APPLICATION OF FAST-TRACK LEGISLATION METHOD IN PRESIDENTIAL SYSTEM OF GOVERNMENT IN INDONESIA

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Abstract
The amendment of the 1945 Constitution is strengthening the Indonesian presidential system of government by granting the President the authority to issue Government Regulations in Lieu of Laws (Perppu) in response to urgent situations. Additionally, the President and DPR (House of Representatives) jointly discussed and ratified draft laws, providing the President legislative authority in normal, abnormal, or urgent circumstances. When a president with majority parliamentary support holds legislative power, it suggests that parliament has delegated the legislative power to the executive. The current phenomenon shows numerous Perppu issued that may deviate from the provisions of Article 22 paragraph (1) of the 1945 Constitution and Constitutional Court Decision No.138/PUU-VII/2009 giving juridical interpretation to “compelling urgency”. Simultaneously, there is a rise in flash legislation that seems “rushed” in the formation aiming to meet legislative targets. For instance, the Job Creation Bill in Indonesia took 167 days to be enacted despite consolidating 79 laws into a single policy. In Indonesia's presidential system of government, the DPR holds the power to form laws as observed in Article 20 of the 1945 Constitution. This suggests that the fast-track legislation method should strengthen the presidential system, especially in legislation. However, numerous Perppu continue to be issued representing executive authority in legislation. The fast-track method lacks regulation in Indonesian positive law due to the following questions arising, (1) What is the relationship between the fast-track legislation method and Indonesia's presidential system? and (2) How should the fast-track legislation method be ideally applied in law formation according to the 1945 Constitution amendments? Therefore, this research aimed to offer a concept for applying the fast-track legislation method in Indonesia’s presidential system of government according to the 1945 Constitution. A qualitative method was adopted in the research using statutory, conceptual, comparative, and case methodologies. The statutory method included reviewing and identifying laws as well as regulations related to the problem’s formulation. The conceptual method deviated from the doctrine or views in law, particularly constitutional law relating to the formation of laws and regulations using the fast-track legislation method in Indonesia’s presidential system of government. The results found that applying the fast-track legislation method in the Indonesian presidential system to hasten the formation of laws could balance the legislative authority of the President in issuing Perppu, thereby reducing the issuance. Additionally, the fast-track legislation method would further strengthen and purify the presidential system with checks and balances between the executive and legislative institutions. In this method, the procedures would remain consistent with normal law formation provisions, ensuring public participation, information disclosure, and transparency. Therefore, the research recommended that the fast-track method be used for law formation with strict regulations in the presidential system. This should also adhere to guidelines for creating good laws and regulations and providing ample space for public participation in every step while upholding democratic principles.

Keywords: Fast-Track Legislation Method, Presidential System of Government, 1945 Constitution.
A. Introduction

Indonesia is a state that upholds the rule of law, emphasizing that the legal framework should guide the government and society. Every action by these actors should be based on the established legal framework. Therefore, the formation of laws is crucial for institutions with the authority to enact the regulations ensuring the creation of beneficial and equitable laws for the society. Legislators are further required to understand the essence of welfare and justice in legislation according to societal needs.

According to the 1945 Constitution, "Laws" are formed by the DPR as the legislative body.1 Article 20 Paragraph (2) mandates joint approval by the DPR and the President for every draft law.2 While the DPR holds the power to make laws, draft laws also known as RUU should be discussed by the DPR and the President for joint approval. This requirement reflects the characteristics of a parliamentary system of government. However, legislative power is ambiguous within the presidential system of government showing characteristics of the parliamentary democracy. Article 20 Paragraph (1) of the 1945 Constitution further shows the characteristics of the presidential system of government while Article 20 Paragraph (2) suggests the features of the parliamentary democracy. This complexity is compounded by Article 20 Paragraph (5) which grants the President the right of veto allowing the signature to be withheld on a draft law. When the President abstains from signing within thirty days of the request, the bill automatically becomes law. Conversely, the President holds the authority to issue Government Regulations in Lieu of Laws also known as Perppu possessing additional legislative powers beyond those shared with the DPR.

In the presidential system of government, the DPR is more active in the formation of laws to minimize the need for Perppu which lacks public participation. This necessitates the legislature to expedite the legislative function while adhering to normal procedures to address emergencies promptly.

The recent evolution of numerous hastily enacted laws, alongside the presence of Perppu issued without strong justification as stipulated in Article 22 Paragraph (1) of the 1945 Constitution4 and Constitutional Court Decision No.138/PUU-VII/2009 raising intriguing questions. The concept of fast-track legislation is often found in the process of forming and amending laws in Indonesia. This prompts speculation about the correlation with the presidential system of government, warranting further investigation to analyze the application of the fast-track legislation method within the Indonesian version of the presidential system. Based on the observed background, the following problems are formulated:

1. How does the fast-track legislation method correlate with the presidential system of government in Indonesia?
2. What is the ideal use of the fast-track legislation method within Indonesia’s presidential system of government which emphasizes the legislative power vested in the DPR?

A normative juridical research method is used to explore these issues, incorporating statutory, conceptual, and comparative methodologies. The statutory method includes reviewing and identifying relevant legislation while the conceptual method explores

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1 Refer to Article 20, Paragraph (1) of the 1945 Constitution: "The People's Consultative Assembly holds the power to enact legislation."
2 Refer to Article 20, Paragraph (2) of the 1945 Constitution: "Every bill is deliberated by the People's Consultative Assembly and the President to obtain joint approval."
3 Some of them are: the Draft Criminal Code Bill (RKUHP), Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK Law), and Law Number 11 of 2020 concerning Job Creation (Omnibus Law) which has been amended by Law Number 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.
4 Refer to Article 22 paragraph (1) of the 1945 Constitution: "In the event of urgent circumstances. The President has the authority to establish Government Regulations as a substitute for laws."
constitutional law doctrines relating to law formation using the fast-track legislation method in Indonesia’s presidential system of government. Additionally, a comparative method is used to analyze the evolution of legislative authority in the presidential system before and after the 1945 Constitution amendment.

