



Comparing the President's Authority in Forming Laws in Indonesia, the United States and Turkey

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Abstract

Each country is unique in running its government system. One of these uniqueness is related to the executive authority in forming laws, where even though these two countries both use a presidential system of government, there are differences in authority. This difference can be seen in Indonesia and the United States and Turkey, where even though these two countries both use a presidential system of government, there are differences in executive authority. To understand the legal ratio there are differences, even though the 3 (three) countries both use a presidential system of government, this research was conducted. The formulation of the problems in this study are 1) Characteristics of a presidential government system and 2) The authority of the President as an executive in making laws in presidential systems in Indonesia, the United States and Turkey. This research is a legal research with statutory approach, conceptual approach, and comparative approach. The results of the study show that in the Indonesian constitutional structure which is a Joint Function, the holder of the legislative function is the DPR which is carried out jointly with the President to then obtain joint approval. While the formation of laws and regulations in the United States is the House of Representatives and the Senate which are held by two chambers that have roles and functions of legislation that are balanced and equal to one another. If in Indonesia it is the executive who proposes to revise the law, in Turkey it is the majority party in parliament that proposes to revise the law. The presidential system in Turkey in terms of the relationship between the executive and the legislature is proactive.

Keywords: *United States of America; Indonesia; Legal Formation; Presidential System; Turkey*

Introduction

The system of government that exists in our country recognizes the theory of Trias Politica or the division of power which was popularized by an English philosopher named John Locke which was later perfected by Charles Secondat Baron de Labrede et de Montesquieu in his work *Lesprit des Lois* (The Spirit of the Laws), where Montesquieu then holds the view that functions in government are divided into three functions, namely the legislative function, the executive function and the judicial function¹, and this

¹ Suparto. "Teori Pemisahan Kekuasaan dan Konstitusi Menurut Negara Barat dan Islam." *Hukum Islam* 19, No. 1 2019,: 134-149.

thought is known as *Trias Politica*.² According to John Locke, the functions of state power include legislative functions, executive functions, and federative functions.³ In these teachings, Montesquieu argues so:⁴ “If state power is strictly separated into three, namely: statutory power, power to administer government, and judicial power, and each of these powers is held by an independent body. This would eliminate the possibility of arbitrary action on the part of the ruler, or strictly speaking, would not allow the imposition of an absolute system of government.”

The authority of the President in Indonesia to be involved in the process of forming laws is actually regulated in Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that “The President has the right to submit Draft Laws to the House of Representatives”,⁵ then in Article 20 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia it is determined that “every Draft Law must be discussed by the DPR and the President for mutual approval”, then Article 20 paragraph (4) also stipulates that “The President ratifies the Draft Law Laws that have been mutually agreed upon become laws. This article gives birth to the authority of the President of Indonesia to be involved in the process of forming laws, namely in the process of submitting, discussing and ratifying bills.

Legislative power (rulemaking function) is the power of the state to form laws, executive power (rule application function) is the power of the state to implement laws, and judicial power (rule adjudication function) is the power of the state to prosecute violations of the law.⁶ A strict separation between the executive branch of power and the legislative branch of power is an important point in explaining the function of legislation in a presidential system of government. According to Jhon H. Garvey and T. Alexander Aleinikoff, there are 4 (four) consequences of the strict separation of powers between the executive and the legislature in the legislative function, namely:⁷

1. The Supremacy of Statute;
2. The Necessity for Legislation;
3. The Non-Delegation Function; and
4. The Legislative Veto.

In this sense, in a narrow sense the function of the existence of a government means that it is related to actors in the executive branch, namely the head of government and ministers in the cabinet, but in general it means that all officials or ranks in the government, both executive, legislative and judiciary carry out their duties in their respective fields.⁸ Guided by this broad understanding, the system of government in a country has an important meaning, namely a complete order consisting of several components of government that are interrelated and influence each other in the duties and functions of government.⁹

One of the government systems known in modern politics is the presidential system of government. Indonesia, the United States and Turkey with different histories and travel dynamics implement a presidential system of government. One example of a pure presidential system that many

² Zulkarnaen. “Kemitraan Antara Eksekutif dan Legislatif dalam Sistem Pemerintahan Indonesia Berdasarkan Undang-Undang Dasar Tahun 1945.” *Galuh Justisi* 8, No. 2 (2020): 245–260.

³ Risdiana, Izzaty dan Xavier Nugraha. “Perwujudan Pemilu yang Luber Jurdil Melalui Validitas Daftar Pemilih Tetap.” *Jurnal Suara Hukum* 1, No. 2 (2019): 155–171.

⁴ Andy Wiyanto. “Pertanggungjawaban Presiden dan Mahkamah Konstitusi.” *Jurnal Konstitusi* 7, No. 3 (2010): 209–231.

⁵ Negara Republik Indonesia. Undang-Undang Dasar Negara Republik Indonesia (UUD NRI) Tahun 1945.

⁶ Syofyan Hadi. “Fungsi Legislasi dalam Sistem Pemerintahan Presidensial (Studi Perbandingan Indonesia dan Amerika Serikat).” *DIH Jurnal Ilmu Hukum* 9, No. 18 (2013): 78–84.

⁷ Saldi Isra. *Pergeseran Fungsi Legislasi; Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*. Jakarta: PT. Raja Grafindo Persada, (2010): 234.

⁸ Ramlan Surbakti. *Memahami Ilmu Politik*. Jakarta: Grasindo, (2010): 216.

⁹ Teuku Saiful, Bahri Johan. *Hukum Tata Negara dan Administrasi Negara dalam Tataran Reformasi Ketatanegaraan Indonesia*. Yogyakarta: Deepublish, (2018): 249.

consider a "model role model" is the United States government. According to Bagir Manan, the presidential system of the United States government has characteristics:¹⁰

a) The President is the only holder of executive power; b) The president is a government administrator who is responsible in addition to various prerogative constitutional powers that are commonly attached to the position of head of state; c) The President is not responsible to the people's representative body (congress), so that a motion of no confidence cannot be imposed; d) The President is not elected and appointed by the congress, in practice directly by the people; and e) The President can be dismissed through the impeachment process.

