AUTHORIZATION OF LAWS WITHOUT SIGNATURE PRESIDENT PRESPECTIVE SIYASAH DUSTURIYAH

THESIS

By:

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NIM 16230061

DEPARTMENT OF CONSTITUTIONAL LAW (SIYASAH)

SHARIAH FACULTY

ISLAMIC STATE UNIVERSITY MAULANA MALIK IBRAHIM MALANG

2020

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To Meet As Requirements

Obtained a Law Degree

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2020

STATEMENT OF AUTHENTICITY OF THESIS

In the of god,

With awareness and sense of responsibility for scientific development, the author states that the thesis with the title :

AUTHORIZATION OF LAWS WITHOUT SIGNATURE PRESIDENT PRESPECTIVE SIYASAH DUSTURIYAH

It is true a self composed scientific work, not a duplicate or transferring data of another person, unless the reference is stated correctly. In part, the thesis and bachelor's degree that I obtained because of it was null and void.

Malang, June 5 2020

Author

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FOREWORD

بسم الله الرحمن الرحيم

Alhamdulillahirabbil'alamin, who has given mercy and blessed in writing a thesis entitled: "**AUTHORIZATION OF LAWS WITHOUT SIGNATURE PRESIDENT PRESPECTIVE SIYASAH DUSTURIYAH**". We can it well. Our blessing and salutations are given to the prophet Rasulullah SAW who has given uswatun hasanah to us this syar'I life. By following him, may we belong to those who believe and get their benefits on the last dat of Judgement. Amien.

With all the teaching, guidance / direction, and assistance of service that have been provided, then with all humility the author expresses an incomparable thank you to:

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2. Dr. Sudirman, M.A, as the Dean of the Sharia Faculty Maulana Malik Ibrahim State Islamic University, Malang.
3. Musleh Harry, S.H., M.Hum, as Chair of the Department Constitutional Law Faculty Sharia, Maulana Malik Ibrahim State Islamic University of Malang.
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6. Staff of the Sharia Faculty State Islamic Univrsity Maulana Malik Ibrahim Malang, the author's thank you for participating in the completion of this thesis.
7. To both my parents, who always pray, provide motivation, and sacrifice.
8. Father and guardian who tirelessly pray, support to the end, there is no other word but sorry and thank you for everything, may Allah SWT reply to he with his heaven.

With the completion of this thesis report, we hope that the knowledge we have gained during college can provide the benefits of charity in the world and the hereafter. As a man whon never escapes error, the writer really expects the door of forgiveness and critism and suggestions from all parties for the sake of improvement effort in the future.

Malang, June 5 2020

Author

DESY CRISTALIA

ID Number 16230061

TRANSLITERATION GUIDELINES

A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian, included in this category are the Arabic names of the Arabs, while the Arabic names of the Arabs are written as the spelling of the national language, or as written in the reference book. Writing the title of the book in the footnote and bibliography, still using the provisions of transliteration.

Many choices and transliteration provisions that can be used in writing scientific papers, both international standarts. National or special provisions used by certain publishers. Transliteration used by the Sharia Faculty of the State Islamic University (UIN) Maulana Malik Ibrahim Malang uses EYD plus, namely transliteration based on the Joint Decree (SKB) of the Ministry of Religion of the Republic of Indonesia, January 22, 1998, No. 159/1987 and 0543.b / U / 1987, as stated in the A Guidge Arabic Transliteration Manual, INIS Fellow 1992.

B. Consonant

ا = not symbolized	ض = Dl
ب = B	ط = Th
ت = T	ظ = Dh
ث = Ta	ع = ‘ (face up)

ج = J	غ = Gh
ح = H	ف = F
خ = Kh	ق = Q
د = D	ك = K
ذ = Dz	ل = L
ر = R	م = M
ز = Z	ن = N
س = S	و = W
ش = Sy	ه = H
ص = Sh	ي = Y

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word then in transliteration it follows the vowel, not symbolized, but if it is located in the middle or end of a word, then it is symbolized by a comma above (‘), turning around with a comma (‘) for ع

C. Vocal, Long and Diftong

Every Arabic writing in the form of Latin fathah vowels is written with “a”, Kasrah with “I”, dlommah with “u”, while each long reading is written in the following way :

Vocals	Long	Diphthong
a = fathah	Â	قال to be qaala
i = kasrah	Î	قيل to be qiila

u = dlommah	Û	دون to be duuna

Specially for the reading ‘nisbat, it should not be replaced ‘I’, but still written with ‘iy’ in order to describe it ‘nisbat in the end. Likewise for the diphthong, wawu and ya’ after fathah is written with ‘aw’ and ‘ay’. Note the following example:

Diphthong	Example
Wawu = و Ya’ = ي	قول to be qawlun خير to be khayrun

D. Ta’ marbuthah (ة)

Ta’ marbuthoh (ة) translitered with “t” if it is in the middle of a sentence, but ta’ marbuthoh is at the end of a sentence, then translitered using “h” for example اللمدرسةالرسلة become al-mudarasah ar-risalah, or when it is in the middle of a sentence, then transliteres using “h” for example اللمدرسةالرسلة which consist of the composition of mudlaf and mudlaf ilayh, then translitered by using “t” which is connected with the following sentence, for example فيرحمة الله become fii rahmatillah.

E. Said Clothing and Lafadh al-Jalalah

The word clothing in the form of “al” ال in the lafadh jalalah which is in the middle of a standardized sentence (idhafah) is removed. Consider the following example:

1. Al-Imam al-Bukhariiy said ……..
2. Al-Bukhariiy in the muqadddimah the book explains……..
3. Masya Allah kaana wa maalam yasyaa lam yakun
4. Billaah ‘azza wa jalla

F. Hamza

Hamzah is translitered with apostrophe. However, it only applies to hamzah which is located in the middle and at the end of a word. When it is located at the beginning of a word, hamzah is not symbolized, because in Arabic writing it is alif. Example:

شيء – syai’un	أمرت - umirtu
النو – an-na’un	تأخذون- ta’khudzun

G. Word Writing

Basically every word, whether fi’il (verb), isim or letters, is written separately. Only certain words whose writing with Arabic letters are commonly coupld with other words, because there are Arabic letters or harakat that are omitted, so in this transliteration the writing of the word is also coupled with other words that follow it.

Example: وانااللهلهوخيرالرازقين – wa innalillaahi khairar-raaziqiin

Although in the Arabic script system capital letters are unknow, in this transliteration they are also used. The use of capital letters as applicable in EYD, including capital letters used to write by the article

clothing, then those written with capital letters remain the initial name itself, not the initial letters of the article.

Example: ومامحمدالآرسول – wa maa Muhammadun illaa Rasuul

The use of capital letters for Allah only applies if the Arabic script is indeed complete and if the writing is combined with other words so that there are letters or letters that are omitted, then capital letters are ot used.

Example: اللهالامرجميعا – lillaahi al-amru jamii'an

For those who want fluency in reading, transliteration guidelines are an inseparable part of recitation.

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ABSTRAK

Desy Cristalia, NIM 16230061, 2020. ***Pengesahan Rancangan Undang-Undang Tanpa Tanda Tangan Presiden Perspektive Siyasah Dusturiyah***. Skripsi. Jurusan Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Dra. Jundiani, S.H, M.Hum.

Kata Kunci : Pengesahan Rancangan Undang-Undang, Rancangan Undang-Undang, Fikih Dusturiyah

Kewenangan legislasi pasca amandemen UUD 1945, menggambarkan adanya suatu pergeseran kekuasaan legislasi dari Presiden ke DPR. Perubahan ini membuat pertanyaan mengenai kekaburan makna dalam Pasal 20 ayat (5) UUD 1945. Tidak adanya penandatangan atau pengesahan Presiden dalam rancangan undang-undang tetap sah menjadi undang-undang. Apakah pengesahan presiden terhadap undang-undang sebatas formalitas saja mengingat tidak adanya pengesahan Presiden pun rancangan undang-undang yang telah disetujui bersama tetap sah menjadi undang-undang. Dari uraian diatas dapat dirumuskan beberapa permasalahan pokok dalam penelitian, yaitu: bagaimana peran presiden dalam pengesahan undang-undang? Bagaimana kewenangan presiden dalam pembentukan undang-undang perspektif siyasah dusturiyah?

Tujuan dilakukan penelitian ini adalah untuk mengetahui kewenangan presiden dalam pembentukan perundang-undangnya khususnya dalam pengesahan suatu undang-undang. Jenis penelitian yuridis-normatif dengan pendekatan penelitian perundang-undangan. Jenis penelitian ini menggambarkan secara sistematis mengenai pengesahan RUU yang dilihat dari segi perundang-undangan dan pendekatan konseptual dari pandangan-pandangan dari ilmu hukum.

Hasil dari penelitian ini menyimpulkan bahwa secara materiil, pengesahan tanda tanda tangan presiden tetap sah karena hanya batas untuk menyelesaikan perdebatan. Namun secara formil, undang-undang tersebut tidak sah, harus dilakukan tanpa mengajukan tuntutan lainnya. Jika dilanggar maka melanggar tindakan administrative. Terdapat relevansi mengenai kewenangan lembaga eksekutif dalam pembentukan undang-undang dengan fikih siyasah dusturiyah. Relevansi itu terwujud bahwa dalam islam juga seorang khalifah berhak menyerahkan dan mengesahkan qanun/hokum yang hendak dibuat oleh *ahlu halli wal aqdi* dalam musyawarah. Sesuai dengan hasil penelitian di atas, disarankan kepada lembaga eksekutif untuk selalu memperhatikan segala aspek dan kaidah-kaidah baik secara materiil maupun secara formil.