Secondary data comprising primary and secondary legal materials are collected through literature research. Previous publications such as Achmad Kurniawan’s “Fast-Track Legislation in the Formation of Legislation in Indonesia from the Perspective of Fiqh Siyasah (2022)” discussed the adoption of the Fast-Track Legislation method in the formation of legislation in Indonesia. The analysis further describes how the Fast-Track Legislation mechanism can respond to urgent legal requirement when needed, focusing on the perspective of Fiqh Siyasah. Another publication by Bayu Aryanto, Susi Dwi Harijanti, and Mei Susanto titled “Initiating the Fast-Track Legislation Model in Law Formation System in Indonesia” stated concerns about the potential risks of hastily enacted laws that lack underlying rules or standards. The analysis examines how the rapid law formation processes may impact the President's authority, which largely depends on the will of the legislators including the DPR and President.

Similarly, Ibnu Sina Chandranegara in the paper entitled “Adopting the Fast-Track Legislation Mechanism in the Proposal of Draft Laws by the President” analyzes and advocates for the Fast-Track Legislation method that adheres to standard procedures conducted by the legislature rather than hastily executed by the executive through Perppu issuance. Chandranegara suggests that maintaining the legislative function within the legislature which correlates with the 1945 Constitution of Indonesia would be better associated with democratic principles, urging for the elimination of the President's authority to issue Perppu.

The research contributes to existing literature by focusing on the intricate relationship between the fast-track legislation method and Indonesia's presidential system of government. In contrast to previous publications, it emphasizes how the fast-track legislation method can ideally be used within Indonesia's multi-party presidential system, emphasizing the legislative authority of the DPR.

B. Discussion

Indonesia is a state based on law (rechtstaat) rather than power (machstaat), using law to achieve state objectives which is also categorized into written and unwritten. Written law pertains to legislation while unwritten refers to custom as a source of law. This research focuses on written law, specifically the formation of presidential system of government in Indonesia.

In emergencies, laws are formed through the fast-track method that adheres to normal legislative procedures while allowing public participation as regulated in Law No.12 of 2011 concerning the Formation of Legislation. However, the fast-track legislative process often leads to inadequate public participation, conflicts of interest, limited accessibility, reduced public openness, minimal accountability, and a lack of transparency. Despite these issues, the legislature continues to use the method of forming laws within the fast-track category.

1. Law Formation Process in Indonesia

The process of law formation was the transformation of the vision, mission, and values desired by the law-forming institution and society into legal rules.5 This process was regulated by Law No.12/2011, the amendments, and also by Articles 162-173 of the MD3 Law as well as the amendments, divided into the following stages. Planning as regulated in Articles 16 to 42 of Law 12/2011 → Drafting as regulated in Articles 43 to 64 of Law 12/2011 → Discussion as regulated in Articles 65 to 71 of 12/2011 → Endorsement as regulated in Articles 72 to 74 of 12/2011 → Promulgation as regulated in Articles 81 to 87 of 12/2011.

Further implementation regulations were outlined in Perpres No.87 of 2014 and Perpres No.76 of 2021 in the following stages. Bill Planning in Chapter II Second Part of Perpres 87/2014 → Bill Drafting in Chapter III Part One of PR 87/2014 → Bill discussion in Chapter IV First Part of PR 87/2014) → Ratification/Enactment of the bill into law in Chapter V First Part of PR 87/2014 → Promulgation of Law in Chapter VI First Part of PR 87/2014.

The stages in the law-making process were as follows:§

a. Planning Stage
The legislative body prepared the National Legislation Program (Prolegnas) within the DPR including faction and commission leaders, and/or the public → The legislative body coordinated with the DPD as well as the Minister of Law and Human Rights to compile and determine the Prolegnas → The medium-term Prolegnas of 5 years and annual Prolegnas were determined by a DPR decision.

b. Drafting Stage
Members/commissions/joint commissions prepared academic papers → Members/commissions/joint commissions drafted the initial bill → The legislative body coordinated harmonization, rounding, stabilization, and conception of the bill within a maximum of 20 session days → The proposer submitted the harmonized bill to the DPR leadership → A plenary meeting decided on the bill proposed by the DPR initiative, with options to approve without or with amendments or reject → The bill was completed within 30 session days when approved with amendments and extended by 20 days when needed → The improved bill was submitted to the President through a letter from the DPR leadership → The President appointed a Minister to discuss the bill with the DPR, within 60 days after receiving the letter.

c. Discussion Stage
Level 1 discussion comprised the DPR and the appointed Minister, conducted in commission/joint commission/legislative body/budget body/special committee meetings and Level 2 discussion was decision-making in a plenary meeting served as the highest forum in carrying out the duties and authority of the DPR, chaired by the DPR leadership. Based on Article 69 of Law No.12/2011, the level 2 discussion stage in the law-making process was as follows, (a) Submission of reports containing the process, mini faction and DPD opinions, as well as Level 1 outcome, (b) Statement of approval or rejection from each faction and member verbally requested by the plenary chairman, and (c) Delivery of the President's final opinion by the assigned minister.

Decisions would be made based on a majority vote when deliberation for consensus failed to reach an agreement. When a bill did not receive joint approval between the DPR and the President, it could not be resubmitted in the current DPR session.

d. Ratification Stage
The DPR leadership submitted the bill to the President for ratification.

e. Promulgation Stage
The ratified bill was promulgated in the State Gazette of Indonesia. Based on the description, the process of forming laws included five stages namely planning, preparation, discussion, ratification, and enactment. This detailed process suggested that forming laws was lengthy, ensuring the resulting laws met the needs of all Indonesian society. Public access and participation were crucial at each stage, reflecting the importance of inclusivity in legislative processes.

