

## The Implications of the Implementation of Lawmaking During the *Lame Duck* Session for the President's Impartiality in the 2024 Election

**Muhammad Anugerah Perdana**

*Faculty of Law Universitas Islam Indonesia, Yogyakarta, Indonesia*  
*anugerah.perdana89@gmail.com*

**Abstract.** PP 53/2023 led to skepticism over the president's impartiality as he dishonestly supported one of the presidential candidate pairs in the election. During a lame duck session, when a president can no longer be elected, he or she does not want to change election rules, but only focuses on leaving a good legacy during his or her term. However, Indonesia experienced an anomaly when President Joko Widodo's eldest son, Gibran Rakabuming Raka (Gibran), was nominated as a vice presidential candidate. Article 18 of PP 53/2023 says that the President, Vice President, leaders and members of the People's Consultative Assembly, leaders and members of DPR, leaders and members of DPD, ministers and ministerial-level officials, governors, vice governors, regents, vice regents, mayors, and vice mayors running for presidency and/or vice presidency do not need to resign their post. For this reason, There are several research questions to address in this study. First, how anomalous is lawmaking during the lame duck period in Indonesia? Second, how did the lame duck session lead to the president's partiality in the 2024 election? by employing the normative legal research method and using the comparative and statute approaches, the author identifies 2 (two) topics in this paper. First, in 2024 there was an anomaly in government during the lame duck session. An official was involved in the election at the end of his term. Second, the implications of the absence of restriction during the lame duck period allowed the president to be partial, giving an advantage to one pair of the presidential and/or vice presidential candidates.

**Keywords:** lame duck, election, president

**Abstrak.** Proses terbit dan materi muatan Pasal 18 PP 53/2023 menimbulkan problematik jika dikaitkan dengan penyelenggaraan pemilu yang jujur dan adil sesuai semangat yang diatur dalam Pasal 22E UUD NRI 1945. Munculnya PP 53/2023 jelas menguntungkan pihak-pihak tertentu, karena para pejabat negara tidak perlu mengundurkan diri apabila disaat yang bersamaan mencalonkan diri sebagai presiden dan/atau wakil presiden. Istilah lame duck session nampaknya relevan jika dikaitkan dengan peristiwa ini. Penelitian ini mengkaji dua hal, pertama, bagaimana anomali pembentukan hukum selama periode lame duck di Indonesia? kedua, bagaimana pengaruh periode lame duck pada keberpihakan presiden dalam pemilihan presiden/dan wakil presiden tahun 2024. Dengan menggunakan penelitian yuridis normatif dengan pendekatan komparatif dan perundang-undangan. Hasil penelitian memberikan 2 (dua) kesimpulan. Pertama, di 2024, terdapat anomali pada pemerintahan selama lame duck session ketika pemerintahan ikut terlibat dalam pemilihan umum dalam akhir masa jabatannya. Kedua, implikasi dari ketiadaan pembatasan selama periode lame duck memberikan kesempatan bagi presiden untuk memihak yang memberikan kesempatan pada salah satu pasangan kandidat presiden dan wakil presiden

**Kata Kunci:** lame duck, pemilihan umum, presiden

Submitted: 18 Maret 2024 | Reviewed: 30 Maret 2024 | Revised: 2 April 2024 | Accepted: 16 Mei 2024

## INTRODUCTION

Government Regulation Number 53 of 2023 on Procedures for Resignation in the Nomination of the Members of the House of Representatives, Members of the Regional Representative Council, Members of Regional Legislative Councils, President and Vice President, Requests for Permission in the Nomination of the President and Vice President, and Leave in Election Campaigns (PP 53/2023) is an anomaly in legislation during the lame duck period.<sup>1</sup> The lame duck session, according to Fitra Arsil<sup>2</sup>, is a the situation when the legitimacy of public officials is eroded at the end of their term of office. Therefore, in that period, the policy they make tend to affect national stability.<sup>3</sup>

According to Bacon<sup>4</sup>, when it comes to legislation, a "lame duck" refers to a member of parliament or president whose term is about to end and cannot be re-elected. However, they are still in office until the end of their term. However, the lawmaker still have rights and obligations, such as: expressing opinions, proposing motions, discussing draft laws, and approving the draft laws.<sup>5</sup> In presidentialism, as noted by Beasley and Case as well as Johnson and Crain, the lame duck session is when the president is about to end their term, is still able to make policies and make regulations.<sup>6</sup>

According to Giovanni Carbone and Andrea Cassani, during the lame duck period in Africa, the incumbents strengthened their position in elections by restraining the elections, strengthening their network in the judiciary, and leaving the legacy of their

