

Is the Indonesian President strong or weak?

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Abstract

This paper analyzes the newly institutionalized political system in democratizing Indonesia, with particular reference to the presidential system. Consensus has not yet been reached among scholars on whether the Indonesian president is strong or weak. This paper tries to answer this question by analyzing the legislative and partisan powers of the Indonesian president. It must be acknowledged, however, that these two functions do not on their own explain the strengths and weaknesses of the president. This paper suggests that in order to fully understand the presidential system in Indonesia, we need to take into account not just the president's legislative and partisan powers, but also the legislative process and the characteristics of coalition government.

Keywords: executive-legislative relations, presidency, legislative process, democracy

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Introduction

The transition to democracy in Indonesia was completed in 2004, following four revisions of the 1945 Constitution during the years 1999-2002, and the first-ever direct presidential election was held in 2004. In the course of the institutional reforms, the political system was completely revised and, in particular, a balance of power among the executive, legislative, and judicial branches was carefully designed and implemented so as to prevent the re-establishment of an authoritarian regime. This paper analyzes the newly reformed presidential system in Indonesia. Is the Indonesian political system executive-heavy or legislative-heavy? Is the Indonesian president strong or weak? Simple though they may seem, these questions cannot be answered easily. Some scholars argue that the Indonesian political system is legislative-heavy since the president is often frustrated in policy making by an assertive parliament, which has gained power under the democratic reforms. Others argue that the power of the president as head of state is such that the system may still be described as “executive-heavy”. However, these arguments lack an empirical base. Research that clearly defines what constitutes the strength (or the weakness) of the Indonesian president has been seldom attempted. By following an empirical approach, this study will attempt to make good this deficiency.

In order to measure the president's strength, it is not sufficient to confine the study to the institution of president.. The strength and the weakness of the president is, rather, relative to other political institutions. If we define the strength of the president as the extent to which the president can deliver his or her own policy decisions, we have to analyze the relationship between president and parliament, which holds legislative powers. In our analysis, we need to look at the legislative powers given to the president and the partisan power that is held by the president to gain and maintain support in parliament. In the case of Indonesia, legislative powers possessed by the president are generally those that are provided in the constitution. However, to fully comprehend the president's legislative powers, it is not sufficient to read the relevant constitutional articles, for legislative powers are sometimes embedded in legislative process. Rather, we need to analyze the institutionalization of the legislative process in order to understand how the president's legislative powers are constituted. In the Indonesian case, reading constitutional articles does not equip us with an understanding of the president's legislative powers. This paper, therefore, analyzes the president's legislative powers not only through analysis of the constitutional articles but also by observation of the legislative process at work.

Partisan power, on the other hand, can be generally measured in terms of the share of ruling-party seats in parliament and by the president's party discipline. Owing to geographical, ethnic, and religious diversities, Indonesia inevitably has a multi-party system, and it is almost impossible for any single party to win a majority in parliament. Under a party system characterized by

what might be called polarized pluralism, it is necessary to form a coalition of the parties seeking to establish a government. In Indonesia, where only a party (or parties) holding a certain share of votes (or parliamentary seats) can propose a presidential candidate, cooperation among parties is essential. Even if a majority-holding coalition is formed, however, the size of the coalition cannot be regarded as the sole factor determining the partisan power of the president. The reason is that strong partisan power requires continuous cooperation among the ruling parties. In the polarized pluralism of Indonesia, in particular, coordination of interests among parties is difficult to achieve since many parties have to participate in a coalition. When the president or ruling parties fail to achieve the necessary coordination, one of the options is for parties to oppose government policies. We can argue that the partisan power of the president depends not only on the discipline of each party but also on the discipline of any coalition that is formed by the parties. This paper, therefore, takes into account the discipline of coalitions as well as the discipline of political parties.

By analyzing the legislative and partisan powers of the president, the paper attempts to illustrate the relationship between president and parliament in Indonesia. Its central purpose is to answer the question of whether the Indonesian president is strong or weak.

The rest of the paper is organized as follows. Section I offers a general overview of Indonesia's presidential system by discussing the historical evolution and current institutional setting of the post of president. Section II analyzes legislative activities since the beginning of democratization by using

statistical data on the number of enacted laws and on the length of the periods of deliberation, and will attempt to demonstrate that the analysis of the legislative and partisan powers of the president cannot fully explain legislative activities within the political system. Following on from this, Section III discusses the need for an analysis of the deliberation procedures and also considers cooperation among political parties, two aspects that have been neglected by previous studies. The final section concludes by providing the author's answer to the question of whether Indonesia's president is strong or weak.

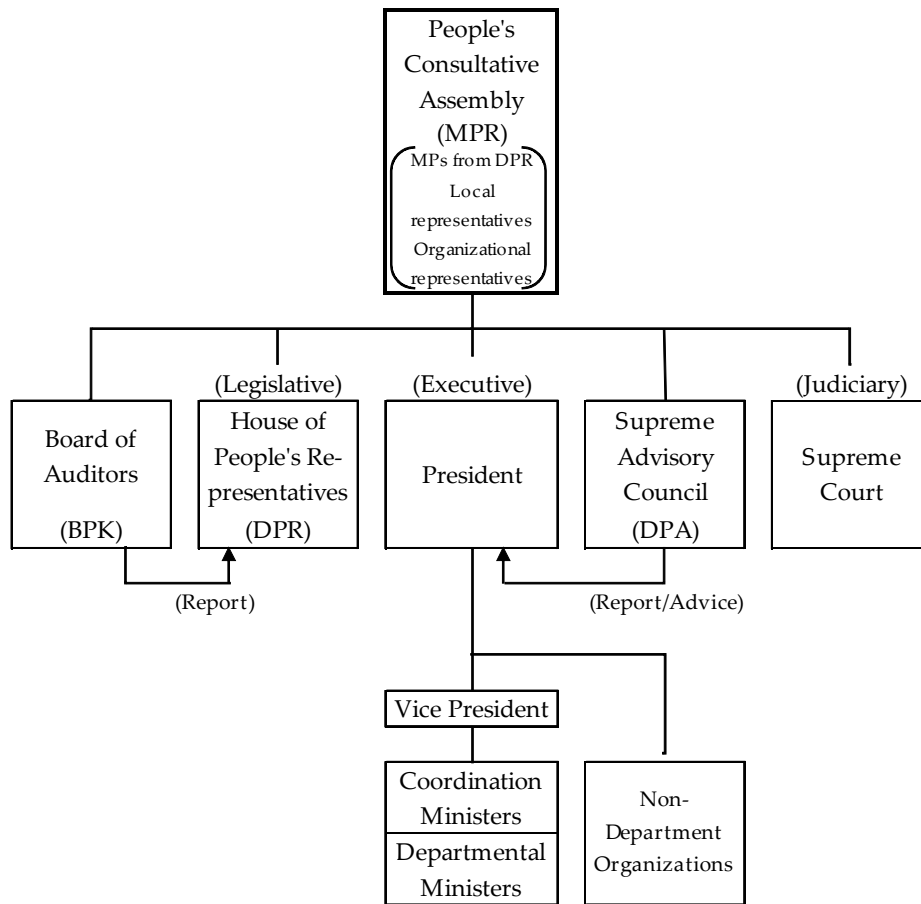
I. The Indonesian Presidential System

A. The President in the Constitutional System

Ever since independence, there has been a presidential system in Indonesia, except for the nine years of the so-called "Parliamentary Democracy" during the 1950s. However, the powers given to the president and the relationship between the president and other political institutions such as parliament, the parties, and the courts have varied over time.

From 1945 to 1949, the main elements of a parliamentary system were adopted under a provisional legislature known as the Central Indonesian National Committee. This occurred in the context of the chaotic situation caused by the independence struggle against Dutch colonial rule.

Figure 1. Indonesia's political system before the first constitutional amendment in 1999



(Source) The Author.

In 1959, President Sukarno declared a return to the 1945 Constitution after the alleged failure of parliamentary democracy under the 1950 Provisional Constitution, and the political system was changed into one that gave the president strong powers. The office of president was constitutionally supposed to be one of the high state organs, the incumbent being elected by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*: MPR). The president, however, could control the MPR by acquiring the authority to appoint most of its members (see Figure 1 for a diagram of the political system

before the 1999 constitutional amendment). Suharto, who gained power in 1966, succeeded in consolidating the authoritarian regime originally established by Sukarno through controlling, with military backing, the ruling party Golkar (*Golongan Karya*: the Functional Group).¹

With democratization in 1998, however, change was imposed on the Indonesian presidential system. Reflecting as it did the fact that the constitutional structure gave the president massive powers, allowing Presidents Sukarno and Suharto to sustain authoritarian regimes for about forty years, the 1945 Constitution was amended four times in the search to establish a democratic political system. One of the most important issues in the amendments is “how to institutionalize the separation of powers.” In the first and second amendments of 1999 and 2000 immediately following democratization, one of the aims of the institutional reforms was to transfer political powers from the president to the legislature. In effect, since the constitution was amended to limit the powers of the president, the constitutional structure was transformed from “executive-superior presidentialism” to “legislative-superior presidentialism”.

