

Redesigning Provisions for the Temporary Incapacity of the President

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Abstract. In a presidential system, the president plays a key role as both head of state and head of government, making the position crucial in governance. Therefore, a vacancy in the presidency whether temporary or permanent should not occur, even briefly. However, Indonesian law only regulates permanent incapacity and does not address temporary incapacity, creating a legal vacuum. This study aims to formulate a legal concept to regulate the temporary incapacity of the president. The Author considers this topic is essential to be implemented within a Presidential system of government, given that the President cannot be dismissed because of policy disagreements. The research uses normative legal analysis with conceptual, historical, and comparative approaches, analyzed through the theory of mandate authority. The findings show that the lack of legal provisions for temporary presidential incapacity can disrupt government functions and undermine the rule of law. This gap exists in both normal situations (leave, minor illness, travel) and abnormal conditions (emergencies, serious health issues), where delegation of duties is left to administrative practices. Therefore, a Presidential Institution Law is needed to clearly define the delegation of presidential duties. This law should distinguish between administrative delegation in normal situations and limited delegation of substantive authority in abnormal situations through a mandate mechanism.

Keywords: President, Temporary Absence, Presidential System

Abstrak. Dalam sistem presidensial, presiden memainkan peran penting baik sebagai kepala negara maupun kepala pemerintahan, sehingga posisi ini menjadi penting dalam pemerintahan. Oleh karena itu, kekosongan jabatan presiden, baik sementara maupun permanen, tidak boleh terjadi, meski hanya sebentar. Namun hukum Indonesia hanya mengatur mengenai ketidakmampuan tetap dan tidak mengatur ketidakmampuan sementara sehingga menimbulkan kekosongan hukum. Penelitian ini bertujuan untuk merumuskan konsep hukum untuk mengatur ketidakmampuan sementara presiden. Hal ini dinilai penting oleh Penulis untuk diimplementasikan dalam sistem pemerintahan Presidensial, karena Presiden tidak bisa dijatuhkan karena alasan kebijakan. Penelitian ini menggunakan analisis hukum normatif dengan pendekatan konseptual, historis, dan komparatif, dianalisis melalui teori kewenangan amanah. Penulis menggunakan berbagai bahan hukum, mencakup bahan hukum primer, sekunder, maupun tersier dari penelusuran kepustakaan. Temuan-temuan yang ada menunjukkan bahwa kurangnya ketentuan hukum mengenai ketidakmampuan sementara presiden dapat mengganggu fungsi pemerintahan dan melemahkan supremasi hukum. Kesenjangan ini terjadi baik dalam situasi normal (cuti, sakit ringan, perjalanan) maupun kondisi tidak normal (darurat, masalah kesehatan serius), dimana pendelegasian tugas diserahkan pada praktik administratif. Oleh karena itu, diperlukan Undang-Undang Lembaga Kepresidenan yang dapat menjelaskan secara jelas mengenai pendelegasian tugas presiden. Undang-undang ini harus membedakan antara pendelegasian administratif dalam situasi normal dan pendelegasian wewenang substantif terbatas dalam situasi tidak normal melalui mekanisme mandat.

Kata Kunci: Presiden, Absen Sementara, Sistem Presidensial

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INTRODUCTION

In presidentialism, the president is the chief of state and the chief executive.¹ This dual role allows the president's power to extend to the executive, legislative, and judicial branches.² According to CF Strong, the president has more powers, i.e. the diplomatic, administrative, military, judicial, and legislative powers.³ Even the 1945 Constitution stipulates that the president and the House of Representatives have the authority over the recruitment of public offices (political recruitment).

In presidentialism, the president plays a central role.⁴ Zainal Arifin Mochtar even states that the president is a king whose power is limited by the constitution.⁵ Therefore, it is not easy to replace the president. For this reason, the President's incapacity should be stipulated rigidly and clearly in laws and regulations. Without any legal norms, an unconstitutional change of government will occur, and it can further affect the stability of the government.⁶ This bad probability can be prevented by provisions for the President's permanent or temporary incapacity.

However, Article 8 paragraph (1) of the 1945 Constitution merely stipulates the President's permanent incapacity if he/she passes away, resigns, is discharged, or is not able to meet his/her obligations during his/her term of office. The phrase "is not able to meet his/her obligations during his/her term of office" is often deemed to refer to temporary incapacity. Nonetheless, the norm refers to the President's total incapacity.⁷ Therefore, Decree of the People's Consultative Assembly (Tap MPR) Number VII/MPR/1973 on the permanent and temporary Incapacity of the President and/or the Vice President was issued. Nevertheless, the definition is ambiguous and

¹ Dina Fadiyah, "Dilema Sistem Multipartai dalam Sistem Presidensial di Indonesia," *Jurnal Politik dan Sosial Kemasyarakatan* 14, no. 1 (2022), <https://doi.org/10.52166/madani.v14i1.2881>. p. 23.

² Saldi Isra, *Lembaga Negara* (Rajawali Press: Jakarta, 2020), p. 193.

³ CF Strong, *Modern Political Constitution* (London: Sidgwick & Jackson LTD., 1930), p. 213.

⁴ Bagir Manan, *Lembaga Kepresidenan* (Yogyakarta: FH UII Press, 2006), p. 122.

