerogatif Presiden." *DHARMASISYA: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 3 (2021): 1485–98.
- Rishan, Idul. "Risiko Koalisi Gemuk Dalam Sistem Presidensial Di Indonesia`." *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (May 2020): 219–40. <https://doi.org/10.20885/iustum.vol27.iss2.art1>.
- Samosir, Osbin, and Indah Novitasari. "Hak Politik Warga Negara Dalam Cengkeraman Politik Identitas: Refleksi Menuju Pemilu Serentak Nasional Tahun 2024." *Jurnal Ilmu Hukum, Humaniora dan Politik* 2, no. 3 (June 2022): 332–46. <https://doi.org/10.38035/jihhp.v2i3.1052>.
- Taufik, Muhammad. "Dinamika Dalam Penerapan Sistem Pemerintahan Presidensial Dan Parlementer di Indonesia." *Qaumiyyah: Jurnal Hukum Tata Negara* 1, no. 2 (2020): 128–41.
- Wafa, Muhamad Khoirul. "Peran dan Partisipasi Masyarakat dalam Pembentukan Undang-undang." *Siyasah Jurnal Hukum Tatanegara* 3, no. 1 (June 2023): 85–100. <https://doi.org/10.32332/siyasah.v3i1.6883>.
- Yudlha, Tamara, and HUsein Manalu. "Analisis Kekuasaan Presiden dalam Proses Pembentukan Undang-Undang Ditinjau dari Perspektif Trias Politica." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (June 2024). <https://doi.org/10.47467/as.v6i2.6954>.