

President's Power, Transition, and Good Governance

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ABSTRACT

This study aims to analyze the President's power and the threat attached to it during the transition of the inter-election period and the concept of the legal framework in Indonesia's legal system. It also provides the need to be performed in the future to ensure that the President does not abuse this power. The matter raises a series of problems regarding the government's authority during the election transition period. This research will provide comparative studies with Ghana, Liberia, and the United States to understand the President's power in the Indonesian constitutional system. This research was conducted using doctrinal research methods, or normative legal research. In reviewing a legal issue, a doctrinal research method analyzes positive law, related cases, and other relevant references. The results showed that the President's power during the election transition period needs to be regulated in the constitution. Furthermore, the arrangement has to be enforced technically in the form of a presidential transition law.



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1. Introduction

The amendment of the Indonesian 1945 Constitution helps in searching for national identity in state life. This amendment enables the country to seek an ideal form of government based on its cultural and socio-political character. Therefore, the first amendment to the 1945 Constitution focused more on structuring the government's authority because the former format used was very authoritarian. The focus of this article will discuss the problem of presidential power in the transition inter-elections period ([Hendrawan et al., 2021](#)).

Twenty years after this amendment (1999–2002), it became natural to evaluate Indonesia's constitutional system due to several administrative problems. The President's power transition becomes a polemic because its limitations and regulation are regarded during inter-election ([Cárcaba et al., 2022](#)). Meanwhile, the democratic process indicates that the government's authority creates complex problems faced by almost all countries worldwide. The President's power transition in the inter-election period occurs when a President wishes to be re-run for a second term in a presidential election (*Pilpres*) ([Talib et al., 2022](#)). In the Indonesian administration system, the government's authority has become a five-year problem during this transition. For instance, the incumbent President re-runs the election for a second term because fraud and abuse of power are always aimed at him. However, the President intervened against all state administrators and

apparatus because he had the power to win back the Pilpres. Also, the incumbent president can decide to take soft steps to face the problem of losing the election or not being re-nominated (Fossati et al., 2020). Therefore, the government's authority that is likely to be abused in the inter-election period becomes a threat to the democratic process. The President can decide to exercise unilateral discretion without paying attention to the public and national interest because he is no longer a political burden in the future (B. D. Lewis, 2022).

This expression in *maxima potential minima licentia* is a postulate in jurisprudence because power is always a desire or willingness to commit crimes and arbitrary actions. Therefore, power-holders tend to impose their will by moving all the vital organs. Power is worthless, but a person's ability to impose his will on others. According to Riggio, it is the use of aspects that exist in social relations to force others to take undesired actions. This shows that the President's power becomes a threat because he is a superior leader (Ufen, 2010). In a presidential system, the president becomes the center of power due to his position as a dual executive. This tends to be an excellent opportunity for the superior leader to abuse power in the form of actions and policies (discretionary). The above act is usually performed during inter-election, specifically if the President is re-nominated or spends the last minute in office. During this time, executives frequently exploit their waning hours of power to further an agenda that the voting public has already rejected at the polls (Sunarso et al., 2022).

The transition of the government's authority during this period is one of the fundamental problems in the Indonesian administration system. According to Nagle, the President frequently takes unusual actions during inter-election. This action is in the form of ratifying or enforcing laws that are undemocratic or procedurally flawed. Also, the President unilaterally takes policies considering that his term of office tends to end soon. This means that the popularity of the superior leader will not be well recognized in public. Therefore, all the President's policies tend to ignore the people's general will (Rumayya et al., 2020).

The fact that all presidents did everything possible to remain in power. During the transition period, presidents either extended their terms in office or changed the laws to be able to run for the presidency again and again. There were numerous allegations of fraudulent practices and violations during the election process, including intimidation or intervention, violence, and the revocation of voting rights (Panjaitan et al., 2022). In order to be re-elected in the general election, he engaged in these fraudulent practices. In Uganda, for example, when President Yoweri Museveni amended the Ugandan Constitution to change the constitutional limits on the President's age and term of office (Norris, 2013). This symptom was observed during President Jokowi's administration when the coalition of political parties, namely Golkar, PKB, and PAN, proposed amendments to the 1945 Constitution to extend the President's term of office. This is a violation of the mandate of Article 22E paragraph (1) and Article 7 of the 1945 Constitution, which state that general election are held every five years and that the President and Vice President's terms of office are fixed and can be re-elected only once (Ilyas et al., 2022).

The government's authority in the inter-elections always gives birth to several discourses including the temporary dismissal and leave, as well as the discourse. According to Norris, Crowe, Jeffery A. Jenkins & Timothy P. Noken, the President's power in the general elections becomes a serious concern and problem (Cárcaba et al., 2022). Also, the study emphasized that the President and members of congress only commit fraud against their constituents during this period. This tends to make the President and members of parliament more dangerous (Burlacu, 2014). Therefore, the government's authority in the inter-elections is one of the fundamental problems in the Indonesian constitutional system. This study consists of several sub-headings including (1) the problem of the President's power in the inter-election period, (2) the implications of regulation absence, and (3) the importance of future arrangements.