⁵ Zainal Arifin Mochtar, p. 43. See Hendra Wahanu Prabandani, *Batas Konstitusional Kekuasaan Eksekutif Presiden (Constitutional Limits of the Presidential Executive Power)*, (*Jurnal Legislasi Indonesia*, Vol. 12. No. 03, October 2015), 271

⁶ Syafri Hariansah and Anna Erliyana, "Mekanisme Pengisian Jabatan Kekosongan Jabatan Presiden dan Wakil Presiden: Studi Perbandingan dengan Amerika Serikat, Brazil dan Perancis," *Pakuan Law Review* 4, no. 2, (2018), <https://doi.org/10.33751/palar.v4i2.886>. p. 334.

⁷ *Ibid*, p. 338.

open to interpretation. Article 1 point 3 only defines temporary incapacity as a condition other than permanent incapacity (passing away, resigning, being discharged, or being unable to meet his/her obligations during his/her term of office). Instead of improving Tap MPR No. VII/MPR/1973, MPR repealed it using Tap MPR No. 1/MPR/2003.

There have been several studies on the President's temporary incapacity. In “*Dinamika Lembaga Kepresidenan di Berbagai Negara*”, Abdul Ghoffar highlights the weakness of the post-amendment 1945 Constitution (1999-2002) regarding the absence of provisions for the temporary vacancy of the President. On the other hand, it is explicitly enshrined in the constitutions of other states.⁸ Ebu Kosmas, in his dissertation “*Pelimpahan Kekuasaan Pemerintahan Negara dalam Hal Presiden Berhalangan Sementara*”, describes two main causes for the president's temporary incapacity, i.e., territory and the President's conditions.⁹ Those two previous studies show the lack of research on provisions for the President's temporary incapacity in Indonesia.

Therefore, this research is of paramount importance not only to fill a gap in the literature and the absence of regulations on the President's temporary incapacity, but also to formulate them. Finally, the concept of “the President's temporary incapacity” is not merely a historical term in the dynamics of the presidential institution in Indonesia. In fact, in every President's term of office, the practice of temporary incapacity cannot be denied. At the same time, the President is required to serve the needs of the public consistently and constantly. Thus, this study focuses on two main points: (1) the practice of the President's temporary incapacity in Indonesia; and (2) the redesign of regulations on the President's temporary incapacity.

METHODOLOGY

This normative and legal research employed conceptual, historical, and comparative approaches. The conceptual approach was used to examine the concept of the

⁸ Abdul Ghofar, *Dinamika Lembaga Kepresidenan di Berbagai Negara*, (Depok: Rajawali Press, 2022), p. 37.

⁹ Ebu Kosmas, Dissertation at Universitas Airlangga “*Pelimpahan Kekuasaan Pemerintahan Negara dalam Hal Presiden Berhalangan Sementara*”, (Universitas Airlangga, 2019), p. 35

delegation of duties in the constitutional system. Besides, the historical approach traced the development of the practice of the President's temporary incapacity. The comparative one compared practices in other countries where the temporary incapacity is stipulated. The data sources consist of primary, secondary, and tertiary legal materials obtained through library research. All of the data were qualitatively analyzed using the theory of mandate authority to confirm that the delegation of duties is administrative and does not transfer legal responsibility from the President.

RESULT AND DISCUSSION

Practice of Temporary Incapacity in Indonesia

The dynamics of governance are often confronted with certain circumstances that prevent the president from carrying out his/her duties and authority as the head of state. Furthermore, in presidentialism, the president is both the chief of state and chief executive. When the president is unable to carry out his duties and authority, the vacuum of power often occurs.¹⁰ There are two types of the president's incapacity, i.e. temporary incapacity and permanent incapacity. The permanent incapacity is clearly stipulated in Article 8 of the 1945 Constitution. It states that before his/her term of office ends, the President may be unable to discharge his/her obligations due to passing away, resigning, being discharged, or being unable to meet his/her obligations during his/her term of office, etc.¹¹

In contrast to the provisions for permanent incapacity, no laws and regulations have provided concrete definitions of the conditions for the president's temporary incapacity. Such incapacity seems to be considered a constitutional convention. However, many provisions need to be clearly formulated to provide legal certainty if the president is temporarily unable to perform his duties. As described above, Tap

¹⁰ Siti Maryam et al, "Kedudukan Menteri Triumvirat dalam Mengisi Kekosongan Jabatan Presiden di Indonesia dalam Perspektif Siyasah Syar'iyah," *Islamic Law: Jurnal Siyasah* 10, No. 1 (2025). <https://doi.org/10.53429/iljs.v10i1.1449>. p. 33.

¹¹ M. Shaiful Anwar and Muhammad Eriton, "Analisis terhadap Pembagian Kewenangan antara Presiden dengan Wakil Presiden dalam Sistem Ketatanegaraan Indonesia," *Journal of Constitutional Law* 2, No. 2 (2022). <https://doi.org/10.22437/limbago.v2i2.17471>. p. 269.