---

<sup>1</sup> Jokowi Terbitkan PP 53/2023, Pengamat: Sarat Nuansa Kepentingan Politik, MetroTV, accessed on February 20, 2024, <https://www.metrotvnews.com/play/kM6Ca1LW-jokowi-terbitkan-pp-53-2023-pengamat-sarat-nuansa-kepentingan-politik>

<sup>2</sup> Fitra Arsil, Ariesy Tri Mauleny, and Ryan Muthiara Wasti, "Law Making Activities during Lame Duck Sessions in Indonesia (1997-2020)", *Parliamentary Affairs*, 76, November 2021, p. 421-442, <https://doi.org/10.1093/pa/gsab058>

<sup>3</sup> Jenkins, J. A. and Nokken, T. P., 'Legislative Shirking in the Pre-Twentieth Amendment Era: Presidential Influence, Party Power, and Lame-Duck Sessions of Congress, 1877-1933', *American Political Development*, 22(1), 2008, p. 111-140, <https://doi.org/10.1017/S0898588X08000023>.

<sup>4</sup> Bacon, Donald C., Davidson, Roger H., and Keller Morton (eds.) *Encyclopedia of the United States Congress*, Vol. 3, (New York: Simon & Schuster, 1995), p. 35

<sup>5</sup> William Safire, *Safire's Political Dictionary*, (New York: Oxford University Press, 1993), p. 65

<sup>6</sup> Besley T and Case A (2003), *Political Institutions and Policy Choices: Evidence from the United States*, *Journal of Economic Literature* 41(1), p. 7-73, <https://doi.org/10.1257/002205103321544693>.

term.<sup>7</sup> The incumbents amended laws and regulations on elections. Furthermore, they interfered in the judiciary to their advantage in the dispute over election results.<sup>8</sup> Once their term ends, the president who can no longer run for another term can not do so. Genevieve Kehoe suggests that presidents who cannot be elected and who end their term soon tend not to care. Therefore, they adopt a pro-people policy. This policy can be great and be continued by their successor.<sup>9</sup>

The phenomenon of South Africa is conversely proportional to that of Indonesia. It is clear when the eldest son of President Joko Widodo (Jokowi), Gibran Rakabuming Raka (Gibran), was nominated as a vice presidential candidate. In the lame duck period, Jokowi began to strengthen his position in the executive branch when taking advantage of his kinship with Gibran and Anwar Usman to change Article 169 point q of Law Number 7 of 2017 on General Elections (UU 7/2017). This change allows those under 40 to run for the presidency and/or vice presidency.<sup>10</sup> During the lame duck period, the President issued Government Regulation Number 53 of 2023 on Procedures for Resignation in the Nomination of the Members of the House of Representatives, Members of the Regional Representative Council, Members of Regional Legislative Councils, President and Vice President, Requests for Permission in the Nomination of the President and Vice President, and Leave in Election Campaigns, allowing ministerial-level officials and regional heads to use state facilities during the campaign.<sup>11</sup>

The Author believe that the lame duck period before and during general elections in Indonesia, was used to serve the interests of an individual, family, and kinship or

---

<sup>7</sup> Giovanni Carbone and Andrea Cassani, "Africa's Lame Ducks: Second-Term Presidents and the Rule of Law", *Government and Opposition*, 2, January 2023, p. 1-23, doi:10.1017/gov.2023.2

<sup>8</sup> Johnson J and Crain M, "Effects of Term Limits on Fiscal Performance: Evidence from Democratic Nations", *Public Choice* 119(2), 2004, p. 73-90, <https://doi.org/10.1023/B:PUCH.0000024183.74743.13>.

<sup>9</sup> Genevieve M. Kehoe, *Presidents and Terminal Logic Behavior: Term Limits and Executive Action in the United States, Brazil, and Argentina*, (Texas: A&M University Press, 2014), p. 105

<sup>10</sup> Constitutional Court Ruling Number 90/PUU-XXI/2023 on the Review of Law Number 7 of 2017 on General Elections

<sup>11</sup> "Catatan Kritis Fraksi NasDem DPR Soal Polemik PP 53 Tahun 2023", *Times Indonesia*, accessed on February 20, 2024, <https://timesindonesia.co.id/politik/478212/catatan-kritis-fraksi-nasdem-dpr-soal-polemik-pp-53-tahun-2023>

political dynasty.<sup>12</sup> Therefore, this study was conducted to shed light on the implications of the implementation of lawmaking during the lame duck session for the president's impartiality in the 2024 election.

