



Reinstating the National Guidelines of State Policy within Indonesia's Presidential System: Exploring the Possibilities

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Abstract

Placing the National Guidelines of State Policy (GBHN or PPHN) developed by the People's Consultative Assembly (MPR) as a guiding framework for the President could elevate the MPR above the President, a model practiced in Indonesia from 1945 to 1999. This paper analyzes the fundamental characteristics of a presidential system and assesses the compatibility of PPHN within this framework, proposing a model for codifying PPHN into laws and regulations that align with Indonesia's presidential system. It concludes that the essence of a presidential system lies in the separation of the legislature and executive, which prevents any accountability mechanism that subordinates the President to the legislature. While PPHN can be reinstated within a presidential system, it must not create accountability mechanisms placing the President under the MPR. The most relevant approach is to incorporate PPHN as a law replacing the RPJP Law, while also establishing checks and balances through the budgetary rights of the House of Representatives.

A. Introduction

This study examines the system of constitutional governance established by the 1945 Constitution of the Republic of Indonesia, particularly following its four amendments. The discourse surrounding the reinstatement of the National Guidelines of State Policy (GBHN), now referred to as the State Policy Principles (PPHN), often highlights a perceived contradiction with Indonesia's presidential system. Notably, the PPHN has the potential to transition the Indonesian governance model toward a parliamentary system,

positioning the President as subordinate to the People's Consultative Assembly (*MPR*).

The relationship between these two institutions is crucial in determining the nature of the governance system implemented in Indonesia. Conceptually, the governance system encompasses two branches of state power: the executive and the legislative. This framework aligns with Matthew Shugart's assertion that the governance system—whether presidential or parliamentary—serves as the legal foundation for establishing the relational dynamics between the legislature and the executive.¹

Additionally, Jimly Asshiddiqie describes the governance system in relation to the term *regeringsdaad*, which refers to the administrative functions of the executive in conjunction with the legislature.² Similarly, Stepan and Skach assert that interdependence between government and parliament characterizes a parliamentary system, while a presidential system is defined by the relative independence of these two branches.³

Consequently, a presidential system necessitates a degree of separation between executive and legislative powers, whereas a parliamentary system promotes a close, authoritative relationship between the legislature and the executive. This authoritative relationship is particularly pertinent in discussions regarding the stipulation of *PPHN*.

Despite recent developments indicating that the proposal for *PPHN* to be incorporated into the 1945 Constitution amendments has been withdrawn⁴, the conceptual and theoretical explorations of the *PPHN* remain significant, especially related to the perceived incompatibility of the *PPHN* concept with a presidential system. This governance model, which has achieved a strong consensus during the amendments to the 1945 Constitution (1999-2002), is a reflection of the reformation mandate.

This paper employs normative legal research methods, focusing on a conceptual study that investigates the comparative theory of presidential

¹ Matthew S. Shugart, "Comparative Executive Legislative Relations", in RAW Rhodes et.al., eds., *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, 2006, p.344.

² Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi (Principles Constitutional Law of Indonesia Post-Reform)*, (Jakarta: Buana Popular Science, 2007), p. 311.

³ Alfred Stepan and Cindy Skach. "Constitutional Frameworks and Democratic Consolidation", *World Politics*, 46 (1): 1–22, 1993. In a parliamentary system, the power to form and dismiss a government is vested in the parliament. See: Michael Laver, "Legislatures and Parliaments in Comparative Context", in Barry R. Weingast and Donald A. Wittman (Eds), *The Oxford Handbook of Political Economy*, (Oxford: Oxford University Press, 2006), p. 121–140.