2. Research Methods

This research was conducted using doctrinal research methods. According to Hutchinson and Duncan, after going through research on several studies on the use of research methods in various Law Faculties in Australia, it was found that "All the reports agreed that doctrinal legal research was

the most accepted methodology in the discipline of law" (Y. Lin & Xi, 2022). Doctrinal research typically begins with the development of a legal proposition, and the entire analysis of data from primary and secondary sources is aimed at testing the proposition. A doctrinal research method is an analysis of positive law, related cases, and other relevant references in reviewing a legal issue (Whitten, 2015). Therefore, all data used in this study are sourced from positive law, related cases, as well as references, and previous research results that are relevant to this paper. The doctrinal legal research is examined in two stages. First, the research was conducted by looking for legal regulations that were the subject of the study in the research objective; Second, analyzing and interpreting the legal regulations that are being studied in the research (Harvey, 2016).

Pearce states that doctrinal research is research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty, and perhaps predicts future developments. This concept is consistent with normative legal research, which seeks to generate new arguments, theories, or concepts as prescriptions for resolving problems (Prasetio et al., 2020). The normative model is mostly used by collecting written and library documents as data. Data were sourced from the primary, secondary, and tertiary legal materials. The primary documents have a binding nature including laws and regulations, while the secondary has non-binding nature such as draft laws, results, and others. The study also emphasized that tertiary legal materials provide instructions or explanations for the primary and secondary including dictionaries, encyclopedias, and others (C. Lin et al., 2022).

In normative legal research, several approaches that were used include the statute, case, historical, comparative, and conceptual (Kusuma et al., 2021). This research study will take three main approaches to explain problems regarding the President's power transition and the concept of the legal framework in Indonesia's legal system: First, the statutory approach aims to examine specific laws and regulations and provides an interpretation of those provisions. Second, the case approach is to understand the legal norms and rules that are implemented in legal practice (Azevedo et al., 2021). Third, the approach seeks to enhance understanding of a legal system and the development of legal reforms. Data were analyzed using the descriptive-qualitative method. Meanwhile, the descriptive is used to provide an overview of the research subject and object, while the qualitative explains the results obtained in the form of theoretical descriptions, opinions, and legal arguments. This paper focuses on scholarly comparative legal research (Kalapos, 2016). This research uses a comparative legal research format to compare regulatory frameworks that regulate presidential transitions as follows in Ghana, Liberia, and the U.S.A (Oermann & Ziebarth, 2015).

3. Results and Discussion

3.1. The Dangers of Presidential Power in the Transition Inter-Election Times in Indonesia

The term president comes from the Latin word *praesidens* or *praesidere* which means to lead and not to become a monarch. However, the President is different from the presidential institution. The President is always associated with the officeholder, while the presidential institution is related to an office environment. Moreover, the President's power tends not to be separated from the historical aspects of the nation or state and ancient empires (Azevedo et al., 2021). This is because the idea of the government's authority is not originated without a blueprint concept that underlies it. The philosopher John categorized the powers of the government into three parts namely; legislative, executive, and federative (in other words, foreign affairs, and national security). Also, Baron De Montesquieu worried about the concentration of powers—not just that they would be in one set of hands, but that in those hands, even the conceptual distinctions between legislating and judging, and between judging and enforcement, would be erased (Y. Lin & Xi, 2022).

Montesquieu's *The Spirit of the Laws* introduced the idea of classifying government into distinct categories of power, namely; first, executive which is used to enforce laws. Second, legislative which helps in making laws, and judiciary which is used to prosecute the violations of the law. In Montesquieu's view, this separation is crucial to the preservation of liberty, which requires that "government be [structured such] that one man need not be afraid of another. These two concepts

are not fundamentally different but have no consistent thought in the third branch of power. John Locke emphasized more on diplomatic relations to maintain a good connection between countries, while Montesquieu emphasized more on protecting human rights (Cárcaba et al., 2022).

Institutionally, the government's authority is interpreted as an executive or agency that has the task to implement state functions based on the provisions of laws and regulations. Therefore, the existence of a country is highly dependent on the President as a dual executive because all activities are fully coordinated based on an unlimited basis. According to CHAPTER III Power of State Administration, Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), "The President holds governmental power due to the Constitution". This indicates that he is the one in control of the country's administration. According to Article 20 paragraphs (2) and (4), Article 10, Article 11 paragraph (1), Article 13 paragraph (1), as well as Article 14 paragraph (1) and (2) of the 1945 Constitution, the President has the right to propose, discuss and ratify draft laws, holds supreme power over the Army, Navy, and Air Force, declares war with the approval of the House of Representatives, makes peace and treaty with other countries, appoints ambassadors and consul, grants clemency and rehabilitation, as well as amnesty and abolition (Sunarso et al., 2022).