## RESEARCH QUESTIONS

There are several research questions to address in this study. First, how anomalous is lawmaking during the lame duck period in Indonesia? Second, how did the lame duck session lead to the president's partiality in the 2024 election?

## METHODOLOGY

In this normative legal research, library data were analyzed.<sup>13</sup> It employed comparative and statute approaches. The comparative approach<sup>14</sup> was adopted to compare lawmaking in Indonesia. In addition, the statute approach was used to analyze the political ground of PP 53/2023 and UU 7/2017. This descriptive research<sup>15</sup> aims to describe issues and analyze data.

## DISCUSSION

### **Anomalous Legislation during the Lame Duck Period in Indonesia**

Fitra Arsil points out that there have been several lame duck sessions in Indonesia since its independence.<sup>16</sup> According to the research he began in 1997, Indonesia's legislature often experiences lame duck sessions. It cannot be separated from impure presidentialism from the early days of independence to the democratic transition. This

---

<sup>12</sup> Aspinall et al "Under a political dynasty, power is shared among family members against the principles of democracy", Aspinall, Edward, and Muhammad Uhaib As'ad, 'Understanding Family Politics: Successes and Failures of Political Dynasties in Regional Indonesia', *South East Asia Research*, 24.3 (2016), 420–35

<sup>13</sup> Peter Mahmud Marzuki, "Penelitian Hukum Normatif dalam Justifikasi Teori Hukum", Prenada Media Group, Jakarta, 2016, p. 13. See also Soetandyo Wignjosoebroto, "Hukum: Konsep dan Metode", Setara Press, Malang, 2020, p. 77.

<sup>14</sup> Walter Hug, "The History of Comparative Law", *Harvard Law Review*, 45, No. 6, (1931), p. 1027. See also Peter de Cruz, *Comparative Law in a Changing World*, (London: Cavendish Publishing Limited, 1999), p. 18

<sup>15</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, 20th edition, (Jakarta: UI Press, 2020), p. 120

<sup>16</sup> Fitra Arsil, "Law Making Activities during Lame Duck Sessions in Indonesia (1997-2020)", p. 8

system allowed 32 years of political stability under the New Order.<sup>17</sup> During the democratic transition in 1999, the lame duck session took place after President Soeharto had been replaced by President BJ Habibie. Subsequently, UUD NRI 1945 was amended, leading to the transition to pure presidentialism.<sup>18</sup>

While the lame duck period in Indonesia is often associated with a weak government, it does not necessarily result in fewer laws and regulations. However, the lame duck period in Indonesia has shown higher productivity in legislation between the executive and legislative branches. In the fifth year, the House of Representatives and the president have shown a significant increase in productivity compared to the preceding nearly four years. It is of interest to note that it has occurred during the final session prior to the inauguration or transition. During BJ Habibie administration, 21 laws and 91 government regulations were introduced in 1999. The legislation was relatively expeditious, employing the "fast-track legislation" method. It allows laws to be made in less than two years on average. To be precise, it often takes between three and five months to make a law.<sup>19</sup>

The practice during the lame duck session in the democratic transition has continued subsequent to the reform. As Susilo Bambang Yudhoyono's term of office was coming to a close, the executive and DPR made 20 laws during the lame duck session. Five laws were ratified by the president in September, and 15 laws were signed just before the president-elect was inaugurated.<sup>20</sup>

During Joko Widodo administration, in 2019 more laws were passed at the end of his first term. In 2018, 12% of the bills in the national legislation program (prolegnas) were passed into laws. The percentage saw a rise by 13.46% to 25.46% in 2019.<sup>21</sup> By the

---

<sup>17</sup> Mahruzah Hasibuan and Irwansyah, "Evaluasi implementasi periode "lame duck" di Indonesia sejak kemerdekaan Republik Indonesia tahun 1945 hingga saat ini" *Jurnal Educatio*, 9(2), August 2023, p. 716-721, <http://dx.doi.org/10.29210/02020344>

<sup>18</sup> Nuryadin, "Urgensi Pengaturan Lame Duck Session (Sesi Bebek Lumpuh) dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia", *Jurnal Salam*, 9(6), 2022, p. 1797-1814. DOI: 10.15408/sjsbs.v9i6.26798

<sup>19</sup> The data were reviewed by the author. See JDIH Setneg, *Produk Hukum Undang-Undang*, accessed on November 5, 2023, <https://jdih.setneg.go.id/Produk>.