The transformation, however, resulted in political instability: the position of the president was directly affected by political maneuvering within the MPR, whose membership was dominated by the members of the House of People’s Representatives (*Dewan Perwakilan Rakyat*: DPR). Political instability

¹ Although Golkar under the Suharto regime was officially regarded not as a political party but as an association of functional groups, in effect it worked as a ruling party. In March 1999, after the fall of the Suharto regime, Golkar declared itself a political party, and ran along with other parties in the general election of 1999.

was exacerbated by the fact that the president cannot maintain a stable political base in the legislature due to the polarized pluralism of the party system. In the end, in July 2001, President Abdurrahman Wahid was impeached by the MPR because of severe conflicts between the president and the legislature.

Nevertheless, the “legislative-superior presidentialism” was itself soon reformed. The political turmoil under Abdurrahman Wahid’s government aroused the nation’s awareness of the need for further institutional reforms. In the third and fourth constitutional amendments of 2001 and 2002, attempts were made to institutionalize a more equal balance of powers, with heightened legitimacy being given to the president. It was agreed that the president should be elected not by the MPR but directly by the people, and that the impeachment of the president should require the consent of the judiciary so as to prevent undue influence on the position of the president from partisan interests in parliament. The legislative institutions were also reformed by eliminating the huge powers that had been given to the MPR. In the judicial branch, the Constitutional Court was newly installed so as to legally constrain the executive and the legislative branches. In effect, the newly institutionalized political system fully employs the principles of separation of the three powers.

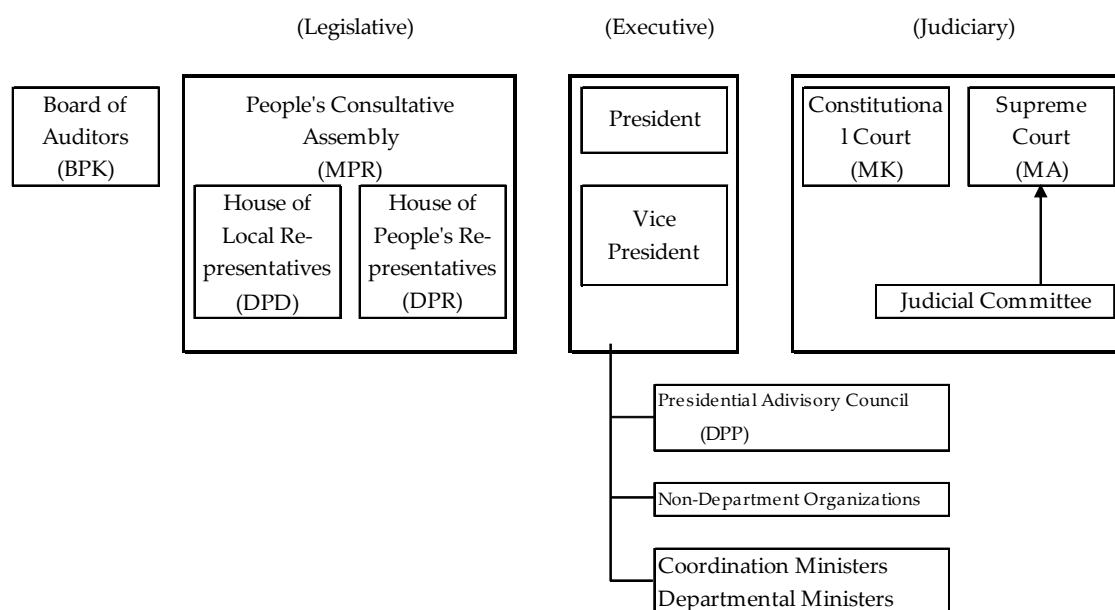
The current political system of Indonesia took its present shape in 2004 as a result of the above-mentioned four series of constitutional amendments that followed democratization (see Figure 2). Insofar as it employs the separation of the three powers --- executive, legislative and judicial --- it resembles American-style presidentialism. The president, holding executive power, is

elected directly by the people for a five-year term. The legislature is composed of the DPR, whose members are elected by proportional representation, and the House of Local Representatives (*Dewan Perwakilan Daerah*: DPD),² whose members are elected by the people to represent 33 provinces (each province has four representatives). The MPR, once the highest organ of state, is nowadays the consultative forum of the two chambers.³ The judiciary consists of the Supreme Court, whose jurisdiction covers the general courts, and the Constitutional Court, whose functions are judicial review, settlement of disputes between state institutions, and reviews of election results.

² The House of Local Representatives (DPD) was newly stipulated in the third constitutional amendment of 2001, and came into being after the 2004 general elections. Under the Suharto regime, the MPR consisted of members of the DPR, representatives of local governments, and representatives of functional groups. Although membership by representatives of functional groups was abolished after democratization, representatives of local governments were newly organized into a single chamber with members directly elected by the people. The DPD has the authority to propose bills concerning issues of regional autonomy and can participate in the deliberations on such legislation, but it does not have powers of approval.

³ When the DPD was newly institutionalized, the MPR lost its status as the highest state organ in the political system and has since been regarded as a combined chamber with the DPR as the lower chamber and the DPD as the upper chamber and as a consultative forum. Yet, as noted in footnote 2, insofar as it has no legislative power, the DPD has limited authority. Some Indonesian analysts call this type of political institution “soft” bicameralism. For example, see Jimly Asshiddiqie [2004, 52-56], one of the drafters of the constitutional amendments. Asshiddiqie has since changed his position and his recent work interprets Indonesian legislative institutions in terms of tricameralism, by which he means the MPR, the DPR, and the DPD (see, for example, Asshiddiqie [2007: 159]. His reasoning is that the MPR has the right to appoint and dismiss the president (the formal right to appoint the president and the right to dismiss the president following a decision by the Constitutional Court on a proposal of impeachment by the DPR) and the right to establish and revise the constitution.

Figure 2. Indonesia's political system after the fourth constitutional amendment in 2002



(Source) The Author.

The president is elected directly by the people in the same year as the general elections for the DPR and DPD, or in other words once every five years. Candidates for the presidential election have to be proposed as a set of president and vice president by a political party (or a group of political parties) which have a certain share of parliamentary seats. An independent candidate is not allowed to run for election.⁴ A candidate wins the election with a majority vote at the national level,⁵ but when there are no candidates who

⁴ The Law on the Presidential Election for the 2004 presidential election provided that only parties (or groups of parties) with more than 20% of the votes in the parliamentary election or 15% of the parliamentary seats are permitted to propose a candidate. The conditions for proposing candidates for the 2009 presidential election were raised to more than 25% of votes or 20% of parliamentary seats.

⁵ But a presidential candidate has needed to fulfill other conditions to win the election: that is, a candidate for the 2004 presidential election had to win more than 20% of votes in more than a half of the provinces as well as to win a majority vote at the national level; and, a candidate for the 2009 presidential election had to come first in more than half of the provinces as well as winning a majority vote at the national level.

acquire a majority vote, the top two candidates proceed to a second round of votes. The incumbent president can be reelected only once.

On the other hand, several steps have to be taken to impeach the president. First, when the DPR finds any unlawful activity by the president including corruption and criminal acts, it can, with two-thirds approval, send a request for impeachment to the Constitutional Court. When the Constitutional Court recognizes the request as legitimate, the MPR discusses the matter and the president can be impeached by approval of two-thirds of those attending the relevant MPR session. On the other hand, the president does not have the right to dissolve the DPR. In order to avoid repetition of bitter experiences in the past following unilateral dissolution of parliament by the president, the third constitutional amendment of 2000 incorporated an article that denies the president's right to dissolve the DPR.⁶

As described above, post-democratization presidentialism in Indonesia seems to employ in a simple way the principle of the separation of powers. Yet, on close observation of the relationship between the president and parliament,⁷

⁶ President Sukarno issued a Presidential Declaration (*Maklumat Presiden*) to suspend the DPR in 1960. In the previous year, President Sukarno abrogated the 1950 Provisional Constitution that was based on the parliamentary system, and announced a return to the 1945 Constitution, marking the beginning of the period of so-called "Guided Democracy." Although the political regime was called a "democracy," it was in fact an authoritarian regime under which the right of the people to participate in politics was widely constrained. After democratization in 1998, President Wahid, who faced a fierce conflict with parliament, issued a Presidential Declaration to suspend the DPR on July 22, 2001. On this occasion, in contrast to the circumstances that followed Sukarno's presidential declaration, political parties and the military refused to accept the president's decision, and instead opened the way for the impeachment of President Wahid by the MPR.

⁷ This paper focuses on the House of People's Representatives (DPR) as a legislative institution. Here, "the parliament" refers to the House of People's Representatives (DPR) unless specifically mentioned otherwise.

we can find an important difference with the presidentialism of the United States, the classic example of a presidential system that employs separation of powers. The next section analyzes Indonesia's presidentialism, focusing on legislative and partisan powers, and explores in a little more depth the question of the strengths and weaknesses of the president.