MPR No. VII/MPR/1973 states that temporary incapacity refers to when the president cannot discharge his/her duties due to conditions other than those mentioned in Article 1 paragraph 3.¹²

On the contrary, the president's temporary incapacity is enshrined in the constitutions of other countries. It is mostly clear in the 25th Amendment to the Constitution of the United States. Section 3 says that the president shall voluntarily transmit his powers to the vice president during his period of incapacity.¹³ Then, Section 4 allows the Vice President and a majority of the cabinet to remove the President involuntarily if he is unable or unwilling to admit that he is unable to discharge the powers of his office. Despite being implicit, the inability refers to the president's temporary incapacity. According to Article 4 of the operative clause of the amendment, when the president declares that his inability is over, he resumes his presidency.¹⁴

History shows that the President's temporary incapacity occurred in constitutional practice at the beginning of independence. For instance, on December 19, 1948, President Soekarno and Vice President Hatta gave a mandate via radiogram to Sjafruddin Prawiranegara to form an emergency government.¹⁵ The decision was made because the President and Vice President, along with their ministers, were detained by the Dutch during the second military aggression in the capital city of Yogyakarta.¹⁶ Finally, on December 22, 1948, he managed to form the cabinet of the Emergency Government of the Republic of Indonesia (PDRI) and served as its chair.¹⁷ Despite no constitutional basis, it reacted to emergency conditions that gave rise to an extra-constitutional agreement to maintain the sovereignty of the Republic of

¹² Tempo, "Berhalangan Sementara", accessed on 30th April 2025, <https://www.tempo.co/politik/berhalangan-sementara-1043905>.

¹³ Ryan T. Harding, "Preventing Presidential Disability within the Existing Framework of the Twenty-Fifth Amendment," *University of Arkansas at Little Rock Law Review* 40, No. 1 (2017), p. 2.

¹⁴ Herbert Brownell, "Presidential Disability: The Need for A Constitutional Amendment," *The Yale Law Journal* 68, No. 2 (1958). <https://doi.org/10.2307/794468>. p. 189.

¹⁵ Mestika Zed, *Somewhere in the Jungle Pemerintah Darurat Republik Indonesia Sebuah Mata Rantai Sejarah yang Terlupakan* (Jakarta: Sinar Harapan, 1980), p. 71.

¹⁶ George McTurnan Kahin, *Refleksi Pergumulan Lahirnya Republik, Nasionalisme, dan Revolusi di Indonesia* (Solo: UNS Press, 1995), p. 428-429.

¹⁷ There is no term "chair" in the 1945 Constitution. There were two reasons for using the term "chair". The mandate given by Soekarno-Hatta was delayed, and it was due to modesty and concern, even though he held the position of the head of government. Ajip Rosidi, *Sjafruddin Prawiranegara: Lebih Takut kepada Allah SWT*, Pelita, December 6, 1978, p. 114.

Indonesia. There were at least two opposing groups regarding Sjafruddin Prawiranegara's position in carrying out the mandate. The first group held the view that the mandate was that of the President.¹⁸ Another group was of the opinion that he obtained the mandate as the Prime Minister.¹⁹ Nonetheless, it cannot be denied that Sjafruddin, as the Chair of PDRI, carried out presidential functions until his mandate was returned on July 13, 1949. The eight-month period and the process of returning the mandate to those giving it indicate temporary incapacity.

The transition from a unitary state to a federal state resulted in the rapid change of Indonesia's system of government. On December 27, 1949, Mr. Assaat, as the Chair of the Central National Indonesian Committee (KNIP), was the Caretaker President of the Republic of Indonesia in Yogyakarta²⁰ under Law No. 7 of 1949 on the Appointment of the Caretaker President of the Republic of Indonesia. It was because Soekarno was appointed as the President of the Republic of the United States of Indonesia (RIS) and Vice President Hatta became the Prime Minister of the RIS. After Natsir's integral motion, the states merged with the Republic of Indonesia in Yogyakarta, and Indonesia constitutionally became the Unitary State of the Republic of Indonesia once again. On August 15, 1950, Mr. Assaat returned his mandate to Soekarno as the President of the Republic of Indonesia.²¹ Therefore, it can be said that Soekarno was temporarily unable to perform his duties due to changes in the form of the state, as he had to prioritize his other function as the President of RIS. In addition, Mr. Assaat obtained the mandate as the "Caretaker" President of the Republic of Indonesia, instead of the definitive one.

During his term of office from 1999 to 2001, President Abdurrahman Wahid a.k.a Gus Dur often travelled abroad. He even visited 13 countries in a single week.²² The

¹⁸ Moch. H. Kharismulloh Hilmatiar, "Pembentukan Pemerintahan Darurat Republik Indonesia 1948-1949 dalam Perspektif Fiqh Siyasah dan Hukum Tata Negara," *Jurnal Al-Mazahib* 3, No. 1 (2015), <https://doi.org/10.14421/al-mazaahib.v3i1.1387>. p. 183.

¹⁹ See <https://www.hukumonline.com/berita/a/melacak-kebenaran-syafruddin-prawiranegara-presiden-ri-begini-kata-prof-yusril-lt6458812224b80/?page=2>, accessed on May 8, 2023.

²⁰ Jeffri Arlinandes Chandra et al, *Teori dan Konsep Pembentukan Perundang-Undangan di Indonesia* (Bengkulu: CV. Zigie Utama, 2022), p. 62-63.

²¹ Andi Setiadi, *Hidup dan Perjuangan Soekarno Sang Bapak Bangsa* (Yogyakarta: Laksana, 2017), p. 80.