<sup>20</sup> Nuryadin, *Urgensi Pengaturan Lame Duck Session (Sesi Bebek Lumpuh) dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia*, p. 1801

<sup>21</sup> Nuryadin, *Urgensi Pengaturan Lame Duck Session (Sesi Bebek Lumpuh) dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia*

conclusion of the first term, seven bills had been deliberated during the 2019-2020 sitting session (until September 30, 2019). This figure represents a notable increase compared to the 2018-2019 sitting session when there were only four bills in prolegnas. There have been anomalies in the lame duck period at the end of Joko Widodo's second term in office. In 2023, the quantity of bills passed into laws experienced a significant decrease despite the carry-over procedure under Law Number 15 of 2019 on the Amendment to Law Number 12 of 2011 on Lawmaking. In Prolegnas 2023, the lawmakers aimed at enacting 39 bills. Nevertheless, only six of them (15.38%) were enacted into laws. This figure is lower than the quantity in 2022.

Table 1. Bills in Prolegnas 2018, 2019, 2022, and 2023 Passed into Laws

| <b>Year</b> | <b>Prolegnas Target<sup>22</sup></b> | <b>Realization of Prolegnas<sup>23</sup></b> | <b>Realization of Prolegnas in Percentage Terms</b> |
|-------------|--------------------------------------|--|---|
| <b>2018</b> | 50                                   | 6  | 12.00%  |
| <b>2019</b> | 55                                   | 14   | 25.46%  |
| <b>2022</b> | 40                                   | 9  | 22.50%  |
| <b>2023</b> | 39                                   | 6  | 15.38%  |

Laws introduced during the lame duck period in 2014 and 2019 reflect the characteristics of government as hypothesized by Giovanni Carbone and Andrea Cassani in their research in South Africa and the United States. Despite the hypothesis, several anomalies have been seen at the conclusion of Joko Widodo administration. There are 2 (two) anomalies during the lame duck period in Joko Widodo's second term. First, at the end of their term, lame ducks often introduce more laws as their great legacy. However, Joko Widodo has not brought in more legislation during his second term. The number of laws made under his administration has decreased from 2023 to 2024. As of February 2024, only Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions

<sup>22</sup> JDIH Setneg, Produk Hukum Undang-Undang, <https://jdih.setneg.go.id/Produk>, accessed on November 5, 2023

<sup>23</sup> DPR, Program Legislasi Nasional Prioritas, accessed on November 5, 2023 <https://www.dpr.go.id/uu/prolegnas>,

was introduced.<sup>24</sup> In contrast, 6 (six) laws were passed until January during Susilo Bambang Yudhoyono administration.

Second, the low productivity in legislation cannot be separated from how the government focused on the elections. Genevieve Kehoe's assertion that the president violates election rules in the lame duck period was proven to be untrue in 2024.<sup>25</sup> Joko Widodo is no longer eligible for the presidency due to the two-term limit (10 years). For this reason, his son was nominated to continue his programs.<sup>26</sup>

Those anomalies are the underlying issue. In the 20th amendment to the United States Constitution, George Norris said that there was concern about a lame duck period. First, the lame duck session would allow officials who were not elected or were not re-elected to make pragmatic policies in lawmaking. Second, as is the case with the legislature, during the period in question, the government would take advantage of the situation to accelerate the approval of policies as a reward or thank-you for the allocation of seats to lawmakers in the lame duck session.<sup>27</sup>

Corrales and Penfold argue that term limits may allow lame duck presidents to exercise their power and make sure that they do not interfere in general elections.<sup>28</sup> Corrales says that the lame duck period in the presidential system poses threats. It is notable that presidents in their final term has three incentives to legitimize their rule:<sup>29</sup> (1) the absence of direct pressure to manipulate regulations to be re-elected; (2) easy access to the judicial apparatus to protect their personal interests; and (3) motivation to leave the legacy of their administration. Therefore, a president who is no longer

---

<sup>24</sup> “DPR RI Sahkan UU Perubahan tentang ITE”, DPR RI, accessed on February 7, 2024, <https://www.dpr.go.id/berita/detail/id/47956/t/DPR%20RI%20Sahkan%20UU%20Perubahan%20tentang%20ITE>

<sup>25</sup> Genevieve M. Kehoe, *Presidents and Terminal Logic Behavior: Term Limits and Executive Action in the United States, Brazil, and Argentina*, p. 67

<sup>26</sup> “Warisan Jokowi: Ironi kemunduran demokrasi di tangan si 'anak kandung reformasi' di balik gencarnya pembangunan infrastruktur dan investasi”, BBC, accessed on February 10, 2024, <https://www.bbc.com/indonesia/articles/c9901z9lp0go>

