

# Comparing Presidential System Implementation in South Korea, Philippines, and Indonesia



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## Abstract

*The system of government will be reflected in the state constitution, Indonesian constitution is reflected in the UUD 1945. Although it does not explicitly mention, the constitution clearly shows the characteristics of the presidential system adopted by Indonesia. Some Asian countries also implement presidential systems of government such as in South Korea and Philippines. With different culture, will be different in the implementation of the presidential system of government, especially in terms of presidential elections, presidential accountability and the process of dismissing the president (impeachment). In the case of presidential elections, all are equally elected by the people, but only in Indonesia after the presidential term can still be re-elected. the president is accountable to the people of the state, except in South Korea, in addition to being responsible to the people of the state as well as to parliament because South Korea is a hybrid system in its system of government. In the process of dismissal of the president (impeachment) all countries involve legislative power except in Indonesia in addition to involving legislative and judicial power organized by the Constitutional Court.*

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## 1. Introduction

There are several models of government systems in this world, but broadly speaking, according to Jimly Asshiddiqie, they are divided into three most popular categories, namely presidential, parliamentary and mixed government systems which are a combination of presidential and parliamentary systems. Many experts agree with Jimly Asshiddiqie's opinion, including Sri Soemantri who revealed that there are three types of government systems, namely parliamentary, presidential and mixed.<sup>1</sup> Based on the material of the 1945 Constitution, Indonesia is a state of law based on the ideology of Pancasila. The relationship between national principles and the constitution of a country is seen in the basic ideas of the state, and the objectives as contained in the Preamble of the Constitution. It is from these national principles that the life of the state as stated in the laws and regulations that have been established. The regulation and organisation of

<sup>1</sup> Kuswanto Kuswanto, 'Consistency of the Presidential System in Indonesia', *Sriwijaya Law Review*, 2.2 (2018), 170 <<https://doi.org/10.28946/slrev.vol2.iss2.67.pp170-182>>.

state administrative life can be in the form of a constitution.<sup>2</sup>

The constitutional framework of a nation typically mirrors its system of governance, as exemplified by Indonesia's Constitution '45, specifically in Chapter III. The 1945 Constitution of Indonesia affirms the specific features of the presidential system in the country. The presidential system of governance entails the appointment of a president as the head of state in a given nation. In the case of Indonesia, a president is democratically elected by the populace every five years.<sup>3</sup> Typically, the president assumes the dual responsibilities of serving as both the chief executive of the government and the symbolic representative of the nation. Nevertheless, it should be noted that not all nations that adopt a presidential system possess a president who fulfills the dual role of both head of government and head of state. The 1945 Constitution introduced several novel concepts, including the recognition of democracy and democracy as mutually reinforcing objectives, the adoption of a presidential form of governance, the establishment of a system of checks and balances to ensure the separation of powers, and the emphasis on both national unity and diversity within a nation.<sup>4</sup>

The principles of unity and diversity are exemplified in Pancasila, the philosophical foundation of the state. Pancasila encompasses a set of values that can foster harmony and balance across various dimensions, including material, truth, aesthetics, morality, and religion.<sup>5</sup> The hierarchical and systematic nature of Pancasila is evident through a series of precepts. The precepts encompassed in Pancasila have been formulated through the contemplation of its creators, drawing from the experiences and observations of Indonesian society. Consequently, it is imperative for law enforcement authorities to internalize and apply these precepts in the execution of legal procedures within Indonesia. Pancasila encompasses a set of precepts that encompass the values and principles of positive law. These precepts are explicitly articulated in the preamble of the 1945 Constitution, which serves as the foundational document of the state.<sup>6</sup>

A number of provisions within the 1945 Constitution underwent amendments, with the People's Consultative Assembly (MPR) reaching a consensus to uphold the presidential system of governance. Furthermore, the political system in Indonesia continues to uphold and simultaneously refine its existing structure. The process of purification encompasses the alteration of the presidential and vice-presidential election system, which previously relied on the selection by the MPR and has since transitioned

<sup>2</sup> Eko Noer Kristiyanto, 'Pemakzulan Presiden Republik Indonesia Pasca Amandemen Uud 1945', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2.3 (2013), 331 <<https://doi.org/10.33331/rechtsvinding.v2i3.63>>.

