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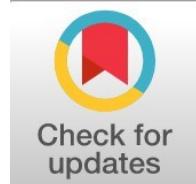
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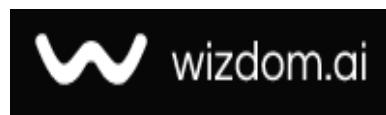
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Executive–Legislative Relations in Appointing the Indonesian National Police Chief

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Abstract

General Background The post-amendment 1945 Constitution establishes Indonesia as a presidential system with the President holding supreme executive authority, supported by a framework of checks and balances. **Specific Background** Within this framework, Article 11 paragraph (1) of Law No. 2 of 2002 requires approval from the House of Representatives in appointing the Chief of the Indonesian National Police, generating sustained constitutional and theoretical debate. **Knowledge Gap** Existing discussions have not sufficiently clarified whether this approval mechanism constitutes a limitation on presidential authority or operates as a confirmation instrument consistent with presidentialism. **Aims** This study aims to examine the conformity of the DPR approval requirement with presidential system principles under the 1945 Constitution and to analyze its implications for presidential executive authority. **Results** Using normative legal research with legislative, conceptual, and historical approaches, the study finds that DPR involvement functions as a confirmation power within the checks and balances mechanism rather than a transfer or reduction of executive authority. **Novelty** The study demonstrates that the approval mechanism preserves the President's role as the sole proposer of candidates while situating legislative participation within constitutionally justified oversight. **Implications** These findings affirm that DPR approval strengthens public accountability and institutional legitimacy without altering the fundamental structure of Indonesia's presidential system, thereby supporting constitutional consistency and governance stability.

Highlights:

- DPR participation operates as a confirmation mechanism rather than an appointment authority.
- Presidential control over national security leadership remains constitutionally intact.
- Legislative involvement contributes to accountability and institutional legitimacy.

Keywords : Presidential System, Checks and Balances, DPR Approval, Executive Authority, Police Chief Appointment

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Introduction

The system of government is the pattern of relationships between the executive, legislative, and judicial institutions in exercising state power. After the amendment of the 1945 Constitution, Indonesia explicitly adopts a presidential system, as affirmed in Article 4 paragraph (1) of the 1945 Constitution that the President holds the governmental power. [1] These provisions make the President the head of state and head of government who holds the highest executive authority. In a presidential system, the separation of powers becomes a core principle. The President gains legitimacy directly from the people through elections, so their position does not depend on the confidence of the legislature. The mechanism for removing the President can only be carried out through strict legal procedures (Articles 7A–7B of the 1945 Constitution), not legislative political considerations. Therefore, the relationship between the President and the legislature is one of checks and balances, not a dependent relationship as in a parliamentary system.[2].

After the amendments to the 1945 Constitution, Indonesia's presidential system was actually strengthened through a state administration design that is more balanced among state institutions. Jimly Asshiddiqie emphasized that this strengthening does not change the basic character of presidentialism: the supervisory function of the House of Representatives must not diminish the executive authority of the President.[3] Nevertheless, the strengthening of oversight in the reform era has led to several regulations that give the House of Representatives a role in appointing executive officials, especially the Chief of Police and the Commander of the Indonesian National Armed Forces. The issue arises in Article 11 paragraph (1) of Law No. 2/2002, which states that the Chief of Police is appointed by the President with the approval of the House of Representatives.[4] Historically, this provision arose from the reform spirit to prevent a return to executive dominance as experienced during the New Order era. However, from the perspective of presidentialism theory, this consent requirement has the potential to limit the President's prerogative powers that are not directly restricted by the constitution. A similar arrangement in Article 13 paragraph (2) of Law No. 34/2004 on the Indonesian National Armed Forces shows a pattern of legislative intervention in the executive domain.[5]

Jimly Asshiddiqie emphasized that the role of the DPR should only be political confirmation, not determinative approval that can obstruct the President's decisions. This aligns with Montesquieu's theory of separation of powers, which separates substantive authority among branches of government. When the DPR gains the authority of "approval," there is a shift of legislative boundaries into the executive domain, potentially disturbing the balance of power. From the perspective of Hans Kelsen's theory of the hierarchy of norms (Stufenbau des Recht), the 1945 Constitution as the grundnorm holds the highest position, so any limitation on the President's authority must come directly from the constitution. The Constitutional Court, through Decision Number 005/PUU-IV/2006, also affirmed that restrictions on the powers of state institutions are only valid if based on the 1945 Constitution. Therefore, the DPR's approval obligation under the Police Law is debated as a form of normative conflict between the law and the constitution.[6]

The controversy over the appointment of Police Commissioner General Budi Gunawan is a clear example of the tension between norms and political practice. President Joko Widodo nominated Budi Gunawan as Chief of Police, and the House of Representatives approved it by acclamation. However, the designation of Budi Gunawan as a suspect by the Corruption Eradication Commission sparked a public trust crisis and put the President in a dilemma. This case shows that the approval mechanism of the House is not only legal in nature but also laden with political dimensions and external pressures, which can hinder the executive's effectiveness in decision-making. Empirically, the House's approval mechanism has two implications. On the one hand, it strengthens public accountability through legislative involvement. On the other hand, this mechanism has the potential to become a venue for political negotiation that hampers executive functions. The ambiguity of the approval's nature—whether administrative or political—encourages a tug-of-war of interests that could disrupt government stability.