According to Bagir Manan, the presidential system in Indonesia initially had almost similar characteristics to the system in the United States, but this has changed since the amendment to the 1945 Constitution (1945 Constitution). After the amendment of the 1945 Constitution to the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the presidential system in Indonesia became impure.¹¹ This is due to the mixing of elements of the parliamentary system. This can be seen for example in Article 5 jo. Article 20 of the 1945 Constitution of the Republic of Indonesia which authorizes the President to propose and participate in the ratification of laws.

If you look at other countries that implement a presidential system, in fact the granting of authority to the President to be involved in forming laws is indeed becoming known. Countries that implement this presidential system give the impression of giving "exclusive authority" to the President. This can be seen from the President's authority in several countries, such as:¹² 1. Authority that is executive in nature or organizes government based on the constitution. 2. Authority that is legislative in nature or regulates public or general interests (regulates social affairs based on laws and the constitution). In a system of separation of powers, regulatory authority is assumed to be in the hands of the representative body, not the executive. So, if the executive feels the need to regulate, then the authority to regulate in the hands of the executive is a derivative of the legislative authority. 3. The power of the judiciary in order to restore justice related to court decisions. Such as the authority to grant clemency, abolition and amnesty. 4. Diplomatic authority. 5. Administrative powers to appoint and dismiss people in state offices (President as chief executive). 6. Authority in the field of defense and security.

As previously mentioned, in a presidential system, the formation of laws and regulations is the exclusive authority of the legislature, this is based on the principle of popular sovereignty. However, it turns out that over time, the legislative function itself does not absolutely become the authority of the legislature, but is also carried out together with the executive power. Not infrequently the executive power is more dominant in carrying out legislative functions. Even if you look at current state administration practices, other branches of power may also have the authority to regulate or stipulate regulations that are also binding on the public, if the people's representatives have given their approval in a law.

The discussion that will be described in this paper is limited to aspects of the function of legislation in a presidential government system and the extent of the President's authority as an executive body in carrying out these legislative functions. To be able to find an explanation of these problems, the author uses comparative analysis as a means to explain how the process of forming laws in a presidential government system, especially regarding the President's authority as an executive body. Indonesia, the United States and Turkey are relevant for comparison, because these three countries have the same form of government system, namely adopting a presidential system of government. What's more, the United

¹⁰ Bagir Manan. *Lembaga Kepresidenan*. Yogyakarta: Gama Media, (1999): 50.

¹¹ Abdul Bari Azed. "Mewujudkan Sistem Presidensial Murni di Indonesia: Sebuah Gagasan Penyempurnaan Sistem Ketatanegaraan Indonesia." 5, No. 2 (2013): 44–78.

¹² Laurensius Arliman S. "Penyelenggaraan Sistem Presidensial Berdasarkan Konstitusi yang Pernah Berlaku di Indonesia." *Muhakkamah* 4, No. 2 (2019): 77–89.

States is considered as a reference for presidential systems for countries in the world. Meanwhile, Indonesia is still in the process of being slightly influenced by the parliamentary system. Make a comparison between Indonesia and Turkey because these two countries are two countries that have implemented two different government systems, namely the parliamentary system and the presidential system. Indonesia implemented a presidential system for the first time on 18 August 1945 to 17 August 1950. After that, Indonesia implemented a parliamentary system from 1950 to a Presidential Decree in 1959. The parliamentary system failed to form a new constitution so that Indonesia returned to the 1945 Constitution and re-implemented a presidential system and has survived to this day.¹³ Likewise in Turkey, which implemented a parliamentary system for the first time since its establishment on October 29, 1923 until the 2017 constitutional referendum. Since 2017, a presidential system has been implemented in Turkey. The presidential system is more effective because the policy-making process is not long-winded in parliament, which so far has been seen as hampering the government's performance.

Method

This article uses a normative legal research typology.¹⁴ A process to find the rule of law,¹⁵ legal principles and legal doctrines in order to answer the legal issues faced in order to achieve legal goals that reflect the values of justice.¹⁶ Analyze the legal norms that have been set by the authorized official.¹⁷ The normative legal research method is needed in presenting a legal argumentation. As legal research and in Dutch it is called *rechtsonderzoek*.¹⁸ Legal research is research conducted to find solutions to legal problems that arise, namely to provide a description of what should be regarding the issues raised.¹⁹ In this legal research, it was conducted to answer legal issues regarding the authority of the president as an executive agency in forming laws in a presidential system. To answer these legal problems, this legal research uses legal arguments. Research that uses legal arguments is research whose main characteristic is examining the application of a rule of law accompanied by legal arguments/considerations made by law enforcers, as well as the interpretation that underlies their enforcement.²⁰ Thus, this legal research will describe the legal ratio of policy implementation related to the president's authority as the executive branch in forming laws in a presidential system.

In this legal research, the approach used is statutory approach, conceptual approach, and comparative approach.²¹ The statutory regulation approach is carried out by examining all statutory regulations and other regulations related to the legal issues handled, so that in this study the ratio of legislation, ontological basis and philosophical basis of related regulations can be identified.²² In this legal research, laws and regulations related to the president's authority as an executive body in forming laws are examined.

The conceptual approach is an approach that departs from the views and doctrines developed in legal science to analyze legal issues.²³ In this study, a conceptual approach is used for the authority of the

¹³ Hakiki Paizon. *Sistem Pemerintahan Pada Masa Demokrasi Liberal Tahun 1949-1959*. Diss. Riau University, (2013).

¹⁴ Ni Ketut Sari Adnyani, Gede Marhaendra Wija Atmaja, and I. Ketut Sudantra. "Indigenous People Between Recognition and Disclaimer of Legal Pluralism Perspective." *International Journal of Multicultural and Multireligious Understanding* 8.9 (2021): 352-362.

¹⁵ Peter Mahmud Marzuki. *Penelitian Hukum, Edisi 1 Cetakan VI*. Jakarta: Kencana Prenada Media Group, (2010): 179.

¹⁶ Bambang Sunggono. *Metodologi Penelitian Hukum*. Jakarta: PT. Rajagrafindo Persada, (2009): 112.

¹⁷ HS Salim dan Erlies Septiana Nurbani. "Penerapan Teori Hukum." *Penelitian Tesis Dan Disertasi, Jakarta* (2014).

¹⁸ Peter Mahmud Marzuki. "Penelitian Hukum." *Yuridika* 16, No. 1 (2001): 103.

