

COMPATIBILITY OF THE PRESENCE OF THE STATE POLICIES WITH THE PRESIDENTIAL GOVERNMENT SYSTEM IN INDONESIA

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Abstract: the presence of state policies amidst the presidential system has sparked controversies and raised glitches in state administration because these policies and the practice of parliamentarism intersect. On the other hand, fundamental issues arise from the national development planning system, calling for systemic maintenance to reinforce the direction and certainty of development in Indonesia. This article seeks to explore the compatibility of the state policies with the presidential system in Indonesia, mainly focusing on the urgency of the state policies and the form of the policies compatible with the presidential system in Indonesia. This research employed a normative method supported by statutory, historical, and conceptual approaches. To examine the urgency and the compatibility of the policies to the constitutional system in Indonesia, the policies need to be further investigated. The research results show that the urgency of the state policies can be viewed from the need to lead the directions, and policies, and set the certainty of the state development. The presence of these policies is expected to improve the shortcomings of the national development planning system, encompassing improvement of the political aspect of the development plan, constitutional design aspect, and ideological aspect. The compatibility of these policies with the presidential system represents the policies that leave no harm to the standard of the presidential system unless they (i) weaken the position of the president in connection with the parliament, and (ii) require the president to be responsible under the MPR (People's Consultative Assembly). The compatibility of these policies can be formulated in three models: (i) the DPSP model; (ii) the parent law model as the state policies; and

(iii) setting the policies by the MPR by adjusting to the principles of presidentialism.

Keywords: Compatibility, State Policy, Presidential System.

Introduction

The goals of Indonesia are set out in the 1945 Constitution of Indonesia as the philosophical tenets in the development of the state covering all sectors. In the time of the Old Order and New Order, the goals of this development were outlined in the State Policy Guidelines (henceforth referred to as GBHN) serving as the policies and the direction of the state development.

After the reform, the goals of the development no longer refer to GBHN, but rather to the national Development Planning System (henceforth referred to as SPPN), marked by the promulgation of Law Number 25 of 2004 concerning the national Development Planning System. The birth of this law has transformed the national development regime, from the GBHN to the SPPN regime, superseding the GBHN to set rules in the arrangement of the development plan.

For almost two decades, the SPPN has not optimally reinforced the goals and certainty of national development. Some argue that the current system of development is pragmatic because its implementation is contingent upon the vision and mission of the president,¹ most of which are not based on the constitution and philosophy of the state, but rather on the provisional needs of the citizens as voters, ruining the goals of the development, particularly when it is associated with development sustainability between the government period and the integration of the development planning in regional areas. When it comes to the

¹ These vision and mission of the president were then adopted into the RPJMN for the coming five years. See Pasal 4 ayat (1) Undang-Undang No. 25 Tahun 2004 tentang Sistem Perencanaan Pembangunan Nasional.

state's philosophy, the development planning model set out in the SPPN is viewed as not reflecting the ideological state policies.²

Concern about the development goals has encouraged some to think about reviving the state policies within the Indonesian constitutional system in the form of the Principles of the State Policies (henceforth referred to as PPHN).³ The Chief of the People's Consultative Assembly, Bambang Soesatyo, asserts that the idea of bringing back the PPHN departed from persistent uncertainty of the national development in every government period and the disharmony of the development between the regional and central governments.⁴ In this context, there seems to be no urgency for the presence of PPHN expected to reinforce the goals and certainty of the development of the nation.

When associated with the presidential government system, the presence of PPHN may spark problems. Saldi Isra holds that the system of the development planning model of the GBHN no longer conformed to the development in the presidential government system as specified in the 1945 Constitution after amendments.⁵ Three principles underlie this argument; first, post-amendments to the 1945 Constitution, the People's Consultative

² According to Yudi Latif, state policies carry two tasks; first the ideological policies setting forth the basic principles of the guiding principles that elaborate the philosophy of the state and the constitutional Articles into the legislation and development policies; second, strategic-technocratic policies specifying the pattern of far-reaching, integrated, guided, gradual, sustainable, and long-term development plan by paying attention space and area. Yudi Latif, *Memahami GBHN*, Kompas, 22 Agustus 2019, <https://www.kompas.id/baca/utama/2019/08/22/114226121>, accessed on 25 April 2022.

³ PPHN is the nomenclature set out in the recommendation of the MPR of 2014-2019, currently being used by the MPR as a reference to formulate GBHN to ensure that it complies with the system of the constitution of the state after the amendments to the 1945 Constitution.

⁴ Bambang Soesatyo, *Cegah Negara Tanpa Arah: Restorasi Haluan Negara dalam Paradigma Pancasila: Reposisi Haluan Negara sebagai Wadah Aspirasi Rakyat*, Cetakan pertama (Jakarta: Sekretariat Jenderal Majelis Permusyawaratan Rakyat Republik Indonesia, 2021), 68.

⁵ Saldi Isra, *Wacana Menghidupkan GBHN*, Kompas, 2016, <https://nasional.kompas.com/read/2016/01/12/15320071/Wacana.Menghidupkan.GBHN?page=all>, accessed on 25 April 2022.