A greater impact of this conflict is the disruption of the purity of the presidential system. First, the President's prerogative rights become weakened. Second, there is a shift in the function of the House of Representatives (DPR) from oversight to intervention. Ni'matul Huda refers to this as a constitutional anomaly. Third, the governance process becomes inefficient because the appointment of strategic officials depends on political dynamics in parliament. Fourth, this situation opens up the potential for the politicization of bureaucracy and shifts the state's orientation from the rule of law to political interests, as Mahfud MD has warned. Giovanni Sartori emphasizes that when the executive depends on legislative approval, the system begins to shift towards semi-presidentialism. Thus, if the DPR's approval mechanism continues to be maintained without clear limits, Indonesia could, in fact, experience a system shift even though, normatively, it remains presidential.[3]

By examining these theoretical and empirical issues, it is clear that the DPR's approval mechanism in the appointment of the Chief of the Indonesian National Police not only raises normative debates but also has a direct impact on power relations within Indonesia's presidential system. This provision opens the door for legislative intervention in the executive's prerogative, potentially causing tension between constitutional norms and statutory norms, as well as creating ambiguity in the practice of governance. Therefore, the stipulation of 'DPR approval' in the appointment of the Chief of Police needs to be comprehensively reviewed to ensure its alignment with the principles of the presidential system desired by the 1945 Constitution. This study becomes important in order to uphold the supremacy of the constitution and to ensure that the checks and balances mechanism does not turn into a mechanism of checks and obstruction. Based on this urgency, this research is aimed at answering two main questions, namely: (1) whether the provision of DPR approval in the appointment of the Chief of Police is in line with the principles of the presidential system of government according to the 1945 Constitution; and (2) what the implications of this approval are for the constitutional authority of the President as the holder of executive power.

Method

This study uses a normative legal research method by examining statutory provisions, doctrines, and relevant literature. Three approaches are employed: the legislative approach to analyze the 1945 Constitution and laws related to the authority of the President and the House of Representatives; the conceptual approach to study the principles of presidentialism, separation of powers, and the checks and balances mechanism; and the historical approach to observe the development of executive-legislative relations in the appointment of high state officials over time. Legal materials are collected through literature research, including primary, secondary, and tertiary legal materials. All these materials are analyzed descriptively and qualitatively by identifying and interpreting constitutional norms, comparing them with the principles of presidentialism, and evaluating the practice of the House of Representatives' approval in the appointment of the National Police Chief. This analysis aims to assess whether these provisions are aligned with the design of the presidential system of government according to the 1945 Constitution.

Results and Discussion

A. Provisions of the DPR's Approval in the Appointment of the Chief of the Indonesian National Police in the Perspective of the Presidential System of Government According to the 1945 Constitution

The constitution is a set of basic rules that regulate the organization of the state, as explained by Horowitz. In the context of Indonesia, the 1945 Constitution serves as the basis of legitimacy for the presidential system of government, which emphasizes the separation of powers between the legislative, executive, and judicial branches (Article 20, Article 4 paragraph (1), and Article 24). [7] The President not only acts as the head of government but also as the head of state, as Ludwikowski emphasized that "the President, as the sole executive, is elected as head of state and head of the government." This concept reflects the principle of executive single authority, meaning that executive power is fully vested in the President. After the amendment of the 1945 Constitution, Indonesia's presidential system was strengthened through the mechanism of direct presidential elections as regulated in Article 6A paragraph (1), replacing the previous system which relied on selection by the MPR.[8]

Direct elections provide legitimacy that is direct (direct mandate) from the highest sovereign, namely the people, as stipulated in Article 1 paragraph (2) of the 1945 Constitution which states that "Sovereignty is in the hands of the people and is exercised according to the Constitution." The principle of direct election is a main feature of the modern presidential system because it ensures that the President has democratic legitimacy that does not depend on the House of Representatives, thereby strengthening governmental stability. The provision "the President is directly elected" is not merely a description of the election method, but a main pillar of constitutional legitimacy that shapes the pattern of relations between the President and the House of Representatives. Since the legitimacy of both comes from the people through separate elections, their relationship is one of checks and balances, not subordination. The President is not subject to the parliament in forming the government, while the House of Representatives (DPR) still has supervisory and legislative authority as stipulated in Articles 20 and 20A of the 1945 Constitution, including the right of inquiry, the right of interpellation, and the right to express opinions.[8]

On the other hand, the President still has strong executive powers, including the authority to propose bills (Article 5 paragraph (1) of the 1945 Constitution) and to enact government regulations (Article 5 paragraph (2) of the 1945 Constitution). This pattern of relationship is a form of the practice of separation of powers, reinforced by a system of checks and balances among the branches of state power.[9] One of the main characteristics of a presidential system of government is the concentration of executive responsibility in one hand, namely the President as the holder of government power. This concentration is not only related to the functions of government in terms of general administration but also covers strategic areas such as defense and security. In the context of the 1945 Constitution, the fields of defense and security are sectors that place the President in a central position because they concern the safety of the state, national stability, and the control of state instruments that have the authority to use force. The President's position in defense and security is the most fundamental part of the executive power structure in Indonesia's presidential system. The main basis is Article 4 paragraph (1) of the 1945 Constitution, which explicitly states: "The President of the Republic of Indonesia holds the power of government according to the Constitution." [8]

This formulation implies that all governmental functions, including defense and security, are in the hands of the President as the holder of the highest executive power. This affirmation also underpins the principle of a single executive, where the President acts as the supreme leader of all governmental apparatus. Jimly Asshiddiqie emphasizes that the presidential system "demands a single executive who holds full responsibility for the government, including defense and security." [10] The power of the President is further emphasized through Article 30 of the 1945 Constitution, which is the most fundamental article in regulating the relationship between the President and the state's defense and security apparatus. Article 30 paragraph (3) of the 1945 Constitution states: "The Indonesian National Armed Forces consist of the Army, the Navy, and the Air Force as state instruments tasked with defending, protecting, and maintaining the integrity and sovereignty of the country." [8] In its implementing provisions, the President is referred to as the holder of the highest power over the Indonesian National Armed Forces (TNI), so that the entire chain of strategic command and defense policy is under the President. This is emphasized in Law No. 34 of 2004 concerning the TNI, which states that the President is the "Holder of the highest power over the use of TNI force" (Article 3 paragraph (1)).