²² Dian Dewi Purnamasari, <https://www.kompas.id/baca/polhuk/2020/12/14/gus-dur-lawatan-ke-luar-negeri-dan-pendekatan-kemanusiaan>, accessed on December 14, 2020.

president's going overseas is related to the diplomatic function as an original power of the executive.²³ Legal instruments often used when the President visits another country are Presidential Decrees (Keppres). It has been a constitutional convention until now. Initially, those decrees did not clearly explain the main tasks and functions the Vice President had to perform. Then, however, Presidential Decree No. 8 of 2000 provided guidelines to the Vice President.²⁴ Thus, the President's going abroad proved that he was temporarily unable to perform his duties, with the delegation of daily duties, i.e. general powers only, to the Vice President.²⁵ After the reform, one of its mandates was the direct election of the President and Vice President. The contest allows competition based on the principles of honesty and fairness, including regulations on the incumbent president's campaign leave. President Susilo Bambang Yudhoyono a.k.a SBY took campaign leave during the 2009 election based on Letter of the Minister of State Secretary Number B-254/M.sesneg/D-2/06/2009.²⁶

The main pillar of the rule of law is the principle of legality, which implies that the government's authority derives from laws and regulations. In theory, the authority derived from these laws and regulations is assumed in three ways, i.e. attribution, delegation, and mandate.²⁷ Miriam Budiardjo argues that power is at the core of state administration on the move (*de staat in beweging*) so that the state can function, work, be capable, achieve, and perform in serving its citizens.²⁸

The mandate was extra-constitutionally given to Sjafruddin when the President and the Vice President were arrested, but it was politically legitimate to defend the existence of the state. Returning the mandate to Soekarno affirms that the power exercised was a mandate, instead of a delegation, as there was no transfer of position. Meanwhile, Mr. Assaat obtained the mandate constitutionally under Law No. 7 of 1949. In spite of the legal legitimacy, the nature of the power exercised remained

²³ Bagir Manan, *Lembaga Kepresidenan*, (Yogyakarta, Gama Media, 1999), p. 167.

²⁴ Presidential Decree Number 8 of 2000.

²⁵ Ebu Kosmas, "Kesatuan Kekuasaan Presiden dan Wakil Presiden," *Jurnal Proyuris* 2, No.1, (2020), p. 166.

²⁶ Inilah Jadwal Kampanye SBY, <https://amp.kompas.com/nasional/read/2009/06/03/1729092/~Nasional>, accessed on Friday, April 23, 2021.

²⁷ Moh Gandara, "Kewenangan Atribusi, Delegasi, dan Mandat," *Khazanah Hukum* 2, No. 3, (2020). <https://doi.org/10.15575/kh.v2i3.8187>. p. 92-99.

²⁸ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2008), p. 36

transitional, as shown by the return of the mandate after the RIS was dissolved. Both cases show that the delegation of power in Indonesia's presidentialism did not always depend on written norms, but on substantive legitimacy and constitutional consciousness. Thus, the authority of the mandate exercised in Indonesia was not only a legal instrument, but also a political mechanism to maintain the continuity of power during a crisis without undermining the principle of the sovereignty of the people.

Redesigning the President's Temporary Incapacity in the Presidential Institution Law

1. Delegating the Authority through Mandate

The performance of duties by other officials when the President is temporarily unable to perform his/her duties must be within a clear legal framework and in accordance with applicable constitutional principles. In this regard, although the President cannot directly carry out his/her duties, the delegation of authority to the Vice President or relevant ministers cannot be considered a permanent or substantive transfer of authority. Instead, the authority remains with the President as the delegation of duties is administrative and temporary during the President's incapacity. The assignment to the Vice President, as stipulated in Article 4 paragraph (2) of the 1945 Constitution after the amendment, confirms that the President is assisted by the Vice President in meeting his/her obligations. Even though the Vice President is given the mandate to carry out certain duties on behalf of the President, it does not change the position of the President as the chief executive. The Vice President is the assistant whose duties depend on the President's assignment and does not have independent authority to make decisions autonomously. Therefore, the performance of duties by the Vice President should be deemed to be an administrative assignment, instead of a transfer of authority leading to changes in the power structure within the government. All actions taken by the Vice President are on behalf of the President, and therefore, legal responsibility remains with the President.²⁹

²⁹ Johannes Johny Koynja, "Konstitusionalitas Fungsi dan Wewenang Wakil Presiden RI setelah Amandemen UUD 1945," *Jurnal Hukum Jatiswara*, p. 344-354.

Furthermore, when both the President and Vice President are unable to perform their duties simultaneously, Article 8 paragraph (3) of the 1945 Constitution provides the legal basis for appointing ministers with strategic functions, namely the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense, to carry out certain duties. The assignment to these ministers remains a delegation of administrative duties from the President. Even though these duties are carried out by officials who are not equal to the President, the authority delegated to them does not change the structure of government.³⁰ Decisions or policies made by these ministers during the period of temporary incapacity are deemed to be made on behalf of the President, and the President, as the highest authority in presidentialism, remains legally responsible for these policies.

In administrative law, a mandate is an order from a superior to exercise authority which can be carried out anytime without transferring responsibility. If the authority granted is original, originating from laws and regulations, those receiving the authority may expand or create new authority, but the responsibility for its performance lies entirely with them.³¹ Thus, in the event of temporary incapacity, the President can give mandates to other officials to perform certain duties, but substantive authority remains with the President. The delegation of authority to the Vice President and relevant ministers does not change the President's position as the chief executive. The implementation of these duties should be deemed to be in the context of a temporary administrative mandate, which remains legally binding and is the responsibility of the President. It is based on the principle of due process of law, which requires that each use of authority be carried out in accordance with valid legal procedures and not result in a vacuum or abuse of authority.

Therefore, during the President's temporary incapacity, the delegation of duties to the Vice President or ministers does not lead to a substantive transfer of executive power. In contrast, this is an administrative assignment to maintain the continuity of

³⁰ Furqan Razak et al, "Menteri Triumvirat dalam Tata Kementerian Negara Republik Indonesia," *Qawanin Jurnal Ilmu Hukum* 5, No. 1 (2024). <https://doi.org/10.56087/QAWANINJIH.V5I1.473>. p. 62-80.

