RESOLVING THE PROBLEMATIC ARRANGEMENT OF THE TRIUMVIRATE AS INTERIM PRESIDENT IN INDONESIA: INSIGHTS FROM GABON AND AUSTRIA

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Abstract
This article presents the challenges associated with the triumvirate concept as an interim presidential arrangement in Indonesia and alternative statutory regulations. This normative legal research was performed to determine whether Indonesia’s current triumvirate arrangement adequately addresses extraordinary events such as a vacuum of power. The statute approach and the comparative approach were employed in this research. The results showed that Indonesia’s triumvirate arrangements are insufficient and comparatively simplistic when contrasted with other countries employing similar concepts. To strengthen Indonesia’s framework, it is crucial to examine the regulatory frameworks of comparable nations, with a particular focus on insights from Gabon and Austria.

Keywords: comparative, constitution, interim president, triumvirate, vacuum of power

A. Introduction
A vacuum of power occurs when a leader loses control and there is no immediate successor to take their place. Like a physical vacuum, this absence of power tends to be quickly filled by other forces. These forces can manifest as military coups, rebellions, or armed groups.1 A vacuum of power in the state can jeopardize the stability of a country. To prevent such a vacuum, measures should be taken, such as forming an emergency government. An emergency government is a temporary or interim administration intended to maintain stability and prepare for the return of established governance.2 Historically, temporary governments were formed to facilitate the restoration of royal power.3

In Indonesia, provisions regarding a vacuum of power are regulated by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), specifically in Article 8, paragraph (3) as follows.4

1 Jonaedi Efendi, Ismu Gunadi Widodo, and Fifit Fitri Lutfianingsih, Dictionary of Popular Legal Terms (Jakarta: Prenadamedia Group, 2016), 421.
4 Constitution of the Republic of Indonesia Year 1945, Article 8 Paragraph (3).
"If the President and Vice President die, cease to exist, are dismissed, or are unable to perform their obligations during their term of office simultaneously, the acting presidents shall be the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense jointly. No later than thirty days after that, the People's Consultative Assembly shall hold a session to elect a President and Vice President from the two pairs of candidates for President and Vice President proposed by the political party or coalition of political parties whose pairs of candidates for President and Vice President received the first and second highest number of votes in the previous general election, until the end of their term of office."

Article 8, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) addresses two main points. Firstly, it specifies the officials who will serve as interim president: the Minister of Home Affairs, the Minister of Foreign Affairs, and the Minister of Defense, collectively known as the ministerial triumvirate. Secondly, it mandates that the Consultative Assembly (MPR) must convene within thirty days of a vacuum of power to elect a new president and vice president.

The term "triumvirate" has two definitions. The first defines it as a trinity or triad. The second definition describes it as a form of government or power held by three individuals acting as a unit. According to the Cambridge Dictionary, a triumvirate is a group of three people who control an organization or activity. The Oxford Dictionary traces the term to the late 16th-century Latin word "triumviratus" and defines it as a group of three people who unite to control something together. In the context of the constitutional system, a triumvirate refers to three rulers who collectively hold power in a government.

Article 8, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Indonesian Constitution) was passed in the Fourth Amendment during the 6th Plenary Session of the MPR on August 10, 2002. Although 22 years have passed, this article has never been applied because there has never been a simultaneous absence of both the president and vice president, which would create a vacuum of power.

The limited scope of Article 8, Paragraph (3) and the lack of additional regulations governing its implementation could hinder its effectiveness during extraordinary events. Besides a vacuum of power, other potential issues include conflicts of authority between the interim president and the inability of parliament to convene to elect a new president and vice president.

The limited regulation of the triumvirate in the 1945 Indonesian Constitution raises concerns about whether it is sufficient to address a vacuum of power or if there are better alternatives. Based on the background described above, this study seeks to answer two main questions: First, what are the issues with the current triumvirate arrangement as an interim president in Indonesia? Second, what are the alternatives to the triumvirate arrangement for an interim president in Indonesia?

This normative legal research employs two approaches to address the problem: the statutory approach and the comparative approach. The statutory approach analyzes all
regulations and laws related to the legal issues under study. The comparative approach compares Indonesia's legal arrangements with those of other countries regarding the same legal issues.  

B. Discussion

1. Problematics of Triumvirate Arrangement as Interim President in Indonesia

Considering that the state is continually evolving, improving the state constitution should be seen as a standard practice. Nathalie Behnke and Arthur Benzy argue that constitutional change is a response to external challenges and internal dynamics. In facing the potential for a vacuum of power, Indonesia must schedule constitutional amendments or translate the constitution into implementing rules, supported by specific arguments and alternative arrangements.