In addition to defense, the President's authority in the field of security also has a strong constitutional basis. Article 30 paragraph (4) of the 1945 Constitution states that the President determines general defense and security policies, which means that all national security policies cannot be separated from the executive's responsibility. Meanwhile, Article 30 paragraph (5) of the 1945 Constitution mandates that the existence of the National Police be regulated by law. This constitutional directive is realized in Law No. 2 of 2002 on the Indonesian National Police, which states that the National Police is under the President and carries out security functions within the framework of government policy.[11] Bagir Manan explained that the security function is one of the core powers of government, so in principle, the President is the leader of the state's security apparatus. [12]. This position asserts that, in principle, the President leads the National Police, not in the sense of daily technical operations, but as the holder of governmental authority responsible for internal security. Thus, the President's relationship with the National Police is structural-constitutional, not merely administrative.

Regarding the appointment of the Chief of Police, Article 11 of Law No. 2 of 2002 stipulates that the President appoints and dismisses the Chief of Police after obtaining approval from the House of Representatives (DPR). This mechanism does not diminish the fundamental character of the presidential system, because the authority to propose candidates for the Chief of Police rests entirely with the President. DPR approval is a form of checks and balances, which is constitutional and common in modern presidential countries. [13]. This mechanism is also in line with the principle of legislative oversight as stipulated in Article 20A of the 1945 Constitution, which grants the House of Representatives the right of interpellation, the right to form an inquiry, and the right to express opinions. With this structure, the President's authority in defense and security remains dominant and operates within a single executive framework. The involvement of the House of Representatives through the approval mechanism for appointing the Chief of the National Police is not a form of executive subordination to the legislature, but rather a regulation of the balance of power for public accountability. Therefore, when assessing the issue of whether the House of Representatives' approval in appointing the Chief of the National Police is compatible with the presidential system, it is very clear that the constitutional basis still places the President as the holder of the highest governing power in matters of defense and security.

In the development of modern state governance, the prevention of absolute power is a fundamental principle in a democratic rule of law. This concept is realized through the mechanism of checks and balances, which is a system of control among state institutions so that power is not concentrated in one hand and serves as a kind of control tool, which is an 'instrument of government which limits, restrains, and allows for the control of the exercise of political power'[14]. This idea is rooted in Montesquieu's theory of the separation of powers, which emphasizes that state power should be divided and balanced, because if power is concentrated, then "freedom will disappear." Indonesia's presidential system adopts the same principle, although it does not rigidly separate powers like the classical *trias politica* model.[5]. The separation of powers in the practice of Indonesian state administration is flexible and developed in the form of mutual oversight between branches of government.

In a presidential system, the President is the single executive who holds governmental authority as stipulated in Article 4 paragraph (1) of the 1945 Constitution. However, as a consequence of being a modern rule-of-law state, executive power is not unlimited. The legislative body, namely the House of Representatives, is granted constitutional authority to perform oversight functions as regulated in Article 20A of the 1945 Constitution, which includes the right of interpellation, inquiry, and the right to convey opinions.[8] This provision emphasizes that legislative oversight is an important instrument to maintain the balance of power, prevent executive dominance, and ensure accountability of state administrators. The House of Representatives' oversight of the executive is a manifestation of the people's sovereignty within the representative democracy mechanism. The idea that power must be controlled is classically expressed in Lord Acton's statement: "Power tends to corrupt and absolute power corrupts absolutely." This statement affirms that unchecked power has a high potential for abuse. Therefore, the involvement of the House of Representatives in approving the appointment of strategic state officials is part of the constitutional mechanism to curb the potential misuse of executive power.[15] It means that even though there is already a separation of powers, it is still very necessary.

One form of legislative oversight in Indonesia's presidential system is the right to confirm, which is the DPR's authority to approve or reject certain official candidates proposed by the President. In the appointment of the National Police Chief, this mechanism is stipulated in Article 11 paragraph (1) of Law No. 2 of 2002, and follows the same pattern as the appointment of the Commander of the Indonesian National Armed Forces as regulated in Article 13 paragraph (3) of Law No. 34 of 2004. Although the 1945 Constitution does not directly regulate the process of filling the position of National Police Chief, Article 30 paragraph (5) of the 1945 Constitution mandates that the position of the Police is further regulated by law. Therefore, granting the confirmation function to the DPR through law is constitutionally valid.[8] This mechanism does not diminish the core authority of the President as the holder of government power (Article 4 paragraph (1) of the 1945 Constitution) and the highest authority in the field of defense and security. The President remains the proposer, policy controller, and the party responsible for the institutional direction of the Indonesian National Police. Within the framework of modern presidentialism, legislative involvement through the right of approval is a common practice of checks and balances, especially in presidential systems that do not implement absolute separation of powers. Thus, the House of Representatives' approval of the appointment of the Chief of the Indonesian National Police is not only constitutional but also functions to strengthen transparency, public accountability, and the democratic character of Indonesia's presidential system.[13]

Regarding whether the provision for DPR's approval in the appointment of the Chief of the Indonesian National Police is in accordance with the principles of the presidential system of government under the 1945 Constitution, it is necessary to examine it systematically through the constitutional basis and state administration theory. In a presidential system, executive power is indeed held by the President as the holder of government authority, as affirmed in Article 4 paragraph (1) of the 1945 Constitution. However, the modern presidential system as adopted by Indonesia does not practice a rigid separation of powers; rather, it is characterized by checks and balances among branches of government. [2]. This is where

the need arises to examine whether the authority of the House of Representatives (DPR) to approve the appointment of the Chief of the National Police represents a reduction of the President's powers or is instead a part of the oversight mechanism justified by the 1945 Constitution. In the context of the Indonesian constitution, the existence of legislative oversight functions is clearly and explicitly affirmed in Article 20A paragraph (1) of the 1945 Constitution, which states that the DPR has legislative, budgetary, and oversight functions. This oversight function serves as constitutional legitimacy that the DPR has a legitimate role in assessing or providing confirmation regarding the actions of the President, including the appointment of strategic public officials.[16]