Assembly (henceforth referred to as MPR) is no longer a supreme institution and no longer has the authority to govern state administration by the president; second, the president and vice-president are directly elected by people, making the president no longer hold the mandatory responsibilities under the MPR; and third, the presence of the state policies may bring back the former pattern where the president should be responsible under the MPR, contravening the presidential government system.

The above argumentation has raised a vital question: how should the PPHN be positioned amidst the presidential system of the government in Indonesia? Theoretically, under such a presidential system of government, both the president and the parliament hold an influential position and strong legitimacy, and they are mutually independent because both are elected in General Elections. In essence, the president and parliament cannot dismiss each other,⁶ which underlines the responsibility of the president to the public as his voters, not under the parliament. This aspect should receive attention in placing the PPHN in the constitutional system of the state, considering that it will affect the legislative-executive nexus in the scheme of the presidential system.

Looking at how state policies apply in some other countries, there seems to be a tendency for countries like Ireland, Belgium, India, the Philippines, South Africa, and South Korea⁷ to place the policies in the system. That is, the presence of the policies is not principally contingent upon the government system that a state adheres to, but it is rather because of the constitutional need of the state to achieve its goals, particularly in developing countries that view the policies as to direct and guide the policy of the state in the development.

However, such state policies still have to adjust to the constitutional design of a state. A country with a parliamentary

⁶ Fitra Arsil, *Teori Sistem Pemerintahan Pergeseran Konsep dan Saling Kontribusi Antar Sistem Pemerintahan di Berbagai Negara* (Depok: Rajawali Pers, 2017), 23.

⁷ Jimly Asshiddiqie, *Konstitusi ekonomi*, Cetakan kedua (Jakarta: Penerbit Buku Kompas, 2016), 102-107.

system certainly adheres to the formulation different from that running under the presidential system. As a consequence, the essence lies in the compatibility of the presence of the state policies to the presidential system of government. Such compatibility is essential to study to ensure that the state policies are not counter-productive to the presidential government system in the time to come.

This article seeks to explore the compatibility of state policies with the presidential government system to discover the ideal formula that conforms to the presidential system in Indonesia. The main focus of the problems encompasses the urgency of the state policies in the constitutional system in Indonesia; whether the presence of these policies contravenes the presidential system of government; and the form of the state policies compatible with the presidential system of government.

This research employed a normative-legal method supported by statutory, historical, and conceptual approaches to explore the issues of state policies implemented in the presidential government system.

Presidential System of Government in Indonesia

The form and accentuation of state policies between countries may vary, depending on the need and the constitutional design of the state concerned. The policies in Indonesia often change in their form, adjusting to the constitutional system of Indonesia.

Following the amendments to the 1945 Constitution of the Republic of Indonesia, Indonesia has strictly adhered to the presidential principle,⁸ in which heavy power and responsibilities of the government are vested in the president.⁹ The president is not responsible under the state's parliament, both of which hold strong standing and the basis of legitimacy, leaving the president with no

⁸ Ahmad Yani, "Sistem Pemerintahan Indonesia: Pendekatan Teori dan Praktek Konstitusi Undang-Undang Dasar 1945," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 12, No. 2, Juli 2018, 124.

⁹ Jimly Asshiddiqie, *Implikasi Perubahan UUD 1945 Terhadap Pembangunan Hukum Nasional* (Jakarta: Mahkamah Konstitusi Republik Indonesia, 2005), 9-10.

power to dismiss the parliament. Similarly, the parliament cannot overthrow the president without constitutional procedures.¹⁰

Along with the nature of the presidential system, as introduced by some experts, Denny Indrayana mentions the main characteristics of the presidential system:¹¹ (i) the president is the head of the state and the government; (ii) president is not elected by the parliament, but directly elected by citizens; (iii) president is not part of the parliament and cannot be dismissed by the parliament unless he is dismissed through an impeachment; and (iv) president cannot dismiss the parliament. Paul C. Manuel and Anne M. Cammisa also mention the main characteristics of the presidential system as follows:¹²

- a. *Separation of legislative and executive powers;*
- b. *Direct popular election of the president;*
- c. *The chief executive may be neither appointed nor dismissed by a legislative vote;*
- d. *The president is in exclusive charge of the executive branch;*
- e. *Separate elections (and separate bases of legitimacy) for the president and congress.*

Agreeing upon maintaining the presidential system following the amendments to the 1945 Constitution has been accompanied by the measures taken to reinforce the presidential system that are obvious in several aspects: (1) the MPR is no longer responsible for people's sovereignty,¹³ making the MPR no longer the supreme institution of the state; (ii) president and vice-president is directly elected by citizens;¹⁴ (iii) president is no longer responsible under the MPR, and president can only be dismissed

¹⁰ Ribkha Annisa Octovina, "Sistem Presidensial di Indonesia," *CosmoGov*, Vol. 4, No. 2, Oktober 2018, 248.

¹¹ Denny Indrayana, *Negara Antara Ada dan Tiada: Reformasi Hukum Ketatanegaraan* (Jakarta: Penerbit Buku Kompas, 2008), 198.

¹² Paul Christopher Manuel dan Anne Marie Cammisa, *Checks and Balances? How A Parliamentary System Could Change American Politics, Dilemmas in American Politics* (Boulder, CO: Westview Press, 1999), 16.