<sup>27</sup> Edward Stringham, ‘The Emergence of the London Stock Exchange as a Self-Policing Club’, *Journal of Private Enterprise*, The Association of Private Enterprise Education, 17, 2002, p. 1-19

<sup>28</sup> Corrales J and Penfold M, “Manipulating Term Limits in Latin America, *Journal of Democracy*”, 25(4), 2014, p. 157–168, <https://doi.org/10.1353/jod.2014.0066>

<sup>29</sup> Andrea Cassani, “Autocratisation by Term Limits Manipulation in Sub-Saharan Africa, *Africa Spectrum*, 55(3), 2020, p. 228–250, <https://doi.org/10.1177/0002039720964218>.

eligible for re-election can interfere in elections. It can lead the president to be partial, compromising the principles of state democracy.

### **The Implications of the Lame Duck Session for the President's Impartiality in the 2024 Election**

As noted by Norris, the president's partiality in elections should be considered a threat to democracy. Under Law Number 7 of 2017 on General Elections, the president has the broad and strategic authority to determine how general elections are held. For instance, the president can nominate candidates for the General Elections Commission (KPU) and determine positions at the Elections Supervisory Agency (Bawaslu). It can be seen in the table below.

Table 3. President's Authority in Elections

| Authority   | Description  | Article (Laws and Regulations) |
|---|--|--------------------------------|
| <b>Nomination for the General Elections Commission</b>                          | The President shall appoint a selection team of up to 11 members, with at least 30% of them being female   | 22 par. (1) of Law 7/2017      |
|   | The President shall submit the 14 (fourteen) names of candidates for KPU commissioners to DPR at the latest 14 (fourteen) days after receiving the documents from the selection team | 24 par. (1) of Law 7/2017      |
| <b>Approval for KPU commissioners confirmed by the House of Representatives</b> | The President shall approve the names of KPU commissioners confirmed by DPR at the latest 5 (five) workdays after receiving the names from DPR.                                      | 26 par. (1) of Law 7/2017      |
| <b>Dismissal of KPU commissioners</b>   | A KPU commissioner shall be dismissed by the President   | 37 par. (3) of Law 7/2017      |
| <b>Nomination for Bawaslu</b>   | The President shall submit the 10 (ten) names of candidates for Bawaslu commissioners to DPR at the latest 14 (fourteen) days after receiving the documents from the selection team  | 120 par. (1) of Law 7/2017     |
| <b>Approval for Bawaslu Commissioners</b>                                       | The President shall approve the Bawaslu commissioners confirmed by DPR at the latest 5 (five)  | 122 par. (1) of Law 7/2017     |



|   |   |   |
|---|---|---|
|   | workdays after receiving their names  |   |
| <b>Dismissal of KPU commissioners</b>   | A Bawaslu commissioner shall be dismissed by the President  | 135 of Law 7/2017   |
| <b>Nomination for DKPP</b>  | Two candidates for DKPP members representing the civil society shall be nominated by the president  | 155 par. (5) of Law 7/2017  |
| <b>Permission for officials running for the presidency and/or vice presidency</b> | a person who is currently serving as a governor, deputy governor, regent, deputy regent, mayor, and deputy mayor who will be nominated by a political party or a coalition of political parties participating in the election as a presidential candidate or vice presidential candidate shall request permission from the president. | Article 171 par. (1) of UU 7/2017 as amended by Article 18 par. (1) of PP 53/2023 |

The president's immense and unlimited authority, including the capacity to change policies on elections, has given rise to a number of issues. Law Number 12 of 2011, as lastly amended by Law Number 13 of 2022 on Lawmaking, does not contain sanctions for any violation of the procedure for making laws and regulations. Indonesia needs regulations on the lame duck period. In the United States, those regulations put a limit on the parliament's authority and prevent lawmakers from taking advantage of the presidential transition. It is worth noting that the President of the United States cannot pass new laws during the lame duck session. Under Article 5 paragraph (2) of UUD NRI 1945, the president can introduce a policy through a government regulation.<sup>30</sup>

Despite no regulation imposing a limit on the president's new policies during the lame duck period, President Susilo Bambang Yudhoyono issued a statement to limit the lawmaking process. This was done to ensure social stability at the end of his term. The practice was then followed by his ministers and officials. During Joko Widodo's first term, the constitutional convention Susilo Bambang Yudhoyono had introduced was observed. Nonetheless, such a convention has not been followed in his second term due to the absence of laws and regulations on it.<sup>31</sup>

<sup>30</sup> Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia

<sup>31</sup> Fitra Arsil, "Law Making Activities during Lame Duck Sessions in Indonesia (1997-2020)", p. 17

As a consequence, the candidate pair directly supported by the president took advantage of the absence of legally binding power. After Constitutional Court Ruling Number 90/PUU-XXI/2023 on the review of Article 169 point q of Law Number 7 of Year 2017<sup>32</sup> had allowed his eldest son, Gibran Rakabuming Raka, to run for the vice presidency, Joko Widodo then changed the mechanism for resignation and permission for state officials nominated as presidential and/or vice presidential candidates through PP 53/2023.

