

# IMPLICATIONS OF THE REVISION OF THE WANTIMPRES LAWS ON THE GOVERNMENT SYSTEM IN INDONESIA

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## Abstract

The revision of Law Number 19 of 2006 concerning Wantimpres is one example of a legal product that was born during the *lame-duck session* and enacted through *fast-track* legislation. The amendment article contained in the laws *a quo* raises legal debates and affects the system of government in Indonesia. The main problem discussed in this study is the position of the Presidential Advisory Council following the revision of the Presidential Advisory Laws within the Indonesian government system. Moreover, how effective is the position in comparison with the Indonesian Presidential Advisory Institute and the *French Conseil d'Etat*? The research method is normative legal research, using both a regulatory and a comparative approach. The results of this study are as follows: (1) The Article on the amendment of the law *a quo* raises various polemics in the Indonesian government system, especially changes in the position and membership structure of the Wantimpres. (2) Between the Advisory Council of the President of Indonesia and the *Conseil d'Etat* of France, in terms of position and membership structure, the *Conseil d'Etat* is much more effective in fulfilling its responsibilities as a council of state. These figures are based on the position and structure of the *Conseil d'Etat*. As a suggestion in this study, the amendment of the

Presidential Advisory Law should refer to its effectiveness as an advisory institution to the president.

**Keywords:** *Conseil d'Etat*, Presidential Advisory Council, Revision of the Wantimpres Law, System of Government.

## Introduction

The State of Indonesia adheres to the system of government, namely the Presidency. The presidential system is a form of government that focuses on the role of the president as both the head of state and the head of government.<sup>1</sup> This shows that the president holds two leadership roles in Indonesia: one as the Head of State and another as the Head of Government. This means that Indonesia, with its presidential system of government, has more dominant power in the executive branch, namely the president.

Indonesia is beginning to keep up with current developments, as seen in the United States' political system. Indonesia has a similar pattern: a new branch of government, namely independent agencies, that function as a separate branch. The existence of independent agencies can be interpreted as part of a new separation of powers.<sup>2</sup> The State of Indonesia classifies government institutions into 7 (seven) types of power institutions. The seven power institutions are as follows: Legislative Institutions, Executive Institutions, Judicial Institutions, Consultative Institutions, Inspection Institutions, Federative Institutions, and Constituent Institutions.<sup>3</sup> Consultative Institutions are Advisory Bodies that provide proposals and responses to the Head of State and answer questions submitted by the Head of State.<sup>4</sup>

The institution in question is the Presidential Advisory Council. The Presidential Advisory Council has been known since the time of

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<sup>1</sup> Jimly Asshiddiqie, *Principles of Indonesian Constitutional Law* (West Jakarta: PT. Bhuna Ilmu Popular, 2007), p. 311.

<sup>2</sup> Laurensius Arliman S, "The Fourth Branch of Power: *The New Separation of Power*," *Encyclopedia of Journal*. Vol.6. No. 2 (2024), p. 321.

<sup>3</sup> Mulyawan Rahman, *Indonesian System of Government* (Bandung: UNPAD Press, 2015), p37, [https://jdih.situbondokab.go.id/barang/buku/Sistem%20Pemerintahan%20Indonesia%20\(Dr.%20Rahman%20Mulyawan\)%20\(z-lib.org\).pdf](https://jdih.situbondokab.go.id/barang/buku/Sistem%20Pemerintahan%20Indonesia%20(Dr.%20Rahman%20Mulyawan)%20(z-lib.org).pdf), accessed 11 Nov 2024

<sup>4</sup> *Ibid*, p. 55

Indonesian independence. However, the name of this institution is not the Presidential Advisory Council but the name first used since independence, namely the Supreme Advisory Council. The Supreme Advisory Council was first formed on 25 September 1945<sup>5</sup>.

After the amendment to the 1945 Constitution of the Republic of Indonesia, the position of the Presidential Advisory Council differs from that of the Supreme Advisory Council. As in the 1945 Constitution before the amendment, the DPA is positioned as the *Council of State* to consider the government. The 1945 NRI Constitution Article 16 places the Supreme Advisory Council in one special Chapter in the 1945 Constitution, namely Chapter IV, after the IV amendment, Chapter IV on the Supreme Advisory Council is abolished, and then united in the Chapter of State Government Power. The reason for the abolition of this Chapter on the Supreme Advisory Council is to improve the efficiency and effectiveness of the administration of the state. In addition, it shows that the DPA's advice and considerations do not bind the president.<sup>6</sup> This shows that the DPA is no longer an institution at the same level as the president's but has become a government-structured institution. The rules regarding the Presidential Advisory Council are listed in Law Number 19 of 2006 concerning the Presidential Advisory Council.

On 19 September 2024, during its transition period, the House of Representatives passed three Bills, including the Ministry Law, the Presidential Advisory Council Law, and the Immigration Law. These three regulations have the potential to lead to abuse of regulations because they are considered not to provide the benefits of a regulation that has been formed, and in the drafting of these regulations, the legislation does not involve meaningful participation from the community, as stated in Article 96 of Law Number 13 of 2020 concerning the Formation of Regulations. Not only that, the ratification of the three laws is also considered a product of accelerated rule-making

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<sup>5</sup> Aas Subarkah Ahmad Fachrudin and Abdullah Yazid Any Rufaidah, *Presidential Advisory Council 2015-2019*, edited by Wahyu Budi Santoso (Jakarta: Wantimpres, 2017), p. 46

<sup>6</sup> Ni'matul Muda, *Indonesian Constitutional Politics* (Yogyakarta: FH UII Press, 2003), p. 54.