B. Legislative Powers of the President

The legislative powers of the president, as stipulated in the constitution, are far from strong. Presidential powers have been reduced dramatically since democratization, one of the most important targets being the legislative powers held by the president. The 1945 Constitution before the amendment stipulated that "the President shall be invested with the power to draw up legislation in concurrence with the House of the People's Representatives," meaning that the president and the parliament were to share legislative power. The president also had the power of veto, stipulated in the following terms in the constitution: "Should draft legislation though passed by the House of the People's Representatives not be ratified by the President, (the) said bill (will) not be submitted again during the same session of the House of People's Representatives of that period." The president, furthermore, held the right to propose the state budget as well as the right to establish government regulations in lieu of law in case of emergency, although such regulations had to be ratified by the DPR in the succeeding session. Before democratization, the president thus held various legislative powers, meaning that the president was dominant over parliament so far as legislative activities were concerned.

In fact, the president's supremacy over parliament was clearly enunciated in the Elucidation of the 1945 Constitution, which stated that "under the People's Consultative Assembly, the President is the supreme executive of the Government of the State."⁸

After democratization, however, the relationship between the president and the legislature changed completely. In the first constitutional amendment of 1999, it was clearly stipulated that "the House of People's Representatives shall hold the authority to establish laws" whereas "the President shall be entitled to submit bills to the House of People's Representatives." With these amendments, the president was deprived of the right to establish a law while still maintaining the right to propose a bill. As regards other presidential rights, the president needs agreement or consultation with parliament regarding appointments of ambassadors, consuls, and members of independent administrative organizations such as the central bank and the election commission. The same applies to grants of titles, decorations, and other honors.

The presidential veto, provided for in the 1945 Constitution prior to the amendments was deleted in the second constitutional amendment so that a bill passed by the parliament automatically comes into effect 30 days following its passage, even if the president fails to ratify it. This provision, sometimes misunderstood as amounting to a presidential veto, in fact clearly denies a veto

⁸ Indonesian laws are attached with an elucidation at the end of a body. This elucidation carries as much binding force as does a law. The 1945 Constitution was also accompanied by an elucidation (*Penjelasan tentang Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*). This, however, was abolished in the constitutional amendments.

by the president. After being passed by parliament, a bill should be ratified by the president before it can become a law in the full sense of the term, but it can nevertheless become a law without the president's ratification. Therefore, the Indonesian president does not have a veto which could allow him or her an opportunity to express disapproval of a bill.

Nevertheless, the president can participate in the deliberations on bills in parliament, and bills cannot be passed in parliament without presidential approval. In this regard, the constitution stipulates that "each bill shall be discussed by the House of People's Representatives and the President to reach joint approval." As will be discussed later, the parliament cannot proceed to final voting in the preliminary session as long as it fails to acquire presidential approval, even if all the factions of the parliament agree on a bill. Presidential approval is a precondition for the voting of parliament on a bill. In other words, when a bill is passed in parliament, the president has already approved it. On the contrary, when the president is dissatisfied with a bill, parliament cannot take a vote on it. When neither the president nor the parliament approves a bill, it is dropped and cannot be proposed in the same term of the parliamentary session. Thus, whereas the Indonesian president does not have a veto on a bill passed by parliament, he or she has a veto in the deliberations. In this way, the president has an effective veto power although it is not clearly defined as such in the constitution.

Provision of a government regulation in lieu of law was upheld in the constitutional amendment, which stated that the president has the right to establish a government regulation in lieu of law in case of emergency, although

such a regulation must be ratified by the parliament in the succeeding session. This government regulation corresponds to a “presidential decree,” enacted as a law without parliamentary deliberation, although in Indonesia, it needs parliamentary *ex post facto* approval.⁹ However, the definition of what constitutes an “emergency,” which is the precondition for the activation of the regulation, is not written into the constitution, and is left entirely to the president’s discretion.

The Indonesian president has neither the right to limit parliamentary revision of the state budget nor the right to propose a national referendum. Although the president has the right to propose a draft of the state budget, the draft should be discussed jointly with parliament in the same manner as other bills. When a draft of the state budget is not approved by parliament, the state budget of the previous year is executed. The constitution contains no provisions for the holding of national referendums. In the Suharto era, there were regulations on implementation of a national referendum to vote on whether or not the MPR should start deliberation on a constitutional

⁹ Article 5 (2) provides that “the President shall establish a Government Regulation (*Peraturan Pemerintah*) to implement the legislation expediently.” This government regulation is legally positioned as inferior to a law, and not equivalent to a Presidential Decree. Inferior to a Government Regulation are a Presidential Regulation (*Peraturan Presiden*), a Presidential Decision (*Keputusan Presiden*), and a Presidential Instruction (*Instruksi Presiden*), all of which are not equivalent to a Presidential Decree, but which are administrative regulations that stipulate specifications about the implementation of a law or of an administrative decision that relating to personnel matters and the daily duties of the government. A Presidential Regulation has been recently introduced on the basis of the Law on Legislation No. 10/2004. Before the enactment of Law No. 10/2004, a Presidential Decision (*Keputusan Presiden*) was established for the purpose of both administrative order and administrative procedure. After the enactment of Law No. 10/2004, a Presidential Regulation was established for the purpose of administrative order. A Presidential Decision (*Keputusan Presiden*) was used as an administrative decision (Asshiddiqie [2007: 223]).

amendment (the MPR Decision No. 8/1983 and the National Referendum Law No. 5/1983). These regulations were abolished after democratization.

As has already been mentioned, the Indonesian president does not inherently enjoy strong legislative powers. On the other hand, the president plays a key role in approving draft bills through his or her involvement in the deliberation process in parliament. “An effective veto” of the Indonesian president enhances the president’s influence over parliament insofar as it prevents parliament from passing a bill that is contrary to the president’s preference. This means that the president is not entirely dependent on parliament while not being superior to parliament in the legislative process.

C. Partisan Power of the President

The legislative activities of the president cannot be defined solely in terms of constitutional powers. Since parliamentary approval is needed for a bill to become a law, the president must have the support of a majority in parliament to pass a draft bill. In addition, the president’s legislative activities are influenced by factors such as whether the government is composed of a single party or multiple parties and how strongly party discipline is maintained. This section discusses the partisan power of the Indonesian president.

It is extremely difficult for the Indonesian president to maintain a stable political support base in parliament. Democratic general elections have been held four times since independence. The effective number of parliamentary parties has been as high as 6.4 in the first general election of 1955, 4.7 in the 1999 election immediately after democratization, 7.1 in the 2004 election, and 6.1 in

the 2009 election (see Table 1).¹⁰ The share of parliamentary seats of the leading party in each election was as low as 22.3% for the Indonesian National Party (*Partai Nasional Indonesia*: PNI) in the 1955 election, 33.1% for the Indonesian Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan*: PDIP) in the 1999 election, 23.1% for the Golkar Party in the 2004 election, and 26.8% for the Democrat Party (*Partai Demokrat*: PD) in the 2009 election, showing that even the leading party has never held an absolute majority in the parliament. A party system typical of the polarized pluralism of Indonesia has come about as a result of the proportional representation system which was intentionally adopted to reflect the country's multiplicity of ethnic, religious, and regional cleavages.

Considering that multiple parties acquire parliamentary seats and that there is no majority party, every president has weak partisan power in terms of his own party base. Even President Megawati Sukarnoputri, who among leaders of the post-democratization governments held the highest share of a presidential party's parliamentary seats, was head of a party, the PDIP, that held only 30.6% of parliamentary seats. Thus, in order to strengthen his or her partisan power, a president needs to establish a stable political support base through forming a coalition government. Furthermore, parties have to cooperate in the presidential election since it is only a party or a coalition of parties holding a certain share of parliamentary seats that can propose its

¹⁰ In the 2009 parliamentary election, the effective number of parliamentary parties declined to 6.1 even though the effective number of electoral parties increased to 9.6. This was because for the first time in Indonesian election history, the Law on General Elections stipulated a threshold of 2.5% votes for securing a parliamentary seat.

presidential candidate.

Table 1. Relationship between the President and the Parliament

President Period	B.J. Habibie (5/20/98~ 10/19/99)	Abdurrahman Wahid (10/20/99~ 7/22/01)	Megawati Sukarnoputri (7/23/01~ 10/19/04)	1st Susilo Bambang Yudhoyono (10/20/04~ 10/19/09)	2nd Susilo Bambang Yudhoyono (10/20/09~ 10/19/14)
Constitution	Legislative-superior		Balances of Three Powers		2009 General Elections Pluralism 9.6 6.1
	1st Amend	2nd Amend	3rd Amend	4th Amend	
Presidentialism General Elections Party System Effective Number of Electoral Parties Effective Number of Parliamentary Parties Parliamentary Seats % of a Ruling Party % of President's & Vice-President's Parties % of Ruling Coalition Parties ²⁾ Number of Coalition Parties Compositions of Coalition Parties	Executive-superior 1997 General Elections Predominant 1.6 2.1 ¹⁾		1999 General Elections Pluralism 5.1 4.7		2004 General Elections Pluralism 8.6 7.1
		10.2%	10.2%	30.6%	10.2%
	40.8%	40.8%	42.2%	33.3%	26.8%
	94.8%	94.8%	83.2%	63.8%	75.5%
	2 Parties & 1 Faction Golkar PPP Military/Police	7 Parties & 1 Faction PKB PDIP Golkar PAN PPP PBB PK	5 Parties and 1 Faction PDIP PPP PBB PAN Golkar Military/Police	7 Parties PD Golkar PKS PAN PBB PKPI PPP	6 Parties PD PKS PAN PPP PKB Golkar

(Source) The Author.