<sup>3</sup> M. Yasin al-Arif, 'Anomali Sistem Pemerintahan Presidensial Pasca Amandemen UUD 1945', *Jurnal Hukum IUS QUIA IUSTUM*, 22.2 (2015), 238–54 <<https://doi.org/10.20885/iustum.vol22.iss2.art4>>.

<sup>4</sup> Rini Astuti, 'Governing the Ungovernable: The Politics of Disciplining Pulpwood and Palm Oil Plantations in Indonesia's Tropical Peatland', *Geoforum*, 124.May 2019 (2021), 381–91 <<https://doi.org/10.1016/j.geoforum.2021.03.004>>.

<sup>5</sup> Sarip Arip Arip, 'Kemajemukan Visi Negara Hukum Pancasila Dalam Misi Hukum Negara Indonesia', *Refleksi Hukum: Jurnal Ilmu Hukum*, 2.2 (2018), 109–24 <<https://doi.org/10.24246/jrh.2018.v2.i2.p109-124>>.

<sup>6</sup> Sekar Anggun Gading Pinilih, 'Aktualisasi Nilai-Nilai Pancasila Terhadap Hak Atas Kebebasan Beragama Dan Beribadah Di Indonesia', *Masalah-Masalah Hukum*, 47.1 (2018), 40 <<https://doi.org/10.14710/mmh.47.1.2018.40-46>>.

to a direct election by the Indonesian populace.<sup>7</sup>

In addition to Indonesia, South Korea is another nation that follows a presidential system. In this system, the president is vested with the power to govern and assume accountability for the management of the state. The President receives assistance from multiple Ministers in the execution of their duties. The regulation of governance in the Republic of Korea is stipulated within its constitution. South Korea is characterized by a hybrid system of government, wherein the nation is governed by both a president and a prime minister. It is widely recognized that the presence of a Prime Minister in a nation is a characteristic of the execution of a parliamentary form of governance.<sup>8</sup> The Prime Minister is temporarily assigned to provide assistance to the president in the execution of his governmental responsibilities, contingent upon receiving parliamentary endorsement for the president's election. The President assumes the role of the head of state, while the Prime Minister assumes the role of the head of government. However, it is worth noting that the President possesses more extensive authority in shaping state decisions, both within the country and in matters pertaining to foreign relations. The election and accountability of the Prime Minister lie within the purview of the parliamentary system. The proposed presidential system of government exhibits notable distinctions from the existing system in Indonesia, thus necessitating a comparative analysis between the two systems.

The Philippines, similar to Indonesia, follows a presidential system of government in which the President serves as the head of state. The Philippines also upholds the principle of trias politica, which encompasses three distinct powers: the executive, legislative, and judicial branches. The exercise of executive power is carried out by the government, with the president serving as its head. The legislative power in the Philippines differs from that of Indonesia, as it is vested in the Congress, comprising the Senate and the House of Representatives. The judicial power in Indonesia is vested in the Supreme Court (MA), which holds authority over the judiciary. This research paper seeks to conduct a comparative analysis of government systems in Indonesia, South Korea, and the Philippines, focusing on three key aspects: 1) The presidential election process; 2) The mechanisms of presidential work accountability; and 3) The procedures for dismissing the president through impeachment in each respective country.

## 2. Research Method

The research methodology employed in this study is a normative or doctrinal legal approach that incorporates a comparative analysis.<sup>9</sup> The comparative approach was selected due to the resemblance of the government system, specifically the presidential system.

<sup>7</sup> Ahmad Ahmad and Novendri M. Nggilu, 'Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution', *Jurnal Konstitusi*, 16.4 (2020), 785 <<https://doi.org/10.31078/jk1646>>.

<sup>8</sup> Tracy S. Wang, 'Society of Asian Academic Surgeons Presidential Address: A Is for American. Asian. Ally', *Journal of Surgical Research*, 277 (2022), A1–11 <<https://doi.org/10.1016/j.jss.2022.02.052>>.

