

The Urgency of Regulating the Lame Duck Session in Indonesia on President Power



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ABSTRACT: A lame-duck session is a common occurrence during presidential transitions. Despite its lame duck status, Indonesia's President holds significant power. Until present, Indonesia has no regulations governing the limitations on the President's power during the lame duck session. This research topic is formulated as first, what is the urgency of establishing legislation addressing lame duck sessions in Indonesia? Second, what is the best lame-duck session arrangement in Indonesia? The research employs normative research methods. As a result, the findings of this research discussion in the lame-duck session created legal uncertainty in policymaking, as well as the possibility of the president using power the advantage of the president's group Ideally, in Indonesia, the lame duck session is governed by law that includes a timeline for the presidential election, which must be held no later than thirty days before the President's term ends.

KEYWORDS: Lame Duck; President, Democracy; Law; power.

A. INTRODUCTION

Presidents in various parts of the world, particularly in Indonesia, handle significant power, which consists of not only the executive but also the legislative and judicial sectors.¹ In fact, the president's immense power remains during his presidency, even in conditions of transition of power between the previous President and the new President.

The transition phase of power generally produces a time gap between the day the election results are announced and the day the President elect is inaugurated, during which a lame duck session occurs.

According to Jack M. Beerman and William P. Marshall, a lame duck session is a period in which incumbent officials (President or members of parliament) remain in their respective positions after the general election has been completed and they are no longer elected, but they are able to retain their authority as incumbent until the term of office is completed and the new officials elected in the general election are inaugurated.² The concept or term "lame-duck session" is not widely known in Indonesia. The implication is that there are currently no formal limitations governing the president's authority during the lame-duck session. In fact, given the current situation, regulating lame-duck sessions in Indonesia is an urgent matter.

As previously stated, the president wields immense power as both head of state and head of government, so it is necessary to limit the president's power before the end of his term of office. According to Zainal Arifin Mochtar, if this ability is not limited, there are several possibilities as follows:³

1. When a president is an incumbent, he utilizes his power to win back his position in the presidential election;
2. If a president is not the incumbent, the president is more likely to defend one candidate for president by using his power;
3. It is extremely potential that "Cinderella action" will occur. Cinderella, according to the fairy tale, becomes a commoner at 12 o'clock at night. In the context of national life, it is expected that before the presidency expires, the president will issue and change numerous regulations and policies that are advantageous to himself or his group.

¹ Muslimin Budiman, "Kekuasaan Presiden Dalam Sistem Pemerintahan Presidensial" *Al-Ishlah: Jurnal Ilmiah Hukum* 20.1 (2017) p. 31.

² William P. Marshall and Jack M. Beermann, "The Law of Presidential Transitions" *North Carolina Law Review* 84.4 (2006) p. 2500–2572.

³ Ronald Tanamas, Wisnu Wijarnarko, and Ramidy, "Penerapan Praktik Lame Duck Lebih Mendesak Di Indonesia" *VOI* (Jakarta, January 31, 2024), accessed February 13, 2024. <https://voi.id/tulisan-seri/352862/penerapan-praktik-lame-duck-lebih-mendesak-di-indonesia>.

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On February 14, 2024, Indonesia will conduct elections for president and vice-president. If the presidential election process is completed in just one round, the General Election Commission (KPU) is expected to declare the results by March 20, 2024. Meanwhile, the inauguration of the president and vice president will be conducted on October 20, 2024.⁴ The long time gap of around seven months between the determination of the presidential election results and the president's Inauguration certainly has the potential for abuse of power by the president or undemocratic policy making. As the presidential election approaches, the author contends it is necessary to shorten the lame-duck term and decrease the president's influence by forming laws and regulations governing the lame-duck session in Indonesia.

Referring to the brief description above, the problem formulation in this research is: *First*, what is the urgency of forming legislation relating to lame-duck sessions in Indonesia? *Second*, what is the formulation of the ideal lame-duck session arrangement in Indonesia?

B. RESEARCH METHODS

The research method employed is normative legal research, which is a research approach that considers law as a system of norms. The structure of norms contains principles, norms, and rules derived from laws and regulations, court decisions, agreements, and doctrines.⁵ The approach taken is as follows: *First*, the statutory approach, which entails revising the statutory regulations governing the lame-duck session. *Second*, a comparative approach.⁶ Specifically, by comparing the concept of the lame-duck session, which is applied in several other countries. *Third*, the historical approach entails investigating legal events that occurred previously and are relevant to the topic of current research. *Fourth*, the conceptual approach begins with the perspectives of legal professionals as developed in legal science.