¹³ Pasal 1 ayat (2) UUD 1945

¹⁴ Pasal 6A ayat (1) UUD 1945

by the MPR during his office term on account of violations as specified in the 1945 Constitution;¹⁵ (iv) the office term of president is limited;¹⁶ (v) president has no power to freeze or dismiss the House of Representatives (henceforth referred to as DPR);¹⁷ (vi) the 1945 Constitution does not recognize the different concept of the head of the government and the head of the state; and (vii) the responsibilities of the government are in the hands of the president,¹⁸ and the president is authorized to form government, arrange cabinets, appoint and dismiss ministries.¹⁹

The measures intended to strengthen the presidential system specified in the amendments to the 1945 Constitution as above are parallel to the principal characteristics of the presidential system expressed by some experts. Saldi Isra points out that the essential features of the purification of the presidential government system following the amendments to the 1945 Constitution encompass:²⁰ (i). changing the process of elections of president/vice-president from election by MPR to popular election; (ii) reorganizing the standing of the MPR as the supreme institution of the state and revoking the responsibilities of the president under the MPR; and (iii) clarifying the mechanism of impeachment of president/vice-president amidst his office term.

All those three features that Saldi Isra mentioned departed from the changes in the principle of people's sovereignty. Prior to the amendments to the 1945 Constitution, the MPR was placed to hold the sovereignty,²¹ clearly implying that the MPR held the supreme power of the state (*die gesamte staatgewalt liege allein bei der Majelis*). Article 1 paragraph (2) of the 1945 Constitution, following

¹⁵ Pasal 7A UUD 1945

¹⁶ Pasal 7 UUD 1945

¹⁷ Pasal 7C UUD 1945

¹⁸ Pasal 4 ayat (1) UUD 1945

¹⁹ Pasal 17 ayat (2) UUD 1945

²⁰ Saldi Isra, *Pergeseran Fungsi Legislasi*, Edisi Kedua (Depok: Rajawali Pers, 2018), 9.

²¹ Pasal 1 ayat 2 UUD 1945 before amendment stating, "Kedaulatan adalah di tangan rakyat, dan dilakukan sepenuhnya oleh Majelis Permusyawaratan Rakyat". (Sovereignty is vested to the people and fully implemented by People's Consultative Assembly)

the amendments, no longer laid the sovereignty in MPR, but it was decided to be executed under the Constitution. This change has placed the position of the highest institution of the state equal to other state institutions.

MPR was no longer entitled to the authority to elect a president and vice-president, revoking the responsibilities of the president under the MPR in ruling the state. The 1945 Constitution, after amendments, mandated that every state institution is responsible for the people's sovereignty, meaning that it complies with and is responsible under the members of the public.²²

The Urgency of State Policies in the Constitutional System of Indonesia

State policies serve to guide the goals of the state administration,²³ bearing directive principles functioning as policies in the state development.²⁴ Some view them as the roadmap of the nation, encompassing economic, political, social, and cultural aspects that interpret the ideology and the constitution of the state.²⁵ It indicates that the policies can be outlined in the constitution, laws, or the Decree of the MPR like it was before the reform. The Philippines strictly regulates the provisions of the state policies under the Constitution of the Philippines 1987—'the Declaration of Principles and State Policies'.²⁶ India also set out the policies in the constitution under 'Directive Principles of State Policies'.²⁷ Ireland took an even earlier start to set it out in 1937, called the Directive Principles of State

²² Bagir Manan, *DPR, DPD dan MPR dalam UUD 1945 Baru* (Yogyakarta: FH UII Press, 2003), 74.

²³ Asshiddiqie, *Konstitusi ekonomi*, 17.

²⁴ Lutfil Ansori, "Haluan Negara Sebagai Pedoman Kebijakan Dasar Negara dalam Sistem Ketatanegaraan Indonesia: Sebuah Tinjauan Filsafat Kenegaraan," *Justicia Islamica*, Vol. 16, No. 1, Juni 2019, 98.

²⁵ Bambang Sadono dan Lintang Ratri Rahmaji, "Reformulasi Garis-Garis Besar Haluan Negara (GBHN) dan Amandemen Ulang Undang-Undang Dasar," *Masalah-Masalah Hukum*, Vol. 49, No. 2, April 2020, 216.

²⁶ *The 1987 Constitution of The Republic of The Philippines, Article II*

²⁷ *The Constitution of India, Part IV*

Policy, consisting of the policies concerning the economy, free market mechanisms, state intervention, and others.²⁸

Looking at these state policies in different countries, Susi Dwi Harijanti dkk share the principles of the implementation of state policies in two models; the DPSP (Directive Principles of State Policies) and the Super-Parliament Model. The DPSP deals with the formulation of state policies in the Articles in the constitution, while the latter does not involve the policies in constitutional text, but the constitution gives authority to the super-parliament to draft the policies. The super-parliament is a state institution in which people's sovereignty is realized. The Model of such state policies was adopted by China and Indonesia before the amendments to the 1945 Constitution.²⁹