(Notes) 1. The legislative effective number of parties under the Habibie administration is calculated with the two parties of Golkar and PPP and the military/police faction holding 75 of 500 seats. The legislative effective number of parties after the 1999 general elections has been calculated without the military/police faction. If the 38 seats concerned are included in the calculation, the legislative effective number of parties becomes 5.5. The military/police faction was reduced from 75 to 38 members in October 1999 and was abolished totally in October 2004.

2. From the Habibie to the Megawati administrations inclusive, the percentages of the ruling coalition parties' seats have been calculated including those of the military/police faction since the said faction participated in these administrations.

3. Abbreviations for party names are as follows: Golkar for Golongan Karya (Functional Groups); PPP for Partai Persatuan Pembangunan (United Development Party); PKB for Partai Kebangkitan Bangsa (National Awakening Party); PDIP for Partai Demokrasi Indonesia Perjuangan (Indonesian Democratic Party of Struggle); PAN for Partai Amanat Nasional (National Mandate Party); PBB for Partai Bulan Bintang (Crescent Star Party); PK for Partai Keadilan (Justice Party), which was renamed after the 2004 general elections as PKS for Partai Keadilan Sejahtera (Prosperous Justice Party); PKPI for Partai Keadilan dan Persatuan Indonesia (Indonesian Justice and Unity Party); and PD for Partai Demokrat (Democrat Party).

In fact after democratization, all governments were established in the form of coalitions formed by more than five parties. President Wahid, the first democratically elected president in Indonesia, began governing under a “national unity” slogan, hoping that by doing so, he would overcome the serious political turmoil that accompanied the transition to democracy. Accordingly, the Wahid government was formed as a coalition of seven major political parties which together held 94.8% of the parliamentary seats, thus becoming what was known as “the rainbow cabinet.” The next president, Megawati, also formed a coalition government with five political parties, thus controlling an overall majority in the parliament. The introduction of direct presidential elections in 2004 has not changed the need for political parties to cooperate in establishing new governments, as can be seen in the case of the two governments led by President Susilo Bambang Yudhoyono who formed a coalition that enjoyed a parliamentary majority. Although President Yudhoyono began his first term as the leader of a minority government, the then-opposition Golkar Party joined the coalition after his vice-president, Yusuf Kalla, won the party chairmanship of Golkar, thus allowing Yudhoyono to form a majority government.

On the other hand, party discipline in Indonesia is generally strong. Party members are dependent on their leadership since under the proportional representation system, parliamentary seats are decided on the basis of votes won by political parties. They are also likely to obey their party’s policies since their leaders have the right to decide candidate lists. But a partial open list was introduced in the 2004 general election, and a full open list was used in the

2009 general election. These developments suggest that that party discipline may weaken in the years ahead.¹¹ Nevertheless, except for some powerful party members or prominent candidates, there are not many candidates who hold a strong support base, and most candidates still depend on their leadership.

Political institutions also persuade the party leadership to hold strong powers. Since 2002, the Law on Political Parties has stipulated that a parliamentary member who violates party rules or who switches to other parties shall be deprived not only of his party membership but also of his parliamentary membership.¹² Vacancies created by expulsion are invariably filled by other candidates from the same party. In this context, it is generally difficult for parliamentary members to explicitly express an objection to the party line. Both the electoral system and party organization are intentionally institutionalized to strengthen party discipline.¹³

¹¹ Indonesia has basically employed the proportional system for the parliamentary elections, but the system has been revised with each election. For example, in the 1999 general election, a candidate could be nominated at the regency/city government level even though a party list was made at the provincial level, and provided that the candidate came first at the regency/city level he or she could secure a parliamentary seat. In the 2004 general election, a partial open list was introduced with the condition that a candidate who won more than the threshold for each seat could acquire a parliamentary seat regardless of his or her ranking in the party list. In fact, only two candidates won more than the threshold for each seat. The Law on the General Elections No. 10/2008 for the 2009 general election, then, stipulated that a candidate was required to win 30% of the threshold for each seat. However, in December 2008, the Constitutional Court ruled that the provision of a party list was unconstitutional, a decision that resulted in the adoption of a full open list.

¹² This provision, adopted under the Suharto era, was abolished by the 1999 Law on Political Parties since it was regarded as undemocratic. But as party leaders argued that there was a need for them to maintain party discipline, the 2002 Law on Political Parties re-introduced the provision (Siegenhain [2008: 125]).

¹³ Thus, switching of membership from one party to another has hardly ever happened in

With strong party discipline and a powerful tendency toward formation of a majority coalition government, the Indonesian president might seem to enjoy strong partisan power. However, cooperation among ruling parties is not necessarily strong or sustainable. In that sense, the partisan power of the president, if not weak, is highly dependent on discipline within a coalition government. We will return to this point in Section III.

As shown above, it is impossible to judge whether the Indonesian president is strong or weak only by analyzing his or her legislative powers and partisan power. The next section will analyze the legislative activities that have occurred since democratization. Have the presidents with the aforementioned legislative and partisan powers been able to successfully establish laws based on their policies? If so, what powers and institutions have made possible this success? If otherwise, what are the causes of legislative failure? After analyzing legislative activities, we will reconsider the relationship between legislative activities and presidential powers.

II. Legislative Activities after Democratization

This section will analyze legislative activities in parliament since democratization in order to consider how easily the president can establish laws on the basis of his or her policy intentions. In particular, the section focuses on the number of laws approved by parliament and on the period

Indonesia. It should also be pointed out that party members seldom move to other parties since social cleavages are so deep that the ideological distance between parties is too wide to cross (Ziegenhain [2008: 127]).

needed between submission of a bill to parliament and the establishment of a law based on the bill. Although it might be argued that it is more important to look at a qualitative rather than a quantitative index of established laws in order to evaluate parliament's legislative activities,¹⁴ the number of established laws through deliberations in the parliament is also an important index that enables us to understand the realities of legislative activity in any democracy, and especially in cases where a huge number of laws need to be established to implement governmental policies. Indonesia is a newly democratizing country, and there are many policy issues in connection with which new or revised laws need to be provided. This means that quantitative analysis of established laws is a valid approach for understanding whether or not the president can respond to policy needs.

Furthermore, this section analyzes the length of the periods occupied by legislative deliberations in order to understand how quickly the president is able to respond to policy-related issues. If the president is "strong", deliberations on parliamentary bills can be completed within a short period of time to implement the president's own policies. If however the president is "weak", deliberations on bills are likely to be long drawn out, or worse still, bills fail to be approved by parliament.

This section deals with legislative activities between democratization in 1998 and the end of January 2009, but it focuses in particular on the era of the

¹⁴ In particular, NGOs responsible for observing parliamentary activities often argue that we need to determine the extent to which laws for improving the social welfare of the people are established. See, for example, Susanti [2007]. It has been often pointed out that the quality of laws in Indonesia is so low that the Constitutional Court has issued many unconstitutional decisions since it was installed in 2003.

first Yudhoyono government (October 2004 – January 2009) because the democratic reform of political institutions was completed in 2004 and because it is in any case quite difficult to find data on legislative activities, especially on deliberation periods, before 2004. Where necessary, the section will deal with legislative activities during the previous three governments, namely the government of President B.J. Habibie (May 20, 1998 – October 19, 1999),¹⁵ when the constitutional structure and the composition of the parliament remained unchanged from those of Suharto's authoritarian regime; the government of President Wahid (October 20, 1999 – July 22, 2001), when the president was weak relative to parliament, because of the strengthening of parliament through the post-democratization reform of political institutions; and the government of President Megawati (July 23, 2001 – October 19, 2004), when reform of political institutions was completed by the fourth constitutional amendment of 2002. The term “deliberation period” used here refers not to the total number of days occupied by parliament in deliberations on bills, but to the length of the deliberations themselves, from the day on which a bill is proposed in parliament to the day when the president ratifies a bill following parliamentary approval.¹⁶

¹⁵ Vice-president Habibie was sworn in as the president after President Suharto stepped down on May 20, 1998.