Furthermore, the involvement of the House of Representatives (DPR) in giving approval for the appointment of the Chief of the National Police does not stem merely from a broad interpretation, but is explicitly mandated by law. Article 11 paragraph (1) of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia states that the Chief of the National Police of the Republic of Indonesia is appointed and dismissed by the President with the approval of the DPR. Therefore, this arrangement is not a form of legislative intervention that exceeds its authority, but rather a normative mandate established through the law-making mechanism by the President and the DPR together (see Article 20 paragraph (2) of the 1945 Constitution). From the perspective of constitutional practice, the mechanism of the House of Representatives' approval of strategic executive officials is not a characteristic of a parliamentary system, but rather a common practice in a modern presidential system. Many presidential countries implement a confirmation hearing system like in the United States, where the Senate has the authority to confirm high-ranking state officials. This shows that the existence of legislative confirmation rights is not a form of parliamentary control over the executive power, but a control mechanism inherent in the presidential system itself to prevent excessive concentration of power in the President. Thus, the mechanism of the House of Representatives' approval in the appointment of the National Police Chief serves as a constitutional check and functions to maintain the balance of power.[17]

If viewed within the framework of Montesquieu's theory, the involvement of the House of Representatives is not intended to take over the President's authority, but rather as a balancing power. The President remains the main actor in determining the candidate for Chief of Police, as the proposal still comes from the President as head of government and holder of the highest authority over the Army, Navy, and Air Force as stipulated in Article 30 paragraph (3) of the 1945 Constitution, as well as the policymaker for general defense and security policies (Article 30 paragraph (4) of the 1945 Constitution).[18] Thus, the DPR's approval process does not alter the fundamental character of the presidential system that places the President as the sole executive head, because the DPR does not participate in selecting the candidate, but only provides an assessment and confirmation of the President's choice. Therefore, theoretically, constitutionally, and normatively, the DPR's approval mechanism is not a violation of the principles of the presidential system, but a manifestation of the principle of checks and balances upheld by the 1945 Constitution post-amendment.[13] This mechanism also prevents potential abuse of executive power in the appointment of strategic national security officials, considering that power tends to be abused if not monitored (power tends to corrupt, and absolute power corrupts absolutely). Thus, it can be affirmed that the involvement of the House of Representatives in approving the appointment of the National Police Chief is a legitimate oversight mechanism, constitutional, and in accordance with the principles of a presidential system of government under the 1945 Constitution.

B. Implications of the DPR Approval Mechanism of Law No. 2 of 2002 on the President's Executive Prerogative

The position of the President in the presidential system of government based on the 1945 Constitution of the Republic of Indonesia is not separated as both the head of state and the head of government, meaning that the position of both head of state and head of government is vested in a single President. This is in accordance with the provisions of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states, "The President of the Republic of Indonesia holds executive power according to the Constitution." The meaning of executive power according to this provision is executive authority. Thus, the President holds two powers simultaneously, namely the power as head of state as well as the power as head of government.[19] This affirmation of position also places the President as the highest authority in the administration of state governance, including in the matter of filling strategic positions in the executive branch. In the doctrine of the presidential system, the authority to appoint high-ranking officials of ministries, state institutions operating under the executive, as well as law enforcement officials, is essentially a direct manifestation of the President's executive function as chief executive. From this, it is then emphasized that the authority to appoint the National Police Chief (Kapolri) should lie with the President. However, this authority is not absolute because Indonesia's constitutional system adheres to a mechanism of checks and balances as a correction against potential abuse of power. Therefore, the mechanism for appointing the National Police Chief is not entirely in the hands of the President, but requires the approval of the House of Representatives (DPR) as stipulated in Law Number 2 of 2002 concerning the Police.[16]

The mechanism for appointing and dismissing the National Police Chief, which requires the approval of the House of Representatives, is part of a check and balance system, so that the executive and legislative powers can mutually supervise each other.[20] What is meant by the approval of the House of Representatives is that after obtaining the approval and consideration from the House of Representatives, a Chief of Police, through several mechanisms such as the fit and proper test conducted by Commission III of the House of Representatives which covers Law, Human Rights, and Security, will then be inaugurated by the President to be officially appointed as Chief of Police. Based on Law Number 2 of 2002 concerning the Indonesian National Police, it can be understood that the appointment and dismissal of the Chief of Police is indeed the right and authority of the President, but only after obtaining approval from the House of Representatives. Unlike the appointment of ministers, which is entirely the President's prerogative, the appointment of the Chief of Police also involves the confirming rights of the House of Representatives, because before the President appoints the official, the President must first seek the consideration of the House of Representatives.[21]

This difference indicates that the lawmakers intended to position the Police institution as an organ that holds the function of state security apparatus, thereby requiring dual legitimacy from the President (as the holder of executive power) and the House of Representatives (as the people's representation) to ensure public accountability for the considerable power of the police. The appointment and dismissal of the National Police Chief with the approval of the House of Representatives is also aimed at preventing the President from acting arbitrarily in exercising his power, as happened in the past or in the early days of reform, before Law Number 28 of 1997 was amended by Law Number 2 of 2002, when President Abdurrahman Wahid appointed Lieutenant General Chaerudin Ismail to replace General Suroyo Bimantoro as the National Police Chief without the approval of the House of Representatives, causing turmoil and political instability.[22]

Events before the reform era showed that without legislative control mechanisms, the use of executive authority in the field of security had the potential to cause institutional conflicts and political instability. Therefore, post-reform, lawmakers stipulated the approval of the House of Representatives (DPR) as a requirement for the appointment of the National Police Chief, not to weaken the President, but to build a more balanced and accountable presidential system. The provisions of Article 11 paragraph (1) of Law No. 2 of 2002 have significant implications for the exercise of the President's executive powers. Constitutionally, Article 4 paragraph (1) of the 1945 Constitution affirms the President as the holder of government authority, including the power to appoint executive officials as an attribute of executive authority.[8] However, through legislation, this authority is conditioned by the approval of the House of Representatives, so it cannot be exercised absolutely. In practice, the President cannot appoint the Chief of Police solely based on their constitutional mandate, but must go through a legislative confirmation process. From a state administration perspective, this mechanism serves as an external constraint on the President's authority: on one hand, it increases transparency and accountability in filling strategic positions; on the other hand, it introduces greater limitations compared to the classic presidential model, where legislative confirmation usually only occurs if directly stipulated by the constitution.[23]