³¹ Ridwan HR, *Hukum Administrasi Negara*. (Jakarta: PT Raja Grafindo Persada, 2013), p. 109.

government, ensure that state administration continues to run in accordance with applicable legal provisions, and maintain government stability. All policies made during temporary incapacity remain the responsibility of the President, to be implemented by officials with administrative authority on behalf of the President.

2. Condition of Temporary Incapacity

The President may encounter obstacles in his/her term of office. In a normal condition, the normal law applies. In an abnormal condition, the abnormal one applies. First, normal temporary incapacity refers to the inability to carry out duties and authority when the country is in a normal condition. Second, abnormal temporary incapacity is the inability to carry out duties and authority when the country is in a state of emergency. In short, according to Jimly Asshiddiqie, a state of emergency is a threat to public safety, territorial integrity, or state sovereignty.³² Article 12 of the 1945 Constitution says, "The President declares a state of emergency. The conditions governing and the consequences of a state of emergency shall be stipulated by laws." Several other laws and regulations also govern it. The President's normal and abnormal temporary incapacity results in limitations or restrictions on the duties and authority of the mandatory.

3. Duties and Authority during Temporary Incapacity

The concept of executive power, i.e. the government administration carried out by the president, can be divided into general government power and special government power.³³ Bagir Manan, in "*Lembaga Kepresidenan*" (2003), describes general government power as administrative power. Therefore, during the President's normal temporary incapacity, the duties and authority he delegates are general in nature. Those duties and authority are among others:³⁴

- a. Duties and authority in the administration of security and public order;

³² Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Gramedia Pustaka Umum, 2007), p. 63.

³³ Bagir Manan, *Lembaga Kepresidenan*, (Yogyakarta: FH UII Press, 2003), p. 122-123.

³⁴ Edy Susanto et al, "Pelaksanaan Kekuasaan Pemerintahan oleh Presiden Pasca-Amendemen UUD 1945 (Studi Periode 2004-2009)", *Jurnal Varia Justicia* 10, No. 2 (2014), p. 4.

- b. Duties and authority in administering government affairs, correspondence to documentation etc;
- c. Duties and authority in the state administration of public services; and
- d. Duties and authority in the state administration of public welfare.

On the other hand, the special duties and authority to be delegated during the president's temporary incapacity due to abnormal circumstances are mentioned above. Further, Bagir Manan explains that special government power is special in nature, i.e., the exercise of the duties and authority of the president, as the constitutional prerogative of the president.³⁵ The prerogative refers to the privilege or special right of a head of state in performing his/her state duties. Therefore, the special duties and authority can only be delegated owing to the president's permanent or temporary incapacity in an abnormal manner. The duties and authority are, among others:³⁶

- a. holding the supreme authority over the armed forces (Article 10 of the 1945 Constitution);
- b. granting clemency, rehabilitation, amnesty, and abolition (Article 14 of the 1945 Constitution);
- c. granting titles and decorations (Article 15 of the 1945 Constitution);
- d. concluding international treaties and forging international relations (Article 11 of the 1945 Constitution); etc.

Further, when it comes to the transfer of presidential duties to a substitute institution, the institution is the vice president. It is because the vice president is the main assistant of the president, as clearly stipulated in Article 4 paragraph (2) of the 1945 Constitution.³⁷ According to Wirjono Prodjodikoro, the vice president is the second man, while the president is the first man in government.³⁸ However, during the

³⁵ Abdul Ghoftar, *Perbandingan Kekuasaan Presiden Indonesia setelah Perubahan UUD 1945 dengan Delapan Negara Maju*, (Jakarta: Kencana Prenada Media Group, 2009), p. 99.

³⁶ Mei Susanto, "Perkembangan Pemaknaan Hak Prerogatif Presiden: Kajian Putusan Mahkamah Konstitusi Nomor 22/PUU-XIII/2015", *Jurnal Yudisial* 9, No.3, p. 253.

³⁷ Dhanang Alim, "Tugas dan Fungsi Wakil Presiden di Indonesia", *Lex Crimen* 4, No 1, March 2015, p. 123.

³⁸ Wirjono Prodjodikoro, *Azaz-Azaz Hukum Tata Negara di Indonesia*, Dian Rakyat, Jakarta 1989, p. 61.

simultaneous incapacity of the president and the vice president, the presidency is collectively held by the triumvirate of ministers, i.e. the minister of foreign affairs, the minister of home affairs, and the minister of defense. The reason behind it, according to Taufik Sri Soemantri M, is that those three ministers are the president's aides in carrying out his/her duties and authority, so they are deemed to understand the ins and outs of government affairs.³⁹ However, if the three ministers are unable to do so, the president may appoint a minister from his/her cabinet to perform presidential duties.

Therefore, during the president's temporary incapacity, the duties delegated to the substitute state institution greatly depend on the condition of the country at that time. In a normal condition, the substitute institution carries out the president's daily duties in administrative policies. In carrying out presidential duties, the institution acts as the government's representative and will therefore be entrusted with performing duties without the president's approval. However, in an abnormal situation, the substitute institution may perform the general duties, i.e., the daily duties of the president, as well as his/her special duties as the head of state (chief of state), i.e. prerogatives. It requires the president's approval (who gives the mandate). It is worth noting that the delegation is merely about the president's duties, instead of the office. Thus, after the president's incapacity is over, he/she resumes the presidency.