⁴ The Chairman of MPR Review Board declared the cancellation of *PPHN* proposal to be included in the 1945 Constitution upon the agreement of all factions in MPR. *PPHN* will only be contained in the Law, considering that the *RPJPN* Law will end its validity soon. Look:<https://news.detik.com/berita/d-6026276/badan-pengkajian-mpr-skekat-batal-amendemen-konstitute-terkait-pphn> also, in:<https://nasional.kompas.com/read/2022/04/11/06005391/badan-pengkajian-mpr-disebut-stakes-tak-doing-amendment-for-pphn-tapi?page=all> [last accessed December 2, 2022]

systems in relation to *PPHN*. Specifically, the study addresses the following questions: First, how does presidential system theory inform the relational dynamics between the legislature and the executive? Second, does the *PPHN* align with this theoretical framework? Third, how can the reinstatement of *PPHN* coexist with the Indonesian presidential system?

Through this theoretical lens, this research contributes a novel analysis of the authoritative limits of the legislature over the executive within a presidential system, distinguishing it from other governance frameworks. For proponents of *PPHN*, these insights will illuminate the potential for integrating *PPHN* provisions within the parameters of Indonesia's presidential system.

B. Discussion

1. Legislative Authority Limits on Executive in Presidential System

As outlined in the Introduction, the relationship between executive and legislative powers is crucial for understanding the system of governance. In contrast, the judiciary operates independently, maintaining its own autonomy. This paper will focus on elaborating the variants of governance systems, specifically the parliamentary and presidential systems. While other variants exist, these two systems exemplify significant substantive differences.

To identify the most distinctive features of a presidential system, one can examine its origins in the United States⁵. According to Bagir Manan, the American presidential system is characterized by several general traits, one of which is that the President is not accountable to the legislative body, namely Congress⁶, and thus cannot be subjected to a vote of no confidence by it. Jimly Asshiddiqie similarly notes that in a presidential system, the President

⁵According to Ball and Peters, the United States is the most prominent reference for presidential systems. Other countries, especially in Central America and South America, are considered to be imitating the American presidency. See: Alan R. Ball and Brainard Guy Peters, *Modern Politics and Government*, 4th Edition, (Hampshire and London: Macmillan Education, 1988), p. 49. In line with Krotoszynski who stated that the United States is a reference for studies related to the presidential system in order to see that the implementation of the concept of separation of power can be carried out responsibly between the legislature and the executive. See: Ronald J. Krotoszynski Jr., "The Separation of Legislative and Executive Powers", in Tom Ginsburg and Rosalind Dixon, *Comparative Constitutional Law*, (Cheltenham, UK and Northampton, USA: Edward Elgar, 2011), p. 237.

⁶Bagir Manan, *Presidential Institution*, (Yogyakarta: FH UII, 2003), p. 48-49. Compare: Ridwan, Zulkarnain, and Zainal Arifin Mochtar. 2019. "Regulate the DPR's Committees: Making the Indonesian Presidential System More Representative". *Fiat Justisia: Jurnal Ilmu Hukum*, 13 (2):129-50. <https://doi.org/10.25041/fiatjustisia.v13no2.1566>. See also, in: Zulkarnain Ridwan, "Structuring the Oversight Function of the House of Representatives for the Government in the Indonesian Presidential System", *Dissertation*, Gadjah Mada University, 2019 <http://etd.repository.ugm.ac.id/penelitian/detail/175063>

operates independently and is not answerable to parliament.⁷ More succinctly, Shugart and Carey argue that the relationship between the executive and legislative branches does not rely on mutual trust.⁸

Consequently, as Alan R. Ball points out, the President can only be removed from office through the impeachment process established by the legislature.⁹ In line with CF Strong's assertion that the presidential system features a non-parliamentary executive, legislative authority does not exert influence over the executive branch.¹⁰ However, Arend Lijphart cautions that this arrangement poses the risk of legislative-executive deadlock in policymaking, as both branches derive their legitimacy from the electorate.¹¹

Conversely, the parliamentary system represents the antithesis of the presidential model, exhibiting contrasting characteristics. Sri Soemantri asserts that accountability of the executive to the legislature is a defining feature of a parliamentary system.¹² Ball and Peters emphasize that this accountability necessitates the executive's resignation if it fails to maintain the support of parliament following an accountability review.¹³