(fast-track legislation).<sup>7</sup> Indonesia does not use the concept of fast-track legislation to make laws and regulations. Indonesia only recognizes the issuance of government regulations in lieu of laws (Perpu), which, in this case, are issued under conditions of urgency and necessity. However, it uses the idea in practice, although not with the appropriate procedures for fast-track legislation. This is considered an irregularity committed during the recess in the ratification of the Wantimpres Bill by the House of Representatives.<sup>8</sup>

In the revision of the 2024 Presidential Election Law, there is much controversy related to the position of the Presidential Advisory Council. Law Number 19 of 2006 concerning the Presidential Advisory Council states that the Presidential Advisory Council is a Government Institution. Revising the Wantimpres Law changed the position of the Wantimpres Institution to a State Institution. The revision of the Presidential Advisory Council Law has changed the position of the Presidential Advisory Council, thereby potentially changing the institutional structure of the state from a government institution to a state institution, which in this case can be interpreted as a high state institution, namely the legislative, executive, and judicial branches.

The phrase "governmental institution" in Law No. 19 of 2006 is appropriate and there is no need to change the phrase to "state institution," because this has the potential to lead to abuse of power if the meaning of "state institution" in the amendment to Law No. 64 of 2024 is interpreted as only referring to state institutions, namely the legislative, executive, and judicial branches. This is because, if the Advisory Council is interpreted as a state institution, as referred to above, then the State Advisory Council's duties and functions should be

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<sup>7</sup> *Fast-track legislation* focuses on the path or stages that can be taken quickly to discuss a bill. See: Ibnu Sina Chandranegara, "Adoption of Fast-Track Legislation Mechanism in Presidential Draft Proposals," *Journal of De Jure Legal Research* 21, no. 1 (2021), p. 129, <https://doi.org/10.30641/dejure.2021.v21.123-140>, accessed 20 Oct 2024

<sup>8</sup> The *recess* period is when the Members of the Council work outside the House of Representatives, meeting constituents in their respective constituencies (Dapil). Implementing the duties of Council Members in the constituency to capture, accommodate constituents' aspirations, and carry out supervisory functions is known as a working visit. This working visit can be carried out by Council Members individually or in groups. See: the News of the House of Representatives of the Republic of Indonesia, "About the Session," (2016), <https://www.dpr.go.id/tentang/tahun-sidang>, accessed 20 Oct 2024

further strengthened in terms of its binding power over the President. This means that the a quo Law has the potential to strengthen the power of the Presidential Advisory Council in the Indonesian government system because the Indonesian government system is a presidential system that gives power to the President as the head of government to hold and exercise executive power, therefore affecting the independence of the President as head of government who has special rights, namely his prerogative, which is interpreted as the absolute power of the president that any other party or state institution cannot challenge.

Another factor that could potentially affect Indonesia's system of government is the number of members of the Presidential Advisory Council, which was originally limited to eight members after the revision of the law, but is now unlimited or adjusted to the President's needs. The problem is that if at some point the President forms a Presidential Advisory Council with a large number of members, and this could potentially be used as a form of power sharing for the President's supporters who will be elected in the next term, then the position or role of the Presidential Advisory Council will increasingly influence the decisions made by the President. This also emphasizes that the more members the Presidential Advisory Council has, the more active this institution must be in carrying out its duties and functions so that its performance will bring about real change for the nation and state.

Thus, this has the potential to strengthen the power of the Presidential Advisory Council in the Indonesian Government System, where the president holds full control over power as head of government. This could affect the independence of the executive branch as head of government, as mentioned above regarding the prerogative rights of the President. Another impact of the amendment to the a quo Law is on the state budget, because the amendment to the a quo Law removes the provisions of Article 7 paragraph (1) regarding the number of members of the Presidential Advisory Council, which was originally set at 8 members, and in the amendment, it is changed to suit the needs of the President. By not limiting the number of Wantimpres members, this will create new problems. A large number does not guarantee that the institution will perform better. The impact of forming a very large Presidential Advisory Council will be a waste of the state budget.

In addition to the change in the number of members, there is also a change in the criteria for members of the Presidential Advisory Council, which has repealed the provisions of Article 8, letter h, regarding members of the Presidential Advisory Council having to have certain expertise in the field of state administration. This provision is certainly appropriate in order to prevent and limit the entry of certain groups' interests in providing considerations and advice to the President. The status of the Presidential Advisory Council as an independent consultative body in providing advice or consideration to the President, due to the removal of this provision, has the potential to lead to intervention from certain interest groups in the government. For example, it will benefit the political party supporting the president-elect for the next term if the president-elect appoints a Presidential Advisory Council consisting of members of his political party. Therefore, the amendment to Law Number 19 of 2006 has an impact on the Indonesian government system and order. Without the abolition of this provision, becoming a member of the Presidential Advisory Council will be considered more relevant to the duties and functions of the Presidential Advisory Council, especially if the members of the Presidential Advisory Council are figures who have experience in government bureaucracy.<sup>9</sup>

Based on the above problems, it is necessary to discuss the impact of the amendment of the Wantimpres Law on the government system in Indonesia. This study aims to determine whether the changes to the Presidential Advisory Council Law align with the Indonesian government system and to analyze the impact of the changes contained in the new Presidential Advisory Law.

## **Research Methods**

The research used in this study is called normative research. According to Soerjono Soekanto and Sri Mamudji, normative legal research is legal research conducted by examining library materials (secondary data).<sup>10</sup> This research uses a qualitative approach with descriptive analysis methods. The qualitative approach was chosen

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<sup>9</sup> A. Gafur A.A. Baramuli, *DPA From Age to Age*, First Edition (Jakarta: PT. Penebar Swadaya, 2000), p. 138.