<sup>9</sup> Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <<https://doi.org/10.53955/jhcls.v2i1.21>>.

Nevertheless, variations in geography, culture, and history may lead to divergent implementations in each country.<sup>10</sup> This legal comparison is characterized by its descriptive nature, as it seeks to gather information regarding the governmental systems of the countries under examination.<sup>11</sup> The research data consists of primary legal materials, such as legislation, as well as secondary data derived from books, journals, and other published sources.<sup>12</sup> The methodology employed for data collection in this study involves a comprehensive review of relevant literature.

### 3. Results and Discussion

#### **The topic of discussion pertains to the political system known as the Presidential System in South Korea**

The Republic of Korea, commonly known as South Korea, is governed by a President who is democratically elected through a direct popular vote. Presidential elections are conducted at regular intervals of five years, with a provision that restricts each president to a single term in office. In the event of a tie in the presidential election, the candidate is determined through a process wherein the National Assembly casts their votes and the candidate with the majority of votes is selected. The aforementioned provision prohibits former Presidents from being eligible to register as presidential candidates in subsequent elections.<sup>13</sup>

The President of South Korea receives assistance from the Prime Minister in the execution of their responsibilities. The Prime Minister's election is conducted through a direct electoral process, wherein the President selects the Prime Minister based on the recommendation of the National Assembly. The Prime Minister bears the responsibility of being accountable to both the President and the parliament. The South Korean system of government can be classified as a parliamentary presidency, as described by Shugart and Carey in their analysis of political systems. The role of the Prime Minister entails the oversight of ministers, as well as the organization and coordination of governmental policies under the guidance of the President.<sup>14</sup> In the interim, council members are assigned the responsibility of aiding the President and Prime Minister in the execution of their respective obligations. Councillors possess the authority to assume leadership roles and provide supervision to ministers, undertake the handling of significant domestic affairs, and serve as representatives of the government within the National Assembly. Councillors bear the responsibility of being

<sup>10</sup> Rian Saputra and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), 61-118 <<https://doi.org/10.15294/lesrev.v7i1.64143>>.

<sup>11</sup> Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139-48 <<https://doi.org/10.53955/jhcls.v2i3.54>>.

<sup>12</sup> Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIA LEGAL STUDIES*, 8.1 (2023), 243-88 <<https://doi.org/10.15294/jils.v8i1.67632>>.

<sup>13</sup> Hyeonju Son, 'Images of the Future in South Korea', *Futures*, 52 (2013), 1-11 <<https://doi.org/10.1016/j.futures.2013.06.001>>.

<sup>14</sup> Hyeonju Son, 'Analysis of Reasons and Countermeasures for the Necessity of Alternative Futures Discourses in South Korea', *Futures*, 55 (2014), 1-14 <<https://doi.org/10.1016/j.futures.2013.12.002>>.

accountable to the President.<sup>15</sup>

South Korea employs a mixed presidential system in its system of governance, as it incorporates certain elements from parliamentary systems. The President possesses executive powers that are concomitant with those of the Prime Minister. In the context of governance, the allocation of legislative authority is vested in the parliamentary body known as the National Assembly. The lack of parliamentary accountability is observed in the President and Prime Minister.<sup>16</sup> Presidential elections are conducted at regular intervals of five years to facilitate the democratic process of selecting the President via general elections, thereby enabling direct participation of the populace in electing the head of state. The President assumes the roles of both the head of state and head of government, in addition to serving as the Commander-in-Chief of the military. The government of South Korea operates in accordance with the South Korean Constitution, which underwent amendments in 1987. The constitution comprises a total of 130 articles and 6 supplementary regulations, which are organized into 10 chapters. These chapters encompass various aspects such as "General Provisions," "Rights and Duties of Citizens," "National Assembly," "Executive Branch," "Judiciary," "Constitutional Court," "Election Management," "Local Powers," "Economic Institutions," and "Constitutional Amendments." The Constitution delineates the roles, responsibilities, authorities, and obligations of each state institution.<sup>17</sup>