The legal materials used are: First, secondary legal materials consisting of law books and legal journals. Second, primary legal materials, consist of statutory regulations.⁷ Legal materials will be collected through library research, which includes retrieving legal scientific papers and legal regulations from the internet. In addition, all legal resources acquired are subsequently selected or classified, and then analyzed in accordance with the legal issues encountered, in order to reach a conclusion.⁸

C. DISCUSSION

1. The Urgency of Arranging the Lame Duck Session in Indonesia

The phenomenon of the lame-duck session generally occurs during the transition period of the transfer of power, when government officials whose terms of office will soon end and whose successors have been chosen are given the label "lame duck." Since the beginning of the 20th century, the concept of "lame duck" has not been used in a complimentary sense. Moreover, the primary issue with lame-duck is that politicians adopt policies that favor their group (undemocratic) or take legally binding measures that contradict the vision and mission of recently elected officials, despite the fact that the people-elected leaders hold power in government.⁹

Dror Itzhak Yuravlivker, states the definition of lame-duck as: "The term (lame duck) originally emerged in 18th century Britain to describe a stockbroker who owed more than he was worth yet continued to conduct business despite being financially crippled. By the mid-19th century, the term had migrated to the United States, where it ultimately acquired the meaning we still use today: a politician still in office but whose successor has already been chosen".¹⁰

If the long term duck session is not managed properly, it is likely to have a detrimental influence on state administration, including *First*, legal uncertainty in policymaking for interested parties. For example, toward the end of President Susilo Bambang Yudhoyono's term, he issued SE-05/Seskab/IV/2014, canceling Bank Mandiri's acquisition of Bank Tabungan Negara (BTN) and delaying the forestry license procedure.¹¹ *Second*, before the end of his position, the President may utilize his power to pursue his political ambitions. For example, consider President Jokowi's actions which are aimed at consolidating his political power to appoint his son (Gibran Rakabuming Raka) as Vice President from 2024

⁴ CNN Indonesia, "Kapan Pengumuman Resmi Hasil Pemilu 2024 Dari KPU?" CNNINDONESIA, accessed February 18, 2024, <https://www.cnnindonesia.com/edukasi/20240216105707-561-1063405/kapan-pengumuman-resmi-hasil-pemilu-2024-dari-kpu>.

⁵ Muhaimin, *METODE PENELITIAN HUKUM*, (Mataram: Mataram University Press, 2020), p. 47.

⁶ Yati Nurhayati, Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum" *Jurnal Penegakan Hukum Indonesia* 2.1 (2021), p. 11.

⁷ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum" *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8.8 (2021) p. 2463–2478.

⁸ Muhaimin, *Op.cit*, p. 49.

⁹ John Copeland Nagle, "Lame Duck Logic" *UC DAVIS LAW REVIEW: School of Law, University of California* 45.4 (2012): p. 1177–1219.

¹⁰ Dror Itzhak Yuravlivker, "The Lame Duck Congress: Fair or Foul" University of Maryland College Park (2013).

¹¹ Mahruzar Hasibuan and Irwansyah Irwansyah, "Evaluasi Implementasi Periode 'Lame Duck' Di Indonesia Sejak Kemerdekaan Republik Indonesia Tahun 1945 Hingga Saat Ini", *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9.2 (2023), p. 717.

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to 2029. *Third*, toward the end of his presidency, the President's decisions and policies often reduce democratic norms and do not represent community concerns. For example, the issuing of The Government Regulation in Lieu of Law (Perpu) Number 2 of the Year 2022 concerning Job Creation, which was later specified as Law Number 6 of 2023. As the main concern, the development of this Perpu is far from an "urgent situation". In actuality, the formation of the Perpu was supposedly for the requirements of the political elite, rather than the needs of the people.