In Indonesia, the definition of state policies has been accentuated differently by each government regime. The history of the constitution in Indonesia has recorded that the existence of the state policies in Indonesia has experienced some transformation in terms of its appearance and form in line with the change in government regimes and constitution. In the era of the Old Order, there were two types of state policies, namely the GBHN and the Comprehensive National Development Plan (henceforth referred to as PNSB).³⁰ At the same time, the state policies set forth in the 1945 Constitution were more associated with political policies in their implementation, separated from the development policies. The content of the GBHN was more focused on political consolidation,³¹ aiming to give direction and set far-reaching

²⁸ Ireland's Constitution of 1937 with Amandemens through 2015, Article 45

²⁹ Susi Dwi Harijanti, *Konstitusionalisasi Haluan Negara pada Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasca Amandemen*, Cetakan pertama (Jakarta: Badan Pengkajian MPR RI, Majelis Permusyawaratan Rakyat Republik Indonesia, 2020), 23-24.

³⁰ The term 'haluan negara' (state policies) and 'haluan pembangunan' (development policies) were introduced in the Decree of MPRS No. I/MPRS/1960 concerning the Political Manifesto of the Republic of Indonesia as the State Policy Guidelines.

³¹ GBHN was mostly adopted from the political speech of President Soekarno, like the political manifesto of the Republic of Indonesia said by President Soekarno on 17 August 1959. This manifesto set out two fundamental matters for the development of Indonesia at that time: *first*, the main issues of the revolution of

guidelines to foster the revolution of Indonesia post-independence. The planning and guidelines of the national development were separately set out in the document of PNSB, as specified in the Decree of interim MPR Number II/MPRS/1960 concerning the Guidelines of Comprehensive National Development Plan Stage I, 1961-1969. The PNSB served as the elaboration of the GBHN in the development sector.

In the era of the New Order, state policies were more prioritised for national development,³² with the formal form of the GBHN. That is, GBHN served as the policies of the development intended to direct and provide guidelines for the development of the state, with its implementation specified in the Five-Year Development Plan (Repelita).³³ The state was deemed successful in setting the development plan systematically and sustainably along with the fundamentals set out for sustainable development.³⁴

The existence of the GBHN in the constitution was eroded after the amendment to Article 3 of the 1945 Constitution in 2001. The GBHN starting to exist during the reform era as the last GBHN was the Decree of MPR Number IV/MPR/1999 concerning State Policies 1999-2004. According to Aidul Fitriciada Azhari, the

Indonesia; second, the general program of the revolution, encompassing political, economic, social, mental, and cultural, and safety aspects, as well as the foundation of new organisations. The essence of this manifesto was summarized in the concept of USDEK, consisting of (1) the 1945 Constitution; (2) socialism of Indonesia; (3) guided democracy; (4) guided economy; and (5) state ideology. See Roeslan Abdulgani, *Bahan-Bahan Pokok Indoktrinasi* (Jakarta: Yayasan Prapantja, 1964), 116.

³² The emphasis given on the national development can be seen from the formulation of the definition of GBHN set forth in the Decree of MPR No. IV/MPR/1973, defining GBHN as "the guidelines of the state policies principally representing the general pattern of the national development stipulated by MPR".

³³ In the era of the New Order from 1968 to 1998, there were 6 decrees of MPR, namely (1) TAP MPR No. IV/MPR/1973; (2) TAP MPR No. IV/MPR/ 1978; (3) TAP MPR No. II/MPR/1983; (4) TAP MPR No. II/MPR/1988; (5) TAP MPR No. II/MPR/1993; and (6) TAP MPR No. II/MPR/1998.

³⁴ Bab I angka 2 Lampiran Undang-Undang No. 17 Tahun 2007 tentang Rencana Pembangunan Jangka Panjang Nasional Tahun 2005-2025.

GBHN played a vital role in recovering the economic crises and guarding the democratic transition between 1998 and 1999.³⁵

Law Number 25 of 2004 concerning the National Development Planning System (henceforth referred to as UU SPPN) was enacted, superseding the GBHN in setting regulations to draft the development plan. The UU SPPN was intended to ensure effective, efficient, and accurate development activities. The inception of this law marked a new era of the national development plan, transitioning from the GBHN regime to the regime of the SPPN.

SPPN was further elaborated in the form of the National/Regional Long-Term Development Plan (henceforth referred to as RPJPN/D), National/Regional Medium-Term Development Plan (RPJMN/D), and Central/Regional Government Workplan (RKP/D). To sum up, the SPPN covers the twenty-year RPJPN/D,³⁶ five-year RPJMN/D, and RKP annually. The RPJPN is understood as an elaboration on the objectives of the inception of the Indonesian government as specified under the 1945 constitution, encompassing the vision, mission, and goals of national development.³⁷ The RPJMN, however, carries the vision, mission, and program of the president that refers to the RPJPN,³⁸ further stipulated in the form of Presidential Regulation.³⁹ For a better understanding, the table below presents the comparison of the constructions of BHN-PNSB (Old Order), GBHN (New Order), and SPPN (post-reform).