<sup>10</sup> Sri Mamudji Soerjono Soekanto, *Normative Legal Research: A Brief Review* (Jakarta: PT. Raja Grafindo, 1995), p. 46

because it allows researchers to explore in depth the context and factors that influence change. This type of research uses two main methods, namely the legislative approach and the analytical approach. The legislative approach is carried out by analyzing all laws and regulations related to the legal issues being discussed/researched. Meanwhile, the analytical approach examines legal materials to determine the meaning of terms used in regulations and legislative concepts conceptually, as well as to determine their application in practice and legal decisions. This is done through two examinations. First, researchers attempt to obtain new meanings contained in relevant legal regulations. Second, they test these legal terms in practice through analysis of legal decisions.<sup>11</sup>

The legal materials used to support the success of this research are primary legal materials, namely laws and regulations, and secondary legal materials, namely scientific papers, draft laws and regulations, law books, and law journals. The legal materials obtained through primary and secondary legal sources are systematically organized. The analysis used in normative legal research is qualitative legal analysis, which involves interpreting the processed legal materials. After analyzing all the legal materials that have been studied, the results will reveal issues regarding the revision of the Presidential Advisory Council and its implications for the Indonesian government system.

### **The Position of the Presidential Advisory Council after the Revision of the Presidential Advisory Law on the Government System in Indonesia**

The amendment to Law Number 19 of 2006 concerning Wantimpres, as amended into Law Number 64 of 2024 concerning Wantimpres, has given rise to a new legal polemic. The changes made include elements of politics and personal interests—the first change regarding the position of the Presidential Advisory Board. The phrase Government Institution in the Wantimpres Law was changed to State Institution before the revision. This change resulted in uncertainty regarding the position of the Presidential Advisory Council after the revision of the Presidential Decree Law.

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<sup>11</sup> Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, Bayu Media Publishing, Malang, 2008, pp. 256-257.

The position of the Presidential Advisory Council before the revision of Law Number 19 of 2006 concerning the Presidential Advisory Council placed the Presidential Advisory Council as a Government Institution, where the meaning of the word Government Institution means that it is under the power of the government, namely the president. This is stated in Articles 2 and 3 of Law Number 19 of 2006 concerning Presidential Incentives, which states the status of the position of the Presidential Advisory Council. In Article 4 of the Presidential Decree, the Presidential Advisory Council, in carrying out its duties, only has to provide advice and consideration to the president. The advice and consideration the Presidential Advisory Council gives to the government is not mandatory and binding. Therefore, in carrying out its duties, the Presidential Advisory Council continues to provide advice or consideration to the president, whether requested or not, and the president can follow or not follow the advice or considerations given.

Jimly Assihiddiqi's Article entitled "Development and Consolidation of State Institutions Post-Reform" classifies State Institutions into three parts. The first layer of State Institutions is those whose duties and authorities are expressly stated in the 1945 Constitution of the Republic of Indonesia.<sup>12</sup> The second layer consists of State Institutions established by law, while the third layer comprises State Institutions created through regulations derived from the law or at the Regional level. Based on the division of the meaning of State Institutions in Indonesia by Jimly Assiddiqi, at least it has explained the position of each State Institution mentioned in the law. For this reason, State Institutions should be interpreted based on these three layers: State Higher Institutions/Main State Institutions and Auxiliary State Institutions.

The Presidential Advisory Council can be considered part of the State Institutions if the meaning of State Institutions refers to State Institutions that are included in the second layer of state institutions, according to Jimly. The term State Institutions in the revised Presidential Advisory Council Law can be interpreted in multiple ways if it is understood to mean state institutions such as the Legislative,

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<sup>12</sup> Asshiddiqie, Jimly. *Development & Consolidation of State Institutions Post-Reform*. Edited by Lenny Wulandari. Second Edition. Jakarta: Sinar Grafika, 2012, p. 109

Executive, and Judicial branches. If the Presidential Advisory Council is interpreted as a state institution like these three branches, then it should also perform a checks and balances function. However, the function of the Presidential Advisory Council is only related to the exercise of state power, meaning that the Presidential Advisory Council only performs tasks with the President and does not perform tasks with other state institutions.

In the Constitutional Court Decision Number 005/PUU-IV/2006, it is asserted that the 1945 Constitution makes a clear distinction among the different branches of governmental power within the Legislative, Executive, and Judicial domains. This distinction is represented by the functions of the MPR, DPR, and DPD, the President and Vice President, as well as the Supreme Court, BPK, and Constitutional Court, which serve as the main state organs connected through the principle of checks and balances. Additionally, the Constitutional Court Decision emphasizes that a lack of communication among the leading State Institutions (primary organs) and the auxiliary State Institutions (secondary organs), grounded in the principles of mutual respect and listening, could jeopardize the existence of these State Institutions. Consequently, they may be seen as hindering the constitutional framework as a whole, which is rooted in the concepts of constitutional democracy and a democratic rule of law, as outlined in Article 1, paragraphs (2) and (3) of the 1945 Constitution.<sup>13</sup>

Article 16 of the 1945 Constitution of the Republic of Indonesia states that the Presidential Advisory Council provides advice and consideration to the president. This Article is in a cluster of Government power chapters, meaning that it is clear that the position of the Presidential Advisory Council is in the status of a Government Institution. By declaring the position of the Presidential Advisory Council as a State Institution, the Presidential Advisory Council is also referred to as a State Official. Based on the regulations, there are several legal bases for forming State Institutions. State Institutions are formed with and/or based on the Constitution. There are State Institutions that are formed by law. Laws and regulations under the law also form State Institutions.