Thus, the main implication of this provision is the reorientation of the President's executive powers from being mandatory and direct to being conditional and procedurally limited. This changes the nature of the President's authority in the field of security from a full executive prerogative to a power that must go through a legislative verification process. Although intended to strengthen the principle of checks and balances, this mechanism still poses the potential for constitutional tension if the interpretation of the House of Representatives' authority exceeds the purpose of oversight and instead restricts the effectiveness of executive functions. Article 11 paragraph (1) of Law Number 2 of 2002 states;

"The Chief of the Indonesian National Police is appointed and dismissed by the President with the approval of the House of Representatives." [24]

This norm explicitly indicates that the President's authority in appointing and dismissing the Chief of the National Police is not entirely discretionary, but rather requires the involvement of the legislative body through an approval mechanism. Legally, such a formulation places the DPR's approval as part of the series of legal procedures that must be fulfilled.

An important question that needs to be examined is regarding the nature of this norm, whether the approval of the DPR is positioned as a constitutive requirement (must exist for the President's action to be valid) or merely an administrative requirement (procedural but does not affect the validity of the decision). Looking at the wording 'appointed and dismissed ... with the approval of the DPR,' the construction of this sentence indicates that the DPR's approval has a constitutive nature, so without such approval, the appointment or dismissal of the Chief of Police cannot be considered legally valid. [6] As a legal norm, this is part of the formal regulation regarding the procedure for filling certain public positions. Constitutionally, the existence of this norm must be linked to the legal basis for the enactment of laws in Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which grants the President the authority to propose bills, and Article 20 of the 1945 Constitution of the Republic of Indonesia, which states that the House of Representatives holds the power to enact laws. This means that the provision requiring the House of Representatives' approval in the appointment of the National Police Chief is not a unilateral limitation on the President's authority, but rather the result of a legislative process conducted jointly by the President and the House of Representatives themselves. These two institutions are the ones that formulate, approve, and establish this mechanism in Law No. 2 of 2002.[18].

The mechanism of checks and balances in a democracy is a natural and even highly necessary thing. It is meant to prevent the abuse of power by individuals or institutions and to avoid the concentration of power in one hand. With such a mechanism, the decision-making process between state institutions, especially the executive and legislative branches, becomes more accountable, controlled, and balanced. Thus, the requirement for the People's Representative Council's (DPR) approval in the appointment of the National Police Chief (Kapolri) can be understood as part of the principle of mutual oversight and control, which is a fundamental characteristic of a modern democratic system. The principle of supervision among branches of power is then concretely realized through the DPR's involvement in the process of appointing the National Police Chief.[25]

The involvement of the House of Representatives (DPR) through the right to give or withhold approval or consideration is referred to as the right to confirm (rights to confirm) of the legislative body. As a representative body, the DPR can help control or oversee the performance of public officials in carrying out their duties and authorities to ensure they comply with the provisions of the constitution and laws. From a constitutional perspective, these rights and confirmations of the legislative body can be justified. In a democratic state, the right to confirm is very important because it represents the people's role in monitoring the performance of state officials.[15] This understanding indicates that normatively, the involvement of the DPR (House of Representatives) through the approval mechanism is not a form of unlawful reduction of the President's power, but rather part of the legislative design produced jointly within the framework of governance based on the 1945 Constitution. In other words, this norm should be understood as a procedural element inherent to the position of

the National Police Chief, and not as a political intervention into executive authority. It is this normative structure that will serve as the basis for further analysis of the implications of this provision on the practice of presidential power in Indonesia's presidential system of government.

From the perspective of constitutional theory, some experts argue that the provision requiring the DPR's approval in Article 11 paragraph (1) of Law No. 2 of 2002 limits the President's maneuverability as the holder of executive power. This view is based on the basic principle of the presidential system that executive authority, including the appointment of officials directly under the President's chain of command, should be under the full control of the President (full executive discretion). Therefore, the requirement to obtain DPR approval is seen as a form of reduction in the singular and independent nature of executive power. To understand the basis of this view, it is necessary to review the constitutional practice before the enactment of Law No. 2 of 2002. At that time, the President held very dominant authority in the appointment of police officials. This was evident in Law No. 13 of 1961 concerning the Basic Provisions of the State Police, which was a mandate of MPRS Decrees No. I/MPRS/1960 and No. II/MPRS/1960. Within this regulatory framework, the police leadership was under the structure of the Junior Minister of Police, and the appointment process was entirely determined by the President without involving other institutions. [26].

Article 6 of Law No. 13/1961 explicitly states that the President holds the highest authority over the National Police, with an explanation affirming the President's position as the supreme leader of the Police. This provision is reinforced by Article 3 and its explanations, which place the Police as part of the Armed Forces, in accordance with MPRS Decree No. II/MPRS/1960. Furthermore, Article 10 of the decree grants the President "full authority" in all decisions related to the police institution.[16] Thus, the appointment of police leadership at that time was an executive prerogative that did not recognize any legislative control mechanisms. This history of regulation forms the basis for the argument that the provision for DPR approval in Law No. 2 of 2002 is a form of limitation on the President's authority. Whereas previously the President had full authority without DPR involvement, the shift toward a legislative confirmation mechanism is understood as a reduction of executive dominance in filling strategic positions within the police.