ABSTRACT

Desy Cristalia, ID Number 16230061, 2020. ***Authorization Of Laws Without Signature President Prespective Siyasah Dusturiyah***. Thesis. Department of Constitutional Law (Siyasah), Faculty of Syariah, Islamic State University of Maulana Malik Ibrahim Malang. Supervisor Dra. Jundiani, S.H, M.Hum.

Keywords: Ratification of the Draft Law, Draft Law, Siyasah Dusturiyah

The authority of legislation after the amendment to the 1945 Constitution, illustrates a shift in legislative power from the President to the DPR. This amendment raises questions about the obscurity of meaning in Article 20 paragraph (5) of the 1945 Constitution. There is no signatory or endorsement by the President in the draft law.remains lawful. Is the president's endorsement of the law a mere formality given the absence of the President's endorsement, even a draft law that has been agreed to remains legally valid. From the description above, several main problems in the research can be formulated, namely: what is the role of the president in passing the law? What is the authority of the president in forming the perspective of siyasah dusturiyah?

The aim this study is to find the president authoruty the formation of a especially in the act of the legislation. Type of juridical-normative research with a statutory research approach. This type of research systematically describes the passage of a bill in terms of legislation and relates it to the concept of legal theory.

The results of this study conclude that materially, the ratification of the president's signature remains valid because it is only the limit to settle the debate. But formally, the law is mentionedIt isn't illegal, it must be done without submitting other demands. If it is violated, it violates administrative actions. There is relevance regarding the authority of executive agencies in the formation of laws with fiqh siyasah dusturiyah. The relevance is realized that in Islam also a caliph has the right to surrender and ratify the qanun / law that would be made by ahlu halli wal aqdi in deliberations. In accordance with the results of the above research, it is suggested to the executive agency to always pay attention to all aspects and rules both materially and formally.

مستخلص البحث

ديسي كريستاليا, رقم الطالب 16230061, 2020, التصديق على مشروع القانون دون التوقيع الرئاسي على منظور الدستورة في سياساه. البحث الجامعي. بقسم القانون الإداري, في كلية الشريعة بجامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج, المشرفة: جنديان الماجستير.

الكمة الئيسية: مشروعية القا نون, مشروع القانون, الا سياساه الدستورية.

تشريع ما بعد التعديل من الدستور 1945, واصفا التحول في تشريعات السلطة من الرئيس إلى جمهورية كوريا الديمقراطية الشعبية. ةهذا التغيير يجعل الاستفسارات بشأن عدم وضوح المعنى في المادة 20 الفقرة (5) الدستور 1945. ولايزال القانون لا يزال غير قانوني لأي موقع أو تصديق على الئيس في مشروع القانون. وسواء اقتصر تصديق الرئيس على القانون على الشكليات وحدها, نظراً لعدم تصديق الرئيس, فإن المشروع المتفق عليه قانوناً لا يزال صالحاً ليصبح قانوناً. من التفيسر المذكور أعلاه يمكن صياغة.

والغرض من هذا البحث هو معرفة سلطة الرئيس في وضع قوانينه, ولا سيما في التصديق على قانون. هذا النوع من البحوث القانونية- المعيارية مع نهج البحوث بشكل منهجي ما يتعلق بالتصديق على مشروع القانون كما يتضح من حيث التشريع والنهج المفاهيمي لآراء العلوم القانونية.

وخلصت نتائج هذه الدراسة إلى أن تأكيد توقيع الرئيس يبقى صحسحاً من الناحية الموضوعية لأنه ليس سوى حد لحل النقاش. ومع ذلك, فإن القانون غير قاتوتي, للقيام بذلك دون تقديم أي مطالب أخرى. وفي حالة انتها كها, تنتهك الإجؤاءات الإدارية. 10 وتو جد أهمية لسلطة المجلس التنفيذي في وضع التشريعات ذات الاجتهادات القضائية. يدرك أن الصلة في الإسلام أيضا الخليفة له الحق في الا ستسلام والتصديق على قانونحو كوم الذي هو أن أدلى به أهل هالي والعقادي في التداول. وفقا انتا ئج البحث أعلاه, فإنه من المستحسن للمؤ سسات التنفيذية أن تولي دائمما اهتماما لجميع الجوانب والاتفاقيات على حد سواء من النا حية الموضوعية وبشكل شكلي.

CHAPTER I

INTRODUCTION

A. Background

The 1945 Constitution underwent article changes during the New Order era. The first amendment consisted of 9 articles which were stipulated on October 19, 1999. The second amendment consisted of 25 articles, which was stipulated on August 18. The Third Amendment has 23 articles and was stipulated on November 9, 2001. The Fourth Amendment which was stipulated on August 10 has amended 13 articles as well as 3 articles of Transitional Rules and 2 articles of Additional Rules.[1]

Various groups suspect that the changes to the articles above are because these articles are directly related to the enormous power of the President, almost without a checks and balances mechanism.[2].Seeing the results of these changes, it is undeniable that one of the main targets of the constitutional amendments is the presidential institution and the people's representative institution.

Viewed from the point of view of constitutional law, the state is an organization of power and that organization is a working system of state equipment which is a whole work system which describes the relationship and

1Taufiqurrahman Syahuri, *Hukum Konstitusi*: *Proses dan Prosedur Perubahan UUD* 1945 1999-2002 *serta Perbandingannya dengan Konstitusi Negara Lain*, (Bogor: Ghalia Indonesia, 2004), 207-208

2 Ni'matul Huda, *Politik Ketatanegaraan Indonesia*, (Yogyakarta: Pusat Studi Hukum, Universitas Islam Indonesia, 2003), 17-18

division of tasks and obligations between each state equipment to achieve a goal. certain.[3]

Shifting the power of legislators to the DPR, the main step that must be taken is to prepare human resources who control and understand the laws and regulations. Understanding the technique of drafting laws and regulations is indeed not too difficult, because there are guidelines that can be studied and contained in the Law on the Formation of Legislation.[4]

Although the changes have placed legislative power in the hands of the DPR, it does not mean that the President no longer has a role in the process of forming laws. Article 20 paragraph (2) and paragraph (3) state that a constitution can only become a law if there is a mutual agreement between the DPR and the President. If the constitution does not get mutual approval, then the constitution cannot be submitted again in court.

In summary, the consequences of sharing of legislative power in the legislative process lead to two things that need to be observed, namely first, the validity of laws is based on mutual agreement between the DPR and the President. Second, after 30 days, the law will take effect automatically even though it has not been approved by the President because the constitution requires the President to promulgate it in the State Gazette. The two things above are interrelated statements, so it is worth asking if previously there was a

3 Soehino, *Ilmu Negara*, (Yogyakarta: Liberty, 1980), 140
4 Maria Farida Indrati, *Ilmu Perundang-Undangan* 2: *Proses dan Teknik Pembentukkannya*, (Yogyakarta: PT. Kanisius, 2007), 9-10

mutual agreement between the DPR and the President but after that the President was not willing to ratify a constitution, but the constitution was still promulgated. The formulation becomes very interesting to study in depth.

Article 20 paragraph (5) of the 1945 Constitution if examined will show inconsistencies. On the one hand, the President wants to show positive cooperation with the DPR by giving approval in the discussion process. On the other hand, the President wants to develop what he has approved, even though it does not provide any legal consequences, or even the President wants to save himself if in development there is resistance from the community or a group of people to a constitution that he has approved.[5]

What is the real urgency of the act of 'the President ratifying' a constitution as stated in Article 20 paragraph (4) which reads 'The President ratifies a constitution that has been mutually agreed upon to become a law'. Why is it so important? because the provisions of Article 20 paragraph (4) must mean that ratification by the President in every legislative process is an obligation for the President. Therefore, it is not at all justified or at least it should be known that there is something if a formulation is found that ignores the act of ratification.

In fact, problems need not arise if the formulation of Article 20 stops at paragraph (4) only. Because after all, Article 20 paragraph (4) becomes a 'locking' clause which closes the opportunity for the President to act other than

5 Algi Aulalangi, *Penandatanganan atau Pengesahan Presiden Terhadap Undang-Undang (Tinjauan Pasal 20 Ayat (5) UUD 1945)*, (Undergraduate Thesis, Universitas Islam Negeri Sunan Ampel Surabaya, 2018).

to ratify the Constitution that has been agreed with the DPR into a law. However, the approval of the formulation of paragraph (5) actually opened the opportunity for the President to take action to ratify the Constitution that had been agreed with the DPR.

The draft law remains valid as law even though there is no ratification from the President within a period of 30 days.[6]For example, during the time of President Megawati Soekarnoputri, several laws were enacted and binding on the general public without being endorsed by the President, namely Law no. 25 of 2002 concerning the Establishment of the Riau Archipelago Province. UU no. 32 of 2002 concerning Broadcasting. UU no. 17 of 2003 concerning State Finance. UU no. 18 of 2003 concerning Advocates. Then, most recently, when President Joko Widodo refused to sign the MD3 Law.[7]Even though the draft law has been approved by the minister who represents the President and the DPR during joint discussions.

This verse is a 'declaration' of the President's actions not to ratify a constitution. It could be said that the verse annulled the previous verse so that it was as if the President's actions not ratifying the constitution did not violate the constitution. It is at this level that Article 20 paragraph (5) becomes a formulation that invites many questions. The principal question is, is the

6 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 20 ayat (5).
7Asep Fathulrahman, "Jokowi: Saya tidak Menandatangani UU MD3" , https://www.google.com/amp/s/m.republika.co.id/amp/p5kvtn354 , Diakses tanggal 14 Maret, 2018

provision reasonable and justifiable, can the state administration practice be justified by law, or legally but not politically?