Regarding the President's enormous power, it is time to enact legislation to limit the President's ability to control and use these powers before the Presidential Election and the transition period of Presidential power. Additionally, the implementation of lame-duck must be executed seriously, and there must be a political commitment to support it. These restrictions must also be in line with constitutional principles which encourage the concept of limiting power. As citizens are aware, the mentality that governs the post-reform UUD 1945 amendment agenda is one of restricting the power of the President. Thus, the desire to limit the President's power stems from the pre-reform policy of concentrating immense power in the hands of the President (executive heavy) without accompanying checks and balances.¹²

The principle of limiting power is one of the characteristics of a democratic legal state which in principle states that "power always has limits" and a government that has limited power (limited government) is a characteristic typical of constitutional democracy.¹³ Indonesia theoretically applies the principles of a democratic rule of law, but in practice, it contradicts this concept. This is demonstrated when there are no legislative restrictions on the President's powers before the Presidential Election or during the handover of the presidency. If the President's enormous power is not immediately limited as the Presidential Election approaches or during the lame duck session, it is possible that it would backfire on Indonesia in the future. According to Lord Acton, "Power tends to corrupt, absolute power corrupts absolutely" Indeed, enormous power on the one hand tends to be misused.¹⁴

2. The Formulation of the Ideal Lame Duck Session Arrangement in Indonesia

Indonesia is a constitutional state, one of which mandates limitations on power. Even though normatively the President's power in Indonesia is not absolute, in reality, within certain limits, there are loopholes to use power for the advantage of groups or factions. These certain limits occur in the period leading up to/during the slow duck session. As of this writing, there are no legal provisions that control the use of the President's powers before or after the general election.

The legislation governing general elections in Indonesia's democratic process only regulates the principles of its implementation. However, it does not explicitly the time limit for the executive and parliamentary transition periods following the completion of all stages of the General Election.¹⁵ Hence the author aims to establish the concept of ideal lame duck session rules in Indonesia; therefore, the author will compare the lame-duck session regulations in Germany and the United States as follows:

a. Lame Duck Session in Germany

In Germany, power is controlled by a President who is elected by the Federal Convention and serves a five-year term. According to Article 54 Paragraph (4) of the German Constitution, the Presidential election is held no later than thirty days before the end of the President's term of office, or sooner if the term is prematurely terminated.¹⁶ Meanwhile, the head of government is held by the Chancellor who is assisted by the Minister.¹⁷ Furthermore, the Chancellor is elected by a majority vote of the House of Representatives, based on the President's recommendation. If the President's preferred candidate fails to be selected, the House of Representatives will vote on a new Chancellor within 14 days of the first Chancellor's election, which is approved by more than half of the members. After the results of the Chancellor's election are announced, the President must inaugurate the elected Chancellor within seven days; otherwise, the President must dissolve the House of Representatives.¹⁸

b. Lame Duck Session in United States

The lame duck session of the United States government system was originally regulated by the 20th Amendment to the United States Constitution, which went into effect in 1933. The provisions regarding the United States lame duck session are principally regulated in the XX Amendment to the United States Constitution, which consists of 6 chapters (parts) that in principle regulate the transition period in the lame duck session. The emergence of the term "lame duck

¹² Ni'matul Huda, *"Hukum Tata Negara Indonesia"*, (Jakarta: Raja Grafindo Persada, 2007), p. 150.

¹³ Ro'is Alfauzi and Orien Effendi, *"Pembatasan Kekuasaan Berdasarkan Paham Konstitusionalisme Di Negara Demokrasi"*, *Politica: Jurnal Hukum Tata Negara dan Politik Islam* 7.2 (2020), p. 111–133.

¹⁴ Ahmad Ilham Wibowo and Karina Maharani Alkhusna, *"Urgensi Pembatasan Kekuasaan Presiden Dalam Pengangkatan Wakil Menteri Pasca Reformasi"*, *Jurnal Hukum Ius Quia Iustum, Fakultas Hukum Universitas Islam Indonesia* 28.2 (2021), p. 296.

¹⁵ Hasibuan and Irwansyah, *Op.cit*, p. 720.