2. Presidential System of Government

a. Theory of Government System

§ Source from the website of the Indonesian House of Representatives (Dewan Perwakilan Rakyat Republik Indonesia).
The system of government was defined as a structure comprising legislative, executive, and judicial functions that were interconnected and cooperative within the framework of state institutions and the relationships with each other. Jimly Asshidiqie further defined the system as a framework of relationships between state institutions. Furthermore, Sri Soemantri described it as the relationship between the legislative and executive institutions. Ismail Sunny also argued that the system of government was a specific framework explaining the relationship between the highest state apparatus in a country.

The relationships and cooperation between state institutions comprised the system of government in a country. The view of Sri Soemantri focusing on the relationship between legislative and executive state institutions correlated with the understanding that the judiciary was an independent institution, free from interference from other powers, thereby excluded from this cooperation. Generally, two main systems existed in government namely presidential and parliamentary systems. Furthermore, there was a “mixed” system or quasi-parliamentary or quasi-presidential and some also referred to the referendum system.

In a referendum system, the executive was part of the legislature known as a legislative working body which further established sub-agencies to carry out government duties. Control over the legislative body was executed directly through a referendum. Jimly Asshiddiqie identified four models of government systems, namely the United States, United Kingdom, France, and Switzerland. The United States exemplified the presidential system, the United Kingdom represented the parliamentary system, and France denoted a mixed system. Furthermore, Switzerland represented the collegiate system, where the executive council consisted of seven members, each serving as President for one year in rotation. CF Strong also distinguished between two types of executives namely the nominal and the real.

Jimly Asshidiqie further developed nine characteristics of the presidential system of government as follows:

1) A clear separation of powers existed between the executive and legislative branches.
2) The president served as the sole executive, with power undivided consisting only of the president and vice president.
3) The head of government was also the head of state or vice versa.
4) The President appointed Ministers as assistants or subordinates responsible to the president.
5) Members of parliament could not hold executive positions and vice versa.
6) The president could not dissolve or compel parliament.
7) The presidential system of government adhered to the principle of constitutional supremacy while the parliamentary democracy operated on the principle of parliamentary supremacy. Consequently, the executive government was accountable to the constitution.
8) The executive was directly accountable to the sovereign society.

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9) Power was dispersed in a non-centralized manner, in contrast to the parliamentary democracy where power was centered on Parliament.

b. The Presidential System of Government in Indonesia

Based on the 1945 Constitution before the amendment, Indonesia’s system of government was presidential. Articles 4 and 17 of the 1945 Constitution asserted that the Indonesian government should adhere to a presidential, where the President was the head of the executive who appointed and dismissed ministers who were President's assistants. However, the government system under the pre-amendment 1945 Constitution was a “quasi-presidential” system due to the accountability of the President to the MPR which could overthrow the executive.

Generally, Indonesia’s adherence to the “presidential system” was clearly and systematically explained in the elucidation of the 1945 Constitution. This explanation recognized eight key points, namely: 14

1) Indonesia was a state based on law and not on mere power. This implied that the state including the institutions in carrying out any action had to be based on the law or legally accountable.

2) The constitutional system was based on a fundamental law and not absolutism or unlimited power.

3) Supreme state power was vested in the MPR. The sovereignty of the citizens was vested in a body called the MPR, representing Indonesians. This assembly held the highest state power, and the President had to carry out the state direction according to the outlines determined by the assembly. The President who was appointed by the MPR was subject to and responsible to the institution, acting as the assembly’s mandate and implementing the decisions. The MPR had the authority to establish the Constitution and state direction outlines as well as to elect and appoint the President and Vice President.

4) Under the MPR, the President was the highest government organizer, holding power and responsibility for running the state.

5) The President was not responsible to the MPR. While the President needed MPR approval to form laws and determine the state budget, the President was not accountable to the Council but had to work alongside it.

6) State ministers were assistants to the President and not responsible to the MPR but to the President. The ministers' positions depended on the President and not the Council.

7) The powers of the head of state were not unlimited. Although the head of state was not accountable to the Council due to the non-dictatorship. The President was responsible for MPR and had to heed the voice of the DPR. 15

8) There was no concentration of power in the political system. In a presidential system, power was not focused on one state organization alone, as countries with presidential systems generally adhered to the doctrine of division or separation of powers. 16

When a country has a presidential government, the state should be measured against the conditions of a presidential system of government. Therefore, Indonesia did not have a pure presidential system of government. 17 Before the amendment of the 1945 Constitution, Article 5 paragraph (1) stipulated that the power to make laws was vested in the President. After the amendment, the construction of the presidential system of

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14 Refer further to the Explanation of the 1945 Constitution before the amendment.
government was strengthened. This strengthening can be observed in the arrangement of the position and authority of the President and the DPR. There was a shift in legislative power from the President to the DPR, as specified in Article 20 paragraph (1): "The DPR holds the power to form laws." The post-amendment presidential system of government according to the 1945 Constitution included the following:

1) Institutional Relations

There was a separation of executive and legislative powers without a separation between the positions of Head of State and Government. The executive was held by the President, who served as both Head of Government and Head of State. Legislative power was vested in Parliament, with the Executive and Legislature having separate and equal powers. The Head of Government who was also the Head of State was called the President, thereby the system was termed presidential.

2) Recruitment Pattern

There was no overlap of personnel between the executive and legislative branches. Legislative members were directly elected through general elections. Executive leaders such as the President and Vice President were also directly elected through general elections.

3) Oversight and Accountability Pattern

A mechanism of checks and balances existed between the executive and legislative branches. Legislation was formulated by the legislative branch but required implementation by the executive branch. The executive branch could veto legislative policies or refuse to enact legislation, but the legislative branch had the right to impeach the executive. The President, as the head of the executive branch, had the authority to appoint state officials but required legislative approval. The legislative branch could not dismiss the President, and the President could not dissolve the legislative branch.