This accountability mechanism aligns with Jimly Asshiddiqie's perspective that parliamentary systems require the government to be answerable to parliament.¹⁴ Saldi Isra further highlights that, in a parliamentary system, the parliament serves as the epicenter of political power.¹⁵

It is essential to underscore that the fundamental characteristic of a presidential system lies in the separation of legislative and executive powers, where neither branch supervises the other but rather engages in a system of

⁷ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia (Constitution and Indonesia Constitutionalism)*, (Jakarta: Sekretariat General and Registrar of the Constitutional Court, 2006), p. 204-206

⁸ Matthew S. Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, (Cambridge: Cambridge University Press, 1992), p. 19. Compare: Cyril Benoit and Ana-Maria Szilagyi (2021) "Legislative direction of regulatory bureaucracies: evidence from a semi-presidential system", *The Journal of Legislative Studies*, DOI:10.1080/13572334.2021.1986281

⁹ Alan R. Ball and Brainard Guy Peters, *Modern...Op.Cit.*

¹⁰ CF Strong, *Modern Political Constitutions: An Introduction to the Comparative Study of Their History and Existing Form*, (London: The English Book Society and Sidgwick & Jackson Limited, 1966), p. 356.

¹¹ Arendt Lipjhart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, (New Haven and London: Yale University Press, 1984), p. 70.

¹² Sri Soemantri, "Sistem Pemerintahan Republik Indonesia (Government System of the Republic of Indonesia)", *Mimbar Hukum*, no. 44, vol. vi, 2003, p. 189.

¹³ Alan R. Ball and Brainard Guy Peters, *Modern...Op.Cit.*, h. 259-260; See also: Ni'matul Huda, *Ilmu Negara (General Theory of State)*, (Jakarta: Rajawali Press, 2011), p. 259-260.

¹⁴ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara (Introduction to Constitutional Law)*, p. 323.

¹⁵ Saldi Isra, *Sistem Pemerintahan Indonesia: Pergulatan Ketatanegaraan Menuju Sistem Pemerintahan Presidensial (Indonesian Government System: State Administration Struggle Towards a Presidential Government System)*, (Depok: Rajawali Pers, 2019), p. 19-21.

checks and balances. An inclination toward enhanced accountability could blur the defining features of a presidential system, shifting it closer to a parliamentary model. It is within this framework that the relationship fostered by the *PPHN* within Indonesia's presidential system should be examined.

2. Compatibility of *GBHN/PPHN* with the Presidential System

In the Indonesian state system, the National Guidelines of State Policy (*GBHN*) served as a crucial document outlining the government's long-term development plans and national priorities. It provided essential guidance for policymakers and lawmakers, ensuring that their decisions were aligned with the country's overarching vision and objectives. Proponents of *GBHN* argue that it facilitates a clearer understanding of the government's direction and purpose, making it easier to assess the level of success and achievement attained by the ruling government.¹⁶

Prior to the amendments, the 1945 Constitution positioned the *GBHN* with a superior status, as it was associated with the People's Consultative Assembly (*MPR*), the highest state institution. The substantive norms inherent in this framework include:¹⁷

- a. Article 3 "The People's Consultative Assembly establishes the Constitution and the outlines of the state policy."
- b. Explanation of the State Government System III point 3 "People's Sovereignty is held by a body, called the People's Consultative Assembly, as the embodiment of all Indonesian people (*Vertretungsorgan des Willens des Staatsvolkes*). This assembly establishes the Constitution and determines the outlines of state policy. This assembly appoints the Head of State (President) and Deputy Head of State (Vice President). This assembly holds the highest state power, while the President must carry out state policy according to the outlines set by the assembly. The President appointed by the assembly is subject to and responsible to the assembly. He is the "mandatarist" of the assembly. He is obliged to carry out the decisions of the council. The President is not "*neben*" but "*untergeordnet*" to the assembly."¹⁸