¹⁹ Dyah Ochtorina Susanti dan A'an Efendi. *Penelitian Hukum*. Jakarta: Sinar Grafika, (2013): 1.

²⁰ Bagus Oktafian Abrianto, Xavier Nugraha, and Nathanael Grady. "Perkembangan Gugatan Melanggar Hukum oleh Pemerintah Pasca-Undang-Undang Nomor 30 Tahun 2014." *Negara Hukum* 11, No. 30 (2020): 43-62.

²¹ Ni Ketut Sari Adnyani. "Perlindungan Hukum Kesatuan Masyarakat Hukum Adat dalam Pengelolaan Pariwisata Berbasis Kearifan Lokal." *Media Komunikasi FPIPS*, 20(2), (2021): 70-80.

²² Paulus Hadi Suprpto. "Ilmu Hukum (Pendekatan Kajiannya)." *Inovatif 2*, No. 4 (2010): 7-20.

²³ Mulyadi. "Riset Desain dalam Metodologi Penelitian." *Jurnal Studi Komunikasi dan Media* 16. No. 1 (2012): 19-28.

president as an executive branch in forming laws. Meanwhile, the comparative approach is an approach that is used by comparing laws between one country and another to reveal the background to the birth of certain legal provisions for the same problem in the three countries.²⁴ In this study, the things being compared are related to the authority of the president as an executive agency in forming laws in Indonesia with the United States and Turkey.

Discussion

Characteristics of a Presidential Government System

Quoting a journal entitled *Indonesian Government System: Theory and Practical Approach to the 1945 Constitution* by Ahmad Yani, Indonesia currently adheres to a presidential system of government. The President of the Republic of Indonesia holds the highest authority as head of state and government of Indonesia. This opinion is contained in Article 4 Paragraph 1 of the 1945 Constitution which states that the government system in Indonesia is led by the president. "The President of the Republic of Indonesia holds the power of government according to the Constitution."

A presidential system is a system of government in which the executive, usually held by the president, is the center of power of a country. The executive is an institution that implements laws, while the legislature is an institution that makes laws.²⁵ The executive branch in a presidential system is independent of the legislature or parliament. There are several characteristics of a presidential system of government, including the president serving as head of state as well as head of government, the executive is not responsible to the legislature, the cabinet and ministers are made and appointed directly by the president and are responsible to the president and the executive and legislature in an equal position and just as strong.

The main characteristic of a presidential system is that the basis of the president's legitimacy comes from the people. The process of directly electing the executive, namely the president and vice president with a fixed term of office, is proof that a presidential system of government can be accountable to the people. According to Giovanni Sartori, a presidential system has three characteristics. First, the president or head of government is directly elected by the people through general elections for a period of one term. Second, neither the parliament nor the legislature can impeach the president. Third, the president directly leads the government formed by the president himself.²⁶

In state science (*algemeine staatslehre*) what is meant by a system of government is a system of constitutional law, whether in the form of a monarchy or a republic, namely regarding the relationship between the government (executive) and bodies that represent the people.²⁷ Not much different from that, Usep Ranawijaya emphasized that the system of government is a system of relations between the executive and the legislature.²⁸ In line with this view, Jimly Asshiddiqie argues that the system of government is related to the notion of *regeringsdaad*, namely the administration of government by the executive in relation to the function of the legislature.²⁹ This perspective is in accordance with the theory of dichotomy, namely the legislature as a policy maker (*taak stelling*), while the executive as

²⁴ Peter Mahmud Marzuki. *Penelitian Hukum : Edisi Revisi*. Jakarta: Kencana Prenada Media Group, (2017): 93.

²⁵ Syofyan Hadi. "Fungsi Legislasi dalam Sistem Pemerintahan Presidensial". *Jurnal Ilmu Hukum*. Vol. 9, No. 18, Februari (2013): 78.

²⁶ Yusuf Wibisono. "Anomali Praktik Sistem Pemerintahan Presidensial dan Multipartai di Awal Pemerintahan Jokowi Tahun 2014." *Ilmu dan Budaya* 40.55 (2018).

²⁷ Harun Alrasyid. "Kajian Sistem Pemerintahan dan Ruang Lingkupnya." *Majalah Mahasiswa Universitas Pasundan* 3. No. 3 (2002): 1.

²⁸ Usep Ranawijaya. *Hukum Tata Negara Indonesia: Dasar-Dasarnya*. Jakarta: Ghalia Indonesia, (1983): 72.

²⁹ Jimly Asshiddiqie. *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*. Jakarta: Buana Ilmu Populer, (2007):311.

implementing policies (taak verwezenlijking).³⁰ In the implementation of these state functions, there is actually a relationship that influences each other in the implementation of executive and legislative power.

The development of a parliamentary system of government illustrates more the struggle to reduce the absolute power of the king, while the development of a presidential system is more marked by how to regulate the relationship between the president (executive) and the legislature.³¹ Because both receive a direct mandate from the people, presidential systems are often trapped in tensions between the executive and the legislature, especially if the power of the majority political party in the legislature is different from the president's political party.³² Such experiences occur in almost all countries that adopt a presidential system, including the United States and Turkey. Meanwhile, if the majority of parties in the legislature are the same as the political parties supporting the president or the majority of parties in the legislature support the president, then the practice of a presidential system is easily trapped into an authoritarian government.

The classification of modern democracy according to Kranenburg can be distinguished according to the relationship between government organs which represent three different functions, namely: 1. people's government through representatives with a parliamentary system; 2. people's government through representatives with a parliamentary system; 3. people's government through representatives accompanied by direct supervision by the people.

Miriam Budiarto has a different view, where she distinguishes the three systems into two groups, namely the Parliamentary System (parliamentary executive) and the presidential system with a permanent executive or non-parliamentary executive.³³ If you look at it in the context of the Indonesian state that was born after the 1999 reform, there have been several changes in state administration practices, one of which is regarding the affirmation of the presidential system adopted by Indonesia. This can be seen based on the 1945 Constitution of the Republic of Indonesia. In the system of the 1945 Constitution of the Republic of Indonesia, the implementation of people's sovereignty is carried out according to constitutional procedures established based on laws and the constitution (constitutional democracy).³⁴ People's sovereignty in Indonesia is held directly and through a representative system.³⁵

People's sovereignty in Indonesia is carried out directly, this is realized through the direct election of the president, vice president and members of representative institutions. In addition, people's sovereignty is also realized through the exercise of rights and freedom of opinion. These things then have implications for changes in the government system as a whole.