After the amendment of the 1945 Constitution, Article 20 paragraph (1) of the 1945 Constitution stipulated that the authority lay with the DPR as the legislative body regarding the power to form laws. This shift represented a significant change in the balance of power, ensuring that legislative authority was separated from executive influence.

c. The Position of the DPR (Dewan Perwakilan Rakyat) as a Legislative Body

Moh. Mahfud MD stated that the 1945 Constitution had fundamental weaknesses in building a political system, resulting in an undemocratic political structure. These weaknesses observed in the Constitution included the following:

1) The 1945 Constitution established a system that centralized power in the president, lacking clear boundaries and checks and balances. This system was highly susceptible to latent diseases inherent in any form of power, including the tendency towards corruption. Any constitution that was too lax and did not establish clear limits on power became vulnerable to corruption through various manipulations that could be formally justified.

2) The 1945 Constitution granted excessive authority to the legislative body to regulate important matters without clear limitations. In practice, legislative products were often determined more by the President, who influenced the legislative domain through the political framework. Issues such as human rights, judicial authority, and state control over public domains often reflected the will and political views of the President.

3) The 1945 Constitution contained provisions open to multiple interpretations but the interpretation of the President prevailed in practice. Issues such as the presidential

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term, judicial independence, and the concept of a familial economy were examples where the president's interpretation was considered the truth.

4) The 1945 Constitution was too naive, relying heavily on the "spirit" of state officials. It was said that the constitution's provisions would be meaningless if state officials were not good. This was true in some cases but false in others, as even good officials could become corrupt if the system lacked strict limitations. The Constitution needed to be accompanied by a suspicion that anyone in power might tend to be corrupt, necessitating a system of strict power limitations that could not be unilaterally expanded by the ruler. The 1945 Constitution granted too much authority to the legislative body to regulate important matters without clear limitations. Additionally, the provisions of the Constitution were open to multiple interpretations, and its reliance on the spirit of state officials was overly naive.

From the observed opinions, there was significant presidential power in the formation of laws despite the amendments to the 1945 Constitution that aimed to strengthen the DPR. The most significant strengthening was the shift in legislative power, as Article 5 Paragraph (1) of the 1945 Constitution stated, "The President held the power to form laws," which was amended to "The President was entitled to propose draft laws." Despite this change, the DPR did not dominate lawmaking. During 2004-2009, only 24 were proposed by the DPR out of 104 laws.19

According to A. Mukthie Fadjar,20 the lack of proposals from the DPR was due to either incompetence or the political system preventing the DPR from using the opportunities effectively. When assigned the role of lawmaking, the state should immediately consider the legislative model. Furthermore, Latief Farikun21 argued that minimal bill proposals from the DPR were not due to constitutional barriers but rather professional issues within the DPR, relating to the electoral system and party politics in Indonesia. Farikun believed that the legislative role was central to the DPR's function. Harjono22 suggested that entrusting all lawmaking to the DPR while excluding the president, posed risks in situations where the bills was not proposed. This raised concerns about the DPR's readiness to draft all laws, leading to the provision that every law should be discussed with the president for joint approval. However, the author asserted that when the president held power in lawmaking, it blurred the separation of legislative and executive powers creating a pseudo-presidential system in Indonesia.

Bagir Manan criticized the low awareness and attitudes of legislative members, who should respond to public interests democratically. DPR members often saw each other as party representatives rather than society's representatives, leading to a lack of innovation and routine work that confused the public. The multi-party system in the presidential government and the proportional voting system further complicated legislation.23 Many legislative members did not fully understand what needed regulation, leading to confusing discussions. Therefore, the quality of legislative work depended significantly on the awareness and attitudes of DPR members in carrying out the functions democratically and transparently as well as being responsive to societal needs, especially in legislation.

A veto power for the president in drafting laws should balance the power in the legislative process to strengthen the presidential government system. The veto power of

19 Ibid.
22 Ibid., p. 109.
the President allowed a bill proposed by the DPR to be vetoed for up to a month. However, the bill remained valid when it was resubmitted for a signature within 30 days. This research confirmed that the veto power seemed not to be taken seriously by the president.\textsuperscript{24} Furthermore, laws were enacted without the president's approval after the enactment of the 1945 Constitution such as Law No.32 of 2022 concerning Broadcasting and Law No.18 of 2003 concerning Advocates. This indicated a strengthening of the DPR as a legislative body and a reduction in presidential power, achieving a characteristic of the presidential system despite the president having only 30 days to sign a proposed and approved bill.

The legitimacy of DPR membership strengthened as all DPR members were elected through general elections, eliminating appointed members. This increased the legitimacy of DPR membership, determined by voters. Other changes included the DPR's legislative, budgetary, and oversight functions. Article 20A Paragraph (1) of the 1945 Constitution granted the DPR the authority to propose the removal of the president and/or vice president to the MPR after a decision from the Constitutional Court (Article 7 Paragraph (1) of the 1945 Constitution). The DPR approved laws jointly with the president as stipulated in Article 20 paragraph (2) of the 1945 Constitution. Additionally, the DPR's functions were strengthened which included approving state agendas, providing considerations to the president on the appointment of ambassadors, receiving other ambassador placements, granting amnesty and abolition, selecting candidates for the BPK, and proposing three candidates for constitutional judges to the president. However, the authority of the DPR was not binding on the president as the final decision remained with the president. Strengthening the DPR was also observed in the oversight function with the rights of interpellation, inquiry, and expressing opinions. Therefore, there was a shift from executive-heavy to legislative-heavy. The effectiveness and efficiency of the legislative body's functions greatly depended on the quality of DPR members as representatives of the society.