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<sup>13</sup> Constitutional Court Decision No. 005/PUU-IV/2006, pp. 192-193

To understand state institutions, we must first categorize them based on their legal basis, function, and hierarchy. In terms of legal basis, state institutions can be established by the Constitution, laws, and regulations under the law. In terms of function, these institutions can be primary or secondary in nature. In terms of hierarchy, these institutions can be divided into three levels. The first level can be referred to as high state institutions. The second level is referred to as state institutions, while the third level consists of regional institutions.<sup>14</sup>

Based on the explanation of the classification of State Institutions and institutional theory, as well as the decision of the Constitutional Court, it should be understood that the Presidential Advisory Council is not a State Institution at the same level as other Higher Institutions, as explained above that State Institutions from the Executive, Legislative, and Judicial branches of power should not be equated with State Institutions outside this branch of power, because State Institutions located in these three branches of power are The primary State Institution (*central organ state*), whose duties and authorities are expressly regulated by the 1945 Constitution of the Republic of Indonesia, beyond that the State Institutions mentioned in regulations such as the law are secondary/supporting State Institutions (*State Auxiliary Agencies*).<sup>15</sup>

State Institutions, which are referred to as the domain of the organ or Main Organ, have been locked and clearly and firmly stipulated by the 1945 Constitution of the Republic of Indonesia, so that no one can form any other State Organ outside that regulated by the Constitution, except by amending the Constitution.<sup>16</sup> This means that if the position of the Advisory Council is interpreted and considered the same as the Higher Institution, as explained above, it is necessary to amend the Constitution again. According to the 1945 Constitution of the Republic of Indonesia, prior to its amendment, the Supreme Advisory Council was designated as a State Institution that holds the same status as a State High Institution. Before any amendments to the 1945 Constitution were made, this particular institution was arranged in a dedicated

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<sup>14</sup> Nuruddi, Ahmad Muhasim. Indonesian Constitutional Law, (Nusa Tenggara Barat: 2022) p. 316

<sup>15</sup> Huda, Ni'matul. Indonesian Constitutional Politics. (Yogyakarta: FH UII Press, 2003). p, 103

<sup>16</sup> *Ibid*, p. 104

chapter. Moreover, this was the mandate of the Supreme Advisory Council at that time, which included the State High Institution.

Following the definition mentioned above, the meaning of State Officials should also be in harmony with this meaning. The fact is that there is not only a definition of State Official but also a definition of Government Official and Public Official. This will also cause debate and confusion about his status as a government actor. It is essential that the Presidential Advisory Council can be questioned about its status in the Indonesian government system.

Another change is regarding its structure and membership. Article 7, which amends the previous Article, states that the number of members of the Presidential Advisory Council is eight. However, in the amendment of the law *a quo*, there is a change in the number of members of the Presidential Advisory Council, which is at the president's discretion, as the number of members of the Advisory Council certainly impacts the State Expenditure Budget (APBN). This is because the president can inaugurate the Presidential Advisory Council with more than eight members, potentially increasing the burden on the state budget. The duties and functions of the Presidential Advisory Council and the roles that do not bind the president or affect the president's absolute decision on a country's condition should be considered. For this reason, the establishment of the Presidential Advisory Council with many members will not have any impact unless the position of the Presidential Advisory Council is on par with that of the president. The two institutions must influence each other.

In addition to changing the number of members of the Presidential Advisory Council, the following change is to remove one of the requirements for being a member of the Presidential Advisory Council, which is considered very relevant for the new members. The requirement is that they must have special expertise in the field of government, as has been abolished in Article 8, point h of Law 19 of 2006. Not requiring special expertise will provide a gap for the rulers to occupy positions in state institutions and prevent them from giving advice and consideration to the president regarding the problems in the country. Of course, this will be considered a party for the division of positions for supporters in the election of the President and Vice President.

The last change is the prohibition on being a member of the Presidential Advisory Council. It is stated in Article 12, where this Article abolishes the ban that the Presidential Advisory Council may not concurrently hold positions as structural officials of government employees, and other provisions are as follows: leaders of political parties, leaders of community organizations, leaders of Non-Governmental Organizations (NGOs), leaders of foundations, leaders of State-Owned Enterprises (SOEs) or Privately Owned Enterprises (BUMS), leaders of professional organizations, and structural officials in universities, both public and private.<sup>17</sup>

The current amendment only prohibits the Presidential Advisory Council from concurrently holding positions as State Officials by laws and regulations, managerial and non-managerial officials in government agencies, and other officials. Other officials referred to in explaining the law *a quo* include leaders and members of commissions, agencies, and institutions formed based on rules and regulations and financed by the State Revenue and Expenditure Budget (APBN). It is clear that in the change, the prohibition as leaders of political parties, leaders of community organizations, leaders of Non-Governmental Organizations (NGOs), leaders of foundations, leaders of SOEs or BUMS, leaders of professional organizations and structural officials of universities both in the state and private sectors do not have a prohibition, with the meaning that the Presidential Advisory Council is welcome to hold positions as these professions concurrently.

This raises the question of the independence of the Presidential Advisory Council, which, as the name implies, should not come from political circles, because there will be the potential for interference by particular political interests or communities regarding the advice and considerations given to the president in making a policy. Through the revision of the Presidential Advisory Council Law, it is clear that this revision was carried out to give politicians space to enter and participate in all aspects of government.<sup>18</sup> This calls into question the independence of this Advisory Council, which, as its name suggests, should not be

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<sup>17</sup> Law No. 64 of 2024 concerning Amendments to Law No. 19 of 2006 concerning the Presidential Advisory Council.