Initially the use of a presidential system was implemented by the United States, with the following characteristics:³⁶ 1. The President is the holder of the sole executive power, and as the administrator of government who is responsible and has various prerogative constitutional powers that are normally attached to the position of head of state; 2. The President is not accountable to Congress and so cannot be subject to a vote of no confidence. Because the President is not elected and appointed by the Congress, the election for the President is carried out directly by the people, even though they are

³⁰ Wisnu Nugraha. "Fungsi Legislasi Menurut Undang-Undang Dasar Tahun 1945 (Studi Kasus Badan Legislasi DPR RI Periode 2004-2009)," *Binamulia Hukum* 7, no. 2 (2018): 157–168.

³¹ Saldi Isra. "Hubungan Presiden Dan DPR." *Jurnal Konstitusi* 10, No. 3 (2013): 399–416.

³² *Ibid.*

³³ Muliadi Anangkota. "Klasifikasi Sistem Pemerintahan: Perspektif Pemerintahan Modern Kekinian Muliadi Anangkota," *CosmoGov: Jurnal Ilmu Pemerintahan* 3, No. 2 (2017).

³⁴ Ofis Rikardo. "Penerapan Kedaulatan Rakyat di dalam Pemilihan Umum di Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Hukum Sasana* 6, no. 1 (2020): 51–71.

³⁵ *Ibid.*

³⁶ Bachtiar Baital. "Pertanggungjawaban Penggunaan Hak Prerogatif Presiden Di Bidang Yudikatif Dalam Menjamin Kemerdekaan Kekuasaan Kehakiman." *Jurnal Cita Hukum* 2, No. 1 (2014).

formally elected by the electoral college; 3. During his term of office, the President has four years and can only be elected for two consecutive terms (8 years); and 4. In the presidential system in the United States, the President can be removed from office through the impeachment process on the grounds of treason, or committing a serious crime.

According to Bagir Manan, the presidential system implemented in Indonesia before the amendment to the 1945 Constitution had characteristics that were almost similar to the presidential system in the United States, with several features, such as the President being elected by the people's representative body, in this case the MPR. Then the President is subject to and responsible to the MPR, but not subject to and responsible to the DPR. Because the President is appointed by the MPR, the President can also be dismissed by the MPR and can be re-elected indefinitely every 5 years.

Indonesia's long journey in implementing a presidential system is somewhat different from the Republic of Türkiye. Like Indonesia, Türkiye has a long history of governance systems. However, the choice to adopt a presidential system was taken after various crises that emerged in the parliamentary government. The Republic of Türkiye adopted the system of government that exists in Western countries. The head of state is led by a president and the head of government is led by a prime minister. Under Mustafa Kemal Atatürk, Turkey implemented Western-oriented values in all aspects of life including politics.³⁷

In early 2017, the plan to hold a referendum was approved by a parliamentary majority. Following are the highlights of the 2017 constitutional referendum: 1. Gives wider powers to the president 2. The president can rule for up to two terms 3. The president is both head of state and head of government 4. The president and three-fifths of the members of parliament can determine elections to be held for an unlimited time.³⁸ A constitutional referendum was finally held on April 16 2017. The results of the referendum initiated by Recep Tayyip Erdogan with a majority of the Turkish people meant that they wanted a change in the form of government from parliamentary to presidential. Since then, Türkiye has officially become a country with a presidential system of government.

The concept of a Presidential system based on the 1945 Constitution before the amendment, can actually be said to be impure, because it has shown several elements of a parliamentary system. This can be seen in the concept of the President's accountability to the MPR which is included in the definition of a parliamentary institution with the possibility of giving him authority to dismiss the President from office. Therefore, with the fourth amendment to the Constitution of the Republic of Indonesia, in particular with the implementation of a direct presidential election system and structural and functional changes to the MPR institution, the government system adopted by Indonesia becomes more reflective of a presidential system of government. Giovanni Sartori emphasized that a political system is said to be a presidential government if the president:³⁹ (i) result from popular election; (ii) during his or her pre-establish tenure cannot be discharged by a parliamentary vote; and (iii) heads or otherwise directs the government that he or she appoints.

The advantages of a presidential system of government are:⁴⁰ 1. the existence of executive stability based on the guarantee of the certainty of the president's term of office; 2. presidential elections can be considered more democratic than indirect elections either formally or informally as an executive in

³⁷ Muhammad Iqbal, Amin Husein Nasution. *Pemikiran Politik Islam dari Masa Klasik hingga Indonesia Kontemporer*. Jakarta: Kencana, (2010): 111.

³⁸ Salsabil. Mohammad Naufal Eprillian. *Sistem Presidensial dan Dinamika Hubungan Eksekutif-Legislatif Studi Perbandingan Sistem Pemerintahan di Indonesia di Era Reformasi dan Turki Pasca Referendum 2017*. BS thesis. FISIP UIN Jakarta.

³⁹ Yulion Zalpa. "Semi Presidensial: Paradoks Sistem Pemerintahan di Indonesia," *Tamaddun: Jurnal Kebudayaan dan Sastra Islam* 20, No. 2 (2018): 50–59.

⁴⁰ Dinoroy Marganda Aritonang. "Penerapan Sistem Presidensial Di Indonesia Pasca Amandemen UUD 1945," *Mimbar Hukum* 22, No. 2 (2010): 391–407.

a parliamentary system; and 3. there is a separation of powers which means the limitation of executive power which is a very valuable protection for individual freedom against authoritarian government.

Although it has several advantages, it turns out that the presidential government system also has several weaknesses, namely the possibility of deadlock and paralysis due to conflicts between the parliament and the executive. This is of course unavoidable considering the positions of the two institutions are equally independent. So that when there is a conflict, there is no institution that can solve the problem. This conflict can also occur, for example in carrying out legislative functions, where the possibility of a deadlock between the government and representative bodies cannot be denied.