The above explanation shows that the president has a very strong position in the administration system. Therefore, the use of the government's authority with all its debates and problems becomes an actual issue, specifically while in the interim period of the transition. According to Jack Bell, it becomes impossible if a President failed to abuse the power during the inter-election period. Therefore, the concept of limiting the government's authority was emanated to prevent this misappropriation (Cárcaba et al., 2022). The President tends to only exercise his power regarding the law and the constitution. In a modern state, the government's authority needs to be based on a country's constitution. According to Pieris, the power obtained directly through the constitution is an attributive, while the one obtained through other regulations or delegation is derived. Ismail Suny formulated the government's authority into five functions including, administrative powers are used for the implementation of law and politics (Rumayya et al., 2020), legislative power helps in submitting plans and passing laws judicial power is used to grant pardons and amnesties; military power helps in regarding the armed forces and defense affairs; and, diplomatic power is a concern or related to foreign relations (Wahid & Prastyo, 2013).

Furthermore, the most important thing about the President's power is to perform its function. The government's authority is divided into general and specific. Meanwhile, the general power enables the President to perform broad duties, while the specific one allows him to carry out prerogative duties. The regulation of the President's power in the inter-election period is one of the issues that escape the constitutional reform agenda. This problem leads to negative narratives and stigmas including abuse of power, fraudulent elections, unilateral policies, and others. Therefore, the President's power in the inter-election period always creates limitations, dismissal, temporary leave, and resignation (Ilyas et al., 2022).

According to Amadeo, the incumbent President still has the power to grant legal pardons, take unfavorable policies for the newly elected leader, and consensus for his constituents during the transition period. The temptation to offer clemency as a favor to personal and political allies or to fight political enemies increases when an incumbent is defeated in re-election. That is, when presidents' terms come to an end, they may place a larger emphasis on criminal justice policy. So even at the end of a President's term in office, when he or she may be looking for grants, they are not to be found. However, the President's popularity is no more concerned in public, specifically while losing the election or spending the last minute in office (Fuad, 2014).

The study of L. Elaine Halchim showed that the government's authority in the interim election can be transferred to the newly elected leader. However, the President has free will to perform and use all his available power until the last day in office. This situation becomes an opportunity for the President to take policies unilaterally. Therefore, he can commit acts against the law (*onrechmatige overheid daad*), abuse of power (*deteournemen de pouvoir*), and arbitrary actions (*willekeur/abus de droit*). A non-safety valve that regulates the government's authority during the inter-election is one

of the factors leading to this situation. Meanwhile, the President's power continues until the newly elected leader is sworn in (Panjaitan et al., 2022).

In the case of Indonesia's transition in the inter-election times, the president tends to abuse of power, whether he is an incumbent, loses an election, does not re-nominate, and/or his term of office cannot be extended. As for the practices of abuse of power that are commonly carried out by the President (especially the incumbent President) in the transition inter-election times; First, the use of the state budget in the form of programs and activities (misuse of state budget) namely; increasing and paying the salaries of civil servants, TNI, and Polri, promising early payment of the 13th salary and holiday allowance, increasing the salary of village officials, raising village funds, disbursement of social assistance funds; and, increasing and accelerating the acceptance of the Family Hope Program (PKH). Second, ASN neutrality or replacement of officials or employees. The principles of professionalism and neutrality in elections are violated by the involvement of the structure and funding of the bureaucracy and BUMN in the strategy for winning presidential candidates (Mengü et al., 2015).

The fraud committed is structured because it involves the ranks of the relevant ministries and institutions. There are several policies at the bureaucratic level that clearly violate ASN's neutrality. For example, on March 2, 2019, Tjahjo Kumolo – Ministry of State Apparatus Utilization and Bureaucratic Reform (hereinafter Menpan RB) instructed ASN to be not only neutral but also to actively convey President Jokowi's incumbent program (Prasetio et al., 2020). This was communicated prior to election day (voting), on March 2, 2019. This action clearly violated the ASN's neutrality principle. In addition, the Minister of Home Affairs and the Minister of Villages, Development of Disadvantaged Regions (PDT), and Transmigration, held a gathering of village heads which was packaged in a National Gathering event attended by the Incumbent President Jokowi, as stated in the Letter of the Minister of Home Affairs Number 080/2331/SJ dated March 13, 2019, regarding "Recommendations for Implementation of National Village Gathering Activities in Indonesia". Third, in the 2019 presidential election, the neutrality of the State Intelligence Agency (BIN) apparatus and the police. This is proven by a confession from one of the sector police chiefs in Garut, West Java, who acknowledged that all police chiefs were ordered to garner support for the Joko Widodo-Ma'ruf Amin for the president, in February 2019 (Arofah & Nugrahajati, 2014).