<sup>18</sup> YouTube: KompasTv, Wantimpres Becomes DPA, Refly Harun and Margarito Kamis Speak Up Satu Meja (Indonesia, 2024), accessed on February 28, 2025, at the website: <https://youtu.be/LdFtWouypB8?si=kzON1OFsE6EmaMW4>.

drawn from the political sphere, as there are fears that politics could interfere with the advice and considerations given to the President in policy-making.

**Table 1.** Amendment of Law Number 19 of 2006 to Law Number 64 of 2024 concerning Wantimpres.

No	Change	Articles of Amendment	Explanation
1.	Position and nomenclature	Article 1	Change from a Government Institution to a State Institution.
2.	Membership structure	Article 7	The number of members of the Wantimpres was originally eight, but after the revision, it was adjusted according to the president's needs.
3.	Requirements to become a Wantimpres	Article 8	Abolish the condition of letter h: "have certain expertise in the field of government of the country".
4.	Wantimpres Prohibition	Article 12	a) Removal of the ban on being a structural official in government agencies b) Leaders of political parties, leaders of community organizations, leaders of Non-Governmental Organizations (NGOs), leaders of foundations, leaders

			of State-Owned Enterprises or Privately Owned Enterprises, leaders of professional organizations, and structural officials in universities, both public and private
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*source: processed by researchers (2025)*

The revision of the Presidential Advisory Council Law should grant additional authority to the Advisory Council in carrying out its duties and functions, considering that the performance of this Advisory Council cannot be directly felt by the public and is not considered to be particularly necessary by the state. In fact, it can be said that the Presidential Advisory Council was formed solely to carry out the provisions of the 1945 Constitution of the Republic of Indonesia. If the Presidential Advisory Council Law is to be revised, the revision should also cover its authority, considering that in the amendment, the Presidential Advisory Council is further strengthened to become a State Institution with a position equal to that of State Officials as referred to in the Law.

Revision of the Presidential Advisory Council Law could certainly cause problems in the government system, particularly in terms of the position of the Advisory Council, which is not yet considered necessary and only exercises power that is not very binding on the government, meaning that this Advisory Council is merely a garnish to the government system. The President, who serves as Head of State and Head of Government, becomes more visible when his aides have clear authority in running the state.

The duties and functions of the Advisory Council have so far not shown any positive impact or effect on the community, particularly in terms of the work carried out by its members. It is unclear whether the Council has truly accommodated the aspirations of the community, which feels that various policies are detrimental to the community. The role of the Advisory Council should be more tangible and stronger, so

that the community does not simply accept and protest against the government.

Every policy issued by the government should also be discussed with the Advisory Council, not only when the President needs it, but also when the policy to be implemented will affect the general welfare of the people and will have an impact on the progress of the country. The role of the Advisory Council needs to be expanded and regulated in more detail, and its performance must be transparent. For example, it should not only conduct outreach at a specific location. It must provide a platform for the public to express their aspirations, both offline and online, through a dedicated website for public feedback when the government is about to implement a policy.

If the above is implemented, there will be clear positive changes for the community and greater transparency regarding the performance of the Advisory Council. Confidential matters should be limited to meetings and issues that cannot be disclosed, as they could harm the country, so procedurally, everything should be done transparently for the entire community. Considering that the Advisory Council should consist of individuals who are not tied to the political world, as this would undermine the independence of this institution.

According to the experience of Adnan Buyung Nasution, who served on the Presidential Advisory Council in the 2007-2009 period, he wrote in his book "Advice for SBY" that the Wantimpres at that time was not running effectively.<sup>19</sup> Several times, members of the Advisory Council sent advice to the president. However, much of the advice and considerations did not reach the president, and they never met with the president privately to discuss the policies that the president would implement. Also, each member of the Presidential Advisory Committee is more likely to work individually and rarely holds a meeting to discuss the considerations requested by the president. Each member of the Wantimpres carries out his duties by submitting his opinion individually. Adnan Buyung also said that when giving considerations, the president often does not listen to them and does not even give a reason for rejecting them.

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<sup>19</sup> Adnan Buyung Nasution, *Advice for SBY*, ed. Nina Pane (Jakarta: PT. Kompas Media Nusantara, 2012), p. 42

Based on Adnan Buyung Nasution's explanation, this proves that the duties of the Presidential Advisory Council are not binding on the President. In fact, the Presidential Advisory Council can be said to only exist to carry out the orders of the 1945 Constitution of the Republic of Indonesia. In essence, the duties and functions of the Presidential Advisory Council are only to assist the President, which in this case is not mandatory. The 2006 revision of Law No. 19 only changed the phrase or word "Government Institution" to "State Institution" and then removed one of the requirements for the Presidential Advisory Council, which was considered important and relevant to the duties of a member of the Presidential Advisory Council, as well as removing the prohibition on holding multiple positions as stipulated in Article 12 of Law No. 19 of 2006.

Revising the Wantimpres Law is one of the changes that has led Indonesia to experience democratic regression.<sup>20</sup> The degradation of democracy is that people's sovereignty is seen as a way to manipulate or abuse, and political power dominates the constitutional system more than the sovereignty of the people and/or the sovereignty of a democratic state. Authoritarian governments often exploit state institutions to strengthen their power by limiting individuals' freedom of expression and public space,<sup>21</sup> Undermining the rule of law and ignoring the rights of minorities. This manipulation occurs when the regime sees the institution as its tool, not a state tool.