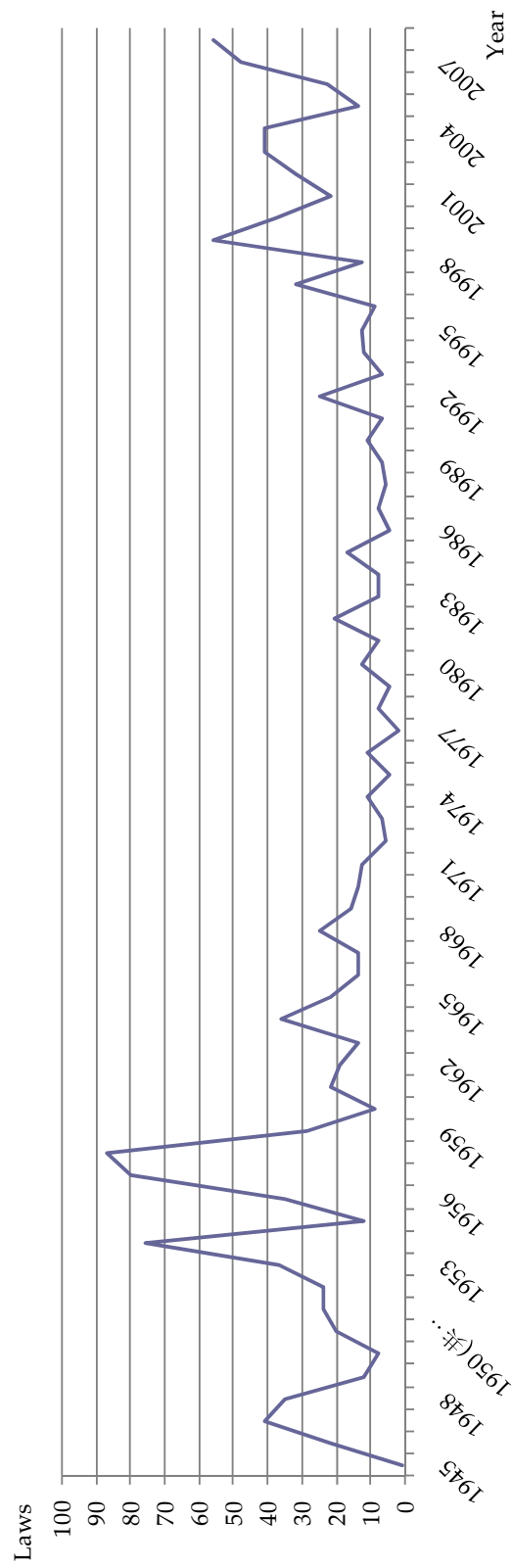
¹⁶ The Constitution stipulates that a bill automatically becomes a law 30 days after the granting of parliamentary approval unless the president ratifies it. In effect, however, the president has so far ratified most of the bills approved by parliament. There were only five laws that were made effective without presidential ratification under the Megawati government (Susanti [2007: 23]).

A. Legislative Activities after Democratization and the Number of Established Laws

The Indonesian parliament was often ridiculed as a mere “rubber stamp” since in the Suharto era, its only function was to approve bills proposed by the government. After democratization, however, with transfer of legislative powers from the president, parliament began to function as the legislative organ of state in a real sense. The number of bills deliberated and passed by parliament increased dramatically. During the 32 years of the Suharto regime (March 11, 1966 – May 20, 1998), the total number of established laws amounted to 370, or about 11 laws annually. By contrast, after democratization (from May 21, 1998 to the end of 2008), some 381 laws were established, or about 35 laws per year (see Figure 3). This indicates that in a democracy, legislative activity is considerably more vigorous than under an authoritarian regime. Under the Suharto regime, the president tended to govern not according to the principle of the rule of law, but according to his own interests, exploiting government regulations, presidential decisions, and presidential instructions, all of which were administrative regulations unilaterally established by the president. But, since democratization, any president wishing to implement his own policies has needed to obtain approval in the form of parliamentary legislation. It is logical that the number of established laws increases under the institution of any democratic era.¹⁷

¹⁷ This contention is supported by Table 2, which shows that the frequency of laws established per year was at its greatest during the period of “the Parliamentary Democracy” of the 1950s .

Figure 3. Number of Established Laws since Independence



(Source) Compiled by the Author from Tim Redaksi Tatanusa [2003], *Himpunan Peraturan Perundang-undangan Republik Indonesia [each year]*

Table 2 shows the number of laws and other regulations established under post-democratization governments. We have to be careful in comparing the number of established laws and regulations since there are differences in terms of governments and political institutions, but the most productive government in establishing laws after democratization was that of Habibie, who established 66 laws during his presidential term of one year and five months, or 45 laws per year. Most of the 66 laws were proposed by the government. It follows from this that President Habibie was highly effective in converting his policies into legislation.

President Habibie, who had been vice-president, was promoted to the presidency following the resignation of President Suharto. During the term of the Habibie government, the legislative powers of the president remained strong since the constitution had not yet been amended and the political system was still one of “executive-superior presidentialism”. Also, the parliament was composed of the same members who had been elected in the 1997 general election held under the authoritarian regime, and the ruling Golkar party held an absolute parliamentary majority. Furthermore, the main policy issues under the Habibie government were democratization and liberalization in both political and economic matters. The president and the parliament both believed that there was urgent need for institutional reforms. These factors made it possible for the Habibie government to carry out legislative activities quickly and efficiently.

Table 2. Number of Established Laws

	Habibie	Wahid	Megawati	1st Yudhoyono
Law	66	51	122	153
Proposed by Government	61	48	94	67
Initiated by MPs	5	3	28	86
The Number of Established Laws per Year	45.4	28.3	36.7	34.8
Laws Proposed by Government per Year	43.1	27.3	29.0	15.6
Laws Proposed by Government per Year Except for Laws on New Regional Government	28.9	14.2	17.9	15.6
Government Regulation in lieu of Law (Perpu)	3	3	4	12
Government Regulation (PP)	118	219	211	321
Presidential Regulation	---	---	---	384
Presidential Decision (Kepres)	255	318	350	100
Presidential Instruction (Inpres)	31	17	21	36

(Source) Compiled by the Author.

(Note) The data refer to the first Yudhoyono government as of the end of January 2009.

By contrast, the government that was least productive in establishing laws was Wahid's. Only 51 laws were established during his term of one year and nine months, or 28 laws per year. Wahid became president at a time when presidential powers had been diluted by the first and second constitutional amendments. The MPR, on the contrary, began to play a role as "the highest state organ" in a real sense as defined in the constitution. In the Suharto era, the MPR was deprived of its strength in that some of its members were appointed by the president. The MPR's role was seen as being confined to reelecting Suharto as president, but after democratization the MPR could elect and impeach the president if it so intended.

With the abolition of appointed members as part of the post-democratization reforms, influence over the MPR shifted to members of the DPR, who effectively controlled the MPR. The Wahid government was established under a legislative-superior presidentialism, and in this regard was the first government of its kind in Indonesian history. But Wahid did not understand the implications of the massive institutional changes that had occurred. His government, backed by his small Islamic party, the National Awakening Party (*Partai Kebangkitan Bangsa*: PKB), with only 10.2% of parliamentary seats, was formed by inviting almost all of the major parliamentary parties into the cabinet so that the parties that made up the ruling coalition represented no less than 94.8% of the parliamentary seats. However, collaboration among the parties could not be maintained, and splits over policy directions and the handling of government affairs began to appear and widen within a year of the president's inauguration. President Wahid was

sharply opposed to parliamentary parties who were critical of his management ability and after a corruption charge was mounted by his opponents, legislative activities became completely paralyzed for over six months. The confrontation finally ended with a triumph for parliament, which successfully impeached President Wahid.¹⁸

Let us now analyze legislative activities under the Megawati and first Yudhoyono governments. The third and fourth constitutional amendments were carried out in 2001 and 2002 respectively, and the imbalance of powers in favor of parliament was reformed to produce a more balanced relationship. The Constitutional Court was newly established in 2003, and the first direct presidential election was held in 2004. Parliament is now checked by the Constitutional Court. The president, who has a strong mandate from the people, can no longer be easily impeached by parliament.

In terms of the number of established laws, some 122 laws were established during the 1,184 days of the Megawati government while 153 laws were established during 1,564 days of the first Yudhoyono government (until the end of January 2009). The number of established laws established per year was 36 for Megawati and 34 for Yudhoyono. This shows an increase in the number of established laws per annum during the terms of these two governments, under which a more balanced power relationship was introduced.

That said, there was an increase in the number of bills initiated by

¹⁸ After President Wahid was impeached, Vice-president Megawati was promoted to become the new president. Hamzah Haz, a chairman of the United Development Party (*Partai Persatuan Pembangunan*: PPP), was elected as the new vice-president by the MPR.

parliament in this period. As regards all established laws, the share of bills initiated by parliament was 23% under the Megawati government and 56% under the first Yudhoyono government. Arrived at by a process of subtraction, the number of laws proposed by the government per year was 29 for Megawati and 15 for Yudhoyono. There was no significant difference between the number of laws established under Wahid and those passed under Megawati, and Yudhoyono was less productive in establishing laws than Wahid. We cannot find any observable correlation between changes in the constitutional structure and the number of established laws.