3.2. Implications of Absences settings

The President's power transition during the general elections is not regulated in the Indonesian constitutional system. However, the absence of these regulations becomes a legal loophole for the President to abuse his power. In the theory of political science and state administration, the policies of the superior leader during the inter-election are divided into two including the popular and unpopular. The popularity is usually taken because the president able to run for a second term. This populist policy was performed to boost his political popularity. Meanwhile, the unpopular is contrary to national interests and the general will of the people (Salazar et al., 2022).

The absence of regulation during the inter-election period tends to affect the processes of governance and democracy. Because the president's authority during the transition between elections is a period of uncontrolled presidential power, which can be a threat to the principles of good governance. For instance, the President can use power to implement policies that are unfavorable to the nation and people but for personal or oligarchic interests. Furthermore, he can use this authority with unilateral actions including legal pardons, diplomacy, foreign agreements, and the appointment of state officials to pass laws in a hurry (Nuesiri, 2022).

William G. Howell and Kenneth R. Mayer reflect the legitimacy of the President's actions in interim elections into two categories; first are those that are consistent with the Presidential preferences in the term spent in the office, or which are merely an extension or continuation of existing policy. This is because policy processes, unilateral actions, and a decision issued a week before the inauguration tend to reflect work that has been going on for months; the second category consists of those decisions that tend not to have been made. These policies are either inconsistent

with previous actions or are sufficiently controversial because they created unacceptable political consequences for the President (Geise & Bariyah, 2022).

According to the views above, it can be concluded, the President needs to be consistent with the campaign promises made during his term of office and not take unilateral policies during the inter-election period, and the prohibition against the controversial decisions that become unacceptable for the newly elected leader. The incumbent President becomes a threat to the democratic process during the inter-election period. This usually occurs especially while he is re-nominated for a second term. Meanwhile, the President's actions towards the end of his term in office are referred to as Cinderella which raises the stigma of a fraudulent and unfair election, abuse of power, undemocratic law enforcement, making international treaties detrimental to national interests, appointing executive career officers, granting legal pardons, and others (Wibowo et al., 2022).

Furthermore, William G. Howell and Kenneth R. Mayer explained the President's position in the inter-election period as follows portraits of outgoing Presidents leaving quietly into the night by overlooking an important feature of American politics and executive power including the ability to unilaterally set public policy. The President has the means to effectuate lasting and substantive policy changes internally and externally by executive orders, proclamations, executive agreements, national security, memoranda, and other directives (Gorwa, 2021). A President who is at the pace of spending the last minute in the office tends to take unilateral decisions that are related to domestic and foreign policies. For instance, the transition of power from President John Adams to Thomas Jefferson. This power transfer became known as the "Marbury vs Madison" incident because John Adams signed a decree appointing Marbury as chief of justice on the "night" of his last day in office. These events are referred to as Midnight Judges. Also, George Walker Bush the 43rd President of the United States, at the end of his term held Barrack Obama hostage with his policies related to the ongoing war in Iraq (Korkmaz, 2011).

In the Indonesian context, this article focuses solely on the president after the reform era. Because since the post-reform, the transfer of presidential power has been carried out through direct general elections. And this is relevant to the topic of this article, which discusses the presidential election's inter-time transition Pilpres. First, president Megawati issued 18 legal products in the form of Laws, Presidential Decrees (*Keppres*), and Government Regulations at the last minute in office. Second, the practice of "Midnight Judges" occurred in the era of Susilo Bambang Yudhoyono (SBY) who unilaterally appoint Patrialis Akbar as a judge of the constitutional court. Lastly, President Jokowi is abusing power because he made a very controversial decision in implementing the Omnibus Law on Job Creation (hereinafter as *UU Cipta Kerja*) after being re-elected for a second term. The process of forming this law was performed in an undemocratic manner. Furthermore, the President approved the revision of Law Number 30 of 2002 concerning the Corruption Eradication Commission. Jokowi's actions weakened this commission in fighting against corruption which contradict his promise during the campaign period. These events show how the President tends to take cinderella's actions during the inter-election period (Wiegant et al., 2022).

Therefore, it is necessary to take constitutional steps to limit the government's authority and abuse. This arrangement needs to be taken seriously because the remaining powers of the President are exercised in good faith. For instance, the President must be stopped from using unilateral policies and actions that tend to bind the newly elected one during the inter-election period. This is important to avoid a dispute of power (*prerogative*) between the de jure versus de facto (Prihatini, 2020). Furthermore, policy-making at the end of the term in office can be performed as long as it is in good faith of the de facto. The President's power needs to be limited because it is contrary to the theory of popular sovereignty. According to Wallner and Winfree, almost all the government's policies during the inter-election period are against the people's will. Theoretically, the country handed over its sovereignty to the elected President. Therefore, it is important to limit the government's authority during the inter-election period to avoid representational damage (Harvey, 2022). The President's goal has to be centered on the completion of all his work programs and political promises before the election process (Harvey, 2022).