Similarly, Corales stated that one of the symptoms of autocratic legalism or democratic backsliding is the violation of laws and the

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<sup>20</sup> The decline of democracy in Indonesia reached its highest point during Jokowi-Amin's leadership between 2019 and 2024. With the joining of the Greater Indonesia Movement Party (Gerindra) as an opposition camp in the government coalition led by the Indonesian Democratic Party of Struggle (PDIP), constitutional supremacy in Indonesia began to decline. Significant support from most House members has resulted in several controversial and unpopular policies. One example is the application of "autocratic legalism" seen in making laws and reducing the independence of judges of the Constitutional Court. See: Eid al-Rishan, "Constitutional Court Regression in Post-Democratic Transition: A Comparison of Court Packing in Hungary, Poland, and Indonesia," *International Constitutional Court Symposium* Vol. 10. No. 2 (2023), p. 453

<sup>21</sup> Sarah Nuraini Siregar, Riaty Raffiudin, and Firman Noor, "Democratic Regression in Indonesia: Police and Low-Capacity Democracy in Jokowi's Administration (2014–2020)," *Journal of Social and Political Sciences* Vol. 26. No. 2 (2022), p. 201, <https://doi.org/10.22146/jsp.72129>, accessed 24 Mar 2025

constitution, meaning that the official government uses its power to change the law based on its intention rather than the public's wishes. This phenomenon is called a pseudo democracy. The amendment of these laws illustrated this pattern. It can be proven by the fact that the process was so fast and made in the transition regime.

This decline became more apparent when the V-Dem Institute's 2024 democracy report labeled Indonesia as an electoral autocracy, a shift from its previous ranking as an electoral democracy.<sup>22</sup> Declining freedom of expression, the degradation of election quality, and increasingly dominant executive control over the strengthening of democratic institutions were the backdrop to this transition. The following data is from the V-Dem Institute's 2025 report on the decline of democracy in 2024.

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<sup>22</sup> V-Dem Institute. Democracy Report 2025: 25 years of autocracy: democracy cut short?. University of Gothenburg: V-Dem Institute (2025), website: [https://www.v-dem.net/documents/62/V-Dem\\_Democracy\\_Report\\_2025\\_spanish\\_lowres.pdf](https://www.v-dem.net/documents/62/V-Dem_Democracy_Report_2025_spanish_lowres.pdf), accessed 16 Nov 2025

Este gráfico de dispersión de burbujas ilustra la evolución del Índice de Democracia Liberal (IDL) de 1990 a 2024. El eje horizontal (X) representa el IDL al inicio de la transformación del régimen, y el eje vertical (Y) representa el IDL en 2024. Una línea diagonal de referencia (y=x) indica la igualdad entre los dos puntos de medición. Las burbujas representan a diferentes países, con su tamaño relativo indicando la magnitud del cambio y su color correspondiendo a una región geográfica.

**Región de los Países:**

- Asia Oriental y Pacífico (Azul)
- Asia Central y Meridional (Lila)
- Oriente Medio y Norte de África (Verde)
- África Subsahariana (Gris)
- Europa del Este (Púrpura)
- Europa Occidental y Norteamérica (Naranja)

**Países Destacados:**

- Brasil:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Corea del Sur:** Muestra una mejora muy notable, pasando de un IDL bajo a uno muy alto.
- Grecia:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Argentina:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Perú:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
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- Leoto:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Montenegro:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Gambia:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
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- Serbia:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Niger:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Burkina Faso:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- El Salvador:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
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- Comoras:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Guinea-Bisáu:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
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- Honduras:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
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- Tailandia:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Maldivas:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Fliti:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Ecuador:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- República Dominicana:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Islas Salomón:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
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- Canadá:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Bangladesh:** Muestra una mejora significativa, pasando de un IDL bajo a uno alto.
- Siria:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Irán:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Yemen:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Corea del Norte:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- China:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- India:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Países Bajos:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Reino Unido:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Estados Unidos:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Francia:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Alemania:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Italia:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
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- Portugal:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
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- Países nórdicos:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
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- Países bálticos:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
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- Países mediterráneos del oeste:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Países mediterráneos del centro:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Países mediterráneos del sur-este:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
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- Países mediterráneos del centro-sur-oeste:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
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- Países mediterráneos del centro-sur-sur-sur-sur-sur-sur-sur-sur:** Muestra una disminución significativa, pasando de un IDL alto a uno bajo.
- Países mediterráneos del centro**

**Figure 1.** Data on the decline and rise of democracy in 64 countries worldwide in 2024

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increased polarization, placing Indonesia at its lowest level of democracy since the beginning of the 21st century.<sup>23</sup>

As noted in Rosalind Dixon and David Landau's book "Abusive Constitutional Borrowing", it is indicated that democracies today tend to regress towards authoritarianism through a combination of formal and informal changes to the law and Constitution, such as constitutional replacements and amendments, judicial reinterpretations, and new rules.<sup>24</sup> Indicators of a decline in democracy are evident in the diminishing quality of the fundamental principles of democratic states and the principles of the rule of law in governance practices.<sup>25</sup>

The decline of democracy in Indonesia is shown by the efforts of the political elite and authoritarian rulers to restore the original Constitution to be re-implemented in Indonesia, such as not limiting the term of office of the president, and reducing direct democracy.<sup>26</sup> This will threaten the order of society, both in filling the state's institutional structure and in state policy-making. An authoritarian institution, including ambiguous and easily moldable legal authority,

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<sup>23</sup> *Ibid.*, pp. 26-27

<sup>24</sup> Rosalind Dixon and David Landau, *Abusive Constitutional Borrowing*, 2021, p. 14, website: <https://doi.org/10.1093/oso/9780192893765.001.0001>, accessed 24 Mar 2025

<sup>25</sup> Ari Wirya Dinata, "Autocratic Legalism in the Formation of Laws in the Transition Period (Lame Duck Legislation)" (2025). In his writing, he explained that at least until now there are three indications of the weakening of democracy, namely *the first* regarding the issue of extending the presidential term towards the end of Jokowi's presidential term, *Second*, the formation of laws aimed at benefiting certain political actors *vis a vis* harming the public interest and resistance to input and criticism or the formation of the law (*law making process*) and third, the phenomenon of weakening the Judicial Power Institution.