4. Reasons for Temporary Incapacity

The President's temporary incapacity is enshrined in the constitutions of many countries. In his study, Abdul Ghoffar shows that 33 countries⁴⁰ have provisions for it in their constitutions.⁴¹ The general and specific reasons for provisions for temporary incapacity vary in each constitution. It stems from the different empirical conditions, constitutional concepts, and experiences of those countries.

³⁹ Titik Triwulan Tutik, Kedudukan Konstitusional Menteri *Triumvirat* sebagai Pelaksana Tugas Kepresidenan dalam Sistem Pemerintahan Presidensial di Indonesia, *Al-Daulah* 10, No. 2, October 2020, p. 293.

⁴⁰ The countries are the United States, Argentine, Benin, Chile, Colombia, Costa Rica, Cyprus, Dominica, Ecuador, El Salvador, Ghana, Guatemala, Honduras, Maldives, Nigeria, Nicaragua, Panama, Paraguay, the Philippines, Russia, Seychelles, Uruguay, Venezuela, Zambia, Zimbabwe, Central Africa, Botswana, Egypt, Peru, Turkey, Burundi, Cameroon, and Burkina Faso.

⁴¹ Abdul Ghofar, *Dinamika Lembaga Kepresidenan di Berbagai Negara*, (Depok, Rajawali Press, 2022), p. 246

Table 1.
Provisions for the President's Temporary Incapacity in Various Countries

State	Regulation	Provision
Turkey	<i>Paragraphs 3-4, Article 106, Turkey's Constitution of 1982 with Amendments through 2017</i>	<i>"In the event of a temporary absence of the President of the Republic on account of illness, travel abroad or similar circumstances, the Vice-President of the Republic shall serve as Acting President of the Republic and exercise the powers of the President of the Republic..."</i>
Argentina	<i>Article 8, Chapter 1, the Constitution of the Argentine Nation</i>	<i>In case of illness, absence from the Capital City, death, resignation, or removal of the President from office, the Executive Power shall devolve upon the Vice President of the Nation...</i>
Chile	<i>Paragraph 1, Article 29, Chile's Constitution of 1980 with Amendments through 2015.</i>	<i>If because of a temporary impediment, either because of illness, absence from the country or another serious reason, the President of the Republic found himself unable to perform his duties, he shall be replaced with the title of Vice President of the Republic, by the incumbent Minister to whom it corresponds according to the order of legal precedence...</i>
Colombia	<i>Article 194, Colombia's Constitution of 1991 with Amendments through 2015</i>	<i>...A temporary vacancy in the office occurs following permission for leave of absence and sickness, in accordance with the previous article, and suspension in the President's exercise of responsibility decreed by the Senate or a prior public admission by the President of a charge in cases anticipated in numeral 1, Article 175.</i>
Zimbabwe	<i>Paragraph 1, Article 100,</i>	<i>Whenever the President is absent from Zimbabwe or is unable to</i>

	<i>Acting President, Zimbabwe's Constitution of 2013 with Amendments through 2017.</i>	<i>exercise his or her official functions through illness or any other cause, those functions must be assumed and exercised— (a) by the first Vice-President;...</i>
Seychelles	<i>Article 56, Chapter IV : The President, Seychelles' Constitution of 1993 with Amendments through 2017</i>	<i>Where the President is on leave of absence, absent from Seychelles or unable for any other reasons, except for a reason specified in article 55, to discharge the functions of the office of President, the Vice-President shall discharge those functions until the President returns from leave of absence or from outside Seychelles and resumes the functions of the office of President or is able to discharge the functions of the office of President.</i>

Source: Reviewed by the Authors

Therefore, Indonesia needs to clearly formulate the reasons for the President's temporary incapacity in the 1945 Constitution. The first reason is leave. The regulation on presidential leave is only related to the presidential election campaign, as stated in Article 299 paragraph (2) of Law Number 7 of 2017 on General Elections (Pemilu) that "In carrying out the campaign as referred to in paragraph (1), The President and Vice President shall comply with the provisions of taking leave at their own expense and not using state facilities." However, according to MK Ruling No. 10/PUU-XVII/2019, the incumbent President running for re-election is not obliged to take leave. It has sparked controversy because regional heads are also required to take leave despite not having as much authority as the President.⁴²

In addition, maternity leave is stipulated in Law No. 4 of 2024 on the Welfare of Mothers and Children and the Manpower Law, which allow female workers/labor to take leave, but they do not stipulate presidential leave in such circumstances. There

⁴² Mochamad Adli Wafi and Deka Oktaviana, "Pembatasan Petahana dan Pejabat Negara dalam Kampanye Pemilihan Umum Presiden", *Jurnal Lex Renaissance* 9, No. 2, (2024). <https://doi.org/10.20885/JLR.vol9.iss2.art6>. p. 384.

may be another female president after the fifth President, Megawati Soekarnoputri. In addition, more women are involved in politics. For instance, the number of women elected to the DPR in the 2024 elections was 129 more than in the 2019 elections.⁴³ In addition, Constitutional Court Decision No. 90/PUU/XXI/2023 expands the age limit requirement. In addition to the quantitative requirement (being at least 40 years old), the qualitative requirement⁴⁴ (the experience as an elected official) provides opportunities for young women.