¹⁶ See: Abbas Raga Sugara, "The Relation Between Direct Presidential Election System With The National Development Plan", *International Journal of Law, Environment, and Natural Resources*, 1(2), 89–96. <https://doi.org/10.51749/injurlens.v1i2.12>. See more at: Bambang Sadono and Lintang Ratri Rahmiaji, "Reformulasi Garis-Garis Besar Haluan Negara (*GBHN*) dan Amandemen Ulang Undang-Undang Dasar", *Masalah-Masalah Hukum*, Jilid 49 No.2, April 2020, p. 213-221; and also: Efriza, E. (2020). Polemik: Garis-Garis Besar Haluan Negara (*GBHN*) dan Rencana Pembangunan Jangka Panjang (*RPJP*), dan Eksistensi *MPR*. *Parapolitika : Journal of Politics and Democracy Studies*, 1(1).

¹⁷The text of the 1945 Constitution before the amendment is quoted from the website of the Constitutional Court, see: <https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ASLI.pdf>

¹⁸*Untergeordnet*, meaning 'subordinate'.

- c. Explanation of State Administration System VI.I “The position of the House of Representatives is strong. This council cannot be dissolved by the President (unlike the parliamentary system). Apart from that all the members of the People's Legislative Assembly also serve as members of the People's Consultative Assembly. Therefore, the House of Representatives (*DPR*) can always monitor the actions of the President. Suppose the *DPR* considers that the President has violated the state policy established by the Constitution or the People's Consultative Assembly. In that case, the assembly can be invited to a special session to ask for accountability to the President.”
- d. Explanation of Article 3 "Because the People's Consultative Assembly holds state sovereignty, its power is unlimited, given the dynamics of society, once in 5 years the Assembly pays attention to everything that is happening and all currents at that time and determines what directions should be used for at a later time."

The aforementioned provisions of the norms are fully cited to draw several conclusions regarding the original intent¹⁹ behind the position of the *GBHN*: First, the *MPR* has the authority to determine the *GBHN* as the highest state institution.²⁰ Second, the President is subordinate to the *MPR* and is accountable to it for the implementation of the *GBHN*. Third, the *DPR* (People's Representative Council) can convene a special session of the *MPR* if there is a violation of the *GBHN* by the President. Fourth, the *GBHN* is subject to review every five years.

These four main provisions illustrate a highly authoritative relationship between the *MPR* and the *DPR* concerning the President. If the President were to dominate the *MPR*, the latter could devolve into a rubber-stamp parliament. Conversely, this dynamic could lead to governmental instability, enabling the easy removal of the President should the *MPR* reject the President's accountability.²¹ Such relationships are typically characteristic of a

¹⁹ Original intent interpreted as desire of the framers of the constitution or law. The need to know the original intent is meant because a constitution must be interpreted strictly according to the intentions of its founders, not with modern values and interpretations, as according to Wild. See: Susan Ellis Wild, *Webster's New World Law Dictionary*, (New Jersey: Wiley Publishing, Inc., 2006), p. 159.

²⁰Historically, both conditions have occurred in Indonesia. In Ben Noble's definition, a rubber-stamp parliament is a parliament that is completely submissive and obedient to the wishes of the head of government. See: Ben Noble and Ekaterina Schulmann, “Not Just a Rubber Stamp:Parliament and Lawmaking” in Daniel Treisman (ed.), *The New Autocracy: Information, Politics, and Policy in Putin's Russia*. Washington, DC: Brookings Institution Press, p. 49. See also: Ben Noble, 2016. “Rethinking 'Rubber Stamps': Legislative Subservience, Executive Factionalism, and Policy-Making in the Russian State Duma.” *D. Phil. dissertation*, University of Oxford.

²¹According to Ali Syafa'at, *GBHN* as a product of *MPR* will provide two choices that have been proven historically. First, it becomes an institution that perpetuates power because the president is able to regulate and control the majority of *MPR* members, as happened during the New Order era. Second, it makes the government unstable because the president can be dismissed at any time when his accountability is rejected by *MPR*, which is actually more

parliamentary system of governance. Therefore, the 1945 Constitution, prior to its amendments, adhered to an impure form of presidentialism.