3.3. Presidential Transition Models: Ghana, Liberia, and the U.S.A.

Several countries in the world have a presidential transitional legal framework. As a comparative study, this article will only describe the legal framework for the transition of the President in Ghana, Liberia, and the United States. In particular, this article will focus more on the legal framework for the transition of the American President. The reason is that the United States is a pioneer country that has a legal framework for the transition of the President into its constitutional legal system. That the United States is well-known as the mother of the presidential transition.

a. Ghana – Presidential Transition Act 2012 (Act 845)

Ghana is a country formed from the union of the British colonies, the Gold Coast and Togoland. On March 6, 1957, Ghana gained independence from British colonial rule and became the first Sub-Saharan African country to free itself from the shackles of colonialism. In Ghana's constitutional history, military coups have often been used to transfer power to the President, and the first coup occurred in 1966 when the military overthrew the government of Kwame Nkrumah (Briggs, 2021). The President's power starts in his government as soon as the president is sworn in and continues until he is no longer the holder of the President's office. For many years, commitments and president administration involvement, during the transition activities period are quite varied. As the Partnership for Public Service notes, presidential transitions were carried out without much-advanced planning or even the cooperation of an incumbent President (Ayanoo, 2021).

In 1981 the political configuration and transition of Ghana's government began to move in a more democratic direction after Lt. Jerry Rawlings took power. In 1992, Ghana's transitional government became more democratic and restored multi-party politics after the country amended the constitution and approved a new constitution, known as the 1992 constitution. In the same year, presidential elections were held, and Lt. Jerry Rawlings won the Presidential election and served as President until 2000, after being re-elected in the 1996 elections (Asante, 2022).

The Constitution 1992, declared Ghana as a sovereign multi-party unitary republic with a republic-presidential system of government. The head of state and government is the president (executive), who is directly elected with a minimum of 50% of the vote for a four-year term and a maximum of two terms. Ghana's constitutional system adheres to the separation and balance of power through the executive, legislative and judicial branches. After the promulgation of the 1992 constitution, the transition of presidential power was carried out democratically through an election process. The 1992 constitution has survived to this day and is the longest-lasting constitution in Ghana's political-constitutional history, and made Ghana a beacon of democracy in Africa (Brierley & Ofori, 2014).

In 2012, for the first time in Ghana's political history since independence, the transfer of political power was regulated by a legal blueprint after parliament approved the Presidential Transition Act 2012, Act 845 on 31 May 2012. The law regulates the transfer of political administration from one President to another democratically elected President, which regulates the composition of the transition team, the function, and schedule of team meetings, the formation of sub-committees and advisory boards, submission of notes, the role of the presidential estate unit, asset inventory, official vacations, and the inauguration of the elected president. The Presidential Transition Act 2012 (Act 845) mandates the formation of a transition team to guide the process of transferring presidential power (Ablo, 2022).

Section 1 of the Presidential Transition Act 12 (Act 845), states that “within twenty-four hours after the declaration of the results of the presidential election in accordance with Article 63 of the Constitution, the incumbent President shall appoint; the head of the presidential staff appointed under the Presidential Office Act 1993 (Act 463), the Attorney-General, and the Ministers responsible for Presidential Affairs, Finance, the Interior, Defence, Foreign Affairs, Local Government and National Security. Whereas, the person elected as President shall appoint an equal number of persons that shall include the Head of

the Civil Service, the Head of the Local Government service, the Secretary to the Cabinet and the National Security Co-ordinator” (Ehwi & Mawuli, 2021).

The Presidential Transition Act 12 (Act 845) mandates the transition team to form a sub-committee which includes, an inauguration sub-committee, which shall be responsible for the organization of the inauguration of the person elected as President into office, and for the taking of the oaths of office by the persons elected as President and Vice-President before Parliament on the 7th January, a government machinery sub-committee, which shall be responsible for arrangements for the handing over to the new administration of the machinery of the Civil Service, including the Ministries and the departments and agencies under the Ministries, a presidency sub-committee, which shall ensure the orderly transfer of all official assets and liabilities of the President, the Vice-President, the Ministers, the Deputy Ministers, the Regional Ministers, the Deputy Regional Ministers and the Presidential staff to the new administration; and any other sub-committees which the team considers relevant in the performance of any of the functions of the Team (Mawutor & Hajjar, 2022).

In the legal framework concept of the Presidential Transition Act 2012, the President and the elected president will form a transition team with the same number of members independently. The President and the President-elect will be co-chairs of the transition team. The functions of team transition are as follows; First, to make comprehensive practical arrangements to regulate, in accordance with this Act, the transfer of political power following a presidential election and a general election (Boamah et al., 2021). Second, to ensure the provision of daily national security briefings for the person elected as President during the period before the assumption of office by the person elected as President; Third, to ensure that the salaries, allowances, facilities, privileges and the retiring benefits or awards as determined, by the President under clause (1) of Article 71, and by Parliament under clause (2) of Article 71 and which are due to the holders of the offices specified in article 71 of the Constitution are paid or accorded to those persons without undue delay; Fourth, to undertake any other function which will enable the Team to achieve the object of this Act (Kidido & Biitir, 2022).