<sup>26</sup> Melissa Crouch, *Constitutional Democracy in Indonesia* (Oxford University Press, 2023) pp. 14-15. See also the case of setbacks in Indonesia since the era of the second Jokowi administration. There is an appeal for Jokowi to continue in his third term as president. This effort abolishes the general election, giving the MPR the authority to re-appoint the president. Then, in 2019, the authority and structure of the Anti-Corruption Commission were amended to limit its power and role in dealing with large-scale corruption in high positions. Furthermore, in 2011, the Constitutional Court faced Legislative changes to its mandate so that in 2020, with the latest change giving longer terms to incumbent Judges, this raised concerns that it would potentially make Judges more supportive of the government's agenda.

widespread illegality, and elite impunity, is a manifestation of the weakening of today's democracy.<sup>27</sup>

About the revision of the Wantimpres Law, which changes the membership structure of the Wantimpres, it is one of the efforts to restore the Constitution towards the 1945 Constitution before the amendment, namely, the Advisory Council is not given a limit on the number of its members. The revision of the Presidential Advisory Council Law is considered a space for the current and future presidents to appoint their supporters to positions during the election campaign. This will open up opportunities for certain political elites or organizations to include their interests when they are part of the government through their position as a Wantimpres State Institution. This will also be one of the government's efforts to avoid getting sharp criticism and advice from the Presidential Advisory Council regarding the policies to be implemented.

Increased executive control has been one of the most important factors in the decline of democracy in Indonesia. Executive authority in Indonesia, which is highly centralized in the president and the institutions under his control, has grown stronger in recent years. The government has sought to subjugate and discredit state institutions such as the legislature, the judiciary, and independent agencies. The government's efforts to influence the appointment and dismissal of members in state institutions such as the Presidential Advisory Council clearly demonstrate how the dominance of executive control is growing stronger. The selection of officials loyal to the government in important positions has resulted in the loss of independence of these institutions, which ultimately reduces their effectiveness in carrying out their role of overseeing the government.

Evidence that the government is intervening in the legislative branch can be seen in the increasing number of coalitions of parties supported by the government during the legislative process. Several controversial laws were passed quickly without public discussion or sufficient interaction with various parties. An example is the amendment to the Presidential Advisory Council Law, which unknowingly gives the President complete freedom in determining the

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<sup>27</sup> Thomas Power and Eve Warburton, "1 The Decline of Indonesian Democracy," *Democracy in Indonesia*, (2021), p.8, website: <https://doi.org/10.1355/9789814881524-006>, accessed 29 Mar 2025

members of the Presidential Advisory Council, which will certainly affect the independence of this institution.

The rules that have been established indicate that the President has broad control over determining the number of members of the Presidential Advisory Council. The removal of the provision on the number of members of the Presidential Advisory Council is one of the factors that gives the President considerable authority within state institutions. Another example is the amendment to the KPK Law, which has been criticized for weakening the anti-corruption agency. This shows how government authority is being used to consolidate power while giving more power to members of political parties to serve as state institutions, which is fundamental in a democratic government.<sup>28</sup>

Making changes to the Wantimpres Law should be a form of abuse of power by the Parliament, in terms of making Draft Laws and Regulations (RUU) based on the interests of certain groups and not for the community or the state. The effort to make changes to the Wantimpres Law does not reflect the principle of people's sovereignty, both formally and materially. Materially, changing the membership structure of the Wantimpres opens up space for political rulers or other organizations to influence the president or even become part of the president, but to carry out their political interests. Obviously, there is no sense of urgency, and the crystal clear legal reasoning behind the revision to adding a number of members to this institution. The academic transcript of this revision of the laws also does not clarify and articulate the consideration (*legal ratio*). The nature of being an independent state institution in the Presidential Advisory Council will undoubtedly have an effect if it is still allowed.

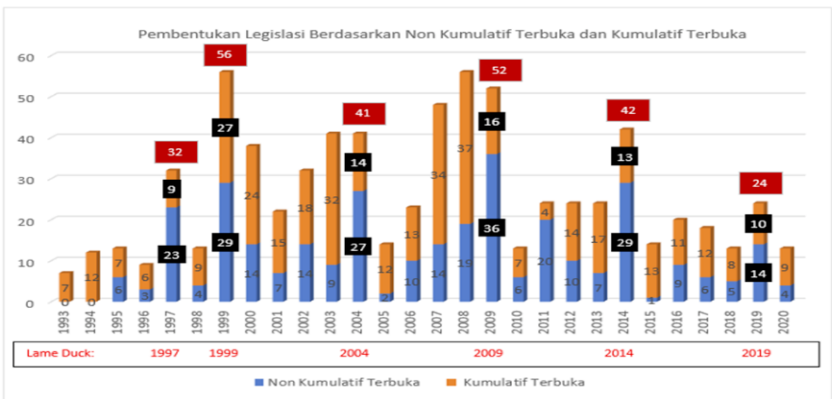
The drafting of the Presidential Advisory Council Law is considered to have ignored the stages of legislative drafting as stipulated in Law Number 12 of 2011, as amended by Law Number 13 of 2022 concerning Legislative Drafting. -Invitation Article 1 point 1, which mentions the 5 stages of legislative drafting, namely planning, drafting,