Article 18 of PP 53/2023 stipulates that the President, Vice President, leaders and members of the People's Consultative Assembly, leaders and members of DPR, leaders and members of DPD, ministers and ministerial-level officials, governors, deputy governors, regents, vice regents, mayors, and deputy mayors running for the presidency and/or vice presidency are exempt from the requirement to resign their posts.<sup>33</sup> The amendment to the aforementioned article changes Article 171 paragraph (1) of Law 7/2017. Thus, ministers are not deemed to be state officials. In addition, ministers running for the presidency or vice presidency is no longer required to resign. Instead, they may apply for permission to participate in the election.<sup>34</sup> It allows presidential candidates who are still serving in the government to utilize state facilities to support their campaign activities.

The assertion that these facilities were used is not a baseless allegation. Rather, data show favoritism. All presidential and vice presidential candidates occupied their positions. It can be seen in the table below.

Table 2. Positions of Presidential and Vice Presidential Candidates until the Election

| Number | Candidate's Name  | Current Position                                     |
|--------|-------------------|--|
| 01     | Anies Baswedan    | No Position  |
|        | Muhaimin Iskandar | Deputy Speaker of the People's Consultative Assembly |
| 02     | Prabowo Subianto  | Minister of Defense                                  |

<sup>32</sup> Constitutional Court Ruling Number 90/PUU-XXI/2023 on the Review of Law Number 7 of 2017 on General Elections

<sup>33</sup> Article 18 paragraph (1a) of Government Regulation Number 53 of 2023 on Procedures for Resignation in the Nomination of the Members of the House of Representatives, Members of the Regional Representative Council, Members of Regional Legislative Councils, President and Vice President, Requests for Permission in the Nomination of the President and Vice President, and Leave in Election Campaigns

<sup>34</sup> Article 171 paragraph (1) of Law Number 7 of 2017 on General Elections

|           |                          |  |
|-----------|--------------------------|--|
|           | Gibran Rakabuming Raka   | Mayor of Solo  |
| <b>03</b> | Ganjar Pranowo           | <b>No Position</b>   |
|           | Mohammad Mahfud Mahmodin | Coordinating Minister for Political, Legal, and Security Affairs |

PP 53/2023 may appear to be advantageous to the three candidates. However, upon closer examination, it cannot be definitively concluded that they will utilize their positions in the general election. When it comes to the roles in the election, each candidate needs to have control over three sectors: information and cyber technology, social affairs, and the state apparatus. Those roles are described in this table.<sup>35</sup>

Table 3. Budget of the Ministry of Defense Related to the Election

| Activity  | Target   | Budget                 |                        | Implementing Agency   |
|---|--|------------------------|------------------------|---|
|   |  | 2023                   | 2024                   |   |
| <b>Secure and Integrated Information Management</b> | Information is managed in a secure and integrated manner | 266.4 Billions         | 200.3 Billions         | National Cyber and Encryption Agency, Ministry of Defense, Ministry of Communications and Information, State Intelligence Agency, National Police   |
| <b>Better Election</b>                              | The neutrality of ASN is better ensured                  | 622.9 Billions         | 547.3 Billions         | Attorney General's Office; Coordinating Ministry for Political, Legal, and Security Affairs; Televisi Republik Indonesia; Ministry of Defense; National Resilience Council; National Police |
| <b>National Security Stability Maintenance</b>      | Maintaining the stability of defense and security        | 34.6 Trillions         | 33.5 Trillions         | Ministry of Defense   |
| <b>Cyber Defense Development</b>                    | Developing cyber defense                                 | 62.3 Billions          | 106.7 Billions         | Ministry of Defense   |
| <b>Total Budget (approximately)</b>                 |  | <u>+35.5</u> Trillions | <u>+34.2</u> Trillions | 69.7 Trillions  |

Source: Annexes to Presidential Regulation Number 52 of 2023 on RKP 2024 and Presidential Regulation Number 134 of 2022 on RKP 2023

<sup>35</sup> Annexes to Presidential Regulation Number 52 of 2023 on Government Work Plans for 2024 and Presidential Regulation Number 134 of 2022 on Government Work Plans for 2023