In accordance with the principles of a presidential system, South Korea has established regulations pertaining to the process of impeaching the president, as outlined in the 10th Constitution of 1987. According to Article 65(1), in the event that the President, Prime Minister, or any other members of the state council engage in actions that contravene the Constitution or established laws, the National Assembly possesses the authority to initiate impeachment proceedings against them.<sup>18</sup> South Korea's political structure is characterized by a mixed presidential and parliamentary system. This arrangement entails a level of accountability for both the President and Prime Minister, as they are not entirely answerable to the parliament. However, the parliament retains the power to initiate a motion for the impeachment of either the President or Prime Minister.<sup>19</sup> In the interim, it is within the purview of the Constitutional Court (MK) to render decisions on matters pertaining to impeachment. The process of selecting the President involves a direct election by the populace, wherein the chosen candidate assumes a five-year tenure in office. The President assumes the dual role of serving as both the head of state and the head of government. In

<sup>15</sup> Arthur Nguyen and Nil Özçaglar-Toulouse, 'Nation Branding as a Market-Shaping Strategy: A Study on South Korean Products in Vietnam', *Journal of Business Research*, 122, September 2019 (2021), 131-44 <<https://doi.org/10.1016/j.jbusres.2020.08.029>>.

<sup>16</sup> Hye Kyung Lee, 'Referring Expressions in English and Korean Political News', *Journal of Pragmatics*, 42.9 (2010), 2506-18 <<https://doi.org/10.1016/j.pragma.2010.02.009>>.

<sup>17</sup> Jong Hwan Suh, 'Forecasting the Daily Outbreak of Topic-Level Political Risk from Social Media Using Hidden Markov Model-Based Techniques', *Technological Forecasting and Social Change*, 94 (2015), 115-32 <<https://doi.org/10.1016/j.techfore.2014.08.014>>.

<sup>18</sup> Mark Callis Sanders and Charlotta E. Sanders, 'A World's Dilemma "upon Which the Sun Never Sets": The Nuclear Waste Management Strategy (Part II): Russia, Asia and the Southern Hemisphere', *Progress in Nuclear Energy*, 110, April 2018 (2019), 148-69 <<https://doi.org/10.1016/j.pnucene.2018.09.009>>.

<sup>19</sup> Jan Duchoslav, Edwin Kenamu, and Jack Thunde, 'Targeting Hunger or Votes? The Political Economy of Humanitarian Transfers in Malawi', *World Development*, 165 (2023), 106179 <<https://doi.org/10.1016/j.worlddev.2022.106179>>.



order to effectively fulfill these responsibilities, the President receives support from the prime minister and other council members. The South Korean governmental system designates parliamentary involvement in the appointment of the Prime Minister, as evidenced by the requirement of parliamentary approval.<sup>20</sup>

Additionally, the parliament possesses the authority to propose the impeachment of either the President or the Prime Minister. During the course of a dismissal, adherence to the indictment procedure through a motion from the parliament is required, whereas the authority to make an impeachment decision lies with the Constitutional Court (Burhantsani, 1990). The Republic of Korea employs a legal process of impeachment to ascertain the grounds for dismissing the President. This process involves the Constitutional Court's decision, which is preceded by a motion from the National Assembly that calls for the President's accountability.

### **The topic of discussion pertains to the presidential system implemented in the Philippines**

In the context of the Philippines, the tenure of the President's office spans a duration of 6 years, limited to a single term. Consequently, the incumbent President is constitutionally barred from seeking re-election as a presidential candidate in subsequent elections. The electoral process entails the direct participation of individuals through voting. The President is responsible for overseeing and managing all executive agencies, bureaus, and offices. In addition to their role as the head of state, the President of the Philippines assumes the position of commander-in-chief of the country's armed forces.<sup>21</sup> The individuals who possess the eligibility to exercise their voting rights in presidential elections are limited to Filipino citizens who are registered voters and have maintained a residence in the Philippines for a minimum duration of 10 years prior to the election. In addition, it is necessary for voters to possess the capacity to comprehend written text and produce written communication. In the event that the presidential and vice presidential elections are conducted as distinct processes, voters possess the ability to exercise a split vote.<sup>22</sup>

The candidate who is elected as president is determined by the candidate who receives the highest number of votes from the electorate.<sup>23</sup> In contrast to the President, a Vice President retains the eligibility to seek candidacy as a vice-presidential candidate in the subsequent election, albeit with a singular opportunity. The vice president's term of office aligns with that of the president, spanning a duration of six years. The vice president possesses the authority to assume the role of the president in the event of significant circumstances, such as the

<sup>20</sup> Hai Thanh Luong, 'Reprint of: Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary', *International Journal of Drug Policy*, 92 (2021), 103132 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2021.103132>>.