The concept applied in the presidential system is the Trias Politica concept. Trias Politica was coined by Montesquieu who previously developed John Locke's power-sharing theory where power is divided into three namely executive, legislative and judicial. The presidential system in the Trias Politica concept is that each pillar in the three institutions is obliged to foster relations between the executive (president) and the legislature (parliament). This requirement also applies to mutual supervision and checks and balances.⁴¹ Most countries that apply this principle must be listed in the constitution of the country concerned.

Another feature of the presidential system is that in a presidential system of government, both presidential and legislative candidates are democratically elected, namely directly elected by the people through general elections. In addition, there is no personal overlap between the president and DPR members. The legislature is the legislator and the executive is the executor of the laws made by the legislature. There are several aspects of the pattern in the presidential system, including patterns of recruitment and patterns of supervision and accountability. The following is an explanation of each of the two: 1. The pattern of recruitment in a presidential system has several important points, including: a. There is no personal overlap between the executive and the legislature. B. Members of parliament or legislature are directly elected by the people through general elections. C. The executive and legislature are directly elected by the people through general elections. 2. Pattern of oversight and accountability: this pattern is also an important part of a presidential system of government. The following are some patterns of supervision and accountability: a. The principle of checks and balances between the executive and the legislature. B. The legislature makes laws and then those laws are executed by the executive. C. The executive can exercise its veto power over the legislature if the executive disagrees with the law.⁴²

If analyzed, it can actually be drawn a common thread, that in general a presidential system of government is a system of government which characterizes the existence of a separation of powers between the executive and the legislature. Thus, with the separation of powers, the President as head of state and head of government cannot dissolve parliament. Likewise, the parliament also cannot overthrow the President. And both the parliament and the president are elected based on direct elections by the people. Because the President is elected by the people, the President is not responsible to parliament.

Comparison of the Process of Forming Legislation in Presidential Government Systems in Indonesia and America

The legislative function is the function of forming laws (wetgevende functie/law making function) which incidentally is a regulatory function (regelende function). According to Jimly Asshiddiqie, the legislative function has four forms of activity namely:⁴³ 1. law-making initiatives; 2. discussion of the bill; 3. approval for the ratification of the draft law; and 4. granting of binding approval or ratification of international agreements or international agreements and other binding legal documents.

⁴¹ Sulardi, Sulardi. "Rekonstruksi Sistem Pemerintahan Presidensiil Berdasar Undang-Undang Dasar 1945 Menuju Sistem Pemerintahan Presidensiil Murni." *Jurnal Konstitusi* 9.3 (2012): 515-530.

⁴² Noviati Cora Elly. "Demokrasi dan Sistem Pemerintahan." *Jurnal Konstitusi* 10.2 (2013): 333-354.

⁴³ Jimly Asshiddiqie. *Pengantar Ilmu Hukum Tata Negara*. Jakarta: PT. RajaGrafindo Persada, (2009):299.

The function of legislation in a presidential system is based on the existence of a clear separation of powers between the executive and the legislature.

Thus, in a presidential system, the legislature sets its own agenda, discusses and approves even the bill itself. That is, the function of legislation in a presidential system is the exclusive authority of the legislature. However, in modern state systems, there is a functional relationship between the executive and the legislature. In fact, the function of legislation in Indonesia is carried out jointly by the executive and legislature.

In the characters described above, legislative power is more dominant in carrying out legislative functions than executive power. However, this character cannot be fully implemented due to several factors such as lack of resources, influence of the party system and other factors. Thus, a distinctive character in a presidential system, the President has a veto right, which is in the form of the right to reject a law that has been determined by the legislative power.

With regard to the legislative functions that are owned by the representative and executive bodies, to find out in detail the variations in the process of drafting laws and regulations in a presidential system of government a comparative analysis is used by answering the following questions: How do new law ideas enter the system—and where do they come from?; Who first explained these ideas—and how?; Who decides, and by what criteria and procedures, to spend scarce drafting resources on some bills—and not others?; Who uses what procedures to ensure that bills meet formal standards, and do not conflict with other laws?; Who did the research to determine the billing details?; And how do institutions provide input and feedback to some people and not others, the power to provide information to those who draft bills—about the facts, theories, and demands and demands of various groups?

Answering these questions will facilitate comparisons between the drafting of laws and regulations in any jurisdiction. Because as we know, laws and regulations as a reflection of the expression of community values are made to maintain public order, so that there is not a single country that does not have a legislative function as one of the main functions in people's lives. nation and state.

A. Indonesia

The authority to regulate or make regulations (*regeling*) is basically the authority possessed by the legislature as the representatives of the people to set binding regulations for every citizen. In Indonesia, in terms of the authority to form laws as written legal products, Article 5 paragraph (1) and Article 20 of the 1945 Constitution of the Republic of Indonesia state as follows; Article 5 (1) The President has the right to submit draft laws to the DPR. Article 20 (1) The People's Representative Council holds the power to make laws. A. Each bill is discussed by the House of Representatives and the President for mutual approval. B. If the bill does not get mutual approval, then the bill cannot be re-submitted at the DPR session at that time. C. The President approves a mutually agreed bill to become law. D. In the event that the draft law that has been mutually agreed upon is not ratified by the President within thirty days after the draft law is approved, then the draft law is valid to become law and must be promulgated.

The provisions of Article 5 paragraph (1) and Article 20 of the 1945 Constitution of the Republic of Indonesia state that the power to form laws belongs to the DPR together with the President. If you pay close attention, in Article 20 of the 1945 Constitution before the amendment and Article 20 of the 1945 Constitution of the Republic of Indonesia after the amendment there was a shift in legislative power which was originally in the hands of the President to shift in the hands of the DPR. With this change, according to Jimly Asshiddiqie, the DPR can be called a legislator or legislator, while the President is a co-legislator.⁴⁴ It is the DPR that becomes the main legislator or the "main legislator", the "main legislator" or the "main legislator", no longer the President as before. However, a different opinion was

⁴⁴ Jimly Asshiddiqie. *Perihal Undang-Undang Di Indonesia*. Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI, 2006): 316.

expressed by Maria Farida Indrati who stated that the role of the President in forming the Law seemed stronger,⁴⁵ if connected with the formulation in Article 20 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states that: "The President ratifies the draft law that has been mutually agreed upon to become law".

This provision proves that in fact the legislative function which is the authority of the DPR is not absolute, but is a function carried out jointly by the DPR and the President (a joint function), so it is not a full authority because the positions of the two are equal and balanced. With this balanced position, the function of legislation in Indonesia is held by the DPR and the President starting from drafting to joint approval.