The Government Work Plans for 2023 and 2024 indicate that the Ministry of Defense is primarily responsible for the implementation, with a large budget. From the preparation of the general election to the voting day, the Ministry of Defense had a budget of around 69.7 trillion rupiahs. Prabowo Subianto's role enabled the manipulation of neutrality and the use of state facilities to influence the political landscape of the election. The neutrality of the Indonesian Military (TNI) is still around 70% due to the implementation of PP 53/2023.<sup>36</sup> This partiality is a threat to democracy, as evidenced by the decline of Indonesia's democracy index from 6.7 to 6.5.<sup>37</sup> The decrease cannot be separated from the president's partiality to establish his political dynasty.

## CONCLUSIONS

This study leads to 2 (two) conclusions. First, during the lame duck period in Indonesia, the president does not necessarily focus on implementing government programs before the term ends. There are incentives during the president's term in office: (1) the absence of direct pressure to manipulate regulations to be re-elected; (2) easy access to the judicial apparatus to protect his personal interests; and (3) motivation to leave the legacy of his administration. These incentives allow the president's interference in the election.

Second, the absence of regulations on the limits of lawmaking during the lame duck session allows the president's partiality. During the lame duck period, the president issued PP 53/2023. Therefore, one of the presidential and/or vice presidential candidate pairs could use state facilities. The partiality threatens democracy as reflected in the fall of Indonesia's democracy index.

---

<sup>36</sup> Survei Populi Center: Masyarakat Lebih Percaya TNI Netral Ketimbang KPU dan Bawaslu di Pemilu 2024, Suara.com, accessed on February 25, 2024, <https://www.suara.com/kotaksuara/2023/12/11/133847/survei-populi-center-masyarakat-lebih-percaya-tni-netral-ketimbang-kpu-dan-bawaslu-di-pemilu-2024>

<sup>37</sup> Indeks Demokrasi Turun, Kebebasan Pers Turut Terancam, Kompas, accessed on February 25, 2024, <https://www.kompas.id/baca/polhuk/2024/01/31/indeks-demokrasi-turun-kebebasan-pers-turut-terancam>

## RECOMMENDATIONS

Susilo Bambang Yudhoyono introduced a constitutional convention to limit lawmaking during the lame duck session. However, it is not observed. For this reason, regulations on lawmaking and elections should contain more provision of sanctions. UU 12/2011 and UU 7/2017 should be amended to contain provisions of annulling regulations. It is necessary to ensure that the amendment to regulations on the electoral policy by the General Elections Commission is legal and lawful. The next president should follow the tradition Susilo Bambang Yudhoyono established to ensure a fair election.

## REFERENCES

- Arsil, Fitra; Mauleny, Ariesty Tri; and Wasti, Ryan M., "Law Making Activities during Lame Duck Sessions in Indonesia (1997-2020)", *Parliamentary Affairs*, 76, November 2021, p. 421-442, <https://doi.org/10.1093/pa/gsab058>
- Aspinall, Edward and Muhammad Uhaib As'ad, 'Understanding Family Politics: Successes and Failures of Political Dynasties in Regional Indonesia', *South East Asia Research*, 24(3), 2016, 420-35
- Bacon, Donald C., Davidson, Roger H., and Keller Morton (eds.) *Encyclopedia of the United States Congress*, Vol. 3, (New York: Simon & Schuster, 1995)
- BBC, "Warisan Jokowi: Ironi Kemunduran demokrasi di tangan si 'anak kandung reformasi' di balik gencarnya pembangunan infrastruktur dan investasi", <https://www.bbc.com/indonesia/articles/c9901z9lp0go>
- Besley T and Case A (2003), *Political Institutions and Policy Choices: Evidence from the United States*, *Journal of Economic Literature* 41(1), p. 7-73, <https://doi.org/10.1257/002205103321544693>.
- Carbone, Giovanni and Cassani, Andrea, "Africa's Lame Ducks: Second-Term Presidents and the Rule of Law", *Government and Opposition*, 2, January 2023, p. 1-23, doi:10.1017/gov.2023.2
- Corrales J and Penfold M, "Manipulating Term Limits in Latin America, *Journal of Democracy*", 25(4), 2014, p. 157-168, <https://doi.org/10.1353/jod.2014.0066>
- Cassani, Andrea, "Autocratisation by Term Limits Manipulation in Sub-Saharan Africa", *Africa Spectrum*, 55(3), 2020, p. 228-250, <https://doi.org/10.1177/0002039720964218>.
- Cruz, Peter, *Comparative Law in a Changing World*, (London: Cavendish Publishing Limited, 1999)