This relationship structure, which bore parliamentary characteristics, was amended in the 1945 Constitution to strengthen the presidential system. As a result, the *GBHN* no longer holds a significant position within the governance framework, primarily due to the equal status of the *MPR* alongside other state institutions.²² Subsequently, Law Number 25 of 2004 concerning the National Development Planning System (*SPPN*) was enacted as the foundation for national development planning following the amendments to the 1945 Constitution. This was further complemented by Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025 (*RPJPN* Law).

In terms of substance, Anggraini et al. argue that the foundational documents for national development planning established after the amendments to the 1945 Constitution bear significant similarities to the *GBHN* documents previously issued through *MPR* decrees. They conclude that both the National Development Planning System (*SPPN*) and the *GBHN* share commonalities in their principles, objectives, and scope, as both are informed by the same state goals outlined in the 1945 Constitution.²³

The primary distinction between the *SPPN* and the *GBHN* lies in the form of the legal products. While the *GBHN* was previously governed by an *MPR* decree, the *SPPN* is now codified through legislation. This shift indicates that State Policy is no longer articulated through an *MPR* decree²⁴, reflecting the *MPR*'s status as horizontally equivalent to other state institutions. Subkhan also notes this development, emphasizing that imposing the implementation of the State Policy Principles (*PPHN*) within the framework of the *GBHN* model, along with the authority to legislate and hold the *MPR* accountable, would inadvertently reintroduce elements of impure presidentialism into the Indonesian governmental system.

It is essential to explore a model for the reintroduction of *PPHN* that aligns with the evolution of Indonesia's presidential system as part of the reform

because the president cannot regulate and control the majority of *MPR* members, as was the case with Gus Dur's government. See: Muchamad Ali Safa'at, *GBHN = Majority Democracy, 2016* accessed from <http://safaat.lecture.ub.ac.id/files/2016/02/GBHN-Demokrasi-Mayoritas.pdf>.

²² See: Sudi Fahmi and Adrian Faridhi, "Limited Amendment of 1945 Basic Constitution and The Return of Main State Guidelines", *Mimbar*, Vol. 36 No. 1st (2020).

²³ *Ibid.*

²⁴ Yessi Anggraini, Armen Yasir, and Zulkarnain Ridlwan, "Comparison of Development Planning Before and After the Amendments to the 1945 Constitution" *Fiat Justitia: Jurnal Ilmu Hukum*. Volume 9 No. 1, January-March 2015, p. 78-79. DOIs:10.25041/fiatjustitia.v9no1.589

mandate.²⁵ This discussion should focus particularly on identifying the appropriate regulatory frameworks that would facilitate this alignment.

3. PPHN Regulatory Model that is Aligned with the Indonesian Government System

A review of the alignment of the State Policy Principles (*PPHN*) with a presidential system reveals that *PPHN* can only be effectively implemented in Indonesia within an impure presidential framework. The incorporation of *PPHN* into an *MPR* decree has become increasingly irrelevant, especially given that the *MPR* is no longer regarded as the highest state institution.

To address this issue, it is essential to propose an ideal regulatory model for *PPHN* that both aligns with the strengthened presidential system established by the amendments to the 1945 Constitution and serves as a practical reference and guideline for national development. Below are some potential models for the regulation of *PPHN*:

- a. *PPHN* is stated in the 1945 Constitution;
- b. *PPHN* is stated in the *MPR* Decree; or
- c. *PPHN* is stated in the Law.

Since the last amendment to the 1945 Constitution in 2002, several themes have been proposed by various state institutions for consideration in the fifth amendment. If the first model is selected, which involves incorporating *PPHN* into the 1945 Constitution, it would necessitate a fifth amendment. This option demands considerable effort, particularly given that discussions around the fifth amendment have been ongoing for an extended period yet have repeatedly failed to achieve consensus. There remains uncertainty regarding the specific substance of *PPHN* that should be formulated, alongside concerns about potential "stowaway" provisions taking advantage of the amendment process.