Historically, the concept of the triumvirate gained popularity during the late Roman Republic. The first triumvirate, comprising Julius Caesar, Pompey, and Crassus, initially united but later fractured as Pompey and Julius Caesar vied for power. Similarly, the second triumvirate, composed of Octavian, Lepidus, and Antony, also dissolved due to power struggles between Antony and Octavianus.

The fate of these two coalitions illustrates the inherent potential for division within triumvirates. When three individuals share equal authority, conflicts often arise among them. This potential for power struggles underscores the importance of clearly defining and limiting the powers of each member of the triumvirate who will serve as interim president.

The formulation of Article 8 Paragraph (3) of the 1945 Indonesian Constitution, ratified during the Plenary Session of the MPR on August 10, 2002, followed initial discussions presenting two options. The first option proposed assigning the duties of interim president jointly to the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense. The second option suggested the Chairmain of the DPR (People's Consultative Assembly) and the Chairman of the DPD (Regional Representative Council) act as officials of the President and Vice President, respectively.

Ultimately, the first option was chosen due to the argument that those performing presidential functions should remain within the executive branch and not delegate these tasks to heads of institutions responsible for executive oversight. This perspective aligns with the view that the selection of ministers is the president's prerogative. Ministers serve as


13 Revision Drafting Team, *Comprehensive Manuscript of* (Central Jakarta: Secretariat General and Registrar of the Constitutional Court, 2010), 6.

14 This opinion was expressed by the Indonesian Democratic Party of Struggle (PDIP) faction by Katin Subyantoro in the meeting of Ad Hoc Committee I of the 3rd MPR Working Committee on January 28, 2002, see: Ibid., 578-579. Also affirmed by the spokesperson of the Democratic Love Nation Party (PDKB), Manasse Malo at the 3rd Plenary Meeting, August 3, 2002. See: Ibid., 584.

presidential assistants and execute specific government functions, thereby functioning as agents of the executive. Returning to historical precedents, the potential for discord among members of a triumvirate in Indonesia remains a concern. Article 8 paragraph (3) of the 1945 Indonesian Constitution lacks specific regulations on the division or limitation of powers among the Triumvirate Ministers when they serve as interim president. This absence of clarity heightens the risk of power conflicts among the three ministers. Such conflicts could destabilize the functioning of the state.

Furthermore, Article 8 paragraph (3) stipulates that interim presidents can only serve for a maximum of 30 days. This limitation is intended to ensure that the MPR convenes promptly to elect a new president and vice president within this timeframe. However, a potential issue arises if the MPR fails to convene due to a lack of quorum at the plenary session. This scenario could prevent the timely election of new leadership, thereby posing a challenge to the country's governance and stability.

The absence of clear regulations for the triumvirate acting as interim president under Article 8 Paragraph (3) of the 1945 Indonesian Constitution poses significant potential problems. The failure of the MPR to convene due to a lack of quorum could prevent the timely election of a new president and vice president, leading to legal uncertainty and disruptions across sectors including politics, economy, and social welfare.

The domino effect of such a scenario could extend to the non-utilization of the annual budget and broader governance challenges. This situation underscores the inadequacy of current constitutional provisions in handling emergencies like the simultaneous vacancy of the president and vice president. Therefore, it can be concluded that Article 8 Paragraph (3) of the 1945 Constitution of Indonesia does not sufficiently address the complexities that arise in such critical situations.

2. Alternative Arrangement for the Triumvirate as Interim President in Indonesia

Article 8 Paragraph (3) of the 1945 Indonesian Constitution lacks provisions for addressing potential vacuum of powers, necessitating a solution. Enhancing this rule could involve drawing regulatory insights from other nations that employ a similar triumvirate concept. Indonesia, utilizing this concept for interim presidential appointments, can adopt regulatory frameworks from analogous systems abroad. By examining these international frameworks, we can assess whether Indonesia's provisions are on par with global standards or potentially lagging behind.

In this present research, 55 state constitutions worldwide were involved. Among these, Gabon and Austria employ the triumvirate concept. However, the constitutions of the remaining...
53 countries do not explicitly reference "triumvirate," precluding them from serving as direct comparisons.