The Presidential Transition Act 2012 can be considered a legal effort to institutionalize the transfer of power from the presidential government to the elected president's government. According to Gyampo, the Presidential Transition Act is an effective effort in overcoming the grim history of democratic transition in Ghana, which remains an integral part of good governance. Due to the legal framework of the Presidential Act 2012, it is very useful to regulate the transfer of power in a way that ensures national unity, policy continuity, and effective management of the public sector. Ghana's success in overcoming the grim history of the President's transition to power has made it a beacon of democracy in sub-Saharan Africa (Berkouwer et al., 2022).

b. Liberia – Executive Order 91

Liberia was founded in 1822 and achieved its independence in 1847. The state of Liberia is a country with a system of government in the form of a constitutional republic. In Liberia, the transitional regime was built on a rejection of the realities of local power which led to a non-consultative reform approach that has seriously jeopardized the implementation of reforms (Andrews et al., 2022). In 2005, Liberia scored outstanding points in its struggle for peace, democracy, and sustainable development by holding multi-party elections that ushered in a democratically elected government led by Ellen Johnson-Sirleaf (Clottey et al., 2022).

In 2007, Liberia was involved in a peaceful transition to a democratic order under the Ellen Johnson-Sirleaf government. And in the same year elections were held and Ellen Johnson-Sirleaf was elected as a democratically elected President. Under the administration of President Ellen Johnson-Sirleaf, the transfer of political power was democratically regulated. The year 2017 was a historic event for the Liberian constitutional system, where the first time the transfer of the President's power was regulated by law so that the transition

of presidential power would run smoothly and orderly (Prempeh, 2021). The presidential transition law was first implemented during the administration of President Ellen Johnson-Sirleaf, when the process of transferring power from his government to President-elect George M. Weah was sworn in on January 22, 2018, after going through an "inclusive and competitive" election process (Mvukiyehe & Samii, 2017).

The law on the transition of the Liberian President's power, known as Executive Order No. 91, concerning Establishing the Joint Presidential Transition Team of 2017, runs smoothly, orderly, and safely. The law requires the formation of a presidential transition team, which is known as *the Joint Presidential Transition Team (JPTT)* (Vadlamannati, 2015). The organizational structure framework of the JPTT transition team is as follows: Firstly, composition – the President of Liberia shall appoint fifteen (15) persons to the Joint Presidential Transition Team and they shall be as follows the minister of state for Presidential Affairs. Secondly, the minister of state for presidential affairs shall be the secretary of the JPTT. Thirdly, the president-elect shall appoint fifteen (15) persons to the JPTT, all of whom must be Liberian citizens. A sitting member of the cabinet may be preferred. The president-elect shall name his/her appointees to the JPTT not later than twenty-four (24) hours after the declaration of the president-elect by the national elections commission (NEC); Fourthly, the President and the President-Elect shall be co-chairpersons of the JPTT. They may designate any member of the JPTT to act as a co-chairperson in their absence, and; the Lastly, decision of the JPTT shall be made by consensus and any disagreement shall be resolved by the president and president-elect, acting jointly (Adebayo, 2019).

JPTT was formed to facilitate the transition of the President, including assisting and supporting efforts to shift government administration from the administration of the outgoing President to the elected president. As the presidential transition team, JPTT is given attribution authority through Executive Order 91, while the functions and powers of JPTT include; first, formulating guidelines and policies to govern the transition; second, ensuring the provision of regular national security briefing for the president-elect during the period commencing immediately upon the constitution of the JPTT by the incumbent President and the President-Elect; third, ensure every lawful step is taken to promote the orderly transition from the incumbent president to the president-elect; fourth, liaise with all government to ensure the effective provision of the services and facilities in pursuance of this executive order (Epreman & Brun, 2018).

The formation foundation of a presidential transition team before and after the election is part of election management. During the transition period, there are so many challenges including efficiency and effectiveness of government administration, political neutrality, and public accountability (Awange et al., 2018). With the existence of Executive Order 91 as the legal framework and management of the presidential transition in Liberia, the transfer of the President's power can run smoothly from the start of the process to the inauguration of the elected President. So that the administration of government can still run effectively during the presidential transition period (Postmus et al., 2015).

c.U.S.A. – Presidential Transition Act 1963

The transition of presidential power is not just a question of how the president completes his duties and responsibilities until the elected president is inaugurated, but the transition of presidential power is talking about how a president should act if his position is in a transition period between times of power transfer. In the United States constitutional system, the concept of a planned, organized, and coordinated transition of presidential power from pre-election to the inauguration of the elected President has been applied in the form of a legal framework. A smooth, safe, orderly, peaceful, and effective transition of the President's power has become a demand in United States democracy, given the complexity of the problems faced during the presidential transition regarding acts of abuse of power at the last minute (Pasek et al., 2015).