This first regulatory model also risks reinstating the *MPR* as the highest state institution. The choice to establish equality among state institutions, based on the principle of checks and balances, was a deliberate decision reflecting the spirit of the Reformation. Given that *PPHN* requires compliance from all state institutions, without a designated enforcement mechanism, it may ultimately serve merely as a guideline on paper.²⁶

²⁵According to Subkhan, the horizontal equality of state institutions means that no one is able to fully control development planning from the center to the regions, as was the case during the New Order era. See: Imam Subkhan, "GBHN and Changes in Development Planning in Indonesia (GBHN and The Change of Indonesia Development Planning)", *Aspirations*, Vol. 5, No. 2, 2014.

²⁶ See: Hilaire Tegnan, et.al, "Indonesian National Development Planning System Based on State Policy Guidelines (GBHN) : A Return to the Future?", *International Journal of Law Reconstruction*, Volume II, Issue 1, March 2018, p. 33-34. Also: Yusdiyanto, "Reviving the Broad Guidelines of State Policy (GBHN) as the Product of People's Consultative Assembly (MPR) in the Presidential Government System in Indonesia", *Fiat Justitia: Jurnal Ilmu Hukum*, 12 (4), (2018), p. 313. See more: Yuzuru Shimada, 2022. "Authoritarianism and

Conversely, if the second model is adopted, which entails placing *PPHN* into an *MPR* decree, this approach is not without its challenges. The *MPR* decrees referenced in Article 7 of Law Number 12 of 2011 pertain solely to existing *MPR* decrees and do not encompass any new ones.

The third regulatory model, however, is more aligned with the Indonesian presidential system. Integrating *PPHN* into a dedicated Law on Principles of State Policy (*PPHN* Law) would not alter the presidential system, as it does not elevate any state institution above others. Consequently, no accountability forum would position one state institution as subordinate to another. Moreover, the *PPHN* Law could be collaboratively formulated by the *DPR* and the President, potentially involving other constitutional state organs to uphold this equitable framework.

For the author, the moral support derived from the foundational principles and goals of the state, as articulated in the Preamble to the 1945 Constitution, provides a sufficient basis for the values that characterize all developmental initiatives in Indonesia. In this context, *PPHN*, as a substantive derivative, can be effectively regulated through legislation. Moreover, given that the Law on the National Long-Term Development Plan (*RPJP* Law) is approaching its conclusion, it can be replaced by the *PPHN* Law. This approach represents a compromise between the aspirations to reinstate the *GBHN* content while preserving the essence of the *RPJP*.

However, it is crucial to establish a robust oversight mechanism for the substance of the National Medium-Term Development Plan (*RPJMN*), which the President-elect will determine for a five-year term. A monitoring mechanism by the *DPR*, empowered with budgetary rights, is essential in this regard. For instance, if the President fails to comply with the *PPHN* Law, the *DPR* should withhold its approval of the Bill on the State Revenue and Expenditure Budget (*APBN*) for the forthcoming year. This mechanism would ensure legal compliance of the *RPJMN* with the *PPHN* rather than relying solely on political processes. Through this framework, the *DPR* would exercise checks and balances over the President, fulfilling its oversight function alongside its budgetary rights.

C. Conclusion

Based on the discussion above, several conclusions can be drawn. First, the fundamental characteristic of a presidential system is the separation of the legislature from the executive, meaning there is no accountability mechanism that places the President under the jurisdiction of the legislature. The implementation of *PPHN* has the potential to blur this separation by introducing an accountability model more typical of a parliamentary system. Second, while *PPHN* can be reinstated within a presidential system, it is

essential that no accountability mechanism exists that subordinates the President to the MPR. Third, incorporating *PPHN* in the form of a law that replaces the *RPJPN* Law is the most relevant approach to prevent a shift in the government system. Nevertheless, it remains crucial to establish an oversight mechanism for the substance of the *RPJMN*, ensuring the *DPR* retains budgetary rights to facilitate effective monitoring.

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