¹⁶ *Germany's Constitution of 1949 with Amendments through 2012*.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

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session" in the modern sense of Congress began in 1935 when the 20th Amendment to the United States Constitution came into effect, and the amendment was ratified in 1933, which essentially specifies that member requirements begin and expire on January 3 of odd-numbered years, where the Congress convenes in a regular session on January 3 every year, unless the preceding session accepts amendments to the law, in which case if the Congress gathers after election day (in November of an even year) but before the next January 3, then the congress This is known as the lame duck session.¹⁹

Within the 20th amendment, a lame duck session is still permitted in the United States, but only if certain actions are taken by either the sitting Congress or the President. A lame duck session may occur under the following circumstances: *First*, by previously enacted legislation establishing an additional session of Congress. *Second*, following a recess in one session but including an election. *Third*, under the authority provided to the leadership during the adjournment or recess of the session. *Fourth*, by moving forward to gather, possibly in pro forma sessions, during the election period, and. *Fifth*, responding to the presidential proclamation calling for an extraordinary.²⁰

The "Lame Duck Amendment" is the 20th Amendment of the Constitution. The 20th Amendment was intended to prevent a defeated president or member of Congress from remaining in office for an excessive amount of time following a failed re-election attempt. Initially, federal officials won seats on March 4, four months after the election (a date that coincided with the beginning of the governing process in 1789), according to Article 1, Section 4. Moreover, members of Congress "assembled and said Convocation was to be held on that day." First Monday of December, excluding the statute specifying different days." This means the new Congress will not assemble for 13 months, and a necessary session will be held following the November election. As they retire from positions, defeated politicians become lame-duck authorities, incapable of successfully representing constituents or influencing public policy. Before the 20th Amendment to the Constitution, which was ratified on January 23, 1933, and went into effect in 1935, lame-duck sessions were significantly different. In addition, congressional elections are conducted every November. Congress restarted on December 1st and held through March 4th. Due to the duration of the session, Congress was unable to do meaningful financial work, leaving politicians unaccountable to voters for several months. The 20th Amendment shortened this period. In section 2, it states, "The Congress will assemble at least once in each year, and such meeting will begin at noon on January 3, unless by law they appoint a different day." The terms of newly elected Senators and Representatives start on the same day. Furthermore, this amendment also shortens the time between the President's election and inauguration, as well as addresses the issue of the House of Representatives' inability to elect the President if the election is held in the House of Representatives (DPR) due to a lack of a majority vote. Another significant component of the 20th Amendment was to shorten the precarious years for the president-elect. As a result, the 20th Amendment transformed the new president-elect's inauguration date from March 4th to January 20th.²¹

Based on the comparison of regulations regarding lame-duck sessions in Germany and the United States above, the ideal formulation of lame-duck session regulations applied in Indonesia is as follows:

- 1) The General Election (Presidential) schedule is held thirty days before the President's term ends. However, under certain circumstances, such as impeachment, resignation, or passing away, the General Election timeline can be accelerated before the President's term ends ;
- 2) Arrangements related to the boundaries of holding General Elections, and inauguration schedules the elected president regulated are set by the law.

D. CONCLUSION

As the head of state and government, the president wields majority power. Even though he is entering a lame duck session, the president has the authority to utilize this enormous power. As the approach of the General Election period and the transition of power, it is necessary to limit the President's power. This is in line with the purpose of limiting authority as mandated in the Constitution of Indonesia.

The governance of the lame duck session in Germany is governed by the German Constitution of 1949, which states that the Presidential Election must be held within thirty days of the President's resignation. Meanwhile, the arrangements for the lame duck session in the United States are regulated by the constitution, which states that the presidential election is held every four years on the first Tuesday in November, and the presidential inauguration is held on January 20. Based on this comparison, the

¹⁹ Nuryadin Nuryadin, "Urgensi Pengaturan Lame Duck Session (Sesi Bebek Lumpuh) Dalam Lembaga Dewan Perwakilan Rakyat Republik Indonesia", SALAM: Jurnal Sosial dan Budaya Syar-i 9.6 (2022), p. 1797–1814.

²⁰ Jane A. Hudiburg, "Lame Duck Sessions of Congress 1935-2020 (74th-116th Congresses)", Congressional Research Service (Informing the Legislative Debate since 1914), accessed February 23, 2024, <https://sgp.fas.org/crs/misc/R45154.pdf>.

²¹ "How The 20th Amendment Made Lame Duck Sessions Less Lame", National Constitution Center, accessed February 13, 2024, <https://constitutioncenter.org/blog/how-the-20th-amendment-made-lame-duck-sessions-less-lame>.

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ideal formulation for the ideal lame duck session arrangement in Indonesia is: *First*, the General Election Schedule (President) is held thirty days before the President's term of office ends. However, within particular circumstances, such as impeachment, resignation, or passing away, the General Election timeline can be accelerated before the President's term expires. *Second*, the boundaries for holding General Elections and the schedule for the President-elect's inauguration are regulated in the form of law.

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