Furthermore, what will be discussed in this paper is the President's ratification of the Act, the harmonization of the theory of checks and balances in government and based on the theory of siyasa dusturiyah. Based on the background of the problems written, the researchers are interested in analyzing the "Legal Politics of the Mechanism of Legalization of Draft Laws"

B. Problem Formulation

Based on the description of the background above, the legal problems can be formulated as follows:

1. How is the legal politics of the mechanism for ratifying the President in the State Administration?

2. Is the President's authority in the law in accordance with the theory of checks and balances and the dusturiyah strategy?

C. Research Objectives

Based on the formulation of the problem above, we can take the research objectives as follows:

1. To analyze the legal politics of the mechanism for ratification of the President in the state administration.

2. To analyze the President's authority in the Act in accordance with the theory of checks and balances and the dusturiyah strategy.

D. Research Benefits

Seeing the above objectives, there are several benefits contained in this research, including the following:

1. Theoretically

Theoretically, the researcher hopes that this research can be used in scientific terms. This research is expected to increase knowledge and develop science in terms of existing law in Indonesia. Especially in the legal system in Indonesia.

2. Practically.

Practically, the researcher hopes that this research will be a contribution to the researchers who will research in the future. Researchers hope that in this research can provide broader insight to readers and can also better understand

Readers, how is the system for formulating, approving, and disseminating a law? law to the public in accordance with Law Number 12 of 2011 concerning invitation.

E. Research Methodology

The research method used is normative legal research or library research which can be described as follows:

1. Types of research

This research is a research that has a method that is different from other research. The legal research method is a systematic way of conducting research.[8]

This research uses library research or normative legal research. This legal research does not recognize field research because what is being studied is legal material so that it can be said to be library based, focusing on reading and analysis of the primary and secondary materials.[9]

2. Research approach

Research approach is a method or method of conducting research.[10]In accordance with the type of research, namely normative legal research (normative juridical), it can be used more than one approach.[11]In this study, a

8Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: PT Citra Aditya Bakti), 2004, 57.

9Jhony Ibrahim, *Teori dan Metodelogi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), 46.

10Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktek* (Jakarta: Rieneka Cipta, 2002), 23.

11Ibrahim, *Teori dan Metodelogi Penelitian*, 300.

statutory approach (Statue Approach) and a concept approach (Conceptual Approach) were used.[12]

The statutory approach is carried out to examine the laws and regulations governing the authority of the President in the formation of laws in the 1945 Constitution of the Republic of Indonesia. While the comparative approach is carried out to see how between one law that regulates similar provisions but does not in line with other laws, so that common ground will be found in the form of similarities and differences that will assist in the analytical process.

3. Types and Sources of Legal Materials

In normative legal research, library materials are basic materials which in research science are generally called secondary legal materials.[13]The secondary legal materials are divided into primary and secondary legal materials.

1. *Primary Legal Material*

   Primary legal materials are legal materials that are authoritative, which means they have authority. Primary legal materials include:

   a. Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

12 Muhammad, *Hukum dan Penelitian Hukum*, 113.

13Soejono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Tinjauan Singkat* (Jakarta: Rajawali Press, 2006), p. 24.

b. Law Number 12 of 2011 concerning the Formation of Legislation.

c. The Book of Siyasa Duturiyah

2. *Secondary Legal Material*

Is legal material that is helpful and supports primary legal material in research that will strengthen the explanation in it. Among them are books, journals and documents that review the President's Authority in passing a law, regarding the concept of checks and balances in Siyasah Duturiyah which will be used as analysis in this study.

F. Legal Material Collection Method

The collection of legal materials in library research is a documentary technique, which is collected from literature studies such as books, papers, articles, magazines, journals, newspapers or the work of experts. In addition, interviews are also one of the data collection techniques that uphold documentary techniques in research and serve to obtain data that supports research if needed.

G. Legal Material Processing Method

This study used the processing of legal materials by editing, namely re-examination of legal materials obtained mainly from their completeness, clarity

of meaning, suitability, and relevance to other groups.[14]After editing, the next step is coding, namely giving notes or signs stating the type of legal material source (literature, law, or document), the copyright holder (author's name, year of publication) and the order of the formulation of the problem.

Then the next step is the reconstruction of legal materials, namely rearranging the data in an orderly, sequential, logical manner, so that it is easy to understand and interpret. The final step is to locate the sequential data of the problem.[15]

H. Legal Material Analysis Techniques

After the legal materials are collected, then the legal materials are analyzed to get conclusions, the form in the legal material analysis technique is Content Analysis. Content Analysis shows an integrative and conceptual analysis method that tends to be directed at finding, identifying, processing, and analyzing legal materials to understand, their significance, and relevance.[16]

I. Previous Research

The researcher describes several thesis titles that have been previously researched by students who still have similarities, even though there are

14Saifullah, *Konsep Dasar Metode Penelitian Dalam Proposal Skripsi* (Hand Out, Fakultas Syariah UIN Malang, 2004), th

15 Muhammad, *Hukum Dan Penelitian Hukum*, 126.

16Burhan Bungin, *Metodelogi Penelitian Kualitatif: Aktualisasi Metodelogi Kearah Ragam Varian Kontemporer*, (Jakarta: PT. Raja Grafindo, 2007), 203.

similarities, but because there are similarities in the research, it does not mean that the research that has been done by previous researchers is exactly the same as what has been studied before. Because the researchers have conducted a search and the results have not been studied according to the exact same theme and title as what the researcher is researching. The themes that have similarities by EMA that will be studied by researchers include:

Algi Aulalangi (14370045) 2018 with a thesis entitled "Signing or Ratification of the President Against the Law (Review of Article 20 Paragraph (5) of the 1945 Constitution)" Student Study Program of Constitutional Law (Siyasaha) Faculty of Sharia and Law State Islamic University Sunan Kalijaga Yogyakarta.

The result of research by Algi Aulalangi is the interpretation of Article 20 paragraph (5) of the 1945 Constitution which gives rise to two interpretations regarding the enactment or validity of the draft law into law. Then reinforced by the contents of Article 73 of Law no. 12 of 2011. After that, the researchers also adjusted to the application of the siyasa dusturiyah theory which discussed state activities related to legislation.

Rahayu Prasetyaningsih with a journal entitled "Measuring the Power of the President in Formation of Legislation According to the 1945 Constitution".

The results of Rahayu Prasetyaningsih's research are discussing the types of power of the President to form laws and regulations, both in the formation of

laws together with the DPR and the power of the President to form other laws and regulations.

M. Teguh Irma, Boy Yendra Tamin, Sanidjar Pebrihartiati in a journal entitled "Legalities of Laws Without the President's Signature" with the results of research on the philosophy of mutual consent in the formation of laws.

Previous Research

NO	Name and Title	Formulation of the problem	Research result	Material Object (Difference)
1	**Algi Aulalai** Signing or Ratification of the President Against the Law (Review of Article 20 paragraph (5) of the 1945 Constitution)	1. What is the interpretation of the President's signing or ratification of Article 20 paragraph (5) of the 1945 Constitution? 2. How is the existence of the President's signing or ratification of the law in Article	The President's signature or ratification of laws is only a procedural or formality.	1. Discussion on the legal politics of authority. 2. Discussion on the authority of checks and balances

		20 paragraph (5) of the 1945 Constitution from the perspective of siyasa dusturiyah?		
2	**Rahayu Prasetyaningsih** Measuring the Power of the President in the Formation of Legislation According to the 1945 Constitution.	1. Has the 1945 Constitution after the amendment given sufficient power to the President? 2. What are the powers that are direct derivatives of the President's power?	The President's authority in the formation of Laws, Perpu and PP is expressly stated in the 1945 Constitution, while the authority to form Perpres is the authority which is interpreted from the provisions of Article 4 paragraph (1) of the 1945 Constitution.	Authority of the President in accordance with the theory of Checks and Balances
3	**M. Teguh Irma,**	1. What is the	The role of the	1. Analysis of

	Boy Yendra Tamin, Sanidjar Pebrihartiati Legality of the Act without the President's Signature	philosophy of mutual consent in the formation of laws? 2. What is the role of the President in making laws? 3. What is the mechanism for signing the law?	President is very important in the formation of law. The President is given the right to ratify the Constitution in the form of affixing a signature by the President as the basis for promulgation in the State Gazette, so that the formal requirements for the formation of the law are fulfilled.	the legal politics of the mechanism for the approval of the President 2. Analysis with the theory of checks and balances and siyasa dusturiyah.

J. Systematics of Writing

The systematics of writing this law is done by dividing it into three chapters with the following systematics:

CHAPTER I INTRODUCTION

This chapter discusses the background of the problem, problem formulation, research objectives, research benefits, research methodology, previous research, and writing systematics.

CHAPTER II LITERATURE REVIEW

Contains a theoretical framework related to the theory of the principle of checks and balances, the theory of legal politics, and the theory of siyasa dusturiyah.

CHAPTER III ANALYSIS OF RESEARCH RESULTS

The first discussion is related to the legal politics of the mechanism for ratifying the President in the state administration. The second discussion explains the President's authority in the Act in accordance with the theory of checks and balances and siyasa dusturiyah.

CHAPTER IV CLOSING

This chapter consists of conclusions and suggestions from the author, bibliography, and author's biography.