<sup>21</sup> Marnel Arnold Ratio, Jillian Aira Gabo-Ratio, and Yasuhiro Fujimitsu, 'Exploring Public Engagement and Social Acceptability of Geothermal Energy in the Philippines: A Case Study on the Makiling-Banahaw Geothermal Complex', *Geothermics*, 85, August 2019 (2020), 101774 <<https://doi.org/10.1016/j.geothermics.2019.101774>>.

<sup>22</sup> Will Smith, 'Climates of Control: Violent Adaptation and Climate Change in the Philippines', *Political Geography*, 99, February (2022), 102740 <<https://doi.org/10.1016/j.polgeo.2022.102740>>.

<sup>23</sup> Wang.

president's incapacitation, demise, or voluntary departure from office.<sup>24</sup>

In Article XI, titled "Accountability of Public Officers," the concept of executive accountability is discussed, emphasizing that public office is held as a public trust. Therefore, it is imperative that public officials demonstrate accountability to the community, fulfill their duty of providing services to the community, and exhibit integrity, loyalty, and fairness in the execution of their responsibilities as representatives of the state.<sup>25</sup> The Philippines, in its implementation of the presidential system, also upholds the principle of trias politica, which entails the division of powers among the executive, legislative, and judicial branches. The authority to make laws is bestowed upon the legislative branch of the United States government, known as Congress, which is comprised of two chambers: the Senate and the House of Representatives. In Sections 2 and 3 of Article XI, both provisions hold significance in the event of the President's removal due to his involvement in constitutional violations, treason, corruption, graft, or other criminal activities.<sup>26</sup>

Due to this rationale, the DPR is granted the authority to initiate the process of impeachment against the President, contingent upon the request made by either the general public or the members of the DPR. The process of impeaching the President involves the referral of the decision to the Senate, where it garners the backing of one-third of the House of Representatives' members. The subsequent stage of the impeachment process involves the Senate, which serves as the secondary legislative body empowered to make determinations regarding the impeachment proceedings.<sup>27</sup> In the event that a two-thirds majority of the members of the senate express their support for the initiation of impeachment proceedings against the President, it is mandated that the President relinquish their position of authority. Furthermore, it is noteworthy that the judiciary in the Philippines assumes a significant function in the presidential removal process within the senate, wherein the Chief Justice of the Supreme Court presides over the proceedings.<sup>28</sup>

In the context of the Philippines, the process of impeaching a President or Vice President is initiated by the indictment of the House of Representatives, as stipulated in Article XI Section 3 clause (1) of the Philippine Constitution. This constitutional provision grants the House of Representatives the sole authority to commence all impeachment proceedings. According to Article XI Section 2 of the Philippine Constitution, the House of Representatives possesses the authority to initiate impeachment proceedings against the President or Vice President for various offenses, including but not limited to misconduct against the

<sup>24</sup> Katrina Hannah D. Ignacio, Adrian I. Espiritu, and Roland Dominic G. Jamora, 'The Current Status and Challenges in Multiple Sclerosis Management in the Philippines', *Multiple Sclerosis and Related Disorders*, 46.September (2020), 102510 <<https://doi.org/10.1016/j.msard.2020.102510>>.

<sup>25</sup> Imtiaz Mohammad Sifat and Hasanudin Mohd Thas Thaker, 'Predictive Power of Web Search Behavior in Five ASEAN Stock Markets', *Research in International Business and Finance*, 52.January (2020), 101191 <<https://doi.org/10.1016/j.ribaf.2020.101191>>.