In Indonesia, the President was affirmed as the holder of executive power as stipulated in Article 4 Paragraph 1 of the 1945 Constitution. Furthermore, the DPR was stated to be the holder of legislative power as articulated in Article 20 Paragraph 1 of the 1945 Constitution transferring the locus of legislative power from the President to the DPR.

The transfer of legislative power from the President to the DPR was part of the effort to restructure the position and relationship between the executive and legislative branches. This transfer or shift of legislative power to the DPR was a characteristic of a presidential system and a manifestation of the exercise of popular sovereignty and the limitation of power. The authority of the President in the 1945 Constitution after the amendment distorted the principle of separation of powers and led to an imbalance between the positions of the President and DPR in lawmaking. Due to the President's legislative position, this imbalance created significant presidential dominance in lawmaking and had the potential to trigger abuses of power. The President's legislative power after the amendment of the 1945 Constitution was inappropriate when placed within the framework of a presidential system of government. Even the President's legislative power after the amendment was considered incomprehensible from the

\textsuperscript{24} Refer to Article 20 paragraph (5) of the 1945 Constitution: "In the event that the draft law approved jointly is not ratified by the president within thirty days from the date the draft law is approved, the draft law shall become law and must be promulgated."
perspective of any governance system that evolved in the era of modern democracy, emphasizing the power to enact laws lies with the representative bodies of the society.\textsuperscript{25} A presidential system of government placed the legislature as a proactive institution in lawmaking. However, the presidential system in Indonesia still placed the President with authority in the legislative process. This could be observed from the broader norms compared to the executive. The participation of executive in legislation contradicted the separation of powers in a presidential system. The proactive legislative power of the President was essential for the optimization of the governance power vested in the authority.\textsuperscript{26} This also showed that the constitution granted the President various legislative powers including (1) proposing bills as stipulated in Article 5 Paragraph 1 of the 1945 Constitution, (2) participating in bill discussions with the DPR, (3) approving bills as explained in Article 20 Paragraph 2, (4) refusing to approve bills discussed with the DPR stated in Article 20 paragraph 3, and (5) enacting jointly approved bills. The executive power in supporting the proactive power in legislation also exceeded the principle of the separation of powers.\textsuperscript{27} Therefore, the President could not be perceived as solely enforcing laws made by other institutions. The President was rather expected to actively engage in debates with the DPR to fulfill promises and political agendas as a political leader accountable for election pledges, often manifested in legislative outcomes.

In the context of Indonesia, the proposed state budget lacked public approval, and such power was not constitutionally granted. However, the President possessed the authority to issue Government Regulations as substitutes for laws, facilitating the implementation of the previous year’s State Revenue and Expenditure Budget. Similar powers were vested in several countries, aiming to restrict the legislature's sole authority over financial matters.

The President faced challenges in fulfilling election promises without proactive legislative strength and agenda control, addressing evolving needs, and meeting public demands. Despite being entrusted with overall governance, it was crucial to prevent excessive presidential power that could undermine democracy. A significant risk arose when the President held a supermajority in parliament, potentially compromising checks and balances.

In the Indonesian context, a supermajority in the DPR represented a strong coalition where the President could secure over 75% of the seats. This trend was observed from the SBY-Boediono to the Jokowi-Maruf Government led to diminished opposition, reduced oversight, and the threat of an authoritarian pattern.

In the legislative realm, such dynamics could reduce laws to mere formalities, creating gaps between legal frameworks and public needs. Expedited or minimal deliberative processes might characterize lawmaking and foster varying traits of legislative tyranny.

d. The Position of the Regional Representative Council (DPD) as a Legislative Institution

Following the amendment of the 1945 Constitution, Indonesia’s representative institution model experienced a shift from a unicameral to a bicameral system as the MPR composition changed to include members from both the DPR and DPD. This transition


signaled a move towards bicameralism, although debates persist over whether it constitutes soft bicameralism or a tricameral model.

In a bicameral model, both chambers share similar legislative and oversight functions with equal authority differing only in the formation or appointment. The arguments for the necessity of a second chamber in representative institutions included:

1) Preventing hasty and unplanned enactment of laws by a single chamber.
2) Realizing federal principles to safeguard the will of different states against federal dominance.

The argument for a second chamber was associated with federal states which was practiced in unitary states, such as in the United Kingdom, France, and Italy, operating as bicameral parliamentary systems. Following the establishment of the DPD, Indonesia transitioned towards a bicameral parliament. According to Jimly Asshiddiqie, this shift primarily aimed to achieve the following:

1) A more stable balance between the executive and legislative branches.
2) Enhancing parliamentary efficiency through a revising chamber that could oversee the decisions of the first chamber more carefully.

The United Kingdom, which was a unitary state, comprised two chambers of parliament namely the House of Lords (Upper House) and the House of Commons (Lower House). According to Irving Stevent as stated by Saldi Isra, the House of Lords initially comprised members of the royal council including military leaders and royal advisors. With the democratization and the evolution of new social classes, there was a proposal to balance representation leading to the creation of the House of Commons. In the United States, the parliament comprised the House of Representatives as the lower house representing national interests and the Senate as the upper house representing state interests.

Regarding Indonesia's representative institution model, Formappi suggested that the DPD functioned primarily as a specialized staff of the DPR, which represented political parties portraying the DPD as an appendage of the DPR. However, Firmansyah Arifin, et al. argued that the DPD was a state institution comparable to the DPR as a representative body. While the DPD represented regional interests, the 1945 Constitution did not accord the institution the same importance as the DPR, particularly in legislative functions. Therefore, the regulations concerning the DPD in the 1945 Constitution showed that it served as a complementary body to the DPR rather than a fully-fledged legislative institution.