CHAPTER II

THEORITICAL REVIEW

A. Principles of Checks and Balances

The trias politica theory put forward by Montesqieau looks very clear that the people's representative institution or legislative body is one of the state institutions that stands alone, separate from other state institutions.[17]

As an embodiment of people's sovereignty, the people's representative institution is also an institution that functions as checks and balances against other state institutions. To carry out these functions, the people's representative institutions are usually given several functions, for example, the legislative function, the supervisory function, and the budget function. These checks and balances aim to ensure that the executor of state power monitors and balances one another. In the sense that the authority of one State institution will always be limited by the authority of other State institutions. With this concept, checks and balances actually start from the existence of a power limit.

The principle of checks and balances is a constitutional principle that requires that the legislative, executive, and judicial powers be equal and mutually control each other. State power can be regulated, limited, and even controlled as well as possible, so that abuse of power by state officials or

17 Romi Librayanto, *Trias Politica dalam Struktur Ketatanegaraan Indonesia* (Makassar: PuKAP, 2008), 18.

individuals holding positions in state institutions can be prevented and overcome.[18]The mechanism of checks and balances in a democracy is a natural thing, even very necessary. This is to avoid the abuse of power by a person or an institution, or also to avoid the concentration of power on a person or an institution, because with a mechanism like this, one institution will control or supervise each other, and can even complement each other.[19]

The principle of checks and balances can be operationalized in the following ways:[20]

a. Giving the authority to take action to more than one institution. For example, the authority to make laws is given to the government and parliament;

b. Granting the authority to appoint certain officials to more than one institution, such as the executive and the legislature;

c. Legal remedies for impeachment of one institution against another;

d. Direct supervision from one institution to another, such as the executive supervised by the legislature;

18Jimly Asshidiqie, *Konstitusi* dan Konstitusionalisme Indonesia,(Jakarta : Sinar Graphic, 2010), 61.

19Afan Gaffar, *Politik Indonesia : Transisi Menuju Demokrasi*, (Yogyakarta: Student Library, 2006), 89.

20Munir Fuady, *Teori Negara Hukum Modern*, (Bandung: Refika Aditama, 2009), 124.

e. Granting authority to the court as an institution to decide disputes over authority between the executive and legislative bodies.

These checks and balances, which result in one branch of power within certain limits being able to interfere in the actions of another branch of power, are not intended to increase work efficiency, but to limit the power of each branch of power effectively.

Trias Politica is not always real apart. But checks and balances are maintained, mainly thanks to a tradition of clear and institutionalized opposition. In a democracy like Indonesia, the challenge is precisely the dysfunction of the trias politica, so that checks and balances are not created.[21]Coupled with the mentality of the officials in the three institutions, which if one of them is carrying out the checks and balances function, the party being investigated feels disturbed by his independence.

The system of checks and balances in the administration of power allows for mutual control between existing branches of power and avoids hegemonic, tyrannical and centralized power actions.[22]This system prevents overlapping of existing authorities. Likewise, in Jimly Asshiddiqie's opinion, the existence of a system of checks and balances results in state power being able to be regulated, limited and even controlled as well as possible, so that abuse of

21Zainal C. Airlangga, "Korpsi Trias Politica", htpps://www/neraca.co.id/article/93551/korupsi-tias-politica, diakses tanggal 28 November 2017

22A. Fickar Hadjar ed. Al, *Pokok-pokok Pikirandan Rancangan Undang-Undang Mahkamah* Konstitusi, (Jakarta: KRHN dan Kemitraan, 2003), 4.

power by state administration officials who occupy positions in the state can be prevented and handled as well as possible.[23]

According to Mirian Budiardjo, the doctrine of the checks and balances system among state institutions presupposes equality and mutual monitoring of one another, so that no institution is more powerful than the other.[24]

The checks and balances mechanism provides an opportunity for the executive to control the legislature. Although it must be admitted that the DPRD has a very strong political position and often does not have political accountability because it is closely related to the general election system that is run.

The pattern of formation of checks and balances is closely related to the formation of the doctrine of the separation of powers which was built with the pattern of formation with the intention of inspiring ongoing power. The GoLongan who rule as the holder of power, tend to abuse their power, especially when that power is gathered in one hand or body. Then, the truth of this is informed in the Qur'an: "Know! Verily, man is indeed transgressor, for He sees himself as self-sufficient."[25]If humans feel they are powerful enough, military enough, enough to get the support of the masses, enough to have

23Jimly, *Konstitusi*, 74.

24Miriam Budiardjo, *Demokrasi* di Indonesia Parlementer dan Demokrasi Pancasila : Kumpulan Karangan Prof. Miriam Budiardjo, (Jakarta : PT. Gramedia Utama, 1994), 227.

25qs. Al-Alaq (96); 6-7

enough power, they are usually enough to be infected with a feeling of arrogance.

Islamic teachings have the concept of separation of powers that occurred when the Prophet Muhammad SAW founded the state of Medina. The executive, legislative, and judicial functions have been implied in a country through the word of Allah SWT, namely: "Indeed, We have sent our Messengers with clear evidences and We have sent down with them the Bible and the balance so that humans can carry out justice. And We created iron in which there is great strength and various benefits for humans, and so that Allah may know who helps (religion) Him and His messengers even though Allah does not see. Verily Allah is Strong, Most Mighty ".[26]

B. Legal Politics

Moh Mahmud MD formulated legal politics, namely the official policy on law that will be enforced either by making new laws or by replacing old laws, in order to achieve the goals of the State.[27]Soedarto defines legal politics as state policy through state agencies authorized to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to.[28]

26QS. Al-Hadid (57): 25

27Moh. Mahmud MD, *Politik* Hukum di Indonesia, (Jakarta : Rajawali, 2010), 1

28Soedarto, in Moh. Mahfud MD, *Membangun* Politik Hukum, Menegakka Konstitusi,(Jakarta : Rajawali Pers, 2011), 14

The understandings given by the experts above can be concluded that legal politics is a government policy in regulating its people through systematic legal development to achieve common goals in the state. Legal politics in practice is always identified with policies in the form of the formation of laws and regulations. The direction of the formation of legislation is legal politics as a means of the state to achieve its goals.

Purnadi Purbacaraka and Soerjono Soekanto revealed that legal politics includes activities to choose values and apply values.[29]So legal politics is a guideline for forming laws and regulations so that they are in accordance with Pancasila and the 1945 Constitution

Prior to the reformation, precisely during the New Order era, the direction of Indonesian legal development was determined by the GBHN (Outline of State Policy). This GBHN, drawn up by the MPR at that time, determined the direction of the development of the Indonesian nation, both medium-term development and long-term development. In the 1993 GBHN, namely in Chapter II, E.5 (regarding the Legal Field Target) which reads:[30]

The establishment and functioning of a stable national legal system, based on Pancasila and the 1945 Constitution, by taking into account the plurality of applicable legal systems, which are able to guarantee certainty,

29Purnadi Purbacaraka and Soejono Soekanro, in Zen Zenibar, *Degulasi* dan Konfigurasi Politik di Indonesia Suatu Tinjauan dari Sudut Hukum Tata Negara, Thesis, (Jakarta: University of Indonesia, 1997), 59.

30Mahfud MD, *Politik Hukum*, 49.

order, enforcement and legal considerations that support national development. Supported by legal apparatus, advice, and adequate infrastructure as well as existing and law-abiding communities.

After the Reformation, which was followed by the fall of the Second President of the Republic of Indonesia, namely President HM. Suharto in 1998. Indonesia built its laws on the demands of reform, namely the National Law Reform. After the reformation, in 2004, the direction of Indonesia's development which was previously determined by the GBHN and after the reform of the GBHN was replaced by the National Medium Term Development Plan (RPJMN).[31]

Legal politics has two characteristics, namely permanent nature and temporary nature. The permanent nature is the basis of belief for the formation and enforcement of the law.[32]In the national legal system contains:

1. The national legal system based on and to defend the principles of Pancasila and the 1945 Constitution;

2. There is no law that gives special rights to citizens based on ethnicity, race, and religion;

31Satya Arinanto *Politik Pembangunan* Hukum Nasional dalam Era Pasca Reformasi, *Artikel ini disampaikan dalam acra Pengukuhan Guru Besar Fakultas Hukum Universitas Indonesia di* Aula Fakultas Kedokteran Indonesia, Indonesia, (Jakarta: March 18, 2006).

32Bagir Manan, "Pemahaman mengenai Sistem Hukum Nasional", Makalah Kuliah Pembukaan (pra pasca) Program lmu Hukum Pascasarjana UNPAD, Bandung, 1994, 15-19.

3. The formation of law takes into account the wishes of the people;

4. Recognition of customary law and unwritten law as national law;

5. The formation and enforcement of the law is fully based on community participation; and

6. The establishment and enforcement of the law is for the sake of the general welfare, the establishment of a democratic and independent Indonesian society and the implementation of the state based on law and the constitution.

Temporary legal politics is a policy that is determined from time to time according to need. The purpose of the policy in accordance with the needs is in the formation of legislation, adapted to national needs and to create people's welfare.

C. Siyasah Duturiyah

Siyasah dusturiyah is part of the fiqh siyasah which discusses the issue of state legislation. In this case also discussed, among others, the concepts of the constitution, legislation, democratic institutions and shura which are important pillars in the legislation. In addition, this study also discusses the concept of the rule of law and siyasa and the reciprocal relationship between

the government and citizens as well as the rights of citizens that must be protected.[33]

The problem in fiqh siyasa dusturiyah is the relationship between the leader on the one hand and the people on the other and the institutions that exist in the community. Fiqh siyasa dusturiyah is usually limited to discussing the regulations and legislation required by state matters in terms of conformity with religious principles and is the realization of human benefit and meeting their needs.