³⁵ Aidul Fitriadi Azhari, "Reformulasi Sistem Perencanaan Negara Berbasis GBHN pada Abad 21," dalam *Reformulasi Kebijakan Haluan Negara Antara Realita dan Cita-Cita*, (Medan: Enam Media, 2019), 7.

³⁶ Undang-Undang No. 17 Tahun 2007 tentang Rencana Pembangunan Jangka Panjang Nasional menentukan RPJPN sampai tahun 2025.

³⁷ Pasal 3 Undang-Undang No. 17 Tahun 2007 tentang Rencana Pembangunan Jangka Panjang Nasional jo. Pasal 4 ayat (1) Undang-Undang No. 25 Tahun 2004 tentang Sistem Perencanaan Pembangunan Nasional.

³⁸ Pasal 4 ayat (2) Undang-Undang No. 25 Tahun 2004 tentang Sistem Perencanaan Pembangunan Nasional.

³⁹ Pasal 19 ayat (1) Undang-Undang No. 25 Tahun 2004 tentang Sistem Perencanaan Pembangunan Nasional.

Table 1. Comparison of the Constructions of GBHN-PNSB (Old Order), GBHN (New Order), and SPPN (Post-Reform)

Category	GBHN-PNSB	GBHN	SPPN
Function	Political and development policies	National development policies	The guidelines of the National Development Plan
Development pattern	Consisting of: 1) GBHN 2) PNSB 3) The state and development policy guidelines	Consisting of: 1) Fundamental pattern of national development 2) The general pattern of long-term development 3) The general pattern of the five-year development	Consisting of: 1) RPJP 2) RPJM 3) RKP
Objective	Goals and guidelines of state development	Goals of national development	The guidelines of the National Development Plan
Nature	Top-down	Top-down	Bottom-up
Legality	TAP MPRS	TAP MPR	UU
Institution	National Planning Department (Depernas)	Development Planning Agency of Indonesia (Bappenas)	National Development Planning Ministry/Development Planning Agency of Indonesia (Kementerian PPN/Bappenas)
Subject regulated	Executive, judicative, and legislative power	Executive power	Executive power
Ideology	GBHN is ideological, PNSB is strategic-technocratic	Ideological, strategic-technocratic	Strategic-technocratic
Accountability	Law	Law	Politics

Source: Obtained from varied resources and processed.

Since the enactment of UU SPPN in 2004, the development according to SPPN has run for almost two decades. Back then, SPPN was underrated in terms of its incapability to strengthen the goals and certainty of state development. The development

planning pattern specified in SPPN was deemed tenuous in aspects like (i) political practices in the development plan and (ii) constitutional design.

From a political perspective, the drafting of the RPJMN by the government did not reach the RPJPN because the president and vice-president focused more on being responsible for the manifestation of the vision and mission promised during the campaign. The problem is that the vision and mission of the president underlying the RPJMN were not arranged based on the constitution and the philosophy of the state, but based more on the temporary needs of the voters, in which all the programs offered were more of the political commodities to collect votes, leaving the development plan pragmatic. When it comes to the integrity of development plans in regional areas, the vision and mission offered are often different from those of regional heads, sparking imbalanced practices between the RPJMN and RPJMD. This disproportion will certainly lead to disharmony between the central and regional governments. This condition is often exacerbated by obvious differences between the presidential political parties and the parties of the regional head in the multi-party system.

From the perspective of the constitutional design, (i) the design of the SPPN is *executive centris* or executive perspective since the state development only relies on the president as an executive head without considering the involvement of other countries. In such a condition, state development is seemingly simplified into an executive domain. The RPJMN, departing from the vision and mission of the president and later set forth as presidential regulation, strengthens executive domination since regulatory flexibility has eased the development plan according to what the president has expected.⁴⁰ (ii) the inconsistency and discontinuity of the RPJPN are often caused by a five-year presidency. This indicates that there is no guarantee for the sustainability of the development between presidencies.

⁴⁰ Mei Susanto, "Wacana Menghidupkan Kembali GBHN dalam Sistem Presidensial Indonesia," *Jurnal Penelitian Hukum De Jure*, Vol. 17, No. 3, September 2017, 434.

Apart from the above issues, when associated with the philosophical aspect of the state, this condition is also linked to the principal matter regarding the SPPN, in which the model of the development plan in SPPN does not represent ideological state policies. Yudi Latif elaborates that state policies are ideological, encompassing fundamental principles as the guarding bases in helping delineate the philosophy of the state and the Articles in the Constitution in legislation and development policies.⁴¹

Ideological state policies are not new, as they were initiated by the founding fathers of this country, placing the state policies as the guidelines of principal policies of the state and parallel to the 1945 Constitution as the constitution of the state and Pancasila as the philosophy of the state. They agreed that state policies were set as instruments to reach the goals of the state.⁴²

Jimly Asshiddiqie believes that the tradition of state policies, which is termed the Directive Principles of State Policy (DPSP), is common practice in countries not adhering to socio-communist. The primary intention is to provide counselling and direction to ensure that operational policies in economic, social, and cultural aspects do not contravene the ideas specified under the constitution as the highest law.⁴³ Bambang Sadono asserts that state policies are seen as urgent to ensure that national development is the manifestation and implementation of the ideology of the state and Pancasila.⁴⁴ Within the purview of the constitution, the presence of state policies is not only measured within the scope of direct democracy or because the president no longer has the responsibility under the MPR, but it is more because of the state policies as the instruments for delineation of the goals of the state in the constitution.