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<sup>28</sup> Matlosa, K. Global Trends and Impact of Democratic Recession: Hard Choices for the Global South. *South African Journal of International Affairs*, vol.30, no.3 (2023), pp 337–355.

discussion, ratification or enactment, and promulgation.<sup>29</sup> The ratification of the draft law only took a few days to plan, draft, discuss, and ratify, and this is what is referred to as accelerated legislation. The Presidential Advisory Council Law is one of the laws that is not included in the 2020-2024 National Legislation Program (Prolegnas). This statement is also strengthened by Fitra Arsil, who observed the pattern of lame duck legislation. He demonstrated the tendency of law maker to use the lame duck session to ratify many laws. In his research, he states that every transition year, the DPR showed an anomaly in the law-making process by ratifying many laws compared to the previous year. It took place in 2004, 2009, 2014, 2019, and 2024. The detail can be seen below.

Bar Chart on Law Making based on non open list and open list



Therefore, it can be said that the revisions made by the legislative body are still considered to have no urgency for the Indonesian government system and are not related to the conditions currently experienced by the Indonesian state and society. What is important at this time is that there are still draft laws that need to be amended and must be passed immediately because they are related to current issues, for example, the Asset Seizure Law.

It can be seen that there are still many cases of corruption occurring in Indonesia, so this is what needs to be given special

<sup>29</sup> Law Number 13 of 2022 Concerning the Second Amendment to Law Number 12 of 2011 Concerning the Formation of Legislation

attention by the government or the legislative body in passing a law. It is evident that by revising the Presidential Advisory Council Law, the current executive body has not yet appointed a Presidential Advisory Council. This means that the Presidential Advisory Council does not yet have a strong enough position to play its role in the Indonesian government system, and to date, there has been no performance from the Presidential Advisory Council that can be felt by the public, especially the President himself.

It should be noted that during the change of leadership of the seventh president of the Republic of Indonesia in 2024, until now, the eighth president of the Republic of Indonesia has not been elected and inaugurated, and the Presidential Advisory Council for his term. Suppose you look at Law Number 19 of 2006, as amended in Law Number 64 of 2024 concerning Wantimpres. In that case, it has regulated the deadline for the appointment of the Presidential Advisory Council to a maximum of 3 months following the election of the new President and Vice President. Therefore, it can be concluded that this is not in line with the rules in Article 9 paragraph (3) of Law Number 64 of 2024 concerning Wantimpres and violates Article 16 of the 1945 Constitution of the Republic of Indonesia.

According to a statement by the Special Advisor to the President for National Defense Affairs, Dudung Abdurachman, delivered at the end of his inauguration as Special Advisor to the President on October 22, 2024, there was no Presidential Advisory Council during Prabowo's administration. Dudung also mentioned that there were only Special Advisors assigned to handle their respective fields, and these Special Advisors were referred to as the Presidential Advisory Council. The regulations clearly state that these two institutions are very different. The Special Advisers to the President are regulated by Presidential Regulation No. 137 of 2004 concerning Special Advisers to the President, Special Envoys to the President, Special Staff to the President, and Special Staff to the Vice President. Based on the Constitution, the Special Advisers to the President are part of the structure of the Cabinet of the Republic of Indonesia.

## **Conclusion**

In the revision of Law Number 19 of 2006 concerning Wantimpres, there are several errors, including *First*, the position of the Presidential Advisory Council, which changes the status of the Presidential Advisory Council, initially regulated as a Government Institution, to become a State Institution. In interpreting the State Institution in the Presidential Advisory Council, it must be interpreted based on the definition of State Institutions according to their hierarchy, layers, and duties. It should also be emphasized that if the position of the Advisory Council becomes stronger, then the duties and functions of the Presidential Advisory Council must also be increased.

*Second*, the membership structure of the Presidential Advisory Council, which was initially determined by the number, is no longer determined by the number through its amendment, following the needs of the president. In terms of removing the provision stipulating the number of Wantimpres members, it is hoped that the President will carefully consider the number of members to be selected for the Presidential Advisory Council, as the number of Wantimpres members also affects the state budget.

*Third*, regarding the requirements to be a member of the Advisory Council, it no longer regulates special skills for prospective members. Regarding the number of Wantimpres members required by the President, even though the provision stipulating that Wantimpres members must have special expertise in the field of government must remain a reference for the President, this provision is no longer enforced in the latest Wantimpres Law.

*Fourth* is the prohibition for members of the Wantimpres who previously were not allowed to hold dual positions as structural officials in the amendment of the Article, which has been abolished. The prohibition on holding concurrent positions as a political party leader and a structural official in either the government or the private sector should remain in effect, as there are concerns about possible intervention from other parties, particularly political parties. If the President selects a member of his or her political party who lacks expertise in government affairs, such intervention could occur.

The revision of the Wantimpres Law also does not reflect the urgency of the changes, and the planning and ratification of this law were also carried out through fast-track legislation and were not part of

the 2020-2024 legislative program. Therefore, this Wantimpres Law is considered a form of regression in Indonesian democracy, as its drafting process ignored meaningful participation. The concept of rapid lawmaking is unknown in Indonesia, which only recognizes the issuance of government regulations in lieu of laws (Perpu), which, in this case, are issued under conditions of urgency and necessity.

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## **Website:**

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