The presence of Gabon and Austria, where the triumvirate concept is applied to appoint interim presidents, illustrates its adaptability across countries with mixed and parliamentary systems of government. In Gabon, which employs a mixed system, the triumvirate serves as a temporary presidential fill-in. Similarly, Austria, with its parliamentary system, incorporates the triumvirate concept for temporary presidential appointments. Article 64 of the Austrian Constitution specifically emphasizes the use of the triumvirate concept, stating:

“All responsibilities of the Federal President shall, in the event of his absence, initially devolve to the Federal Chancellor. A stopover in another member state of the European Union shall not be regarded as a hindrance. If the hiatus lasts more than twenty days or if according to Article 60 Paragraph (6) the Federal President is prohibited from exercising his office, the President, the Second President and the Third President of the National Council acting as a committee shall assume the responsibilities of the Federal President. The same applies if the position of Federal President is permanently vacant.”

Article 64 Paragraph (1) of the Austrian Constitution outlines that the Austrian triumvirate, consisting of the President, the Second President, and the Third President of the Austrian National Council, jointly assumes the duties of the interim presidency. This arrangement activates under three specific circumstances: firstly, when the president is incapacitated for more than 20 days; secondly, when the president is legally restricted from performing duties as per Article 60 Paragraph (6) of the Austrian Constitution; and thirdly, when the office of the federal president becomes permanently vacant. Prior to these situations, the Federal Chancellor temporarily assumes the interim presidency.

Article 64 Paragraph (2) of the Austrian Constitution details the decision-making process of the Austrian triumvirate while serving as acting president. Decisions are made through voting or majority vote among the members of the triumvirate. This paragraph also designates the President of the Austrian National Council as the leader of the triumvirate. In this capacity, the President of the National Council represents the triumvirate publicly as the acting president.

Article 64 Paragraph (3) of the Austrian Constitution specifies that even if one or two members of the Austrian triumvirate are absent, the remaining members still constitute a quorum for decision-making as acting president. In cases where there is a tie among the remaining members, the President of the higher-level National Council has the authority to break the tie and make the decision.

The final paragraph of Article 64 mandates the Federal Government to promptly organize presidential elections to fill the vacant office of the Federal President. Upon the election of a new president, the Austrian triumvirate is responsible for convening a Federal Assembly meeting to ratify the newly elected Federal President.

Article 64 of the Austrian Constitution offers significantly more detailed provisions compared to Article 8 Paragraph (3) of the 1945 Indonesian Constitution. It addresses crucial aspects such as decision-making processes within the triumvirate and procedures for conducting presidential elections during a vacancy. These provisions highlight areas where Indonesia could potentially enhance its constitutional framework, particularly in regulating decision-making to prevent deadlock among triumvirate members.

Article 64 of the Austrian Constitution also addresses the scenario where one or two members of the triumvirate are absent, ensuring regulatory measures to maintain legal certainty.

19 Constitution of Austria, https://www_constituteproject.org/constitution/Austria_2013, Article 64.
Additionally, it establishes the role of a leader within the triumvirate, mitigating potential conflicts of authority by designating a higher-ranking member.

In contrast, Gabon integrated the concept of a triumvirate assuming interim presidential duties into its Constitution as recently as 2020. Following a constitutional amendment ratified on December 29, 2020, the Gabonese Parliament endorsed a triumvirate arrangement to govern during periods of presidential incapacity. This amendment, approved by 89.1% of the National Assembly and Senate members during a congress in Libreville, Gabon's capital, was prompted by a significant challenge when President Ali Bongo Ondimba suffered a prolonged recovery from a stroke, leaving a presidential vacuum of power.20

Reliou Koubakin advocated against entrusting state power to individuals not directly elected by the people. Instead, he proposed that the President of the National Assembly, the Minister of Defense, and the President of the Senate should jointly serve as an interim triumvirate.21 This arrangement, he argued, would provide a balanced and representative interim leadership. Article 13 of the Gabonese Constitution outlines the provisions regarding the triumvirate acting as the presidency as follows: 22

"In the event of a vacancy of the Presidency of the Republic for any reason or permanent impediment to the presidency, it shall be declared by the Constitutional Court upon referral of the bureaus of both chambers of Parliament jointly by two-thirds (2/3) of its members, either on its own initiative, or on the initiative of the Government in power by two-thirds (2/3) of its members, A committee composed of the President of the Senate, the President of the National Assembly, and the Minister of Defense shall temporarily perform the duties of the President of the Republic.