⁴¹ Yudi Latif, *Memahami GBHN*.

⁴² The thoughts of the founding father of the state can be seen from the results of the sessions of BPUPKI-PPKI. See *Risalah Sidang BPUPKI- PPKI 25 Mei 1945–22 Agustus 1945*.

⁴³ Asshiddiqie, *Konstitusi ekonomi*, 25-27.

⁴⁴ Bambang Sadono, *Amandemen Jalan Tengah*, Kompas, 1 September 2016, 6.

Mahfud MD explained that the abolishment of the GBHN from the 1945 Constitution was a political haste.⁴⁵ The vital role of the state policies was described by A.M. Fatwa, saying that GBHN represented the state policies guarding all the development of the development of the state performed by all the branches of the power of the state.⁴⁶ in the conception of state development, all those branches of power should be involved in the development. That is, the regulation of the subject of the state policies should also encompass all executive, legislative, and judicative powers.

This description shows that there are currently three principal problems in the SPPN in the aspects of political practices, constitutional design, and ideology, the three of which call for attention in reconstructing the state policies within the scope of the constitutional system of Indonesia these days. In other words, the initiation of the PPHN as state policies should start by mending these problems instead of bringing back the old GBHN. However, some good practices need to be considered from the old GBHN for further implementation these days, combining positive legacies from several government regimes to help improve the development of the state in the future.

The above details should clarify the urgency of the presence of state policies in the constitution of Indonesia. Therefore, the existence of the state policies should be viewed as the aspects involved in the improvement of the system of the national development plan without overlooking the constitutional system of Indonesia—the 1945 Constitution.

The Compatibility of State Policies in the Presidential System of Government in Indonesia

The discussion on state policies is often faced with the presidential government system. Nevertheless, seen from a wider perspective, the presence of state policies is common in some

⁴⁵ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Rajawali Pers, 2007), 45.

⁴⁶ A. M. Fatwa, *Potret Konstitusi Pasca Amandemen UUD 1945* (Jakarta: Penerbit Buku Kompas, 2009), 92.

countries under either parliamentary or presidential systems. State policies are not contingent upon the system of the government that a state is adherent to, but it is more related to the constitutional needs in manifesting the goals of state development, particularly in developing countries. It does not mean that every state implements the same state policies because they have to conform to the constitutional design of the state.

Along with the amendments to the 1945 Constitution, Indonesia has adhered to the presidential system. The presence of the state policies must take into account the conformity to the presidential system principles. Due to this pretext, the presence of the PPHN must be placed within a particular framework to present the vision of state policies under the presidential government system. In such a context, the compatibility of these policies with the presidential system of the government of Indonesia needs to be addressed.

In terms of the results brought by the amendments to the 1945 Constitution, three features are to be used in this article as instruments to measure the compatibility of the state policies with the presidential government system, namely the change in the system of presidential and vice-presidential elections, president's responsibility, and the existence of the MPR as the high institution of the state.

The amendments to the 1945 Constitution have led to the change in the presidential and vice-presidential election systems in Indonesia. Before amendments, Article 6 paragraph (2) of the 1945 Constitution states "President and vice-president are elected by the MPR with the most votes." After amendments, the system of this election changed to direct elections. Article 6A of the 1945 Constitution states that the president and vice-president are directly elected as a pair via a popular election.

Giving people the right to directly elect the president and vice-president symbolises sovereignty and shows that they receive a mandate directly from their people. Such direct elections foster checks and balances between the president and the parliament because they are directly elected by the people. The legitimacy of

the president is not derived from the mandate of the MPR but from the members of the public. Therefore, the president is no longer directed by the MPR.

This shifting mechanism of presidential and vice-presidential elections has been going in line with the discourse on the presence of state policies in Indonesia. As seen from the debate in the MPR working committee session in the amendments to the 1945 constitution, the abolishment of the GBHN has been associated with the changing way of electing president and vice-president. There is an indication that this direct election resulted in the abolishment of the GBHN since the president was not responsible under the MPR. Therefore, setting the development plan was thought to depart from the authority of the president *per se*.⁴⁷ similarly, the General Provisions of UU SPPN also state that following the amendments to the 1945 Constitutions governing the direct elections of the president and the absence of the GBHN as the guidelines referred to by the president to arrange development plan, further regulations are required for the process of national development plan.

Taking a closer look at the construction of the state policies as the guidelines of the basic policies for development, the author regards that the state policies have no direct bearing on the mechanism of presidential and vice-presidential elections, or it can be said that the presence of the state guidelines did not result in the change in the way president and vice-president have been elected. This change is simply because Article 6A of the 1945 Constitution ordered so. Popular elections focus more on filling government positions, while the GBHN focuses more on development plans. Therefore, the presence of PPHN should be for the purpose of reviving the vision of state policies to direct and give guidelines to development, not for the purpose of restoring the presidential election by the MPR.