Table 3. Number of Established Laws according to Policy Areas

	Habibie		Wahid		Megawati		1st Yudhoyono	
Laws Proposed by Government	61	(%)	48	(%)	94	(%)	67	(%)
Politics & Justice	17	28%	3	6%	18	19%	10	15%
Economy	10	16%	14	29%	23	24%	21	31%
Society & Religion	2	3%	1	2%	1	1%	6	9%
Budget	3	5%	4	8%	8	9%	9	13%
Settlement	2	3%	1	2%	4	4%	4	6%
New Regional Government	20	33%	23	48%	36	38%	0	0%
Ratification	7	11%	2	4%	4	4%	17	25%
Laws Initiated by MPs	5	(%)	3	(%)	28	(%)	86	(%)
Politics & Justice	3	60%	0	0%	13	46%	12	14%
Economy	1	20%	0	0%	7	25%	6	7%
Society & Religion	1	20%	0	0%	3	11%	8	9%
New Regional Government	0	0%	3	100%	5	18%	60	70%

(Source) Compiled by the Author.

(Note) The data refer to the first Yudhoyono government as of the end of January 2009.

This becomes clearer when we look at the policy areas of the laws that were established (see Table 3). Among 48 laws proposed by the Wahid government, 23 laws (48%) concerned the setting up of new regional governments. Among the 94 laws proposed by the Megawati government, 36

laws (38%) concerned the establishment of new regional governments. In Indonesia, rapid and ambitious decentralization began to be carried out in 2001. In response to the transfer of powers to the second-tier local governments, new regency and city governments were set up one after another.¹⁹ Because setting up new regional governments is strongly supported by local elites and communities, and arouses little political conflict, bills for the establishment of new local governments do not face opposition in parliament. For this reason, bills of this kind are not an appropriate indication of the relationship between the president and the parliament, and have therefore been omitted from the study. Omission of the local government bills leaves 14 laws per year for Wahid, 17 for Megawati, and 15 for Yudhoyono (see Table 2). In other words, there is little difference in the number of laws established per annum among these three governments. Although Indonesia's constitutional structure dramatically changed from a legislative-superior presidentialism to a separation of three powers, the transformation did not affect the legislative activities of the president.

What is more, institutional reform of the president's legislative powers was completed in the second constitutional amendment of 2000, before Wahid

¹⁹ Autonomous local governments in Indonesia comprise provinces (*provinsi*) as the first-tier local governments and regencies/cities (*kabupaten/kota*) as the second-tier. The purpose of a provincial government is to maintain coordination among regency/city governments and monitor their activities. A regency/city government plays a central role in local autonomy with all of authority transferred from the central government except for issues of diplomacy, defense, justice, finance and money, and religion. Following the rapid implementation of decentralization, local elites began to mount strong demands for the establishment of new autonomous local governments. By April 2009, the number of provincial governments had increased from 27 to 33 and regency/city governments had increased from 311 to 471. The move to establish new local governments continues at the present time.

took office as president. This is one of the reasons why the number of established laws remained constant after the Wahid government. That said, the legislative activities of the three administrations that followed the Wahid government were far from vigorous. Although the number of established laws has increased since the fall of the Suharto regime, parliament has often failed to deliberate the bills necessary for political reform and socio-economic development. The DPR draws up a list of bills to be deliberated for the five year term, called “the National Legislation Program” (*Program Legislasi Nasional: Prolegnas*), whose priority list of bills to be deliberated upon is updated every year.²⁰ Every year between 2005 and 2008, more than a half of the bills listed for deliberation were carried over to the next year session.²¹ One of the reasons for such low legislative productivity is that it takes a long time to deliberate a bill in parliament. The next section, which analyzes deliberation periods in the Indonesian parliament, will examine this point in greater detail.

B. Legislative Activities after Democratization and Period of Deliberation

In the Indonesian parliament, it often takes several years from the presentation of a bill to its approval. Some bills proposed just after democratization have

²⁰ The Prolegnas arose out of a policy to develop a legal system under the Third Five Year Development Program (*Repelita III*) which was implemented in the 1980s. After democratization, it was taken over by the National Development Program (*Propenas*) which was drawn up by the Megawati government. The current Prolegnas was stipulated for the first time by the 2004 Law on Legislation.

²¹ For example, 55 bills were listed in the 2005 Prolegnas, but 33 of them were carried over to 2006. Some 76 bills, including 33 bills carried over from 2005, were listed in the 2006 Prolegnas, but 48 were carried over to 2007. Of the 78 bills listed in the 2007 Prolegnas, 50 were carried over to 2008 (Argama [2009]). Yet, some have doubted the effectiveness of the Prolegnas due to its combination of rigidity and recklessness. See, for example, Sherlock [2007: 36-40]).

been under deliberation for over 10 years. This section first analyzes how long it takes to deliberate a bill in parliament. We will then explain why the deliberation on bills takes up so much time.

This section mainly uses data relating to the first Yudhoyono government beginning in 2004. It is quite difficult to acquire information on the time when a bill is presented to the parliament, and this applies especially to the term between 1999 and 2004. The data presented here have been collected from the annual reports published by the General Secretariat of the DPR (Dewan Perwakilan Rakyat [annual]). I could find data on the deliberation periods for 141 out of the 153 laws established under the first Yudhoyono government (from October 2004 until the end of January 2009), but data on laws established under the Megawati government were available for only 66 out of a total of 122 laws. "Deliberation period" used here refers not to the total number of days spent deliberating the bill, but to the period from the day that the bill was presented to parliament to the day of its ratification by the president, enabling the bill to be promulgated as a law. The day of parliament's approval of the bill has not been used to mark the end of deliberation period because data on the day of ratification are more readily available than for the day of parliamentary approval and because presidents are quick to ratify legislation that they themselves support, even though the constitution stipulates that the president should ratify a bill within 30 days following parliamentary approval.

Table 4. Periods of Deliberation

	Megawati			1st Yudhoyono		
	Number of Laws	(N)	Period (days)	Number of Laws	(N)	Period (days)
Average period of Deliberation	122	66	250.0	153	141	397.7
Laws Proposed by Government	94	49	166.6	67	56	355.3
Politics & Justice	17	8	392.5	7	7	435.0
Local Autonomy	1	0	n/a	3	3	74.5
Economy	23	4	557.5	21	18	606.5
Society & Religion	1	0	n/a	6	5	95.0
Budget	8	0	n/a	9	8	86.9
Settlement	4	0	n/a	4	4	473.0
New Regional Government	36	35	74.4	0	---	---
Ratification	4	2	95.5	17	11	137.5
Perpu	4	1	94.0	12	7	110.4
Laws Initiated by MPs	28	17	490.4	86	85	419.4
Politics & Justice	9	9	610.0	10	10	744.4
Local Autonomy	4	2	375.5	2	2	429.5
Economy	7	1	759.0	6	6	622.8
Society	3	1	737.0	5	5	453.8
Religion	0	---	---	3	2	1057.0
New Regional Government	5	4	149.8	60	60	321.0

(Source) Compiled by the Author.

(Note) The data refer to the first Yudhoyono government as of the end of January 2009.

Table 4 shows the average periods of deliberation under the Megawati and Yudhoyono governments. Under the Yudhoyono government, it took over a year on average to establish a law. The deliberation periods of the laws proposed by the government were a little shorter, but even so, it took almost a year to turn these government-proposed bills into legislation. It should be noted in particular that it took on average over 600 days to deliberate economic laws.²² This indicates that, although the most pressing issues before the

²² We can observe a good example in the Yudhoyono government's handling of a policy issue concerning improvement of the investment environment in Indonesia. The Yudhoyono government, concerned with promoting economic growth and creating employment opportunities, considered the stimulation of investment as their most

Yudhoyono government were economic growth, the creation of employment opportunities, and the eradication of poverty, Yudhoyono could not effect a speedy passage of bills even on legislative procedures related to his own policy requirements.²³

On the other hand, the deliberation periods for budgets are shorter than for other policy areas. In general, a draft budget is presented by the government to the preliminary session of the DPR one day before Independence Day, and its deliberation ends before the fiscal year starts in January. There are no instances of a budget bill having been turned down by parliament. Deliberation on a budget has to finish in December so that a new year's budget can become operative from the beginning of the fiscal year. This is why it takes only three months to deliberate a budget bill.

Bills to ratify a government regulation in lieu of law also have shorter periods of deliberation. As described above, a government regulation in lieu of law is a government regulation that can be established by the president in case of emergency. This regulation has to be ratified by the parliament in the following session. The Yudhoyono government established more government

important policy issue. Moreover an improvement of the investment environment was needed for encouraging foreign businesses to invest in domestic market. With these requirements in mind, the Yudhoyono government presented a bill on the introduction of a new investment law to parliament in March 2006. However, it was not until January 2007 that deliberation on the bill began. In the deliberation process, political parties, which favored protectionist measures, proposed revisions on incentives given to foreign businesses and deregulation measures. After the government accepted some revisions proposed by the parliament, it approved the bill on March 29, 2007. It had taken a year to establish the new law on investment.