Article 13 of the Gabonese Constitution includes several provisions that are analyzed as follows. Firstly, it stipulates that any vacancy in presidential powers must be declared by the Constitutional Court. This declaration occurs upon referral by both chambers of parliament, with approval from two-thirds of their members, or upon initiative by the government under the Prime Minister, similarly requiring two-thirds approval. This mechanism outlines the process by which a presidential vacancy is determined in Gabon.

Secondly, Article 13 specifies that in the event of a permanent vacancy in presidential powers, the President of the Senate, the President of the National Assembly, and the Minister of Defense assume interim presidential duties collectively as a committee. This provision underscores Gabon's adoption of the triumvirate concept to manage a presidential vacuum of power effectively.

Article 13 of the Gabonese Constitution also outlines the specific powers granted to the Gabonese triumvirate when serving as interim president. Unlike the president, the triumvirate's authority is not unrestricted. Any legislative actions or activities pertaining to Articles 15, 20, 21, 25, 26, 70, 89, and 101 of the Gabonese Constitution must first receive ratification from the Constitutional Court. This ensures that the acting triumvirate cannot exercise presidential powers arbitrarily.

Moreover, the Gabonese triumvirate, acting as interim president, does not possess all the powers typically held by the president under normal circumstances. Notably, the authorities specified in Articles 18, 19, 23, 24, and 109 paragraph 1 of the Gabonese Constitution are

excluded from their jurisdiction. Article 13 thus imposes significant restrictions on the triumvirate's authority as acting president, aiming to prevent any arbitrary exercise of power.

In cases where the President of the Senate or the President of the National Assembly cannot participate in the triumvirate as acting president, Article 13 of the Gabonese Constitution regulates the situation. According to this provision, if either official is unable to serve, they may be substituted by the First Vice President of the Senate or the First Vice President of the National Assembly. Consequently, one or both of these vice presidents will then join the Gabonese triumvirate in the role of acting president. The Constitutional Court must first officially declare the incapacity of the President of the Senate or the President of the National Assembly.

Article 13 of the Gabonese Constitution establishes procedures concerning the election of a new president and the duties of the acting members of the triumvirate. It specifies that those serving as acting presidents within the triumvirate are ineligible to run as candidates in the upcoming presidential election. Before assuming office as interim president, members of the Gabonese triumvirate must take an oath. This oath-taking ceremony must be conducted before both the Constitutional Court and Parliament, with the left hand placed on the constitution and the right hand raised before the Gabonese National Flag, as mandated by Article 12 of the Gabonese Constitution.23

Once the Constitutional Court declares a permanent vacuum of power, a vote to elect a new president must promptly follow. Article 13 outlines that this election should take place within a period ranging from 30 to 60 days after the Court's declaration, unless exceptional circumstances, determined by the Constitutional Court, necessitate a deviation from this timeframe.

Article 13 of the Gabonese Constitution governs its own application, with further details on its implementation regulated by an Organic Law. According to Bagir Manan, an Organic Law is enacted based on constitutional directives.24 It specifically serves to regulate the mechanisms outlined in Article 13 of the Gabonese Constitution. Similar to Article 64 of the Austrian Constitution, Article 13 of the Gabonese Constitution provides more detailed provisions compared to Indonesia's 1945 Constitution.

Article 13 of the Gabonese Constitution focuses on limiting the authority of the Gabonese triumvirate when acting as interim president. This limitation aims to prevent an interim president, who assumes leadership without direct electoral mandate, from exercising the same authority as a president elected under normal circumstances. This measure is crucial to prevent arbitrary actions by the interim president.

Similar to Article 64 of the Austrian Constitution, Article 13 of the Gabonese Constitution also addresses scenarios where the Gabonese triumvirate may be unable to serve as acting president. Notably, Article 13 emphasizes the importance of enacting implementing regulations to effectively operationalize its provisions.

Article 8 Paragraph (3) of the 1945 Indonesian Constitution lacks comprehensive provisions in comparison. Amending Article 8 Paragraph (3) of the 1945 Indonesian Constitution is a proposed solution to enhance the specificity of regulations concerning the triumvirate serving as a temporary presidential officer in Indonesia, particularly to address emergency scenarios where both the presidency and vice presidency are vacant simultaneously. Amendments to Article 8 Paragraph (3) of the 1945 Indonesian Constitution can provide more detailed guidelines. These amendments can be enacted by the MPR, which holds the authority to amend the Constitution.25

An alternative approach to enhance the framework for the triumvirate as interim president, without amending the constitution, is to establish regulations under the constitution specifically addressing this issue. These regulations, often referred to as implementing regulations, provide detailed guidelines on how provisions outlined in the constitution are to be applied in practice.  