In 1963, the United States passed the Presidential Transition Act 1963 (PTA 1963), as a legal framework for providing services and facilities for transition teams and establishing a formal mechanism to facilitate the presidential transition from pre-election planning to inauguration day. Before the 1963 PTA was ratified, the Presidential transition was run and/or managed by volunteers and funded by the political parties of the President-elect (Mvukiyehe & Samii, 2017).

Since the implementation of the 1963 PTA until now, there have been several changes in line with developments in guarding the presidential transition process. The 1963 PTA, as amended by the Presidential Transitions Improvements Act of 2015 (Transitions Improvements Act), made several reinforcements by instituting and strengthening processes deemed effective in the provisions of the presidential transition Act. There are at least two main objectives of the Presidential Transition Act 1963, namely: First, the primary purpose - the law was primarily designed to promote the orderly transfer of executive power in connection with the expiration of the President's term of office and the inauguration of a new President." Second, a secondary objective - The Act is designed to reduce the need for private money to support what Congress clearly defines as public liability (Raymond, 2011).

The process of transitioning the President's power in the United States can be seen from the design of the legal framework and the organizational structure of the presidential transition that was formed. The 1963 PTA authorized several bodies or institutions to provide support for the presidential transition from pre-election to inauguration day. The institution or agency that is formed has the task of overseeing the presidential transition process, often referred to as the presidential transition team. The presidential transition team to be formed includes the Federal Transition Coordinator, the White House Transition Coordinating Council, and the Agency Transition Directors Council. Those institutions or agencies have their respective duties, functions, and authorities in the presidential transition process, which have the responsibility to provide access to information, facilities, and services related to the presidential transition to the elected President (including the elected presidential transition team) (Abdul-Razzak et al., 2020).

The presidential transition process consists of three main phases spanning approximately one year, from April or May of the election year to the inauguration and the first 200 days of a new government. Under the provisions of the Presidential Transition Act 1963 - Presidential Transitions Improvements Act of 2015 (Transitions Improvements Act), a senior career executive will be selected at each institution to lead transition preparations. Prior to the election, the presidential transition team and institutions were not allowed to communicate with each other. However, any eligible candidate will be able to send their representatives to the Agency Transition Directors Council meetings and meet regularly starting six months before the election to discuss and coordinate agency-wide transition preparations (Abdul-Razzak et al., 2020). The Agency Transition Directors Council is co-chaired by the Federal Transition Coordinator at the General Service Administration (GSA) and the Deputy Director for Management at the Office of Management and Budget. These two institutions became the main keys for the presidential transition team before the election (Leal & Teigen, 2018).

In the provisions of the Presidential Transition Act, it is also required to appoint an administrator who comes from a senior career officer of the General Service Administration (GSA) to become the coordinator of the Federal Transition Coordinator. The General Service Administration (GSA) is the federal agency tasked with managing the funds and office space allocated for presidential transitions. The General Service Administration (GSA) administrator is appointed by the President (Borges, 2016). The task of this agency is to coordinate transition planning across agencies, ensuring that the agency complies with all statutory requirements on transition planning and reporting (see title 3, section 102: United States Code; and section 4: Presidential Transition Act). It also serves as a liaison for candidates who qualify and participate in the White House Transition Coordinating Council

and the Agency Transition Directors Council. Then, after the presidential election process, the leaders of the transitional institutions will be key to the landing team of the elected president, as stated in the memorandum of understanding between the White House and the presidential transition team (Wang, 2016).

The President would establish this institution no later than the beginning of May in the year of the Presidential Election or formed 6 (six) before the general election. This Council is chaired by senior employees of the President's Executive Office consisting of high-ranking officials such as; cabinet officers; the Directors of the Office of Management and Budget, the Office of Personnel Management, the Office of Government Ethics; the Administrator of GSA; and the Archivist of the United States. The White House Transition Coordinating Council has several duties and responsibilities including, providing guidance to federal transition agencies and coordinators, facilitating communication and information sharing among transitional representatives in the agency and the executive office of the president and preparing and conduct inter-agency emergency preparedness and response exercises. This institution was formed six months before the election (Harguindéguy et al., 2021).

This institution was formed with a number of important responsibilities in the presidential transition process, including ensuring that the federal government has a unified strategy in place to address the challenges and interagency responsibilities surrounding the transition and turnover of non-career appointed officials, coordinating transition activities between the executive office of the President, institutions, and candidates for the transition team who meet the requirements, until after the election of the President and Vice President are elected; and this institution in carrying out its duties and functions refers to the guidelines provided by the White House Transition Coordinating Council and is guided by the previous presidential transition period (Harvey, 2016).

3.4. Toward A Conceptual of Legal Framework in Indonesia

This section explains the basic constitutional principles that limit the President's power transition during the inter-election period. The orderly transfer of authority is one of the indicators of a fair and democratic election process. According to Beermann and Marshall (Nygård, 2020), the transfer of the President's power is filled with uncertainty and contradiction. This is because there are no constitutional provisions that specifically regulate how the government's authority needs to be exercised during the transition of the inter-election period. Jack M. Beermann and William P. Marshall explained that the President's power has to be guided by explicit legal and constitutional principles (Toha et al., 2021).