²³ Data for the Megawati government are insufficient for firm conclusions to be drawn, but it appears that it took longer to deliberate bills on economic issues than bills on other issues.

regulations in lieu of law --- there were 12 such examples by the end of January 2009 --- than any other post-democratization government.

On average, the deliberation period for bills to ratify these government regulations amounts to only three and a half months. This is mainly because there is an institutional regulation that requires parliament to end deliberation in the succeeding session. Other reasons are that such bills are easy for parliaments to approve because implementation of a government regulation in lieu of law is essentially a *fait accompli*, and leaves the parliament with no alternative other than to either approve or reject.²⁴ For these reasons, it does not take a long period of time to deliberate bills to ratify government regulations in lieu of law.²⁵

Since it often fails to acquire quick and effective cooperation from parliament as regards deliberation, the Yudhoyono government often deals with policy issues by exercising its own administrative authority.²⁶ Yudhoyono uses many government regulations in lieu of law because it is more efficient if the president at first legislates what he wants to do using his own

²⁴ Law No. 10/2004 provides that “the House of People’s Representatives only accepts or rejects a Government Regulation in lieu of Law.”

²⁵ Another example of the deliberation schedule influencing the number of approved bills is that the closer the end of the five year parliamentary term, the greater the number of bills that are approved. For example, in October 2004, the last month of the 1999-2004 parliamentary term, 17 bills were promulgated with the Presidential signature. These accounted for about ten percent of the total number of approved bills (173) during the five year term. A similar tendency can be seen at the end of the 1997-1999 parliamentary term (Ziegenhain [2008: 169]) and at the end of the 2004-2009 parliamentary term.

²⁶ For example, during the deliberation on a bill on a new investment law, the Yudhoyono government, anticipating a long period of deliberation, was forced to implement investment policy using administrative measures. In April 2006, for example, the government on its own authority designated the three islands of Batam, Bintang, and Karimun as a special economic zone in order to improve the investment environment in a particular area of the country.

authority and then requests the parliamentary approval at a later stage. For example, the government established a government regulation in lieu of law concerning free trade zones and ports (FTZs) in June 2007 as one of the methods to improve Indonesia's investment environment. Based on this regulation, the government designated the three islands of Batam, Bintang, and Karimun as an FTZ. The previous law states that the designation of an FTZ needs to be governed by a law, but Yudhoyono revised its articles using a government regulation in lieu of law, making it possible to designate an FTZ by government regulation. The government should have designated the FTZ after having acquired parliamentary approval of the revision of the existing law on FTZs. But President Yudhoyono, who wanted to quickly implement a policy of improving the Indonesian business environment, established a government regulation in lieu of law prior to presenting a bill to the parliament to designate the FTZ. A bill to ratify the decision was presented to the parliament in October 2007 after designation of the FTZ by the government. In parliament, some factions raised the question of whether or not it was proper for the government to designate an FTZ on its own authority, but parliament approved the government's proposal and the law was promulgated in November 2007. This was only five months after the government regulation in lieu of law was established, and only a month after the bill seeking its ratification was presented to parliament. This was much shorter than the deliberation period of other economic laws proposed by the first Yudhoyono government.

A government regulation in lieu of law is a short cut whereby the president, often frustrated by the problems of parliamentary management, can

quickly convert his or her own policy initiatives into legislation. But it is not a cure-all, as the constitution provides that the regulation should be established “in case of emergency”, and, moreover, a bill to ratify the regulation is not always approved by parliament. For example, the Yudhoyono government established three government regulations in lieu of law in October 2008 to prevent the global financial crisis from hitting the domestic economy. One of the regulations concerned the introduction of a financial system safety-net, designed to give the government the power to provide public funds to defaulting banks without parliamentary approval. A month after the establishment of the regulation, the government injected public funds into a private bank which was in financial difficulties due to liquidity shortages. After that, the government proposed a bill to ratify these three regulations to parliament, but parliament rejected the bill on the financial system safety-net on December 18, 2009.²⁷

Thus, even though the president has the opportunity to unilaterally legislate with a government regulation in lieu of law, he or she generally faces difficulties in effectively turning his or her policy into legislation. In many cases, it takes a long time to achieve consensus between the executive and the legislative branches of government as well as among political parties. This is why there have been a relatively small number of established laws under all of the post-democratization governments. On the other hand, after

²⁷ The reason why a bill to ratify this government regulation in lieu of law was rejected was that parliament considered that the regulation gave too much authority in policy-making to the Minister of Finance and the Governor of Bank Indonesia (the central bank), by giving them the right to inject public funds.

democratization, it was logically possible for any president with majority support in parliament to establish laws with parliamentary approval. The three governments since President Wahid have enjoyed strong partisan power. Nevertheless, none of them could effectively establish laws by acquiring parliamentary support. The next section will explain why this should be so, and will analyze and comment on parliamentary rule and the reality of coalition governments.

III. Parliamentary Rule, Coalition Government, and the Relationship between President and Parliament

A. Presidential Legislative Powers and Parliamentary Rule

The Indonesian president has strong legislative powers since he has an effective veto that can be exercised before parliament proceeds to vote for a bill while he does not have a veto after parliament approves a bill. While this stipulation of the constitution enables the president to prevent parliament from establishing a law which does not accord with presidential preferences, it causes a long period of deliberation. If a president was equipped with a veto that could be applied after the granting of parliamentary approval, parliament would be able to pass a bill as a result of internal coordination and a vote among parties, without considering the president's preferences. If in such circumstances a president was to use his or her veto, the bill could be returned to parliament for a second attempt at deliberation. In this case, the process of deliberation would end sooner or later regardless of whether the parliament overrides a veto or revises

a bill. In Indonesia, however, because parliament needs to acquire the president's approval on a bill during the decision-making process, deliberation goes on endlessly until both sides reach agreement.

On the other hand, one might expect that the president's agreement with parliament would be predictable in cases where a bill is proposed by the government by way of the president's own ruling party or parties. However, as we have seen in the analysis of the number of established laws and their deliberation periods, the president is not always able to get his own way in converting his policy into legislation. This section analyzes the parliamentary rules with a view to explaining why the Indonesian president faces difficulties in the legislative process.²⁸

The rules of parliamentary procedure in Indonesia include, besides the 1945 Constitution, Law No. 10/2004 on Legislation and the Order of the House of People's Representatives (*Peraturan Tata Tertib Dewan Perwakilan Rakyat Republik Indonesia*). Under the requirements of the Law on Legislation, the government is supposed to participate in the deliberations of parliamentary committees. Representatives from the government can also participate in discussions of other key parliamentary institutions such as the Steering Committee (*Badan Musyawarah*) and the Legislative Committee (*Badan Legislasi*).²⁹ In accordance with the stipulations of the constitution, then, both

²⁸ Some observers have pointed out that one of the reasons for the small number of approved laws is the insufficiency of the financial and human resources allocated to parliament (Ziegenhain [2008: 164]). Others have suggested that the cause lies in the low capability of the government to establish laws (Sherlock [2007: 37]).

²⁹ The Legislative Committee, newly instituted on October 25 1999, works to formulate the Prolegnas and to prepare a bill initiated by members of parliament.

the president and the parliament participate in parliamentary deliberations, and both have to agree on a bill before the parliament decides whether or not to pass it. In this sense, the government is deeply involved in parliamentary deliberations, and government and parliament attempt to build consensus through a process of mutual compromise during the deliberation process.

The process of deliberation proceeds as follows. After a bill is presented to the parliament, the Steering Committee assigns it to the Standing Committee (*Komisi*) or the Special Committee (*Panitia Khusus*). The president also orders the appropriate minister to participate in the bill's deliberation. At the beginning of the deliberation, the proposer explains the objectives of the bill. Each parliamentary faction (*fraksi*) presents a list of problems (*Daftar Inventarisasi Masalah: DIM*) which include comments and proposals of revisions to all of the bill's articles. The government and all the factions discuss each comment and proposal for coordination. Such is the detail of the proposals made by all of the factions and contained in the DIM that it inevitably takes a long time to complete the deliberations.³⁰ Since the Order stipulates that members of parliament should be provided enough opportunity to present their views and proposals, every member, whether belonging to a big or small faction, is allocated an equal amount of time to inquire or to speak without limitations. The deliberation procedures thus allow parliamentary members to continue deliberations indefinitely.

³⁰ In the past, factions which did not contribute to the DIM were not given an opportunity to speak. But now, all of the factions including those not contributing to the DIM can participate in the bill's deliberation. Katharina [2005: 104] argues that this is one of the reasons why it takes such a long time to deliberate.

Furthermore, the Order also provides that parliament should make every possible effort to deliberate (*musyawarah*) in order to reach consensus (*mufakat*). Decision by a majority vote is a last resort to be taken only when decision by *musyawarah* and *mufakat* cannot possibly be attained. *Musyawarah* and *mufakat* are often interpreted as local decision-making practices originally based on Indonesian customary rule (*adat*). Deliberation and consensus are said to be still effective in village communities, but it turns out that *musyawarah* and *mufakat* are also employed in the parliament, the central state organ of Indonesian democracy.³¹ In effect, there have been only few bills that have been approved by majority vote in parliament. Even in cases where the preliminary session takes a decision on a specific bill by majority vote, votes are hardly ever taken at the committee stage.³² The rule of consensus decision-making means that all the factions, whether big or small, are given the power of veto. A long period of deliberation has become a matter of course in a parliament where all the players are given a veto under the polarized pluralism party system.