For instance, Gabon has implemented this approach with Article 13 of its Constitution by mandating the creation of implementing regulations. These regulations elaborate on the mechanisms governing the triumvirate’s role as acting president. On September 13, 2021, the Gabonese Council of Ministers formalized such implementing regulations through Ordinance No. 14/PR/2021. This ordinance was publicly unveiled via video conference and is titled "Organic Law Regulating the Provisions for the Exercise of Temporary Presidential Duties by the Committee (Ordinance No. 14/PR/2021 Dated 13/09/2021)."  

The second chapter of Ordinance No. 14/PR/2021 outlines the organizational structure for the interim president who assumes office to fill a vacancy in the Gabonese presidency. The third chapter details the specific powers delegated to the Gabonese triumvirate while serving as acting president. Lastly, the fourth chapter specifies procedures for the execution of duties by the Gabonese triumvirate in their capacity as acting president.  

To address the limited regulations concerning the triumvirate as interim president under Article 8 Paragraph (3) of the 1945 Indonesian Constitution, implementing regulations similar to Ordinance No. 14/PR/2021 in Gabon could be developed. These regulations would provide detailed guidance on how the provisions of the constitution are applied in practice. This approach offers an alternative solution to improving regulatory clarity without necessitating constitutional amendments.  

Act No. 12/2011 on the Establishment of Laws and Regulations, amended most recently by Act No. 13/2022, explicitly allows for further regulation of the provisions of the 1945 Indonesian Constitution under Article 10 Paragraph (1). This legal framework makes it clear that laws can expand upon the constitutional provisions, making it an ideal avenue for implementing regulations regarding Article 8 Paragraph (3) of the 1945 Indonesian Constitution.  

The concept of a triumvirate acting as president requires meticulous arrangements due to the equal power held by three officials, which inherently creates potential conflicts. Austria and Gabon have both implemented detailed regulations for their respective triumvirates as interim presidential officials to mitigate these risks and prevent any negative outcomes from such shared authority.  

The lack of popularity of the triumvirate concept in global governance is evident from research encompassing 55 countries, including examples from Asia, Europe, the Americas, Africa, and Australia. Among these nations, only Austria and Gabon utilize the triumvirate concept for appointing interim presidential officials.  

This limited adoption may stem from the complexity involved in managing shared authority among three officials, contrasting with systems where a single official assumes interim presidential duties. For example, the Philippines mandates the Speaker of the Senate as

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29 Act No. 12/2011 on the Formation of Laws and Regulations as amended for the third time by Act No. 13/2022, Article 10 Paragraph (1).
acting president, with the Speaker of the House of Representatives as the successor in the event of absence.\textsuperscript{30} Similarly, Belarus designates the Speaker of the Council of the Republic, and Ghana appoints the Speaker of Parliament to fill the interim presidency.\textsuperscript{31} Many other countries also employ similar single-official concepts for their interim presidency arrangements.\textsuperscript{32}

The adoption of a single-official interim presidency, widely prevalent across many countries globally, presents a viable alternative for Indonesia’s interim presidential arrangement, especially given the current limited popularity of the triumvirate concept. Few nations utilize a triumvirate to designate an interim president, underscoring its lack of widespread adoption. A single-official approach simplifies the governance framework by mitigating potential conflicts of authority and avoiding complexities associated with decision-making in a triumvirate, including situations where members may be unavailable to assume the interim presidency.

C. Conclusion

The arrangement of a triumvirate as an interim presidency in Indonesia requires more detailed consideration. Article 8, Paragraph (3) of the 1945 Indonesian Constitution does not provide provisions for handling emergencies that may arise when both the presidency and vice presidency are vacant simultaneously. Drawing insights from the constitutions of Gabon and Austria, two primary alternatives emerge: First, amend Article 8, Paragraph (3) of the 1945 Indonesian Constitution to include provisions addressing simultaneous vacancies. Second, establish implementing regulations for Article 8, Paragraph (3) to outline a triumvirate mechanism in greater detail. Alternatively, it may be prudent to replace the triumvirate concept with a simpler approach to appointing interim presidents, given its perceived complexity and current lack of favor in contemporary contexts.

References

A. Book


B. Journal


C. Internet

Constitution of Austria. https://www.constituteproject.org/constitution/Austria_2013