The second reason is illness. It is *natural* that humans, including the President, suffer from an illness. The President may probably fall ill and be unable to carry out his/her duties and authority in his/her term of office. Vietnamese President Tran Dai Quang contracted a rare toxic virus after travelling to Japan in 2017, and he passed away on September 21, 2018.⁴⁵ John Atta Mills, the President of Ghana, was elected in 2008. Then, when in office, he suffered from cancer and stroke.⁴⁶ President Soekarno suffered from quite severe illnesses several times. In August 1965, a Chinese medical team reported that Soekarno had suffered a cerebral vasospasm (narrowing of cerebral arteries), which only increased the tension among politicians prior to the G30S.⁴⁷ The data shows that the health condition of the President will affect his/her performance and even increase domestic political escalation. Even Ecuador's constitution stipulates a (maximum) time limit of three months for the President's temporary incapacity due to illness, with permission from the National Assembly.⁴⁸

Third, due to overseas visits, whether as the head of state or a person, in accordance with constitutional conventions in Indonesia, the President often issues a Presidential Decree. It is because there is no holiday for the presidential office. Moreover, in

⁴³ Titi Anggraini, RUU Pemilu dan Penguatan Keterwakilan Perempuan” <https://mediaindonesia.com/kolompakar/754850/ruu-pemilu-dan-penguatan-keterwakilan-perempuan>, accessed on March 24, 2025.

⁴⁴ Constitutional Court Ruling No 90/ PUU/XXI/2023.

⁴⁵ VnExpress, Vietnam's President Tran Dai Quang dies aged 62, <https://e.vnexpress.net/news/news/vietnam-s-president-tran-dai-quang-dies-aged-62-3813138.html>, accessed on September 20, 2018. <https://e.vnexpress.net/news/news/vietnamese-bid-farewell-to-president-tran-dai-quang-3815701.html>.

⁴⁶ BBC, Ghana's President John Atta Mills dies, <https://www.bbc.com/news/world-africa-18972107>, accessed on July 20, 2014.

⁴⁷ Taomo Zhou, “China and the Thirtieth of September Movement.” *Indonesia*, No. 98 (2014). <https://doi.org/10.5728/indonesia.98.0029>. hlm. 48

⁴⁸ Article 148 of *Ecuador's Constitution of 2008*.

matters requiring a measured policy response, the President may delegate his/her daily duties to the Vice President. Thus, the President's absence from the country can hinder the public services which are always needed by the public. This delay falls under the category of the President's temporary incapacity. Even Turkey⁴⁹ and Chile⁵⁰ explicitly mention it in their constitutions, placing the Vice President as the first option in the event of temporary incapacity.

Based on the description above, a summary of normal and abnormal conditions can be seen in the following table:

Table 2.
Design of the President's Temporary Incapacity

Condition	Normal	Abnormal
Reason	1. Leave (campaign) (pregnancy and childbirth) 2. Illness 3. Overseas visit	1. Leave (campaign) (pregnancy and childbirth) 2. Illness 3. Overseas visit
Instrument	Mandate (written)	Mandate (written and unwritten)
Duties	General Duties (daily duties)	Daily and Special Duties (prerogatives) as approved by the President.
Time	Limited	Limited
Official	1. Vice President 2. <i>Triumvirate</i> (Menhan, Menlu, Mendagri)	1. Vice President 2. <i>Triumvirate</i> (Menhan, Menlu, Mendagri)

Source: Reviewed by the Authors

⁴⁹ Paragraphs 3-4, Article 106, Turkey's Constitution of 1982 with Amendments through 2017.

⁵⁰ Paragraph 1, Article 29, Chile's Constitution of 1980 with Amendments through 2015.

CONCLUSION

This research draws two conclusions. *First*, the absence of legal provisions for the President's temporary incapacity leads to a vacuum of norms which undermines the continuity of government and the rule of law. Constitutional practices show the President may be unable to perform his/her duties, either in normal circumstances, such as leave, illness, or overseas visits; or in abnormal circumstances, such as a state of emergency or a serious health condition. Due to the absence of clear regulations, the delegation of duties is based solely on administrative conventions open to multiple interpretations and abuse of power. Without any clear regulations, the delegation of tasks can be interpreted in different ways and allows abuse of authority. *Second*, it is necessary to redesign the law through the Presidential Institution Law, which explicitly stipulates the delegation of duties in terms of temporary incapacity, clearly distinguishing between the delegation of administrative authority in normal circumstances and the limited delegation of substantive authority in abnormal circumstances through the delegation of mandate authority to the Vice President. There are several points of research that the authors have not completed, particularly related to the draft content of the Presidential Institution Law that comprehensively regulates the President's temporary incapacity. In addition, it is important to examine the aspect of public legitimacy and its impact on the principle of *checks and balances* in the delegation of executive authority.

REFERENCES

- "Pemberhentian Sementara Presiden Tidak Perlu." Hukumonline.
<https://www.hukumonline.com/berita/a/pemberhentian-sementara-presiden-tidak-perlu-hol333>.
- 1945 Constitution
- Abdul Ghofar. *Dinamika Lembaga Kepresidenan di Berbagai Negara*. Depok: Rajawali Press, 2022.
- Ahmad Syaifudin. "Menyoal Pasal Penghinaan Presiden dalam KUHP: Antara Proporsionalitas Prinsip Primus Inter pares atau Kemunduran Demokrasi." *Jurnal Hukum dan Hak Asasi Manusia WICARANA* 2, no. 1 (2023): 16.
<https://doi.org/10.57123/wicarana.v2i1.32>.