Each bill must be mutually approved by the DPR and the President. If there is no mutual agreement, then the bill cannot be submitted at the next session. If mutually agreed, the bill will be approved by the President. The word agreement between the DPR and the President is ratification of a material nature, while ratification by the President is only formal.

In the spirit of checks and balances, after the amendment to the 1945 Constitution in the parliamentary structure a balance room was formed as a regional representative called the Regional Representative Council (DPD). The DPD is regulated in the provisions of Article 22D of the 1945 Constitution. The birth of the DPD is the second chamber (bicameral) in the Indonesian constitutional system. So that it resembles the existence of the Senate in the United States. In the legislative function, the role of the DPD is not very strong and even very weak. So, it's only a supporting institution for the DPR. We can see this from the authority possessed by the DPD is only limited to submitting bills and giving consideration to the DPR and participating in discussing a bill. DPD did not participate in approving the bill. The role of the DPR is more dominant than the DPD, so that Indonesia can be said to adhere to a soft bicameral.⁴⁶

The arrangement in Article 20 of the 1945 Constitution of the Republic of Indonesia is different from the legislative model in a presidential system. Related to this model, Saldi Isra, put forward the characteristics of the legislative process or the formation of laws in a presidential system as follows:⁴⁷ 1. First, in the initial process of drafting laws, the executive and (members) of the legislature have the same opportunity to submit bills; 2. Second, all draft laws are discussed and approved by the legislature; 3. Third, because discussion and approval are the exclusive authority of the legislature, executive power holders can submit objections or reject (in the form of a veto) bills approved by the legislature; 4. Fourth, in accordance with the principle of the supremacy of the legislature in forming laws in a presidential system, objections or rejections by the executive can be rejected again by the legislature over a presidential veto, bills are announced and declared valid as laws.

Articles 5 and 20 of the 1945 Constitution of the Republic of Indonesia actually contain the separation of powers by prioritizing the principle of checks and balances between branches of state power. In the legislative, executive and judicial fields there is a clear separation of powers. DPR as a state institution that has a legislative function represents the people who are sovereign in forming laws. Meanwhile, the government as the executive only acts as the executor of the law. If the government stipulates a statutory regulation, then the authority to form said statutory regulation must be based on the delegation of authority originating from the legislature (delegation of the rule-making process). Legal products formed by these secondary institutions as officials or executive bodies are also commonly referred to as executive acts or executive products. In other words, the DPR is the legislator, while the President is the executor of the law.

⁴⁵ Maria Farida Indrati S. *Ilmu Perundang-Undangan 1 Jenis, Fungsi, Dan Materi Muatan*. Yogyakarta: Kansius, (2007):188.

⁴⁶ Taufik Hidayat. "Penerapan Sistem Soft Bikameral Dalam Parlemen Di Indonesia," *JOM Fakultas Hukum* 2, No. 2 (2015):1-14.

⁴⁷ Isra. *Pergeseran Fungsi Legislasi; Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia*. Bandung: Refika Aditama, (2018): 235.

Broadly speaking, the process of forming a law consists of several stages, namely:⁴⁸ 1. The process of preparing for the formation of laws, which in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Formation of Legislation (UU 15/2019) begins with the stages of planning statutory regulations. The planning for drafting this Law is carried out in the National Legislation Program. In drafting laws based on National Legislation Program, the bills referred to can originate from the Government (President), based on Article 5 paragraph (1) of the 1945 Constitution and Article 43 paragraph (1) of Law 15/2019, from the DPR, based on Article 20 paragraph (1) of the 1945 Constitution and Article 43 paragraph (1) of Law 15/2019, from Members. DPR RI based on Article 21 of the 1944 Constitution of the Republic of Indonesia 5, and from the DPR RI based on Article 22D of the 1945 Constitution of the Republic of Indonesia and Article 43 paragraph (2) of Law 15/2019. 2. The process of deliberating draft laws is carried out by the DPR together with the President or appointed ministers. Discussion of the bill based on Article 67 of Law 15/2019 is carried out in two levels of discussion, namely the level I discussion which is held at commission meetings, joint commission meetings, Legislation Body meetings, Budget Committee meetings, or the Special Committee. Meanwhile, level II discussions were carried out in plenary meetings. 3. The process of ratification of the draft law by the President, and 4. The process of ratification (by the minister in charge of government affairs in the field of law).

Based on this procedure, it can be seen briefly that the formation of laws is the authority possessed by the legislature, in this case the DPR RI, which is carried out with the President in accordance with the constitutional mandate. In the previous discussion, it has been explained that in order to carry out its legislative function, the President has the right to submit bills and conduct discussions regarding the drafting of laws with the DPR RI. Even though the President and the DPR both receive a direct mandate from the people through general elections, at a practical level what actually happens is a struggle for influence between the president and the DPR in front of the people. In fact, building a large coalition (over-sized coalition) is not a guarantee that the holders of legislative power will not intervene in the executive. In the legislative function, the 1945 Constitution provides a balanced position (fifty-fifty) between the government and the DPR in deliberating and ratifying bills. However, in practice, the government appears to be quick to give in to the wishes of some political forces in the DPR. With regard to the formation of laws and regulations, there is still a possibility of a deadlock between the President and the DPR. Even though in this case, based on the 1945 Constitution of the Republic of Indonesia it is stated that it is the President who has the authority to ratify draft laws that have been passed into law. However, regarding the arrangements regarding this matter, it cannot be concluded that the President has greater authority than the legislature. This is because Article 20 paragraph (5) explains that in the event that a bill that has been mutually agreed upon is not ratified by the President within thirty days of the draft law being approved, the draft law is valid to become law and must be ratified. invited.

In the context of the Indonesian constitutional system with a presidential system, the function of legislation still refers to the separation of powers between the executive and the legislature, but it is not applied absolutely. This is demonstrated by the President's authority to participate in submitting bills, discussing them with the DPR to reach a mutual agreement, and passing them into law.

B. United States

In America, the principle of separation of powers that was coined by Montesquieu (legislative, executive and judiciary), the United States actually tried to set it down in the constitution. In America, Congress is the sole authority to make laws. The president solely exercises executive power and does not have the power to form or has the right to initiate and does not have the right to participate in deliberating laws. Article I of the United States Constitution states that: "All legislative powers conferred herein shall revert to the United States Congress, which is composed of the Senate and the House of Representatives".