Fiqh siyasa dusturiyah covers a very broad and complex field of life. All of these problems, and the issue of fiqh siyasa dusturiyah generally cannot be separated from two main things: first, the kulli arguments, both the verses of the Qur'an and hadith, al-maqashid as-shari'a, and the spirit of Islamic teachings in regulating society, which will not change no matter what the situation is in society. These kulli arguments are dynamic in changing society. Second, the rules that can change due to changes in circumstances and conditions, including the results of the ijtihad of the scholars, although not entirely.

The previous scholars generally talked more about government than the state, this was caused, among other things, by:

33Muhammad Iqbal, , *Fiqh Siyasah,Konstektualisasi Doktrin Politik Islam,* (Jakarta: Prenadamedia Group, 2014), 177.

1. The difference between the state and the government only has a theoretical meaning and has no practical meaning because every act of the state is in reality an act of the government, even more concretely the people who are assigned the task of running the government.[34]While the fuqaha focus their attention and investigation on practical matters.

2. Due to the very close relationship between the government and the state, the state cannot be separated from the government, so the government can only exist as an organization that is conceived and used as an instrument of the state.[35]

3. If the fuqaha are more focused on the head of state, because what is concrete is the people who run the government, which in this case is led by the head of state.[36]

4. Islamic historical facts show that the first problem that was questioned by Muslims after the Prophet's death was the problem of the head of state, therefore it is logical that the fuqaha pay special attention to the problem of the head of state and government rather than other state matters.[37]

34Muchtar Affandi, *Ilmu-Ilmu* Kenegaraan, (Bandung: 1971), 157

35Affandi, *Ilmu-Ilmu,* 155

36HA Djazuli, *Fiqh Siyasah,* 49

37HA Djazuli, *Fiqh Siyasah,* 49

5. The problem of the rise and fall of a country is more about the rise and fall of government than other elements of the state.[38]

Among the jurists and Islamic scholars who also discussed other parts of the country, such as Al-Farabi, Ibn Sina, Al-Mawardi, Al-Ghazali, Ibn Rushdi, and Ibn Khaldun.[39]

If it is understood that the use of the word dustur is the same as constitution in English, or the Basic Law in Indonesian, the words "basic" in Indonesian are not impossible to come from the word dustur. Meanwhile, the use of the term fiqh dusturi is for the name of a science that deals with the following issues: the problem of government in a broad sense, because it contains the principles of regulating power in the government of a country.As a lie in a country, of course, laws and other lower regulations must not conflict with this lie.

The development of legislation in Islam was carried out during the reign of Sultan Aurangzeb (Almgir I) of the Mughal kingdom (India) who ruled in 1658-1707 AD. He formed a commission tasked with compiling a collection of books of Islamic law. The result of this Commission's work was the promulgation of a book of regulations for worship and muamalah for Muslims, named Fatwa-I Alangmiriyah, which was ascribed to the name of the Sultan. This book consists of six thick volumes with the main reference to

38Wirjono Prodjodikiro, *Asasa-Asas Ilmu Negara dan Politik*, (Bandung, 1971), 17-18

39HA Djazuli, *Fiqh Siyasah*, 49

the Hanafi school, the school that is widely practiced by Indian Muslims. However, the nature of this law is semi-official, because it does not have binding power to be practiced as a law befits.[40]

Massive legislation was carried out during the Ottoman rule (1300-1924). At this time the law used in society was not only fiqh, but also the decisions of the caliph or sultan on disputes or disputes that occurred between community members. In addition, there are also decisions taken at the legislative assembly meeting as al-sultah al-tasyri'iyah and approved by the caliph. The first form is called Idara Saniyah, while the second is called Qanun. The peak of the progress of this qanun occurred during the caliph Sulaiman I (1520-1566) AD because of the great concern of this caliph there was legislation, so he was given the title Sulaiman al-Qanuni. In the hands of Sulaiman al-Qanuni also the Ottoman empire experienced the peak of glory in various fields.

After Sulaiman al-Qanuni died, the Ottoman empire suffered a setback. No more caliphs have the capacity to exercise these two powers. The political ability of the successor rulers was not followed by their ability and mastery in the field of religion. By Ifarena, in their state duties they were assisted by Sadrazam for political affairs and Shaykh al-Islam for religious affairs.

40Subhi Mahmasham, *Falsafah al-Tasyri' fi al-Islam*, (Damascus: dar al-Kasysyaf, 1952), 61-62

CHAPTER III

DISCUSSION

A. Legal Politics Mechanism of Presidential Ratification in the State Administration

Political law (legal policy) is an official policy on law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals.[41]When interpreting a law or article, it usually uses a grammatical interpretation. However, when the grammatical interpretation still cannot find the meaning, it is necessary to use the historical interpretation method, in order to know the wishes of the legislators.

The discussion related to Article 20 paragraph (5) has been known since the discussion on the amendment in 1999. To be precise, the Ad Hoc Committee Meeting III of the 5th MPR Working Body was on Monday, October 11, 1999.[42]However, the finalization of paragraph (5) of the Draft 1945 Constitution was only ratified in the second amendment, namely in 2000. In terms of discussing the draft Article 20 paragraph (5) of the 1945 Constitution, many members of the meeting held debates, including the existence of paragraph (5) of Article 20 of the Constitution which was a an

41Mahfud MD., *Politik Hukum*, 1

42Abdul Gofar et al., ., *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Buku III Jilid 2, (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2010), 728.

affirmation because the president has given mutual consent. So, there is no longer any reason for the president to refuse. So the draft law that has received mutual approval is not in vain and applies even if the president does not sign it. On the other hand, the president can issue a Regulation in Lieu of Law (PERPPU). Broadly speaking, it is not without reason that the draft law remains valid and takes effect within 30 (thirty) days after the draft law is discussed even without the president's signature.[43]

The validity of a law there are 5 legal actions that are carried out for the public, the legal actions are material ratification, formal ratification, promulgation, publication in the State Gazette and enforcement[44]Jimly Asshiddiqie stated that there are three types of Draft Laws which are in the process of being discussed and Draft Laws which have been jointly approved by the DPR and the Government which have been ratified in the Plenary Session of the DPR.[45]

Article 20 paragraph (5) of the 1945 Constitution is an affirmation of the third type of Draft Law which has obtained mutual approval between the DPR and the President. When the Draft Law does not get mutual approval between the DPR and the President, the Draft Law will never be brought to trial as stated in Article 20 paragraph (3) of the 1945 Constitution. So the draft that has been mutually agreed upon can materially be said to be final.

43Abdul Gofar, *Naskah Komprehensif*,, 1072

44Jimly Asshidiqie, *Perihal Undang-Undang*, (Jakarta: Raja Grafindo, 2010), 291.

45Jimly, *Perihal Undang-Undang*, 42

because the material cannot be changed by anyone. Meanwhile, Article 20 paragraph (5) is an administrative ratification.[46]

Materially the Draft Law that has received mutual approval between the DPR and the President, the quality of the Draft Law is considered a Law even though it is not formally binding on the public.[47]Therefore, even though the President does not ratify the Draft Law that has been mutually agreed upon, Article 20 paragraph (5) is enacted. The draft law remains valid and must be promulgated and applies to the public.

Broadly speaking, it can be understood why there is Article 20 paragraph (5) of the 1945 Constitution, this is because when the President does not take a stance to ratify the Draft Law which has basically been ratified in the Plenary Meeting which marks the achievement of mutual agreement between the DPR and the President. . There is no reason for the President not to ratify the Constitution, basically the President, represented by his ministers, has also discussed the Draft Law together. The draft law that has been approved and ratified is a draft law that has been valid in a material sense and its validity is just a matter of time. Ratification by the President is a formal ratification.

Politically, in legislation, instead of using the President's veto, as in the United States constitutional system, he has the right to reject various

46Jimly, *Perihal Undang-Undang*, 43.

47Jimly, *Perihal Undang-Undang*, 43-44.

constitutions made by the DPR if they conflict with the interests of the public will. Article 20 paragraph (5) actually forces the President to continue to accept the Constitution from the DPR. Although the product of the law has no significance for the public interest and the welfare of the people, it is seen from a sociological and philosophical context.

Judging from the United States system which espouses a pure Presidential System, that the American President has no role in the discussion of the constitution. Nagyen, the President of the United States was granted a veto power to refuse to pass the constitution. The veto right is granted by the United States constitution as a form of checks and balances between state institutions, in particular to prevent such great power over the constitution that the draft could harm society. The President's veto right has been widely agreed upon, not as a form of the President's legislative power, but only as a tool to influence the formation of constitutions contained in the legislative body.[48]

The President has used the veto power in the constitutional system in Indonesia. It is proven that there are some real laws that are still being

48Hendra Wahanu Prabandi, *Batas Konstitusional Kekuasaan Eksekutif* Presiden (Constitutional Limits of the Presidental Executive Power), Jurnal Legislasi Indonesia, Vol 12 No. 03, April, 2018, 269

promulgated even without the approval of the President and these laws are still in effect, including:[49]

1. Law no. 32 of 2002 concerning Broadcasting, there has been resistance which is quite harsh what most people do broadcasting.

2. Law no. 25 of 2002 concerning the Riau Islands, there have been pro against the people of Riau itself.

3. Law no. 18 of 2003 concerning the Advocate Profession, has happened very complicated debate where sharia scholars are allowed become an advocate.