C. Some Arguments Strengthening Criticism of the DPR Approval Mechanism in the Appointment and Dismissal of the National Police Chief

1. Reduction of the President's Full Executive Discretion

In a presidential system, the President holds sole executive authority as stipulated in Article 4 paragraph (1) of the 1945 Constitution. This position places the President as the chief executive with full authority over the control of government apparatus, including the appointment of high-ranking officials under the executive chain of command. Doctrinally, the position of the Chief of the Indonesian National Police (Kapolri) is part of the executive apparatus that carries out governmental functions in the field of security and law enforcement, as affirmed in Article 8 paragraphs (1) and (2) of Law No. 2 of 2002, which states that the National Police is under the President and the Kapolri is responsible to the President. Therefore, the appointment and dismissal of the Kapolri inherently fall within the President's executive prerogative. However, this prerogative is normatively limited by Article 11 paragraph (1) of Law No. 2 of 2002, which requires the "approval of the House of Representatives (DPR)" for the appointment and dismissal of the Kapolri. These provisions make the President's actions no longer entirely discretionary, but bound by the legislative confirmation mechanism. Consequently, the President's policy space depends on the political process in the House of Representatives, including the fit and proper test, so that the President's decisions must take into account legislative dynamics and political preferences in parliament.[21]

The President must ensure that the proposed candidate for Chief of the National Police has a chance of obtaining majority support in the House of Representatives so that the appointment process is not hindered. In this case, the approval of the House serves as an external control that limits the President's discretion in managing the executive command structure, including the national security sector. This limitation is clearly seen when compared to the appointment of ministers under Article 17 paragraph (2) of the 1945 Constitution, where the President has full prerogative without a legislative confirmation mechanism. In other words, if in the appointment of ministers the President holds absolute authority, then in the appointment of the Chief of the National Police that authority is reduced by law through the requirement of approval from the House of Representatives.

This difference in the design of authority shows that the lawmakers consciously reduced the President's executive discretion in the security sector, particularly regarding the position of the Chief of the National Police. Normatively, the existence of parliamentary approval not only limits the President's leeway as the holder of executive power but also changes the decision-making structure within the executive body. This mechanism places the President in a more restricted position compared to the classical presidential model, where the head of the executive has full authority in determining the country's strategic officials.[27].

2. The Emergence of Presidential Dependence on the Political Constellation of the House of Representatives

The next criticism highlights that the House of Representatives' approval mechanism in the appointment of the National Police Chief has the potential to create political dependence that does not align with the fundamental principles of the presidential system. Constitutionally, Article 4 paragraph (1) of the 1945 Constitution asserts that the President holds executive power, while Article 8 paragraphs (1) and (2) of Law No. 2 of 2002 place the National Police under the President and make the National Police Chief directly accountable to him.[28] However, Article 11 paragraph (1) of the same Law

allows for the involvement of the House of Representatives' approval, which in practice can create opportunities for political intervention through the fit and proper test process. In certain situations, the House can use this stage as a platform for political bargaining, resistance to executive policies, or rejection of candidates who do not align with the interests of the factions.

In a fragmented political environment or when the government coalition is unstable, this approval mechanism has the potential to turn into a transactional negotiation tool that can slow down or complicate the process of appointing the National Police Chief. This poses a risk to the continuity of command in a security sector that is highly strategic for national stability. Compared to the appointment of ministers, which is entirely the President's prerogative under Article 17 paragraph (2) of the 1945 Constitution, it is evident that the President's authority in filling the position of National Police Chief is more limited. Normatively and practically, the DPR's approval mechanism can place the President in a position where he has to align his strategic decisions with parliamentary political dynamics, thereby shifting the dominant executive character in the presidential system.

This condition can reduce the effectiveness of executives in controlling security forces and create political dependency that is not fully aligned with the principle of separation of powers in a presidential system. The provisions of Article 11, paragraph (1) of Law No. 2 of 2002, which require the approval of the House of Representatives (DPR) in the appointment and dismissal of the National Police Chief, have the potential to place police leadership in a position where it cannot be completely free from legislative influence. Consequently, the independence and professionalism of the National Police Chief in carrying out law enforcement duties may be called into question, as the appointment process is not entirely free from political support from the DPR.[6] In such a construction, the policies and decisions of the Chief of Police are vulnerable to being perceived as responses to the political preferences of the parliament, rather than purely based on law enforcement interests. This not only blurs the line between executive and legislative functions, but can also raise public doubts about the Police's ability to ensure fair and impartial legal certainty across the entire territory of the Republic of Indonesia.[29]

3. Potential Distortion of Executive Accountability

Some constitutional scholars argue that the DPR's approval mechanism in the appointment and dismissal of the National Police Chief has the potential to create distortions of accountability within Indonesia's presidential system. Constitutionally, Article 4 paragraph (1) of the 1945 Constitution states that the President holds executive power and is responsible for national security. However, this authority is not entirely determinative when the appointment of the National Police Chief must go through DPR approval as stipulated in Article 11 paragraph (1) of Law No. 2/2002. This situation gives rise to a phenomenon of 'split accountability,' where the President bears full responsibility for the performance of the National Police, while the DPR also determines who will lead the institution through a political approval mechanism. From the perspective of accountability theory, the misalignment between responsibility and authority is considered problematic because the President can be held accountable for policies whose implementing instruments are not entirely under their control. The situation becomes even more complex because structurally, the police are directly under the President as stipulated in Article 8, paragraph (1) of Law No. 2 of 2002. When the leadership of an agency within the executive command line must be approved by the House of Representatives, the command relationship is no longer hierarchical as in the classic presidential model. [24]. Critics argue that this mechanism can weaken the effectiveness of executive control while also obscuring the locus of accountability, because the House of Representatives participates in selecting the Chief of Police but does not bear direct responsibility for the performance of the institution.