DPR RI, Program Legislasi Nasional Prioritas, <https://www.dpr.go.id/uu/prolegnas>

DPR RI, "DPR RI Sahkan UU Perubahan tentang ITE", <https://www.dpr.go.id/berita/detail/id/47956/t/DPR%20RI%20Sahkan%20UU%20Perubahan%20tentang%20ITE>

Hasibuan, Mahruzah dan Irwansyah, "Evaluasi implementasi periode "lame duck" di Indonesia sejak kemerdekaan Republik Indonesia tahun 1945 hingga saat ini" *Jurnal Educatio*, 9(2), August 2023, p. 716-721, <http://dx.doi.org/10.29210/02020344>

Hug, W., "The History of Comparative Law", *Harvard Law Review*, 45, No. 6, (1931), p. 1027.

JDIH Setneg, Produk Hukum Undang-Undang, <https://jdih.setneg.go.id/Produk>.

Jenkins, J. A. and Nokken, T. P., 'Legislative Shirking in the Pre-Twentieth Amendment Era: Presidential Influence, Party Power, and Lame-Duck Sessions of Congress, 1877-1933', *American Political Development*, 22(1), 2008, p. 111-140, <https://doi.org/10.1017/S0898588X08000023>.

Johnson J and Crain M, "Effects of Term Limits on Fiscal Performance: Evidence from Democratic Nations", *Public Choice* 119(2), 2004, p. 73-90, <https://doi.org/10.1023/B:PUCH.0000024183.74743.13>.

Kehoe, G. *Presidents and Terminal Logic Behavior: Term Limits and Executive Action in the United States, Brazil, and Argentina* (Texas: A&M University Press, 2014)

Kompas, Indeks Demokrasi Turun, Kebebasan Pers Turut Terancam, <https://www.kompas.id/baca/polhuk/2024/01/31/indeks-demokrasi-turun-kebebasan-pers-turut-terancam>

Constitutional Court Ruling Number 90/PUU-XXI/2023 on the Review of Law Number 7 of 2017 on General Elections

Marzuki, P.M, *Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media Group, 2016)

MetroTV, Jokowi Terbitkan PP 53/2023, Pengamat: Sarat Nuansa Kepentingan Politik, *Metrotv*, accessed on February 20, 2024, <https://www.metrotvnews.com/play/kM6Ca1LW-jokowi-terbitkan-pp-53-2023-pengamat-sarat-nuansa-kepentingan-politik>

Nuryadin, "Urgensi Pengaturan Lame Duck Session (Sesi Bebek Lumpuh) dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia", *Jurnal Salam*, 9(6), 2022, p. 1797-1814. DOI: 10.15408/sjsbs.v9i6.26798

Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia

Article 18 paragraph (1a) of Government Regulation Number 53 of 2023 on Procedures for Resignation in the Nomination of the Members of the House of Representatives, Members of the Regional Representative Council, Members of Regional Legislative Councils, President and Vice President, Requests for

Permission in the Nomination of the President and Vice President, and Leave in Election Campaigns

Article 171 paragraph (1) of Law Number 7 of 2017 on General Elections

Presidential Regulation Number 52 of 2023 on Government Work Plans for 2024

Presidential Regulation Number 134 of 2022 on Government Work Plans for 2023

Safire, Williams, *Safire's Political Dictionary*, (New York: Oxford University Press, 1993)

Soekanto, Soerjono, *Pengantar Penelitian Hukum*, 20th edition, (Jakarta: UI Press, 2020)

Stringham, Edward, 'The Emergence of the London Stock Exchange as a Self-Policing Club', *Journal of Private Enterprise*, The Association of Private Enterprise Education, 17, 2002, p. 1-19

Suara.com, Survei Populi Center: Masyarakat Lebih Percaya TNI Netral Ketimbang KPU dan Bawaslu di Pemilu 2024, <https://www.suara.com/kotaksuara/2023/12/11/133847/survei-populi-center-masyarakat-lebih-percaya-tni-netral-ketimbang-kpu-dan-bawaslu-di-pemilu-2024>

Times Indonesia, "Catatan Kritis Fraksi NasDem DPR Soal Polemik PP 53 Tahun 2023", <https://timesindonesia.co.id/politik/478212/catatan-kritis-fraksi-nasdem-dpr-soal-polemik-pp-53-tahun-2023>

Wignjosoebroto, Soetandyo, *Hukum: Konsep dan Metode*, (Malang: Setara Press, 2020)