<sup>26</sup> Laurence L. Delina, 'Indigenous Environmental Defenders and the Legacy of Macli-Ing Dulag: Anti-Dam Dissent, Assassinations, and Protests in the Making of Philippine Energyscape', *Energy Research and Social Science*, 65.September 2019 (2020), 101463 <<https://doi.org/10.1016/j.erss.2020.101463>>.

<sup>27</sup> Teguh Dartanto and others, 'Enrolment of Informal Sector Workers in the National Health Insurance System in Indonesia: A Qualitative Study', *Heliyon*, 6.11 (2020), e05316 <<https://doi.org/10.1016/j.heliyon.2020.e05316>>.

<sup>28</sup> Carlos Primero D. Gundran and others, 'Simulation Training Needs Assessment for Disaster Preparedness and Disaster Response among Selected Agencies in National Capital Region, Philippines', *International Journal of Disaster Risk Reduction*, 94.April (2023), 103824 <<https://doi.org/10.1016/j.ijdrr.2023.103824>>.

Constitution, treason, bribery, corruption, graft, and betrayal of public trust.

### **The topic of discussion pertains to the political system in place in Indonesia, specifically the Presidential System**

Similar to other nations, Indonesia also implements the separation of powers framework, which serves as the primary distinguishing feature of the presidential system of governance. According to Montesquieu's elucidation of the Trias Politica concept, the governance of a nation necessitates the division of power into three distinct branches.<sup>29</sup> This division is imperative as it prevents the concentration of authority in a single entity, which would result in the capricious rule of the governing body and the prioritization of the interests of a select few over the welfare of the entire populace. According to Montesquieu, the division of powers within a state encompasses, at a minimum, the Executive, Legislative, and Judicial branches. Executive power refers to the legal authority vested in the executive branch of government, which is responsible for the implementation and enforcement of laws. This branch, led by the president, assumes the duty of managing the affairs of the country and performing various governmental functions. The concurrent election of the president and vice president is a result of their joint selection by the electorate through general elections. The executive branch of the government is led by a president who concurrently holds the position of head of state. The president receives assistance in performing his daily responsibilities from ministers who are appointed and dismissed at the discretion of the president. Every minister bears responsibility for fulfilling their duties and obligations to the president.<sup>30</sup>

Accountability and supervision play crucial roles in the governance process. The rationale behind the necessity for accountability and oversight in the office of the President stems from its foundation in populist ideology, which emphasizes the importance of the people's involvement and supervision. In light of the constitutional amendment of 1945, it is imperative to establish a system of accountability whereby the President is answerable to the citizenry. The concept of accountability is implicitly referenced within the provisions of the 1945 Constitution.<sup>31</sup> Hence, it is imperative for the President to assume responsibility for his role and obligations to the populace as the bestower of authority. According to Article 6A, paragraph (1) of the Third Amendment to the 1945 Constitution, the President and Vice President are elected through direct popular vote as a pair. In this particular scenario, the individuals assume the role of the mandate givers. Therefore, it is imperative that the President assumes responsibility for all of his policies to the citizenry.<sup>32</sup>

Legislative power refers to the jurisdiction vested in the MPR, which is comprised of the House of Representatives (DPR) and the Regional Representatives Council (DPD), to enact

<sup>29</sup> Risa J. Toha, Dimitar D. Gueorguiev, and Aim Sinpeng, 'The Normalization of Intolerance: The 2019 Presidential Election in Indonesia', *Electoral Studies*, 74.July (2021), 102391 <<https://doi.org/10.1016/j.electstud.2021.102391>>.

<sup>30</sup> Nicolae Stef, Sami Ben Jabeur, and Robert F. Scherer, 'Time to Resolve Insolvency and Political Elections', *International Review of Law and Economics*, 72.September (2022), 106104 <<https://doi.org/10.1016/j.irle.2022.106104>>.

<sup>31</sup> Muhammad Bahrul Ulum and Nilna Aliyan Hamida, 'Revisiting Liberal Democracy and Asian Values in Contemporary Indonesia\*', *Constitutional Review*, 4.1 (2018), 111–30 <<https://doi.org/10.31078/consrev415>>.