According to Jimly Asshiddiqie, the idea of establishing the DPD was connected to efforts in restructuring the Indonesian Parliament into two chambers (bicameral). Rules regarding the division of tasks and authorities of each representative institution were further considered necessary. Consequently, the execution of legislative, oversight, and budget functions related to regional interests should be executed by the DPD and not the DPR. Jimly Asshiddiqie further stated that the difference between the two lay in the nature of the interests represented. The DPR was intended to represent the society while

the DPD was expected to represent the regions. Distinguishing the nature of representation was important to avoid overlap in the functions of both parliamentary chambers.

The 1945 Constitution addressed the DPD's existence in two key aspects namely (1) the legislative and oversight authority as outlined in the constitution, and (2) the subordinate position to the DPR. Therefore, the DPD functioned primarily as a supplementary body to the DPR, suggesting an inherent inequality and imbalance between the two institutions. Although there was a proposal for the DPD to possess veto powers over bills approved by the DPR, opposition from both the DPR and the public led to the abandonment.  

The constitutional amendments following the evolution of the DPD and the redistribution of legislative powers failed to provide clarity on the governmental system and power division. While there was recognition of a strengthened presidential system of government, remnants of a parliamentary democracy persisted, specifically evident in joint lawmaking efforts between the President and the DPR. Despite the emphasis on the DPR's role in legislation, the constitution still allowed for presidential participation including the issuance of government regulations with legal equivalence to laws. This blurred the intended delineation of legislative authority between the DPR and the President, prompting questions about the constitution's vision for a presidential system of government and the feasibility of alternative legislative mechanisms.

3. Fast-Track Legislation Method

The Fast-track legislation method was defined as a model used in swiftly drafting and discussing bills to respond to emergencies, incorporating the standard procedures of the legislative body. The term "method" originated from the Greek language where "Metha" denoted "through," and "Hodos" represented "way," "road," "instrument," or "manner." In essence, method implied the path or manner that should be undertaken to achieve a specific objective.

According to Sanjaya, a method was the medium used to implement a formulated plan in real activities to achieve the intended objectives optimally. Correlating with this perspective and following the issues addressed in this paper, the author used the term "method" to analyze fast-track legislation in the formation of laws. Therefore, the term fast-track legislation focused on the route or stages that could be swiftly pursued in the discussion of a bill until it became law.

The fast-track legislation method has generally been applied in various countries to quickly enact laws. However, the fast-track legislation in the formation of laws was not regulated in positive law in Indonesia, although the concept of expedited legislation was often encountered in the process of forming or amending laws in Indonesia.

Several countries that implemented the fast-track legislation methods included the United Kingdom, New Zealand, the United States, and Ecuador. The countries included criteria defined for the formation of laws that could be expedited within a reasonably short period. The criteria used to qualify a bill for discussion using the fast-track legislation method varied among the countries. In the United Kingdom, the fast-track legislation method with limited criteria included the following:

1) Rectifying errors in legislation;
2) Responding to court decisions suspected of creating new regulations;

3) Ensuring that laws were applied to specific events or conditions;
4) Ensuring that the United Kingdom continued to comply with the international commitments;
5) Implementing changes contained in the Budget;
6) Maintaining and ensuring peace with Scotland, Northern Ireland, and Ireland, and;
7) Responding to public protests.

From the experiences implemented by several countries, there were a minimum of two methods regarding the rapid discussion namely:37

1) The elimination of political debates in the legislative process, as observed in France, New Zealand, and the Czech Republic;
2) Limiting the duration of discussions or cutting procedural discussions in the process of forming laws, as observed in Colombia, Ecuador, Poland, Latvia, and Slovakia.

The fast-track legislation as a method for forming laws through stages that could be swiftly pursued had to avoid any impression of haste but strived to create good laws both procedurally and normatively. This method was intended when the country experienced urgent and pressing events that could disrupt governance continuity.

In contrast to the United States, the method commonly referred to as expedited or fast-track legislation was regulated more dynamically. In terms of regulation, the procedures and criteria for a bill to use the expedited or fast-track method were generally stipulated in the House Rules and Manual. This was a set of rules issued by the Parliament that served as a legal source governing the implementation of tasks, functions, and special procedures required.38 Generally, the method and criteria for expedited laws were regulated within the rules allowing the fast-track methods to be fully determined, used, and terminologically situated within the legislative domain.39 In the United States, the criteria were oriented toward achieving the objectives of the bill.40 The consideration of urgent circumstances did not necessarily refer to imminent threats but rather to the objectives intended to be achieved at specific moments.41 Additionally, qualifying a bill to use the fast-track method was usually accompanied by determining the procedural stages of the model, including the following:42

1) Setting a time limit for the committee of jurisdiction to report the measure;
2) Providing for automatic discharge of the committee from further consideration of the measure or for a privileged motion to discharge the committee with no debate or limited debate when the committee failed to report within the time limit;
3) Making the measure privileged for floor consideration either immediately or after a brief layover period or the measure was reported from the committee of jurisdiction or discharged;
4) Prohibiting floor amendments, including committee amendments, and imposing stringent time limits on debate during floor consideration of the measure and all questions relating to it; and
5) Providing for prompt floor consideration, with little or no debate, of any identical companion bill or resolution from the other house.

In New Zealand, the implementation pattern showcased that of the United States and the United Kingdom regulating not constitutionally but through legislative institutional regulations known as the House’s standing orders. In Indonesia, the current legislative

38 Ibid., p. 162.
41 Ibid.
formation allowed for certain justifications to adopt the fast-track legislation method. Although the process of forming laws was accommodated in the 1945 Constitution and further detailed in Law No. 12 of 2011 concerning the Formation of Legislation, Law No. 15 of 2019, and Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011. The evolving needs and demands for swiftly resolving legislative issues made it urgent to respond to these challenges. The main issue lay in not fulfilling the formal principles in the formation of legislation.