Nevertheless, an objective analysis cannot stop at that criticism. Indonesia's state system post-amendment to the 1945 Constitution does not adhere to a rigid separation of powers, but rather to a dynamic principle of checks and balances. From this perspective, the involvement of the House of Representatives (DPR) can be seen as an instrument of public oversight and a mechanism for democratizing the filling of strategic positions in the security sector, considering that the National Police Chief (Kapolri) plays a crucial role in law enforcement and the protection of citizens' rights. Therefore, the provision for DPR approval can also be interpreted as an effort to balance executive and legislative power in order to strengthen accountability and prevent an excessive concentration of power in the hands of the President.[30]

D. Normative and Theoretical Arguments Supporting DPR Approval as a Mechanism for Transparency, Legitimacy, and Accountability in Indonesia's Presidential System

1. Parliamentary approval as part of the constitutional checks and balances mechanism

The view that the House of Representatives' approval in the appointment of the National Police Chief reduces the President's full executive discretion is incorrect when seen within the framework of Indonesia's post-amendment 1945 Constitution. Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia still affirms that 'The President of the Republic of Indonesia holds the power of government according to the Constitution.' [31] Thus, the position of the President as the holder of executive power remains full and is not constitutionally diminished. The requirement for the approval of the House of Representatives as regulated in Article 11 paragraph (1) of Law No. 2 of 2002 is not a limitation on executive power, but is part of the check and balances mechanism designed by the lawmakers within the framework of modern democracy.[24] This mechanism is intended to ensure that strategic positions in the security sector have strong legitimacy while also being institutionally supervised by the legislature.

The Constitutional Court Decision Number 22/PUU-XIII/2015 affirms that the President's request for approval from the House of Representatives in the appointment of the Chief of the Indonesian National Police does not constitute a deviation

from the presidential system of government, but rather reflects the implementation of the principle of checks and balances implied in the 1945 Constitution. The Constitutional Court stated that the process of selecting public officials aims to protect the rights and interests of the public through transparent, accountable, and participatory procedures. Therefore, the involvement of the House of Representatives is actually an effort to realize good governance, so that officials are elected who possess integrity, capability, leadership, and acceptability to assist the President in running the government.[22]

The involvement of the House of Representatives (DPR) in filling public positions is not a phenomenon that stands alone. The appointment of members of the Audit Board (BPK) (Article 23F paragraph (1) of the 1945 Constitution), Judicial Commission (Article 24B paragraph (3) of the 1945 Constitution), as well as the Commander of the Indonesian National Armed Forces (TNI) (Article 13 paragraph (2) of the 1945 Constitution) all require the approval of the DPR. None of these mechanisms are considered to diminish the President's sovereignty. On the contrary, they are seen as a constitutional design that creates a balance of power. In the context of the National Police Chief (Kapolri), the President remains the party proposing candidates, while the DPR only has the function of approving or rejecting the proposed candidates. The DPR cannot propose candidates on its own.[16] This means that the locus of authority remains in the hands of the President, and the process of DPR approval is a form of legislative oversight in accordance with Article 20A of the 1945 Constitution. Thus, the DPR's approval is not a limitation on executive authority, but an effort to strengthen the legitimacy, accountability, and quality of leadership of the police institution within the framework of a democratic state governed by the rule of law.

2. Parliamentary approval actually strengthens the President's legitimacy, rather than creating political dependence

The argument that DPR approval makes the President politically dependent essentially ignores the true nature of Indonesia's post-amendment 1945 presidential system. In modern constitutional practice, the legislative approval mechanism for strategic officials is not a form of intervention, but an instrument of shared responsibility that actually strengthens executive stability. The President remains the main actor in proposing candidates for the Chief of Police, while the DPR merely gives consent, not independently selects a figure. This configuration places the appointment process of the Chief of Police within a structure of mutually supportive inter-branch relations, rather than weakening each other. The DPR approval process also broadens the political legitimacy of the Chief of Police candidate. [24] Through feasibility testing, public scrutiny, and open discussions in Commission III of the House of Representatives, the selected figure has a broader support base, not only from the President but also from the legislative body as a political representation of the people. This dual legitimacy actually reduces the potential for political resistance to the Chief of Police, minimizes inter-institutional conflict, and facilitates smooth coordination across branches of power, especially on security and law enforcement issues that require political stability. In this context, the approval mechanism is not an obstacle for the President, but a constitutional tool to ensure that officials occupying strategic positions have an adequate level of political acceptance.

In line with this, the post-amendment framework of the 1945 Constitution no longer interprets the President's prerogative rights as an absolute authority that is beyond democratic control. To strengthen the presidential system of government, prerogative rights should be understood as a means to clarify the presidential system adopted in Indonesia so that it fulfills the general characteristics of a presidential system of government, rather than emphasizing the idea of enhancing the President's prerogative rights as an absolute right that cannot be limited. This was one of the important agreements among the factions in the People's Consultative Assembly (MPR) when amending the 1945 Constitution.[32] This view shows that from the beginning of the constitutional amendments, Indonesia chose a balanced presidential model, not pure presidentialism like that of the United States. Thus, the involvement of the House of Representatives (DPR) is actually an implementation of the constitutional design resulting from the amendments, which consciously created space for interaction among branches of power without undermining the fundamental principles of presidentialism. The president still holds substantive control because only he has the right to propose candidates for the Chief of the National Police. In other words, there is no transfer of appointment power to the DPR; what occurs is a confirmation mechanism to ensure the accountability and quality of public officials.[33].

In its consideration, the Constitutional Court views that in the case of appointing the National Police Chief, requesting approval from the House of Representatives (DPR) is not something that deviates from or contradicts the presidential system of government adopted, but rather demonstrates the functioning of the checks and balances mechanism in governance. Furthermore, according to the Constitutional Court, achieving a transparent, accountable, and participatory selection procedure for the election of public officials, aimed at protecting the rights and interests of the public, can be realized. Thus, the request for approval from the DPR in the appointment of the National Police Chief aims to achieve good governance.[22].

Based on these considerations, the DPR's approval mechanism cannot be understood as a form of the President's dependence on the legislative political constellation. On the contrary, this mechanism strengthens the President's legitimacy because the figures approved by the DPR will be more easily accepted by various political groups, thus facilitating the President in implementing security sector policies. This mechanism also creates greater stability in governance, as it reduces the potential for conflict between the President and the DPR regarding the appointed National Police Chief. With broader legitimacy, the Chief of Police is better able to carry out command functions and lead the police institution effectively. Thus, the mechanism of approval by the House of Representatives cannot be seen as a factor that weakens executive power, but rather as an integral part of Indonesia's presidential system, which emphasizes the balance of power, public official accountability, and the effectiveness of government administration. Within this framework, the President remains the primary authority, while the House of Representatives provides additional legitimacy that actually strengthens the President's position in managing the country's security sector.