<sup>32</sup> Sekar Anggun Gading Pinilih, 'The Green Constitution Concept in the 1945 Constitution of the Republic of Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 30.1 (2018), 200 <<https://doi.org/10.22146/jmh.28684>>.



laws. The MPR, or the People's Consultative Assembly, possesses the jurisdiction to modify and validate the Constitution, conduct the formal induction of the president and vice president, and remove them from office in compliance with constitutional provisions in the event of their conviction for a grave offense.<sup>33</sup> The authority to enact legislation is wielded by the DPR. Once a bill is presented by the government, it undergoes deliberation in order to secure collective endorsement for its subsequent ratification and promulgation by the president.<sup>34</sup> The bill necessitates approval from both the DPR (Deliberative and Policy-Making Body) and the President. In the event that the President does not grant approval, there remains the possibility of promulgation within a thirty-day period subsequent to the initial approval.

The exercise of judicial power is vested in both the Supreme Court and the Constitutional Court. These institutions are entrusted with the responsibility of overseeing and implementing the law and the Constitution. Specifically, the Supreme Court is responsible for enforcing the law, while the Constitutional Court is responsible for enforcing the Constitution.<sup>35</sup> The allocation of tasks for both the Supreme Court and the Constitutional Court is delineated in distinct legislation. The 1945 Constitution, following the Amendment, encompasses a total of seven prominent state institutions, namely the People's Consultative Assembly (MPR), the People's Representative Council (DPR), the Regional Representative Council (DPD), the President, the Supreme Audit Agency (BPK), the Supreme Court (MA), and the Constitutional Court (MK). In practical application, the division of powers is not comprehensively segregated into three distinct powers. One additional power, referred to as the examinative power, pertains to the authority to scrutinize the financial affairs of the state. The authority is bestowed upon the BPK, as specified in Article 23 of the amended 1945 Constitution.

Upon contemplation of the historical trajectory of the Indonesian Constitution, it becomes evident that two presidents, namely Soekarno and Abdurahman Wahid, were subjected to dismissal from their respective offices. The authority to dismiss the President is vested in two institutions, namely the DPR and the MPR, with the legal process being conducted in the Constitutional Court.<sup>36</sup> According to Article 24 paragraph (2) of the 1945 Constitution, the exercise of judicial power is entrusted to various judicial bodies, including the Supreme Court, the general court, the religious court, the military court, the state administrative court, and the Constitutional Court. The establishment of the Constitutional Court can be traced back to the incorporation of the concept of the Constitutional Court in Article 24 paragraph (2), Article 24C, and Article 7B of the 1945 Constitution subsequent to the third amendment, which was officially ratified on 9 November 2001. According to the stipulations outlined in Article III of the Transitional Rules of the 1945 Constitution subsequent to the fourth

<sup>33</sup> Kuswanto.

<sup>34</sup> M. I. Asnawi and others, 'State-Owned Enterprise Financial Governance: Dilemma of State Wealth Separation', *IOP Conference Series: Earth and Environmental Science*, 452.1 (2020) <<https://doi.org/10.1088/1755-1315/452/1/012036>>.

<sup>35</sup> Indah Nur Shanty Saleh and Bitu Gadsia Spaltani, 'Environmental Judge Certification in an Effort to Realize the Green Legislation Concept in Indonesia', *Law and Justice*, 6.1 (2021), 1-18 <<https://doi.org/10.23917/laj.v6i1.13695>>.

<sup>36</sup> Mardian Wibowo, I Nyoman Nurjaya, and Muchammad Ali Safaat, 'The Criticism on the Meaning of "Open Legal Policy" in Verdicts of Judicial Review at the Constitutional Court', *Constitutional Review*, 3.2 (2018), 262 <<https://doi.org/10.31078/consrev326>>.

amendment, it is mandated that the establishment of the Constitutional Court must be completed by no later than 17 August 2003. Prior to its establishment, all powers and responsibilities vested in the Constitutional Court shall be assumed and executed by the Supreme Court. According to this stipulation, prior to the establishment of the Constitutional Court, the Supreme Court was responsible for performing all functions and exercising all authorities that are now attributed to the Constitutional Court.<sup>37</sup>