⁴⁸ Maria Farida Indrati S. *Ilmu Perundang-Undangan 2 Proses Dan Teknik Penyusunan*. Yogyakarta: Kanisius, 2007): 11.

The drafters of the United States (US) constitution tried to design a system of government that was different from the British parliamentary system. According to CF Strong, the conception of executive independence from the legislature is one of the concepts agreed upon by the founders of the US.⁴⁹ This separation is regulated in Article I and Article II of the United States Constitution. Not only the separation between the legislature and the executive, the position of the president as head of state as well as head of government first appeared in the US in the 18th century. According to Jadi Alrasid, the office of president in a republic-shaped country is the result of the 1787 Federal Convention which states:⁵⁰ “The executive power shall be vested in a President of the United States of America...”. As Jack Bell said, even though they elect a president and reject a king, the drafters of the United States constitution decided that the president must have sufficient power to solve the complex problems of the nation (the executive must have the power to solve national problems). Because of that, a constitution was drafted which gave great powers to the president, but still closed the presence of despotic leaders such as kings.

The function of legislation in the United States constitutional system is based on a strict separation between the legislature and the executive. In the United States, there is not a single article in the constitution that determines that the President of the United States has the authority to propose a bill.⁵¹ Thus, in the United States of America the doctrine of the separation of powers is that there is a clear separation between executive and legislative powers, especially in the formation of laws. On that basis, the holders of legislative functions in the United States constitution are the Senate and the House of Representatives, without involving the President as the executive.⁵² The president and executive staff are not involved in the legislative function at all, neither proposing bills nor participating in deliberating laws. According to C.F. Strictly speaking, the only link between the executive and the legislature in the United States presidential system in practice is through the President's report (President's Message) and no official of the President's cabinet is allowed to participate in the assemblies of the legislature.⁵³ The function of legislation in the United States is only held by two chambers in congress, namely the Senate and the House of Representatives. The structure of the United States parliament is bicameral, in which the two powers balance each other (strong bicameral).⁵⁴ On this basis, every law in America must be approved by both chambers. Article 1 Paragraph 7 point 2 of the United States Constitution stipulates that: Every bill to be passed by the House of Representatives and the Senate, before becoming law, is submitted to the President of the United States; If he agreed he would sign it, but if not he would return it, with his objection to his native house, which would object strongly to their journal, and proceed to consider it. If, after such deliberations, two-thirds of the House agrees to pass a bill, it is sent along with objections, to the other house, which will also be considered, and if approved by two-thirds of the House, it will become law. But in all such cases, the votes of both Houses will be determined by yes and no, and the names of persons who voted for and against the bill will be recorded in the journals of each House. If any bill is not returned by the President within ten days (except Sunday) of being presented to him, it will become law, in the same manner as if he had signed it, unless Congress by its suspension prevents its return in which case it will not become law.

Based on the American constitution, every law must get approval from both chambers of congress, namely the Senate and the House of Representatives and before it becomes law it must be submitted to the President for approval. If agreed, the law will be signed. handle it, and if not then the President will return it by giving reasons for refusal. The president's rejection of a bill that has been

⁴⁹ C.F. Strong. *Modern Political Constitution an Introduction to the Comparative Study of Their History and Existing Form*. London: Sidwick & Jackson Ltd, (1975):223.

⁵⁰ Isra, “Hubungan Presiden Dan DPR.”

⁵¹ I Made Pasek Diantha. *Tiga Tipe Pokok Sistem Pemerintahan Dalam Demokrasi Modern*. Bandung: Abardin, (1990): 77-81.

⁵² Jaka Prima. “Perbandingan Kewenangan Badan Legislatif di Indonesia dan Amerika Serikat.” *Negara dan Keadilan* 8, No. 1 (2019): 1–12.

⁵³ CF Strong. *Modern Political Constitution: An Introduction to The Comparative Study of Their History and Existing Form*. London: Sidwick&Jackson Limited, n.d.):238.

⁵⁴ Yokotani Yokotani. “Sistem Bikameral di Lembaga Legislatif Berdasarkan Tugas dan Kewenangan Dewan Perwakilan Daerah (Perbandingan Dengan Amerika Serikat, Inggris, Dan Argentina).” *PROGRESIF: Jurnal Hukum* 11, No. 1 (2018): 1850–1866.

approved by both chambers in the United States congress is known as a veto. A veto is the constitutional authority possessed by the President of the United States to pass a bill.⁵⁵ In theory, this practice is called a presidential veto. However, besides that, the veto power owned by the President of the United States can be overturned by the Senate and the House of Representatives through an institution called a legislative veto. In the United States constitution, this term of refusal is called overriding. An override is carried out by both chambers, either the Senate or the House of Representatives, provided that they fulfill 2/3 of the votes of each chamber. If the 2/3 conditions are met, then the bill becomes law (if approved by two thirds of the House, it shall become a law).

The veto power in the presidential government system in the United States can be exercised in two ways, namely regular veto and pocket veto. The regular veto is the type of veto most frequently used by the President of the United States. This type of veto is submitted when the DPR and Senate are in session, so that the draft law becomes law.⁵⁶ The Pocket Veto happened because the 10-day deadline for filing a complaint with the President coincided with the House and Senate not convening. Even if the President raises an objection, the House of Representatives and the Senate cannot overrule it. So with a pocket veto, a bill cannot become law.⁵⁷

In developing constitutional practices, even though the President does not have the authority to form laws, more and more ideas for forming laws come from the Government (President). This is made possible by making use of a provision in Article 2 Chapter 3, of the United States Constitution which states: "He will from time to time provide to Congress Information concerning the states of the Union, and recommend to them consideration of the measures which he will take as necessary and expedient." ...

C. Türkiye

Turkey is a geographically unique country because it is located between two continents, namely Asia and Europe. Turkey used to be the Ottoman Empire which ruled in the period 1299-1923 then became the Republic of Turkey in the form of a unitary state and republic since its establishment on October 29 1923 until now and this is stated in article 1 of the Turkish constitution.⁵⁸ The Republic of Turkey is a country that implements a presidential system of government in which a president or executive holds power as head of state as well as head of government. The President of the Republic of Turkey is a state institution whose powers are regulated in the constitution (Anayasa). The Turkish constitution has undergone several amendments or amendments to the constitution since it was founded on October 29, 1923 until the most recent was the constitutional amendment in 2017.