3. The DPR approval mechanism actually strengthens the Executive's accountability institutionally

The view that the involvement of the House of Representatives (DPR) in the appointment of the Chief of the National Police (Kapolri) has the potential to create distortions in executive accountability is not entirely accurate. Constitutionally, accountability in a presidential system of government is not only understood as a linear relationship between the President and executive officials but also as a mechanism of responsibility that involves the participation and oversight of the legislative institution. This aligns with Article 20A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which affirms that the DPR has legislative, budgetary, and supervisory functions. The DPR's involvement in approving the appointment of the Kapolri is a concrete form of implementing this supervisory function.[34]

In such a construction, the President's accountability is actually strengthened, not weakened. The President remains the head of government as affirmed in Article 4 paragraph (1) of the 1945 Constitution, and still maintains control over national security policies through the executive structure. However, through the approval of the House of Representatives, the process of appointing the Chief of Police becomes more transparent, accountable, and accommodating to public interests. This is in line with the design of good governance, which requires mechanisms of checks and balances to ensure that executive power does not run unchecked and can be mutually supervised.[30].

Normatively, the approval of the House of Representatives (DPR) does not transfer the accountability of the National Police Chief (Kapolri) from the President to the DPR. The Kapolri remains under the President in accordance with Article 8 paragraph (2) of Law No. 2 of 2002, and accountability for the performance of the Police remains within the executive domain. However, the DPR gains a control instrument in the form of a political confirmation process that allows the legislative body to ensure that the Kapolri candidate has the integrity, competence, and independence sufficient to carry out law enforcement duties. It is within this framework that the view of Lord Acton is relevant, namely that "power tends to corrupt, but absolute power corrupts absolutely," a principle reminding us that power left without oversight mechanisms tends to be abused. Therefore, handing over full prerogative authority to the holder of executive power without institutional oversight is not the right choice in a democratic rule-of-law state. The House of Representatives' approval mechanism actually serves as a constitutional safeguard to prevent the concentration of power, ensure that the selection of National Police leaders is conducted objectively, and maintain that candidates proposed by the President are figures who are professionally and morally qualified. [35].

Thus, the involvement of the House of Representatives does not create distortion, but rather establishes a more comprehensive and layered accountability mechanism, in accordance with the principle of checks and balances as intended in the 1945 Constitution. This mechanism also prevents excessive concentration of executive power. The President still proposes candidates, but the House of Representatives plays a role in approving those candidates. This pattern does not divide responsibility, but rather builds shared accountability between the President as the holder of executive power and the House of Representatives as the representation of the people.[36] Ultimately, the DPR's approval in the appointment of the Chief of Police is not an obstacle to executive effectiveness, but rather a constitutional instrument that enhances the quality of public accountability through structured democratic oversight.

Based on the discussion of all the practical implications above, it can be asserted that the mechanism of the House of Representatives' approval for the appointment of the Chief of the Indonesian National Police is not a form of restriction on the President's authority, but rather part of the constitutional framework designed to ensure democratic and accountable governance. The 1945 Constitution places the President as the holder of governmental power according to Article 4 paragraph (1), so the authority to choose the candidate for Chief of Police remains in the hands of the President as the executive leader. The involvement of the House of Representatives does not eliminate this prerogative, but provides a form of shared control that is consistent with the design of checks and balances.[13].

From the perspective of a modern presidential system, legislative oversight of strategic officials is a common and widely accepted practice to prevent the concentration of power. Article 20A of the 1945 Constitution affirms the supervisory function of the House of Representatives (DPR), and through the mechanism of approval for the Police Chief candidate, this authority is exercised institutionally through an open and transparent procedure as regulated in Law Number 2 of 2002 concerning the Indonesian National Police. This process results in increased political legitimacy for the Police Chief, reduces inter-institutional resistance, and strengthens government stability. Furthermore, Constitutional Court Decision Number 22/PUU-XIII/2015 emphasizes that the House of Representatives' approval mechanism does not conflict with the principles of a presidential system, as it does not diminish the President's authority as the holder of governmental power. The Court stated that the involvement of the House of Representatives actually creates a selection procedure that is more transparent, accountable, and participatory, while also supporting the realization of good governance. Thus, the existence of the House of Representatives' approval mechanism serves as an instrument that enhances executive accountability and strengthens the integrity of the political process without creating political dependence that weakens the President's position.[37]

From this, it can be understood that the implication of the requirement for DPR approval in Law No. 2 of 2002 does not weaken, but rather strengthens the constitutional authority of the President as the holder of executive power, and the Indonesian presidential system after the amendment of the 1945 Constitution is built not as a system that places the President as a holder of absolute power, but as a democratic presidentialism that integrates legislative oversight to maintain a balance of power.[38]. The approval of the House of Representatives for the appointment of the National Police Chief is a concrete example of how the principle of checks and balances is applied to support executive effectiveness, strengthen the legitimacy of public officials, and encourage an executive-legislative relationship that both monitors and supports each other in government administration, in order to reinforce Indonesia's stable, accountable, and democratic presidential system.

Conclusion

The approval of the House of Representatives (DPR) in the appointment of the Chief of the Indonesian National Police (Kapolri), as regulated in Article 11 paragraph (1) of Law No. 2 of 2002, does not reduce the constitutional authority of the President as the holder of executive power. The President remains the sole party authorized to propose a candidate for Kapolri and holds control over the police institution, thereby maintaining the executive position in accordance with Article 4 paragraph (1) of the 1945 Constitution. The involvement of the DPR is more appropriately understood as a confirmation power mechanism within the framework of checks and balances, rather than a limitation on the President's appointment power. Thus, the DPR's approval does not weaken the presidential system but rather strengthens accountability, public legitimacy, and the integrity of the process for appointing strategic state officials. This mechanism functions to balance power among government branches without disturbing the fundamental design of presidentialism as intended by the 1945 Constitution.

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