Thinking like the way the state policies era did is no longer necessary since the president is directly elected by people, and this election method has been heavily affected by legal practices in the

⁴⁷ Risalah Sidang Perubahan UUD 1945 Badan Pekerja MPR tanggal 5 Juli 2001.

past, in which the GBHN served as an instrument used by the MPR to assess the responsibility of the president. Once again, direct elections of the president by the members of the public show that the president no longer has any compliance with the MPR but rather with the people who elected him. This difference is inextricable from the government system that the state clings to.

Prior to the amendments to the 1945 Constitution, the government system in Indonesia tended to lean more toward the parliamentary system that placed MPR in the supreme position in the state. Article 1 paragraph (2) of the 1945 Constitution states that the sovereignty is in the hands of the people and fully controlled by the MPR. Article 3 also mentions the MPR enacting the 1945 Constitution and the GBHN. These two Articles show that the MPR holds a central role in designing the constitution of Indonesia and holds supremacy in executing sovereignty. The supreme power, in other words, is held by the MPR to elect a president and vice-president.

With such a principle, it is always acceptable that the president must be responsible under the MPR. Before the amendments to the 1945 Constitution, the GBHN was the reference to execute the national development and dismiss the president. The Decree of MPR Number III of 1978 asserts that the president can be dismissed due to violations of the GBHN. In the history of the workforce in Indonesia, the reference to such state policies as the basis for the impeachment of the president was obvious in the case of the impeachment of Abduurrahman Wahid on account of the violation of state policies.⁴⁸ That is, the GBHN was positioned in two dimensions: as development guidelines (ideological-technocratic dimension) and as the measuring standard to assess the president's responsibility (political dimension).

Following the amendments to the 1945 Constitution, parallel to re-assertion, now the GBHN no longer serves as the standard of

⁴⁸ Hamdan Zoelva, *Impeachment Presiden: Alasan Tindak Pidana Pemberhentian Presiden Menurut UUD 1945*, ed. oleh Nur Rosihin Ana (Jakarta: Konstitusi Press, 2005), 103.

the president's responsibility and, therefore, the GBHN is no longer used as a reference. The existence of GBHN in the presidential system only had one dimension—the guidelines of basic policies in development.

Departing from the construction of Article 1 paragraph (2) and Article 3 and the Elucidation of the 1945 Constitution before amendments, Saldi Isra concludes that the formulation of GBHN in pre-reform era was inextricable from the position of MPR as the supreme institution of the state that controlled the sovereignty;⁴⁹ the changing position of the MPR in the constitutional structure of Indonesia is not likely to give authority to MPR to set state policies similar to GBHN. Hilaire Tegnau dkk more strictly assert that the presence of GBHN, if it has to exist these days, can jeopardise democracy, the rule of law, and regional autonomy.⁵⁰ Susi Dwi Harijanti dkk argue that there are two models of the guidelines of state policies: the DPSP and super parliament.⁵¹ The DPSP was adopted by countries adhering to the presidential and parliamentary systems with successor variants of the development plan, while the super parliament was adopted by countries under parliamentary government by granting the supreme institution of the state the authority to govern the development plan. That is, granting the MPR authority to govern the development plan represents the parliamentarism practice of the state.

The above elaboration reveals that the GBHN can be said to be compatible with the presidential government system if the GBHN does not interrupt the standard of the presidential government system according to these two considerations: (1) the presence of GBHN must not undermine the position of the president in his connection with the parliament, and (ii) the presence of GBHN must not coerce president into being responsible under the MPR.

⁴⁹ Saldi Isra, *GBHN dan Perubahan Konstitusi*, Kompas, 23 Agustus 2016, 6.

⁵⁰ Hilaire Tegnau, Charles Simabura, dan Saldi Isra, "Indonesian National Development Planning System Based on State policies (GBHN): A Return to the Future?," *International Journal of Law Reconstruction*, Vol. 2, No. 1, Juli 2018, 34.

⁵¹ Harijanti, *Konstitusionalisasi Haluan Negara...*, 23.

The formulation above indicates that only these three models are likely to fit the presidential system in Indonesia: DPSP, parent law as the guidelines of the state policies; and the integration of the MPR and presidentialism principle.

First, in the DPSP model, the drafting of state policies is specified in articles in the constitution to explain the goals of the state, particularly in the Preamble of the 1945 Constitution. This model is common in the constitutions of the states with social constitutionalism that is constitutional democratic, like Brazil, the Philippines, and India. Following the amendments to the 1945 Constitution, Indonesia is categorised as one of these countries with socialistic characteristics and the strengthening capacity of the constitutional democracy in the 1945 Constitution.⁵² In terms of the structure of DPSP within the constitution, supreme goals can be elaborated in the Preamble of the 1945 Constitution in the directive principles. The supreme goals in the Preamble of the Constitution are specified in paragraph 4 mentioning *"In order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace, and social justice"*. These goals are given under a particular chapter bearing the basic principles and the policies of the state in fulfilling the fundamental rights of the citizens.