Before the 2017 referendum, the President of the Republic of Turkey was only the head of state and now the President of the Republic of Turkey (Cumhurbaşkanı) is both head of state and head of government. The constitutional obligations and powers of the President of the Republic of Turkey are regulated in the constitutional laws articles 8, 101, 103 and 104. Article 8 regulates how the executive powers and functions are to be exercised and exercised by the President of the Republic in accordance with the Constitution and laws. The term of office of the President of Turkey is five years and can be re-elected through general elections (elections) for one term of office or the president can rule for up to 2 terms as stipulated in article 101. Article 103 states that the elected president must be sworn in as President of the Republic of Turkey. Some of the powers of the President of Turkey regulated in law article 104 include the president being able to appoint and dismiss ministers, being the highest military

⁵⁵ Efi Yulistiyowati, Endah Pujiastuti dan Tri Mulyani, "Penerapan Konsep Trias Politica Dalam Sistem Pemerintahan Republik Indonesia: Komparatif Atas Undang-Undang Dasar Tahun 1945 Sebelum Dan Sesudah Amandemen." *Jurnal Dinamika Sosial Budaya* 18, No. 3 (2016): 336.

⁵⁶ Bagus Oktafian Abrianto, Xavier Nugraha, and Risdiana Izzaty, "Hak Konstitusional Lembaga Kepresidenan Dalam Penolakan Pengesahan RUU APBN Oleh DPR." *Jurnal Ius Kajian Hukum dan Keadilan* 7, No. 3 (2019): 519– 533.

⁵⁷ *Ibid.*

⁵⁸ Profil Negara Turki, <https://www.britannica.com/place/Turkey> , diakses pada tanggal 25 Juli 2023.

leader, determining national security policies and taking necessary actions, granting clemency, amnesty, the president can propose amendments to the constitution if necessary.⁵⁹

The Turkish Parliament in the hands of the Grand National Council of Turkey (Türkiye Büyük Millet Meclisi) is the legislature of the Republic of Turkey which functions as a legislature body. This state institution was founded before the birth of the Republic of Turkey, namely on March 19, 1920 by Mustafa Kemal Pasha in Ankara. The forerunner to the birth of a parliament in Turkey existed when it was still the Ottoman Empire, namely on September 1, 1876. The function of the parliament at that time was to discuss laws and discuss the budget but had to get permission from the authorities or it could be said that the authorities could control the parliament. After being established on October 29, 1923, parliament functioned as a legislative body and applied the principle of checks and balances.

The Turkish parliament exercises its duties and powers under the constitution, article 87. The powers of parliament include discussing bills, enacting laws, adopting budget bills, amending the constitution, approving states of emergency, overseeing the performance of the government or executive. Members of the Turkish Grand National Assembly or parliament are elected through general elections which are held every 5 years and elections are regulated in article 67 of the law. The total number of members of the Grand National Assembly of Turkey is 600 people from 81 provinces of the Republic of Turkey.⁶⁰ The threshold for political parties to be represented in parliament (parliamentary threshold) is 10%. This parliamentary threshold has existed since the era of Mustafa Kemal Atatürk and has persisted until now. If a political party does not reach a predetermined threshold, then the political party still has the right to take part in the election even though it cannot be represented.⁶¹

Conclusion

The legislative function is the function of forming laws. With the existence of the doctrine of separation of powers, the legislature and the executive are strictly separated between their functions and institutions. But in some countries, this separation of powers is not applied absolutely. In Indonesia itself, which adheres to a presidential system of government when compared to the United States, which also adheres to a presidential system of government, there is a clear difference in the involvement of the President as an executive body in making laws. In the Indonesian constitutional structure, the holder of the legislative function is the DPR which is carried out jointly with the President to then obtain joint approval. If there is no mutual consent, the bill cannot become law. Thus, the function of legislation in Indonesia is a Joint Function. While the formation of laws and regulations in the United States is organized by two chambers that have roles and functions of legislation that are balanced and equal to one another. The two chambers are the DPR and the Senate. All laws (bills) must first be approved by the two chambers. Meanwhile, the President is only authorized to give veto rights over bills that have been approved by the Senate and the DPR. Bills that have been approved by the Senate and the DPR (presidential veto), but the President's veto will be null and void if in both chambers both the Senate and the DPR with 2/3 votes reject the President's veto (override), then the bill becomes law. Thus, in terms of forming statutory regulations, the President has their respective powers. In Turkey, the implementation and process of the presidential system, especially in terms of appointing ministers and the relationship between the executive and the legislature, is fast and seamless. The process of revising the terrorism law in the legislature took place easily and without a hitch because the majority of the parliament was solid in passing the law even though there was debate between the government coalition and the opposition and the majority power of political parties in passing the law was the main factor in this case. In Indonesia,

⁵⁹ Kekuasaan, dan Kewenangan Presiden Republik Turki, <https://www.tccb.gov.tr/en/presidency/power/>, diakses pada tanggal 26 Juli 2023.

⁶⁰ Kekuasaan dan Kewenangan Majelis Agung Nasional Turki, <https://global.tbmm.gov.tr/index.php/EN/yc/icerik/25>, diakses pada tanggal 26 Juli 2023.

⁶¹ Alfian Alfian. "Militer dan Politik di Turki". Jakarta: Penerbit Penjuru Ilmu, (2018): 79.

the President can propose laws and regulations and hold joint discussions with the DPR as the legislative body. Whereas in the United States, the President does not have the authority to participate in discussing legislation. However, the President has a veto right that can be used to express his disapproval of the laws and regulations that have been discussed by the Senate and the DPR. Thus, the potential for deadlock is higher in the system for forming statutory regulations in the US than in Indonesia

There is a difference in executive authority in forming laws between Indonesia and the United States and Turkey, even though both are countries that implement a presidential system, this actually happens because of the difference, namely that Indonesia is a soft bicameral country, while the United States is a strong bicameral. Therefore, an9sich cannot be equated, instead the differences must be perfected while taking into account the characteristics of the country.

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