There have been few cases in which bills have been rejected even when consensus has not been reached.³³ Although the constitution stipulates that a rejected bill cannot be proposed in the same term of the parliamentary session, this article is hardly ever observed in practice. When the factions cannot reach

³¹ Ziegenhain [2008: 161-163] points out that many members of parliament prefer a non-majority vote. The author's interview at the Secretariat General of the DPR confirms this point (August 27, 2009).

³² A point made during the author's interview at the Center of Data, Information Management, and Research, the Secretariat General, the DPR on August 25, 2009.

³³ The author's interview at the Center of Data, Information Management, and Research, the Secretariat General, the DPR on August 25, 2009.

consensus on a bill, the bill is left untouched without further deliberation. Such a bill is brought up on the agenda again when the five year term of the parliament members comes to an end. They have to decide whether the bill should be referred back to a proposer or whether it should be carried over to the next parliamentary term. If it is carried over, deliberation is continued in the next session.

As we have seen, the reasons why the number of approved bills is small and why periods of deliberation are so long in the Indonesian parliament are to be found not only in the constitutional stipulation stating that a bill should be approved jointly by the president and the parliament, but also in the decision-making rules. These include procedures such as deliberations based on the DIM, the equal opportunity of speech guaranteed to every member of parliament, decision-making by the *musyawarah* and *mufakat* principle, and an innate tendency to avoid rejecting a bill. Both the constitution and parliamentary rules, ranging from the Order to customary rule, work to limit the legislative powers of the president. The Indonesian president cannot effectively manage legislative activities due to these institutional restrictions.

B. Partisan Power of the President and Coalition Government

The Indonesian president must deal with parliament under the polarized pluralism party system. Given the fact that there has been no single party capable of holding a majority of the seats in the parliament, every president in the post-democratization era has had to strive to strengthen his or her own political base in parliament through entering into coalitions with other parties.

And every president has succeeded in establishing a coalition government which has the necessary absolute majority in parliament. Thus, Indonesian presidents have enjoyed nominally strong partisan power. Taking into account such strong partisan power, one might reasonably expect Indonesian presidents to be able to effectively control parliament and establish bills on the basis of their own policies. In reality, however, presidents have been unable to control their coalition partners despite their nominal partisan power.

All of the Indonesian presidents have invited as many parties as possible to participate in coalition governments in order to secure and expand their political support bases. Nevertheless, bringing a lot of parties into a cabinet has not always guaranteed the establishment of a stable government. The fact is that the greater the number of parties that have participated in a government, the more difficult coordination among the participating parties has become. This was particularly true under the Wahid government. Because President Wahid had to be elected by the MPR, which was then controlled by parliament, and because his government was formed as a symbol of national reconciliation after the first post-democratization elections, his coalition consisted of all the major parties in parliament. However, since Wahid failed to coordinate the various political interests among the parties, and tended to promote his policies using his own judgment, his coalition partners soon defected from the government, and the MPR in the end impeached him. The following Megawati administration, whose priority was to stabilize coalition government so as to avoid a repetition of Wahid's experience, allowed the various political interests of coalition parties to be expressed in policy arenas, while failing to

assume leadership in pushing the nation in the direction of further democratic reforms and economic recovery. The Yudhoyono government could not control the behavior of its coalition partners in the parliament, either. Under Yudhoyono's government, it was often observed that it took a long time to deliberate bills relating to his main policies and it became apparent that parliament was resolved to exercise its legislative investigations on specific political issues.

Why have Indonesian presidents failed to manage parliamentary affairs efficiently, and convert their policies into legislation, despite enjoying clear parliamentary majorities? The reason is that presidents cannot always expect support from their coalition partners. Coalition partners, in spite of being offered ministerial posts, have occasionally opposed bills presented by the government and from time to time have thwarted government policies in parliament. The share of the ruling parties' seats in parliament turned out to be a merely nominal number, and the relationship among parties in parliament proved to be quite fluid.

Why was it that cooperation among the ruling parties was not as strong as it ought to have been? It has been often pointed out that under a presidential system, a coalition of political parties is difficult to put together (see, for example, Stepan and Skach [1993] and Mainwaring [1993]). For a coalition government to be maintained, it is argued, there must be ideological affinity between ruling parties, the coalition agreement must be a fair one, elections have to be scheduled in the near future, and there have to be high presidential approval ratings (Altman [2000]). While these factors seem to be generally

applicable to Indonesia, there are not enough Indonesian cases to test the validity of the assertions. The Wahid government, which was formed by all the major parties, did not benefit from ideological affinity among the coalition partners, and the parties that opposed the president's policies defected from the coalition. Wahid's coalition could not be maintained partly because he was prone to dismiss ministers who opposed his policies. The reason why one of the key ministers, Yudhoyono, left the Megawati government during the final days of her presidential term, was the proximity of the coming parliamentary election in April 2002 and low presidential approval ratings for Megawati.³⁴

Although under the first Yudhoyono government, presidential approval ratings remained high throughout the five year term and the strength of the coalition was successfully maintained, the coalition parties did not necessarily support the president's policies. One of the reasons for this, or so it appeared, was that political parties worked out a political strategy on the assumption that they were competitors in the presidential election under the pluralistic party system. In Indonesia, as argued above, it cannot be expected that in elections, a single party will win a majority. Therefore even parties that have lost in the previous presidential election have a good chance of winning in the coming presidential election, depending on who is a candidate and how a coalition is formed. For coalition partners whose aim is to win in the coming presidential election, it is more rational to constrain cooperation with the incumbent

³⁴ Yudhoyono was not regarded as a competitive candidate by voters until the beginning of the 2004 election campaign. Yet, just one month before parliamentary election campaign started, he resigned from the Megawati cabinet following a conflict with her aides and succeeded in presenting himself as an alternative to the incumbent.

president, to adopt a critical stance toward him or her, and to present an alternative candidate from the opposition parties. In tactical terms, these are more important considerations than helping the incumbent president to secure reelection through supporting the government. In the presidential election under a pluralistic party system such as that of Indonesia, any parties which aim to win in the coming presidential election have few incentives to maintain cooperation as coalition partners. This is why a coalition government in Indonesia is always unstable even though coalition parties may enjoy a majority in parliament.

The existing literature on the partisan power of the president has focused on the ruling parties' share of parliamentary seats as well as on party discipline. Yet, when a coalition government is formed, we need to consider whether cooperation among the ruling parties can be maintained. Otherwise, we may easily overestimate the partisan power of the president. In other words, we have to take into account "coalition discipline" and not just party discipline and the ruling parties' share of seats in parliament.

Conclusion

Since democratization in 1998, the Indonesian presidential system has undergone significant changes in the election system and in the relationship between the president and other state organs. The president is nowadays elected not by the MPR but directly by the people. The presidential system has been transformed from an executive-superior to a legislative-superior system,

and also into a separation-of-powers system. It was quite obvious that the position of president under the Suharto regime was excessively strong. What of the president's power since then? This paper has explored the question of how best we can describe the presidential system of Indonesia after a series of institutional reforms.

The second section of the paper has shown that the work of the Indonesian parliament is characterized by long periods of deliberation and a small number of approved bills. As is evident from the fact that bills concerning major policy issues have been mainly proposed by the government, the president has not exercised a strong power in the completion of legislation. Is that simply because the president is weak or are there other explanations?

The constitution provides the president with the right to propose bills, the right to participate in the deliberations on bills, and an effective veto which allows the president the right to agree on the passage of a bill before parliamentary approval. These legislative powers enable the president to prevent a bill which is against his interests from being approved in the parliament. On the other hand, they cause delay and inefficient legislation. Although presidents have not led parties that have held majorities in the parliament, they have successfully maintained coalition governments through cooperation with other parties. Nevertheless, presidents have frequently been frustrated in their dealings with parliament. Why should this be so? In answering this question, this paper analyzed the legislative process in detail as well as the characteristics of coalition government.

This analysis has revealed that delays to legislation are caused partly by

institutional factors such as the *musyawarah/mufakat* principle embodied in the legislative decision-making process. The paper has also pointed out that the fragility of coalitions can be explained in terms of the lack of incentives for parties hoping to win elections, especially in circumstances where for electoral reasons, parties wish to distance themselves from the incumbent government.

In conclusion, the Indonesian president can be considered not strong enough, especially when we look not only at the legislative powers stipulated in the constitution and partisan power defined by the ruling parties' share of parliamentary seats, but also at the legislative process and the characteristics of coalition government. For these reasons, all of the Indonesian presidents in the post-democratization era have experienced delays in legislation and opposition from the parliament. We can conclude, then, that the Indonesian presidential system after the introduction of institutional reforms is relatively "weak" and comparatively "legislative-heavy".

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