Second, the model of the parent law as state policy guidelines includes the policies outlined in the form of the statute as a parent law in the state administration and development plan of the state. This law set out further elaboration of the Preamble of the 1945 Constitution, stating the basic principles and the basic policies of the development of the state. As ideological state policies, the subject matters of the law encompass values, norms, and directive principles that are general, abstract, and fundamental, not only governing the executive body but also all the institutions of the state whose authority is sourced from the constitution. This parent

⁵² Ibid., 115.

law may become the basis and reference for all other laws that specify development, including SPPN and RPJPN Laws. As the follow-up of this model, the RPJMN previously set out in the presidential regulation needs to be amended from the statutory form to RPJMN Law as a five-year development plan document made by the president along with the DPR. This design enables the RPJMN to facilitate the vision and mission of the president and vice-president and to give elaboration on state policies whose drafting can be controlled by the legislative, thereby guaranteeing the certainty of sustainable development.

Third, the model to set state policies by the MPR by adjusting to presidential principles can be asserted under the decree of the MPR, but it will not force the president to be responsible under the MPR. The control of the enforcement of the state policies is not manifested in the form of an accountability report that may have legal implications, but rather in the form of a performance report from state institutions to the public within a session of MPR. No legal consequences result from this performance report because the assessment of the performance of the state institutions is in the hands of the people through the democratic mechanism guaranteed under the 1945 Constitution.⁵³ Therefore, state policies are not only for the president but all state institutions are required to refer to the state policies to determine for which direction their policies are heading.⁵⁴

The same view is given by Sutan Sorik and Dian Aulia suggesting that to support checks and balances, the document of state policies should be drafted by MPR and the president, and the accountability of the attainment of national development should

⁵³ The idea about performance report forum of the state institutions was introduced by MPR through MPR Reviewing Body in 2017 in one of the reviews regarding the urgency of the GBHN in the national development. See MPR RI, *Urgensi GBHN dalam Penyelenggaraan Pembangunan Nasional* (Jakarta: Badan Pengkajian MPR, 2017), 139.

⁵⁴ *Ibid.*, 280.

involve the coordination between MPR and president, ensuring that the development is not only restricted to executives.⁵⁵

Jimly Asshiddiqie also suggests that the decree of the MPR governing the state policies in this context should be *beschikking*, not *regeling*; it should hold the status of the rules of policies or *beleidsregel* that governs but not in the form of legislation.⁵⁶ This suggestion is not based on the position of MPR after the amendments to the Constitution, which no longer holds the supreme status above the president and DPR as lawmakers. Currently there are no legal products positioned higher than the statute and lower than the Constitution.

From the author's perspective, these three models are prone to misuse by political actors for power reasons, in which performance accountability can be understood as a liability. Especially when the political circumstances of multi-parties often trigger disharmony between the president and the DPR and cause instability in the government, leading to the failure of effective government, coupled with too much power held by the DPR in the design of the constitution of Indonesia, which is often termed *legislative heavy*.⁵⁷ The political relation between President Susilo Bambang Yudhoyono (SBY)-Jusuf Kalla (JK) and the DPR in the period of 2004-2009 was laden with conflicts, ending up with access to enquiry and interpellation rights of the DPR. During this period, the president received at least 14 requests for interpellation rights and 9 enquiry rights requested by DPR. This situation led to ineffective government. If such a circumstance had to happen, the

⁵⁵ Sutan Sorik dan Dian Aulia, "Menata Ulang Relasi Majelis Permusyawaratan Rakyat dan Presiden Melalui Politik Hukum Haluan Negara," *Jurnal Konstitusi*, Vol. 17, No. 2, Agustus 2020, 384.

⁵⁶ Jimly Asshiddiqie, "Konstitusionalisme Haluan Negara untuk Mewujudkan Tujuan Negara Berdasarkan Pancasila", Academia.edu, 2019, https://www.academia.edu/41009096/KONSTITUSIONALISME_HALUAN_NEGARA, diakses 25 April 2022.

⁵⁷ Harry Setya Nugraha, "Gagasan Amandemen Ulang Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Lex Renaissance*, Vol. 3, No. 1, Januari 2018, 68.

presence of the state policies would be counter-productive to the goals of the state development.

Conclusion

This research concludes that the presence of the state policies setting out the directive principles as the guidelines for the basic policies of the state is necessary for the constitution of Indonesia, especially to usher, guide, and ensure the state development. The presence of these state policies is expected to mend shortcomings of the national development planning system, encompassing the improvement in the political aspect in the arrangement of development plant, constitutional design, and ideological aspect. In a conceptual context, state policies do not contravene the presidential system of the state, but its existence still has to conform with the constitution of Indonesia post-amendments to the 1945 Constitution.

State policies that do not ruin the presidential system symbolize the compatibility of the state policies with the presidential system of the government. To ensure this compatibility, this practice should consider the following conditions: (i) state policies must not undermine the position of the president in connection with the parliament, and (ii) the presence of GBHN must not coerce the president into being responsible under the MPR. The forms of the state policies in this context are formulated in three models: (i) DPSP, (ii) parent law as the state policies; and (iii) setting the policies by the MPR by adjusting to the principles of presidentialism. Both the DPSP and parent law models are considered reasonable amidst the presidential system because setting this model by MPR and the practice of parliamentarism intersect. This condition is prone to inappropriate use by political actors amidst the existence of multiple parties.

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