Implicitly the constitution only tries a little bit to regulate the government's authority in the transition period. This is indicated in Article 22E paragraph (1) of the 1945 constitution which stated that "General elections are held in a direct, general, free, secret, honest and fair manner every five years". The two things regulated in this provision include the limitation of the President's term of office for five years, and the transferring the power during the inter-election period. Based on the above argument, the limitations on the President's power in terms of duties and office need to be regulated strictly in the constitution and laws. According to Article 34 paragraph (1) and (2) Law No. 7 of 2017, the election is held simultaneously while the day, date, and time for voting are determined by the General Elections Commission (KPU). This law regulates the implementation of balloting by specifying the exact period it is holding. According to Article (1) paragraph (1) of Law No. 7 of 2017, election means sovereignty of electing members of the People's Representative Council, Regional Representatives Council, and Regional People's Representative Council, as well as the President, and his vice. This is directly, publicly, freely, confidentially, honestly, and fairly performed within the Unitary State of Indonesia based on Pancasila and the 1945 Constitution (Prasetio et al., 2020).

Moreover, matters regarding the voting day, date, and time are regulated in General Election Commission (KPU) Number 10 of 2019 concerning the Fourth Amendment, Number 7 of 2017 concerning Stages, Programs, and Schedule for the Implementation of the 2019 Election. The

election process for the registration of DPR, DPD, and DPRD members and the President and his vice began on March 26, 2018. This process marks the beginning of the transition period because it has entered the stages of the general election. Meanwhile, the schedule and polling day is set for April 17, 2019, where the President's power is in a transitional period until a new leader is inaugurated on October 20, 2019 (Hendrawan et al., 2021). According to the electoral rules in Indonesia, the transferring of the President's power has a time lag of six months because it starts from the registration stage till the day of swearing-in. This shows that the government's authority ended after the voting results is announced. The Presidents who are not elected and those spending the last minute in office will no longer have the mandate or sovereignty of the people. However, the President tends to exercise his power unilaterally for the remaining six months in office or even take policies that are contrary to the will of the newly elected leader and the state. This shows that the six-month lag is dynamic because it become a long transition period in the Indonesian constitutional system (Nygård, 2020).

In the United States, the President's power only takes a few weeks because the length of time tends to create a contradiction and uncertainty in the country's administration. This system failed to run effectively during the inter-election period. Furthermore, the President who loses and spends the last minute in the office tends to administer the policies in bad faith. On the day of the inauguration, the President always promises to properly, efficiently, and effectively perform his obligations until the last day in office (Mann & Bryant, 2020). In Plato's theory, good governance is based on laws and regulations. Therefore, there is need to be a constitutional limit to the President's power during the inter-election period to ensure he does not use it arbitrarily. This is to consider the breadth of the government's authority through *freies ermessen* that tend to be detrimental to the state (B. D. Lewis, 2018).

Jack Bermann and William P. Marshall showed that the inter-election period is full of crisis and uncertainty with a greater risk of abuse of power by the incumbent government. Therefore, during this period, the President's actions are contrary to people's will, but he does not have to do things with bad intentions while experiencing the Regional Head General Election (D. C. Lewis et al., 2015). This is to ensure that the transfer of the government's authority is performed in a safe, orderly, fair, and democratic manner (Calvo et al., 2015). Meanwhile, limiting the President's power in the inter-election period does not mean it is castrated or reduced but only temporarily confiscated until the elected leader is inaugurated. This is to prevent abuse because the government's authority becomes a situation of ruling without sovereignty. Therefore, future arrangements are important to ensure that the transfer of the President's power is performed safely, orderly, and democratically without any threat of danger (Allen, 2015).

4. Conclusion

In conclusion, based on the practice of presidential transition models in the Ghana, Liberia, and the United States, it can be concluded that the purpose of the legal framework - the presidential transition law is an effort to organize the transfer of presidential power starting from pre-election to the inauguration day that the transfer of presidential power can run in an orderly, efficient and effective manner. Least, there are three main objectives of the importance of the President's transitional legal framework, first; to make arrangements for the transition of presidential power to run in an orderly and orderly manner; second, to prevent practices of abuse of power by the president at the last minute of his term of office; third, to coordinate and synergize the transition of government administration between the president and the elected president that government policies can be sustainable (sustainable government). Therefore, the President's power transitions in the inter-election period in Indonesia need to be regulated by the constitution and legislation that the administration of government remains based on the principles of good governance. This arrangement is not to castrate the government's authority but to temporarily confiscate it. The purpose is to ensure that the President does not take unilateral actions during the inter-election period. Also, this arrangement aims to prevent conflicts between the President *de jure* and *de facto* that the transfer of power is run orderly based on constitutional principles.

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