4. Law. No. 17 of 2003 concerning State Finance, has occurred

conflicts of interest between internal government agencies, such as Gidabasgemas with the Ministry of Finance,

There is no denying that the DPR is an institution authorized by the constitution to make laws. however, for the sake of balance, the President as the executive who must implement the law is also given the right to checks and balances. If a constitution is enacted, it can actually cause disorder, insecurity, unrest, and prosperity. The president is responsible for dealing with socio-political chaos. It is precisely the duties and responsibilities of the

49La Ode Muhammad Elwan, *Penataan Ulang Sistem Legislasi: "Efekktifitas Hak Veto Presiden Dalam* Sistem Pemerintahan di Indonesia Berdasarkan UUD NRI Tahun 1945", *Jurnal Universitas* Halu Oleo Sulawesi Tenggara Indonesia, 6-7.

President as the executor of such a heavy law, so it is time for the President to be given personal rights in the process of making laws.[50]

According to his legal politics, reopening the opportunity for constitutional amendments to include a formula that forces the President to ratify the Constitution. The formulation is in the form of a stipulation for a re-vote by the DPR on the constitution that was not ratified by the President. The vote was not meant to change the substance of the constitution, but rather as an effort to force the President to sign the constitution. The DPR session which was held for this purpose, 2/3 members of the DPR wanted the applicable constitution, the President inevitably had to ratify the constitution for the sake of the law. However, if the constitution gets less than 2/3 of the votes from the DPR, then if there is a strong reason, the President has the right not to ratify the constitution. Accordingly, a constitution that is not ratified by the President cannot be enacted.

B. Authority of the President to Ratify the Constitution

1. The authority to ratify the constitution in the system of checks and balances

Bagir Manan, in his argument, argued that the structure of the 1945 Constitution was not sufficient to centralize the system of checks and

50Alex Bambang Riatmodjo, "Hak Veto Presiden dalam Proses Pembuatan UU", Kompas, Kamis 17 Juli 2003, 6

balances between the branches of government to avoid abuse of power or an act of exceeding authority.[51]For example, there is no provision that regulates the limitation of the president's authority to refuse to ratify a draft law that has been approved by the DPR.

Made Subawa, studied the Amendment Study Team of the Faculty of Law, Universitas Brawijaya who stated that the structure of the 1945 Constitution was not sufficient to contain a system of checks and balances between the branches of government to avoid abuse of power or arbitrary actions.[52]For example, there are no provisions regulating the limitation of the President's authority to refuse to ratify a draft law that has been approved by the DPR.

The act of ratifying a draft law that has received mutual approval between the DPR and the president is carried out by the president. This provision can be seen in Article 20 paragraph (4) of the First Amendment to the 1945 Constitution.

Formally, the act of ratifying the constitution by the President has become law. According to Philipus M. Hadjon, although formally the draft

51Akil Mochtar Paparkan Pentingnya Mekanisme Checks and Balances untuk Pemerintahan Demokratis, " https://mkri/index.php/page=web.Berita&id=7834, diakses tanggal 30 November 2012

52Made Subawa, *Implikasi Yuridis Pengalihan Kekuasaan Membentuk Undang-Undang Terhadap Sistem Ketatanegaraan Republik Indonesia Pasca Perubahan Undang-Undang Dasar 1945*, MA Thesis, (Surabaya: UNAIR, 2003), 81-82.

law has become law due to the actions of supervisors, the law does not yet have a valid legal framework because it has not yet been promulgated.[53]

In the practice of forming laws, the ratification of laws after the transfer of power forms laws into the hands of the DPR after the first and second amendments to the 1945 constitution.

Based on the chart above, it can be seen that the authority to ratify the draft law into law is the authority of the president. In connection with the discourse on the ratification of the constitution into law. Inuwan Soejito stated that signing by the president is the last requirement to complete the efforts of legislators to make decisions called laws.[54]

Previously, it is necessary to reaffirm the need for a mechanism for mutual supervision and cooperation which has given rise to modified theories of the separation of powers teaching. The modification is the emergence of a power-sharing theory that focuses on the division of government functions, as well as a theory of checks and balances.[55]

The theory of distribution of power asserts that the separation of powers is still carried out but accompanied by a mechanism for mutual control

53Philipus M. Hadjon, *Lembaga Tertinggi dan Lembaga-lembaga Tinggi Negara, Menurut Undang-Undang Dasar 1945 Suatu Analisa Hukum dan Kenegaraan*, (Surabaya: PT Bina Ilmu, 1992), 24.

54Irawan Soejito, *Teknik Membuat Undang-Undang*, (Publisher PT. Pradnya Paramita, 1993), 188.

55Fajar Laksono and Subardjo, *Kontroversi Undang-Undang Tanpa Pengesahan Presiden*, (Yogyakarta: UII Press, 2006), 151.

between one branch of power and another. As Dahlan Thaib argues, the Trias Politica theory requires checks and balances, which means that between one state institution and another state institutions supervise and test each other so as not to exceed their respective authorities.[56]Checks and balances will be reflected in equal and mutually balanced state institutions, which are based on the basis of a horizontal separation of powers.

The concept of Trias Politica cannot be implemented purely in almost all countries in this part of the world. This happens considering that state administration practices are always accompanied by a phenomenon in which the making of laws that should be the task of the legislative body also involves the executive. This situation is an implication of the development of the era, where the executive is in fact the institution that knows best what needs to be regulated and what does not need to be regulated by law. Another thing, the executive branch has a wide network to the regions, has more complete data and facilities than the legislature.

The principle of separation of power may indeed be relied upon to guarantee the limitation of power, but to fully delegate the task of legislation to the DPR is unrealistic, because most of the legislation is technical in nature which requires the role of the government.

The provisions of Article 20 paragraph (5) of the 1945 Constitution give rise to two different opinions, on the one hand the provision is

56Dahlan Thalib, *Implementasi Sistem Ketatanegaraan Menurut UUd 1945*, (Yogyakarta: Liberty, 1993), 20.

considered as an implementation of the principle of checks and balances and a way out of the constitutional impasse when the president is not willing to ratify the law.[57]on the other hand, this provision actually makes the president's veto power on a constitution meaningless. Therefore, it is also necessary to analyze the two opinions in order to find the truth of their arguments.

Implementing the principle of checks and balances, the President is given the power not to ratify laws that have been agreed with the DPR and the President. Of course, this opinion has the consequence that if there is no presidential ratification of a constitution then of course there will be no promulgation process. The ratification of a constitution by the President is actually closely related to the understanding of mutual agreement between the DPR and the President in the discussion of a constitution. This requires a proper understanding of the concept.

A constitution becomes a law if it is jointly approved by the President and the DPR. Whether or not a constitution is approved must be in accordance with the rules of the DPR, namely through the trial process, it is not simply determined by the leadership of the DPR. By itself the term 'together' is carried out in court together.

The trial can occur in two possibilities. First, based on the existing trial mechanism, a constitution is decided by voting with the majority of votes

57Jimly Asshidiqie, *Kedudukan* Perpu dalam Tap No III/MPR/2000 dan Problem Implementasinya, (Yogyakarta: UII, 2003), 102.

winning the scenario constitution or the government's version. Second, the decision on the constitution was taken through a vote in favor of the DPR version of the constitution. The normative reality of the two possibilities is that if the DPR does not approve the constitution proposed by the government, or if the president rejects the constitution proposed by the DPR, legislation will not be produced. If one party refuses, the constitution cannot be passed into law. This formula has the opportunity to create permanent tensions in legislation and even congestion because the President and the DPR will argue that they both have the people's mandate.

If the second possibility occurs, can it then be said that the constitution has been drafted jointly or in other words, the meaning of mutual agreement has been fulfilled even though the government clearly did not approve it, only lost the vote. The president whose interests are defeated in the trial may already exercise his right not to ratify a constitution decided by the DPR by not signing to promulgate the constitution.

By not signing the constitution, the constitution will never become a law because it cannot be enacted. At this point, the president chooses absolute and decisive power in order to balance the power of the DPR in the field of legislation. But at this point the flow of legislation stops, a law will never be formed. For this reason, according to the adherents of the first opinion, they agree that Article 20 paragraph (5) was raised to anticipate the stagnation in the flow of legislation.

Theoretically, in every law-making process there are two absolute requirements when a constitution is about to be enacted into a legally binding law. The two conditions are formal requirements and material conditions.[58]The constitution has not been called a law if it is unable to fulfill these requirements. The material requirements mean that the president and the DPR have agreed on the material for the constitution. As for the formal requirements, to be called a draft law, it must have an official state document format, including the signature of the President. In other words, the presidential approval of a constitution that has been mutually agreed upon is a condition that cannot be ignored.

Referring to the formulation of Article 20 paragraph (5) of the 1945 Constitution, the President's ratification of a constitution has been manifestly ignored. Article 20 paragraph (5) skips the formal requirements of a law. In fact, this provision has become an element of the non-fulfillment of formal requirements because it 'allows a law to be promulgated and is generally binding without ratification by the president.

Ratification and promulgation of a law by the President is a separate legal act. UUD 945 has ordered that promulgation is obligatory, while the basis for promulgation of a law is the ratification of the President. After the president has signed it, he is ordered to put it into the State Gazette so

58Dawn, *Kontroversi*,, 154.

that the law is binding on the general public.[59]Stagnant flow of legislation should not be anticipated with provisions that are contrary to constitutional law, especially in terms of the formation of legislation.

Basically, both the president and the DPR have the right to reject or accept a constitution. The President has the right to submit constitutions, has the right to veto constitutions initiated by the DPR, and veto constitutions that defeat the interests of his government. Meanwhile, the DPR has the right to submit a constitution on its initiative, has the right to approve, amend, or not reject a constitution, and to reject a PERPU that has been enacted by the government.

The President's immense power to use his weapon to veto a constitution that has been approved by the parliament is accompanied by the government's tendency to propose a constitution. This is based on the fact that it is the government that really knows best the need to make a law because the government is in direct contact with the community.