The fast-track legislation method could limit and provide authority over what could be considered a rapid legislative process. This method was similar but distinct from the Government Regulation in Lieu of Law (Perppu) possessed by the President. In a bill discussed using the fast-track legislation, the urgency differed from that within the scope of the Perppu as stipulated in Article 22 of the 1945 Constitution. The process remained normal in emergencies including joint discussions between the DPR and the President, regardless of who initiated the bill. Therefore, the authority to form laws remained with the DPR as the legislative body mandated by the 1945 Constitution. The urgency of a bill formed using the fast-track legislation method was not the same as a Perppu, as this method included a legislative process together with the legislature. Ibn Sina further proposed the following for use in Indonesia.43

First, by cutting stages of the bill that could be jointly approved by the DPR’s legislative body and the Minister or head of the institution responsible for government affairs in legislation formation. Specific discussions in the bill's discussion stages or when the bill submission outside the Prolegnas was submitted by the DPR would be carried out based on the provisions in Article 114 paragraphs (5) and (6) of DPR Regulation No. 1 of 2020 concerning the Code of Conduct that determined the Bill from the DPR. Second, by limiting the time when bill discussion was qualified to use the fast-track legislation method.

Indonesia had indirectly used the fast-track method through the provisions contained in Article 23 of Law No. 12 of 2011 concerning the Formation of Legislation, Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011, and Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011. These provisions included the following:44

1) The Prolegnas contained an open cumulative list consisting of the following: (a) Ratification of International Agreements, (b) Consequences of Constitutional Court Decisions, (c) State Budget, (d) Formation, Division and merger of provinces and/or districts/cities, as well as (e) Establishment/revocation of Government Regulations in Lieu of Law.

2) Under certain circumstances, the DPR or the President could propose a Bill outside the Prolegnas due to the following reasons: (a) To address extraordinary situations, conflicts, or natural disasters, and (b) Other specific situations ensuring national urgency regarding a Bill that could be jointly approved by the legislative body's specialized committee handling legislative matters and Ministers responsible for government affairs in legislation formation.”.

The Fast-track legislation method indirectly existed in Article 26 of Presidential Regulation No. 87 of 2014 stipulating that "Ministers proposed draft bills outside the Prolegnas as referred to in Article 24 to the Chairman of the DPR through the Legislation Body to be included in the annual priority Prolegnas." Although the rules mentioned only

43 Torando El Edwan, _Loc.Cit._
44 Refer to Article 23 of Law No. 12 of 2011 concerning the Formation of Legislation, as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislation, as further amended by Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation.
accelerated the process within the Prolegnas in the open cumulative list and annual priority. The fast-track legislation regarding the discussion of bills was not further regulated.

Two significant criticisms arose when fast-track legislation was fully implemented in Indonesia. First, there were concerns about the loss of public participation in legislative discussions. Criticism regarding the potential loss of public participation in the use of fast-track legislation methods was a common concern in countries with similar mechanisms. Second, the fast-track legislation method could potentially lead to state-capture scenarios. Although the original purpose of making laws was to protect the public interest, this objective could not be achieved when the implementing parties controlled or dominated the legislators. The interests of power or even private interests which were the typical sponsors of lawmaking could dominate the president's power to issue laws. This issue was influenced by the governance system practiced by the country. In Indonesia which implemented a stronger presidential system after the amendment of the 1945 Constitution, the fast-track legislation method strengthened and purified the governance system by providing checks and balances between the executive and legislative branches.

4. Alternatives for Using the Fast-Track Legislation Method in Indonesia

Law No. 12 of 2011 concerning the formation of legislation only regulated the formation of legislation under normal conditions, providing an alternative for swiftly forming legislation in emergencies while still engaging the legislative body. When applying the Indonesian version of the presidential system of government, it became essential that the authority to form legislation remained with the DPR (House of Representatives). Therefore, efforts to use the fast-track legislation method in Indonesia were considered necessary to ensure legal certainty as a medium of meeting the legal needs of society. This was also an effort to reduce the reliance on Government Regulation in Lieu of Law (Perppu) as a subjective presidential authority to enact laws in emergencies.

The Fast-track legislation method further served as a balancing mechanism between the legislative and executive branches in the formation of laws. This method was highly suitable for use considering that the authority to enact laws depended on the DPR even in emergencies. The DPR was required to fulfill the legislative authority or in other words, the fast-track legislation method served as a medium of refining the presidential system of government in Indonesia. This included the establishment of a checks and balances system between the legislative and executive branches in the implementation of legislative functions.

Correlating with Law No. 12 of 2011, Law No. 15 of 2019, and Law No. 13 of 2022, the benefits of the fast-track legislation method were outlined as follows:

1) In the formation of laws, there was an opportunity to evaluate the framework, and the results of the evaluation led to demands for improvement by the creators. Therefore, the legislative body had to be responsible for revising the legislative products from a substantive standpoint, reducing the need for substantive review by the Constitutional Court.

2) Responding to decisions of the Constitutional Court (MK) required a method for swiftly forming laws that had been considered contrary to the 1945 Constitution. This implied that when there was a decision of the Constitutional Court containing recommendations for a law to be promptly amended.


3) Providing a pathway for the formation of laws such as the ratification of certain international treaties which had to be done immediately without going through the normal legislative process.

4) For the formation of laws in the State Revenue and Expenditure Budget which was initiated by the president for swift discussions to take place.

5) To respond to the urgent demands of society by swiftly forming laws, including for the enactment/repeal of Presidential Regulations in Lieu of Law and the formation, division, and merger of provinces and/or districts/cities without going through the normal legislative process.

6) To reduce the number of Presidential Regulations in Lieu of Law that evolved which would be accepted by the DPR without meaningful public participation.

Based on the observed benefits, the alternative for quickly forming laws without diminishing the authority of the DPR was to implement the fast-track legislation method. This provided a solution for more effective law formation while still adhering to the stages as regulated in Law No. 12 of 2011, Law No. 15 of 2019, and Law No. 13 of 2022 through a shortened timeframe. When the fast-track legislation method was to be used, the following considerations were ideally necessary:

1) Ensuring that every stage in the formation of laws was transparent and included public participation.