As per the provisions outlined in the Fourth Amendment of the 1945 Constitution, the procedure for removing the President or Vice President from their respective offices can be initiated by the MPR, contingent upon a proposal put forth by the DPR. The process of impeachment is initiated when there is substantiated evidence that the President or Vice President has engaged in acts of treason, corruption, graft, or other grave criminal offenses. Following the assertion made by the DPR regarding a significant violation, as outlined in Article 7A of the fourth amendment of the 1945 Constitution, the DPR proceeds to convene a plenary session to deliberate on the submission of a request for a DPR opinion, asserting that the president has contravened the law or decree, as stipulated in Article 7A of the 1945 Constitution.<sup>38</sup> According to the 1945 Constitution, in order for a plenary session of the DPR to be considered valid, a quorum of at least two-thirds of the members of the DPR must be present, and a consensus of at least two-thirds of the members in attendance at the plenary meeting must be reached. Once the quorum requirement has been satisfied, the DPR proceeds to formally petition the Constitutional Court (MK) for the removal of the president. Once the request made by the DPR (Dewan Perwakilan Rakyat) is granted by the Constitutional Court, the Court is granted a period of 90 days to undertake a thorough examination, trial, and ultimately render a decision regarding the DPR's stance on presidential transgressions.<sup>39</sup>

If the decision of the Constitutional Court affirms that the President has not contravened the stipulations outlined in Article 7A and dismisses the request made by the DPR, it follows that the impeachment proceedings cannot proceed. In the event that the Constitutional Court's ruling accedes to the request made by the DPR, thereby establishing the President's legal infringement of the stipulations outlined in Article 7A of the 1945 Constitution, the DPR convenes an additional plenary session to formally transmit the proposal for the impeachment of the President or Vice President to the MPR. Upon receipt of the proposal for the impeachment of the president from the DPR, the MPR is obligated to convene a session to deliberate on the proposal within a specified timeframe of up to thirty days from the date of receipt. The decision regarding impeachment by the MPR necessitates adherence to a prescribed procedure, involving a plenary meeting of the MPR. This meeting requires the presence of a minimum of three-quarters of its members, and subsequent approval by two-thirds of the members in attendance. Prior to that, the President or Vice President is afforded the opportunity to provide an account of their errors or transgressions during the MPR plenary session.

<sup>37</sup> Budi Suhariyanto, 'Masalah Eksekutabilitas Putusan Mahkamah Konstitusi Oleh Mahkamah Agung', *Jurnal Konstitusi*, 13.1 (2016), 171 <<https://doi.org/10.31078/jk1318>>.

<sup>38</sup> Warih Anjari, 'Kedudukan Asas Legalitas Pasca Putusan Mahkamah Konstitusi Nomor 003/PUU-IV/2006 Dan 025/PUU-XIV/2016', *Jurnal Konstitusi*, 16.1 (2019), 1 <<https://doi.org/10.31078/jk1611>>.

<sup>39</sup> Saldi Isra, 'Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia', *Jurnal Konstitusi*, 11.3 (2016), 409 <<https://doi.org/10.31078/jk1131>>.

#### 4. Conclusion

In the political systems of South Korea, the Philippines, and Indonesia, the President is elected directly by the populace through the means of general elections. In South Korea, the president is elected to serve a term of five years, following which they are ineligible for re-election. In the context of the Philippines, it is noteworthy that the president is elected to serve a term of six years, during which they hold executive authority. Subsequent to this term, the president is constitutionally prohibited from seeking re-election as a presidential candidate in the subsequent election cycle. In the context of Indonesia, the president is democratically elected to serve a term of five years, during which they have the option to seek re-election. In relation to governmental accountability, the presidents of the Philippines and Indonesia exhibit similar characteristics, as they both adhere to a system in which they are answerable to the populace. In South Korea, the president is held accountable to both the citizenry and the legislative body, known as parliament. The process of removing the president through impeachment in South Korea bears similarities to that of the Philippines, as it primarily involves the legislative branch. In the Indonesian context, the removal of the president necessitates a sequential process involving legislative, judicial, and ultimate hearings.

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