The existence of a veto is usually regulated in a system that adheres to the principle of separation of powers because it is considered an effective weapon to counter the power of other institutions in a mutually controlling relationship. Thus, the veto power must be limited because without restrictions the president can act recklessly using the veto power. In the United States, it is regulated that if a law that has been passed by

59 "Ketua MK : UU Tanpa Pengesahan Presiden dapat Dibaalkan Mahkamah Knstitusi", artikel di http://www.hukumonline.com/detail.asp?id=8758&cl=berita, 5 September 2003.

parliament is vetoed by the President, the constitution can be discussed again for a re-vote. If the parliament still approves the constitution, the constitution can immediately become a law without requiring approval by the President.[60]

By using the theory of grammatical or grammatical interpretation, it will be implied that in the process of discussing a constitution, the President is given the right by the constitution to approve a constitution. On the other hand, on a contrario basis, the President is also given the right to refuse or disagree.[61]From this it should be understood that the constitution has introduced a norm that gives the President a veto power to express his rejection of the constitution when it is discussed with the DPR in the DPR session.

However, in fact, the existence of the veto power in the Indonesian constitutional system is understood in various ways. The existence of the veto right as introduced by the 1945 Constitution has given rise to various opinions. In this case, there are three relevant opinions expressed. Lukman Hakim Saifudin stated,[62]The President's veto is the right to reject a constitution that is discussed in the DPR, the DPR and the President have the same right to approve a constitution. In the event that the president

60Bagir Manan, *Teori dan Politik Konstitusi*, (Yogyakarta: UII Press, 2003), 43.

61Agus Riwanto, "Strategi Politik Hukum Meningkatkan Kualitas Kinerja DPR RI Dalam Produktivitas Legislasi Nasional", *Jurnal Cita Hukum : Fakultas Syariah dan Hukum UIN Jakarta*, Vol. 4 No. 2, 2016, 278.

62 Dalam Fajar Laksono, "UU Tanpa Pengesahan Presiden : Sebuah Problem Legislasi Pasca Perubahan UUD 1945", *Jurnal Konstitusi Vol. 3 No. 3*, September 2006, 161.

does not approve of a constitution that is discussed in the DPR, the President's disapproval should be conveyed before the decision is made in the plenary meeting of the DPR. If the DPR institutionally approves the constitution but the President does not agree, the constitution cannot be approved as a law.

Indeed, the 1945 Constitution does not explicitly state that disapproval or rejection is a veto right, but the real essence is the same, namely that there is the president's right to reject the constitution discussed in the DPR. Lukam Hakim Saifudin reiterated that if the President does not agree with a constitution that is being discussed in the DPR, then the rejection must be carried out at the decision-making stage to get joint approval from the DPR-President, not after that, and also not in the form of not ratifying or promulgating it.[63]

Jimly Asshiddiqie gave a more concrete understanding of the veto right, namely the right exercised by the President to reject a constitution by not ratifying the constitution. This is related to the joint approval of the President and the DPR in the legislative process. In the event that the constitution has been approved by a majority vote in the DPR trial and won the DPR version of the constitution, then it is considered a mutual agreement. This understanding must be accepted because in a democratic

63Lukman Hakum Saifudin, *Negara RI atau* Pemahaman Kita yang Bukan-Bukan? www.kompas.com

system, the decision-making process must be attended together, but the decisions taken do not mean that they must satisfy all parties.

However, regarding the decision that has been taken together, the President whose interests were defeated in the trial can still exercise his right not to ratify a constitution that has been decided by the DPR by not signing to promulgate the constitution.[64]In this case, the President is faced with only two choices, namely to approve or not to ratify the constitution. Jimly emphasized that the president's right to refuse to ratify the constitution is called the President's veto.

Meanwhile, Muhammad Fajrul Falaakh said that the veto rights introduced by the amendments to the 1945 Constitution were temporary vetoes. The president's thirty-day veto does not mean much in the legislative process. This shows a case of wrong import in transplanting constitutional law.[65]In a country where legislators have full authority to make decisions, the executive does not take part in making decisions as in Indonesia. The executive veto over legislation has meaning only in this context.

Associated with the formulation of Article 20, actually the President's ratification of a law should be the implementation of the principle of

64Jimly Asshidiqie, *Otonomi Daerah dan Parlemen di Daerah*, Makalah, Banten 2 Oktober 2000, 56

65Mohammad Fajrul Falaakh, *Presiden dan Proses Legislasi Pasca Revisi Konstitusi (Parlementerianisme Lewat Pintu Belakang?)*, Makalah, UGM 25-27 September 2003, 44

checks and balances if only clause (5) did not exist. The President's ratification of a constitution becomes the basis and condition for the promulgation of a constitution after previously the DPR was constitutionally empowered to make laws. There, the implementation of the principle of checks and balances will appear, namely when the DPR as the legislative body approves a RUU, both a proposal from the Government and from the DPR itself, and then the President ratifies the Act.

Legislative power that remains in the hands of the DPR and the formal ratification of law products is carried out by the President, indicating that there is a balance of power. However, this opinion is not only denied but also denied by the appearance of Article 20 paragraph (5). Presidential approval is no longer meaningful and has no consequences. The promulgation of a law is no longer based on the presence or absence of a formal ratification of the President, but rather by looking at the 30 day period since the constitution was approved by the DPR and the President.

Ratification of the president in this context can no longer be said to be the implementation of the principle of checks and balances, in fact the DPR is heavy where the function of the President to ratify is actually neglected. The constitutional formulation satisfies the DPR's desire to empower itself. As the holder of the power to form a law. The DPR wants to highlight its authority, which actually has the potential to damage the check and balance mechanism.

Actually, if you want to consistently implement the principle of checks and balances, the formulation of the constitution anticipates the situation if the constitution does not

ratified by the President, not forced on the promulgation. The sentence 'must be promulgated in Article 20 paragraph (5) has become an inappropriate and even wrong effort. It would be very strange for a constitution that was not signed by the President and then promulgated, considering that the President's approval is the basis for promulgation. Without the approval of the President, the promulgation has no basis. The check and balance mechanism is realized if the formula is in the form of forcing the President to ratify a constitution that has been agreed with the DPR and the President, not requiring its promulgation.

Article 20 paragraph (5) clearly denies the principle of checks and balances because it is a tool for forcing the President to continue to accept the Constitution from the DPR as an implication of strengthening the role of the DPR even by cutting the legislative function of the President.[66]In the field of legislation, the President is imprisoned by the existence of Article 20 paragraph (5) by not granting the President a veto.[67]Thus, the ratification of the President in the context of Article 20 is no longer an

66Saldi Isra, *Menggugat Arah Fungsi Legislasi*, http'//www.kompas.com/kompas-cetak/0309/24/opini/575930.htm, Rabu 24 September 2004.

67Adnan Buyung Nasution, *Relasi Kekuasaan Legislatif dan Presiden Pasca Amandemen UUD 1945, Sistem Semi residensial dalam Proyeksi*, Makalah, 7 September 2004, 6

implementation of the check and balance mechanism, but instead undermines the principles introduced by Article 20 paragraph (2).

Regarding the granting of the President's authority in the context of implementing the principle of checks and balances, it was actually formulated at the PAH III BP MPR meeting during the discussion process of the First Amendment to the 1945 Constitution. However, due to the great desire of some of the reformers who were also members of the DPR in an effort to reduce the President's power, this proposal rejected at the 7th Plenary Meeting of the MPR in 2000 on the grounds that the constitution had been agreed with the DPR and the President.

Responding to the oddity of Article 20 Yat (5), the Constitutional Commission proposed a formulation that is more directed to the application of the principle of check and balance. The Constitutional Commission formulated Article 20 which consists of 7 paragraphs, as follows:

(1) DPR has the power to form laws

(2) Each draft law requires the approval of the DPR to become law

(3) If a constitution is not approved by the DPR, the constitution cannot be submitted again in the DPR trial that time

(4) The President ratifies the constitution that has been approved by the DPR, the RUU it cannot be promulgated

(5) Constitutions that are not approved by the President are returned to the DPR to be discussed again

(6) The President ratifies the draft law which has been re-discussed by the DPR if it gets 2/3 approval members of the House of Representatives.

The Constitutional Commission's proposal conceptually requires the approval of the President as an absolute condition for the enactment of a law. The proposal further emphasizes that in terms of legislation, the ratification of the President is very important and cannot be taken for granted. The Constitutional Commission even explicitly put forward the idea that there would be no such thing as promulgation of a constitution without the signature of the President. In this context, the Constitutional Commission agreed to fulfill the formal and material requirements in the case of the formation of laws.

Furthermore, considering that constitutional amendments are not simple matters, it is also necessary to take anticipatory action without waiting for the amendments. If amendments to the constitution are not yet possible, in order to prevent the re-occurrence of the Act without ratification by the President, a constitutional convention shall be applied in the form of

granting in person rights to the President in every process of law formation.

The right in persona is given by logic in the science of law. The legal logic in question is that academically it is expected that every law that will be enacted as a positive law must be able to meet philosophical, juridical, and sociological requirements. Philosophically, the material and legal substance in the Law has a noble and good purpose for the life of society and the state. Likewise, from a juridical point of view, it is in harmony and does not deviate from the principles and principles of the law and the legal system adopted. But sociologically problems can arise due to differences in understanding.