2) Ensuring that the quality of laws formed using the fast-track method remained guaranteed.

3) Ensuring that laws formed still adhered to the principles of good regulation and due process.

4) Ensuring that the fast-track legislation method was truly necessary in emergencies used to address extraordinary circumstances, conflicts, natural disasters, or other urgent situations, thereby allowing for a rapid and precise response to emergencies based on laws guaranteeing legal certainty.

5) Paying attention to the rapid nature of law formation process, demanding intelligence from members of the DPR as statesmen in each stage of law formation process without politicizing the interests of specific groups.

6) Regulating and limiting the scope of laws subject to fast-track legislation, defining procedures and timeframes, as well as ensuring public access to adequate deliberation processes.

The fast-track legislation method was prohibited in the following cases, such as (a) Dealing with long-standing legal issues that had been known for a long period but had not been resolved in the formation process, such as being stuck in the DPR during the discussion phase and (b) Formation of laws using omnibus models.

Certain advantages and disadvantages of the Fast-Track Legislation method included the following. The advantages is (a) Minimizing the need for constitutional review by the Constitutional Court. Fast-Track Legislation method could promptly correct errors in laws before a review request was made to the Constitutional Court, (b) Strengthening and refining the presidential system of government in Indonesia by maintaining a check and balance between the executive and legislative branches, and (c) Responding to urgent public needs which led to a more effective legislative process in Indonesia by incorporating the Fast-Track Legislation method into Law No. 12 of 2011, Law No. 15 of 2019, and Law No. 13 of 2022 on the formation of legislation. Subsequently, applying the concept of Fast-Track Legislation while still adhering to the stages outlined in Law No. 12 of 2011 and the amendments, such as public hearings. Then, the disadvantages is (a) This method led to a legislative process that lacked participation and transparency, as well as having the potential

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48 Torando El Edwan, Loc.Cit.
for flawed decision-making, potentially breaching procedural integrity, (b) The sociological legitimacy of legislative products (laws) produced could be weakened, and (c) The Fast-Track Legislation method undermined adequate deliberation processes and meaningful participation in accommodating interests.

Considering the low quality of DPR members along with various contributing factors, a thorough analysis was necessary before implementing the fast-track legislation method. There were concerns that fast-track legislation could lead to hasty or arbitrary actions by the DPR (and/or DPD), thereby a strong commitment from DPR members to perform the duties better and more responsibly was necessary. Since the essence of the fast-track legislation method depended on the endpoint, it was essential to first address the origins namely the DPR (and/or DPD) members. Therefore, caution was needed in implementing the fast-track legislation method as an effort to further strengthen and refine the presidential system of government. It was also necessary to consider the root issues within the hands of DPR members. The ideal concept that could be proposed in the implementation of the fast-track legislation method included the following:

1) Regulation of the fast-track legislation method for legal certainty and the supremacy of law in the Constitution/UU 1945 because it concerned the authority of the DPR and the President. This required an amendment to the UUD 1945 to accommodate rapid legislative powers with the implementation rules outlined in laws that could be revised through Law on the Formation of Legislation, rather than in the DPR's rules of procedure.

2) Attention to simplifying parts of the process in the formation of laws, such as shortening the discussion time provided that the Academic Paper and Draft Law were understood by the parties in the discussion phase. This also applied to the harmonization phase which was between the Ministry of Law, Human Rights, and the State Secretariat.

3) Publication of every draft law to be discussed among all parties in the legislative and executive branches as well as the public.

4) Reform of the attitudes and awareness of DPR members (including DPD members) in performing the functions of a legislative body.

5) Restructuring of the law-forming institutions from both the DPR (and DPD) and the President.

6) The impact of the implementation was the removal of the President's power to issue Perppu, thereby the FTL Bill should be proposed by the President.

7) Setting time limits for each stage of law formation process.

8) Determining which areas of law could be made using the fast-track legislation method. It was recommended not to draft laws in the political field but rather in the social and economic fields.

C. Conclusion

Based on the preceding discussion, the following conclusions were observed:

1. The fast-track legislation method was associated to Indonesia's presidential governance system, specifically regarding the president's authority in legislative matters through the issuance of Government Regulation in Lieu of Law (Perppu). This method served as a mechanism to counterbalance the president's legislative authority, allowing for the swift enactment of laws through the fast-track legislation. Consequently, the method aimed to uphold the integrity of the DPR's authority and further refine the presidential system of government by establishing a framework of checks and balances between the legislative and executive branches.

2. Ideally, the use of the fast-track legislation method should have been governed by strict regulations while still adhering to the principles of good legislative drafting.

3. The research recommended that the legislative body regulated the fast-track legislation method within the legal framework by amending the 1945 Constitution concerning
legislation. This amendment would entail incorporating the fast-track legislation method as a consequence of adopting a presidential system of government where the authority to enact laws was vested in the DPR. The regulation aimed to balance the president’s authority to issue Perppu, eventually curtailing the president's discretion in this regard.

4. Both the DPR and the President were advised to expand the application of the fast-track legislation method beyond National Legislation Programs (prolegnas). Instead, the method should be used in situations more pertinent to social and economic fields such as addressing conflicts, natural disasters, or other urgent scenarios. This flexibility allowed for a more adaptive legislative response to urgent challenges.

5. The DPR was stimulated to impose a time limit on the discussion of bills without compromising the urgency of public participation. Furthermore, efforts were expected to streamline the process for addressing national urgencies related to a bill with joint approval by the DPR's legislative body and the relevant minister or head of the institution responsible for governmental affairs in the pertinent field of legislative drafting. These measures aimed to enhance efficiency while ensuring the consideration of critical legislative matters.

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