- Andi Setiadi. *Hidup dan Perjuangan Soekarno Sang Bapak Bangsa*. Yogyakarta: Laksana, 2017.
- Antono Adhi Susanto and Ghunarsa Sujatnika. "Redesain Pengisian Kekosongan Jabatan Wakil Presiden Menurut Konstitusi." *Media Iuris* 7, no. 1 (2024): 7. <https://doi.org/10.20473/mi.v7i1.44319>.
- Article 148 of Ecuador's Constitution of 2008.
- Bagir Manan. *Lembaga Kepresidenan*. Yogyakarta: FH UII Press, 2003.
- BBC. "Ghana's President John Atta Mills dies." <https://www.bbc.com/news/world-africa-18972107>.
- CF Strong. *Modern Political Constitution*. London: Sidgwick & Jackson Ltd., 1930.
- Constitutional Court Ruling No 90/ PUU/XXI/2023.
- Dian Dewi Purnamasari. "Gus Dur: Lawatan ke Luar Negeri dan Pendekatan Kemanusiaan." *Kompas*. <https://www.kompas.id/baca/polhuk/2020/12/14/gus-dur-lawatan-ke-luar-negeri-dan-pendekatan-kemanusiaan>.
- Dina Fadiyah. "Dilema Sistem Multipartai dalam Sistem Presidensial di Indonesia." *Jurnal Politik dan Sosial Kemasyarakatan* 14, no. 1 (2022): 23. <https://doi.org/10.52166/madani.v14i1.2881>.
- Ebu Kosmas. *Pelimpahan Kekuasaan Pemerintahan Negara dalam Hal Presiden Berhalangan Sementara*. Universitas Airlangga, 2019.
- Furqan Razak et al. "Menteri Triumvirat dalam Tata Kementerian Negara Republik Indonesia." *Qawanin Jurnal Ilmu Hukum* 5, no. 1 (2024): <https://doi.org/10.56087/QAWANINJIH.V5I1.473>.
- Hendra Wahanu Prabandani, *Batas Konstitusional Kekuasaan Eksekutif Presiden (Constitutional Limits of the Presidential Executive Power)*, *Jurnal Legislasi Indonesia*, 12, no. 3, 2015.
- Hukumonline. "Melacak Kebenaran Syafruddin Prawiranegara Presiden RI? Begini Kata Prof Yusril." <https://www.hukumonline.com/berita/a/melacak-kebenaran-syafruddin-prawiranegara-presiden-ri-begini-kata-prof-yusril-lt6458812224b80/?page=2>.
- Indroharto. *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara*. Jakarta: Pustaka Harapan, 1993.
- Jeffri Arlinandes Chandra et al. *Teori dan Konsep Pembentukan Perundang-Undangan di Indonesia*. Bengkulu: CV. Zigie Utama, 2022.
- Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Gramedia Pustaka Utama, 2007)
- Kompas. "Inilah Jadwal Kampanye SBY." <https://amp.kompas.com/nasional/read/2009/06/03/1729092/~Nasional>.

- M. Shaiful Anwar and Muhammad Eriton. "Analisis terhadap Pembagian Kewenangan antara Presiden dengan Wakil Presiden dalam Sistem Ketatanegaraan Indonesia." *Journal of Constitutional Law* 2, no. 2 (2022): 269. <https://doi.org/10.22437/limbago.v2i2.17471>.
- Media Indonesia. Titi Anggraini. "RUU Pemilu dan Penguatan Keterwakilan Perempuan." <https://mediaindonesia.com/kolom-pakar/754850/ruu-pemilu-dan-penguatan-keterwakilan-perempuan>.
- Miriam Budiardjo. *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia Pustaka Utama, 2008.
- Mochamad Adli Wafi and Deka Oktaviana. "Pembatasan Petahana dan Pejabat Negara dalam Kampanye Pemilihan Umum Presiden." *Jurnal Lex Renaissance* 9, no. 2 (2024): <https://doi.org/10.20885/JLR.vol9.iss2.art6>.
- Paragraph 1, Article 29, Chile's Constitution of 1980 with Amendments through 2015.
- Paragraphs 3-4, Article 106, Turkey's Constitution of 1982 with Amendments through 2017.
- Presidential Decree Number 8 of 2000.
- Retno Saraswati. "Desain Sistem Pemerintahan Presidensial yang Efektif." *Jurnal Masalah-Masalah Hukum* 41, no. 1 (2012): 137-143. <https://doi.org/10.14710/mmh.41.1.2012.137-143>.
- Ridwan HR. *Hukum Administrasi Negara*. Jakarta: PT Raja Grafindo Persada, 2013.
- Saldi Isra. *Lembaga Negara*. Jakarta: Rajawali Press, 2020.
- Syafri Hariansah and Anna Erliyana. "Mekanisme Pengisian Jabatan Kekosongan Jabatan Presiden dan Wakil Presiden: Studi Perbandingan dengan Amerika Serikat, Brazil, dan Perancis." *Pakuan Law Review* 4, no. 2 (2018): 334. <https://doi.org/10.33751/palar.v4i2.886>.
- Taomo Zhou. "China and the Thirtieth of September Movement." *Indonesia*, no. 98 (2014): <https://doi.org/10.5728/indonesia.98.0029>.
- Tempo. "Berhalangan Sementara." <https://www.tempo.co/politik/berhalangan-sementara-1043905>.
- VnExpress. "Vietnam's President Tran Dai Quang dies aged 62." <https://e.vnexpress.net/news/news/vietnam-s-president-tran-dai-quang-dies-aged-62-3813138.html>.
- Wirjono Prodjodikoro. *Azas-Azas Hukum Tata Negara di Indonesia*. Jakarta: Dian Rakyat, 1989.