As it has been stated that Article 20 paragraph (2) of the constitution has introduced a norm whereby the President is given the right to exercise his veto right or express his rejection of a constitution that has been discussed together in the DPR session. The President's refusal must be based on philosophical, juridical, and sociological considerations that are personally owned by the President. Because, in the end, it is the President who is responsible for implementing every law in accordance with the concept of the 1945 Constitution. If the president considers that the constitution that will be approved as a law can pose a danger and/or cause difficulties at the level of implementation, of course the president can reject it or not. agree.

In order for a law without being ratified by the President not to be reborn, it is appropriate that in every process of discussing the RU in the DPR, there must be a final word and a final word from the President to approve or reject the constitution, namely at the level of discussion II. in persona, carried out in a material formal manner before the Plenary Session of the DPR to make decisions regarding a law, and may not be represented to the Minister in the provisions of the 1945 Constitution, only assistants to the President, and responsible to the President

2. The Problem of the Constitution Without Presidential Ratification

The shift in the authority to make laws, which was previously in the hands of the President and transferred to the DPR, is a constitutional step to put the functions of state institutions in accordance with their respective duties. However, the 1945 Constitution also regulates the president's powers in the legislative sector, including the provision that the DPR discusses each draft law jointly with the President. The shift of legislative power into the hands of the DPR, turned out to be not completely dominant, due to the presence of Article 20 paragraph (2) of the 1945 Constitution which states that "every draft law is discussed by the DPR and the President for mutual approval". Then Article 20 paragraph (3) of the 1945 Constitution affirms, if the draft law does not get mutual consent,

Laws that were born without the approval of the President in the end really cause problems. Broadly speaking, there are 4 problems that can be raised regarding the emergence of laws without the approval of the President, namely:

First, the Law on the establishment of the Riau Islands Province, the Broadcasting Law, the Law on State Finance and the Law on Advocates are in fact laws with a high level of resistance and raise sharp pros and cons in the community. As a result, there is a desire from the public who are dissatisfied, and consider that the law is far from fair, so they need to take steps to reject it.

This was repeated again during the administration of President Joko Widodo, there were 2 draft laws which he did not ratify but were still enforced and binding on the general public without being ratified by the President, including Law no. 2 of 2018 concerning the Second Amendment to Law no. 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, and the Regional Representatives Council (MD3) and Law No. 19 of 2019 concerning the Second Amendment to Law no. 30 of 2002 concerning the Corruption Eradication Commission, in which President Joko Widodo admitted that he did not sign the constitution because it captured public unrest regarding a number of controversial articles.

The real impact, before the law was enacted, was the threat of a judicial review to the Constitutional Court already echoing. This has become very unnatural, not to mention the enactment of the law but has been attacked by the threat of judicial review.

In this regard, from a technical point of view, there is an oddity when a law is declared valid even though it is not ratified by the President but must be included in the State Gazette to state that the law is valid and binding. But that was done by the Minister of Law and Human Rights as an assistant to the President. Even in a draft of the law there is also the head of the presidential symbol and after the phrase "By the Grace of God Almighty", but the president did not ratify the constitution.

The biggest strength is actually the mutual agreement between the DPR and the President. Joint approval of Article 20 paragraph (2) of the 1945 Constitution is a material ratification and ratification by the president Article 20 paragraph (4) of the 1945 Constitution is a formal ratification[68]and if you look at several laws that apply without the approval of the President. In fact, the threat of judicial review that was echoed before the Act was enacted was very difficult to understand. The stronger the assumption that the formation of laws is a mere manifestation of political interests that ignores the benefit of the people, this kind of thing

68Jimly, Perihal Undang-Undang, 297.

will affect the community. If this happens, it will continue to cause public apathy towards the parties involved.

The second problem is that the Act without the approval of the President makes the political will of the President to carry out the mandate of the Law very low. This can be seen in the implementation of the Law on the Establishment of the Riau Archipelago Province, until a year after the Law was ratified, it turned out that until September 2003 the Government had not definitively formed an interim governor. If the government has a strong intention to implement the law, the government should immediately make a PP, and elect a temporary official, but this has not been implemented.

The third problem is the threat of cancellation demands. The Chief Justice of the Constitutional Court, Jimly Asshiddiie, stated that a law that was promulgated without the approval of the President could be filed for annulment to the Constitutional Court. Jimly Asshiddiqie considered that the law which was promulgated without the approval of the president had violated the process of making it.[69]

In examining a law, the Constitutional Court does not only review the material law but also the formal law. Therefore, any law whose process is not in accordance with the law can be filed for cancellation to the Constitutional Court. Included in the category of laws that violate formal

69 "Ketua MK : UU Tanpa Pengesahan Presiden Dapat Dibatalkan Mahkamah Konstitusi", http://www.hukumonline.com/detail.asp?id=8758&cl=Berita, 5 September 2003.

law are laws that are enacted without ratification or signature of the President. A law promulgated without the approval of the Presideb is not justified from the science of constitutional law and state administrative law.

The final problem is that laws that are promulgated without the approval of the President are absolutely not justified. Supposedly, referring to the provisions of Article 20 paragraph (4) because it is the President who ratifies the Law, it will be true if the letterhead and subject in the Law document are the President of the Republic of Indonesia. Supposedly, if the President is not willing to ratify the letterhead and the subject of the Law is the DPR as the holder of the power to form the Law.

The gross mistake is that the four laws without presidential ratification stated above use letterheads and are subject to the President of the Republic of Indonesia, even though it is clear that the president did not ratify them. In fact, the neglect of the ratification of the President has been deriving from Article 38 paragraph (3) and paragraph (4) of Law no. 10 of 2004 concerning the Establishment of Legislation. Article 38 paragraph (3) No. 10 of 2004 states that in the event that a draft law is not signed by the president, the sentence for ratification reads: This law is declared valid based on the provisions of Article 20 paragraph (5). Meanwhile, paragraph (4) emphasizes that the sentence for ratification of a law must be the last page of the law before the promulgation of the text of the law in the State Gazette.

3. Authority for Ratification of Constitutions in Siyasah Duturiyah

Fiqh Siyasah dusturiyah in the field of siyasah tasyri'iyah or legislative power, namely the power of Islamic government in making and establishing laws based on provisions that have been revealed by Allah SWT in Islamic law which includes:

1. The government as the holder of the power to determine the law to be enforced in an Islamic society;

2. The Islamic community will implement it;

3. The contents of the regulation or law itself must be in accordance with basic values of Islamic requirements.

The government as the holder of power or can be called the caliph as the title of Head of State in Islamic history has the authority and power to issue legal provisions that are not clearly regulated in the Al-Quran and Hadith, but the right to make legislation belongs only to Allah SWT and His messenger. . So that the caliph issued a law or qanun or laws that are not clearly regulated by the Koran and hadith. Because the rule of law of Allah SWT does not distinguish between the owners of power and state individuals.

The task of implementing the law. to implement it, the State has executive power (al-sultah al-tanfidhiyah). Here the State has the authority to describe and actualize the legislation that has been formulated. In this

case, the state carries out policies both related to domestic affairs, as well as those relating to relations between countries. The highest executor of this power is the Government assisted by assistants (cabinet or ministers) who are formed according to the needs and demands of different situations from one Islamic country to another. Just as legislative policies must not deviate from the spirit of Islamic teachings, political policies of executive power must also be in accordance with the spirit of texts and benefit.

The state is a tool to implement and maintain the values of Islamic teachings to be more effective in human life from the authority of one person or group against another person or group. The state has the power and power so that the regulations made can be obeyed as long as they do not conflict with the teachings of Islam itself.

Article 20 paragraph (5) of the 1945 Constitution is the right of the President in ratifying a draft law to become a law. Therefore, it is reasonable if, more specifically, the object of study regarding Article 20 paragraph (5) of the 1945 Constitution concerning the mechanism for the ratification of the President is included as the object of study of siayasa dusturiyah.

According to Abul A'la al-Maududi, the relationship between the legislative, executive and judicial institutions in an Islamic State does not contain clear instructions. But the conventions (administrative customs) in the time of the Prophet and the four caliphs provide sufficient guidance

that the Head of the Islamic State is the supreme head of all these different state institutions, and this position is maintained by all four caliphs.[70]

In all important matters of the state, such as the formulation of policies or the provision of regulations in various matters of government or law, the caliph inevitably must consult with ahl al-hal wa al-aqd and immediately reach an agreement, so that in its implementation in the future there will be no problems related to those regulations. The legislative body in Islam is only an advisory body to the Head of State, whose advice can be accepted and can also be rejected in accordance with the will of the Head of State concerned.

Likewise, Fiqh Duturiyah in analyzing the mechanism for the ratification of a draft law, cannot be separated from the role of the Government in terms of the President as the Head of Government and the DPR. The role of the DPR is the same as the role of ahlu al-halli wal aqdi, he has the right to form the rule of law, but prior to the amendment of the 1945 Constitution. In the case of the formation of a law, the President and DPR must obtain approval from the President and the DPR. it cannot be resubmitted. However, if he gets approval, Presie will ratify and stipulate the constitution into law.

After the amendment to the 1945 Constitution, there was a shift in law-making power where the DPR held the power to form laws. Draft laws that

70Abul A'la Maududi, *The Islamic Law and Constitutional*, terj. Asep Hikmat, "*Sistem Politik Islam*,249"

have been mutually agreed upon but not ratified by the President within 30 days of the legislation being approved, then the draft laws are legally valid and must be promulgated.

From the explanation above, fiqh siyasah dusturiyah analyzes that in terms of legislation it does not explain in detail the mechanism for the ratification of the qanun, it is only explained that in forming the qanun it is carried out only by deliberation by members of Ahlu al-halli wal Aqdi, in terms of deliberation.

The participation of the President in signing or ratifying as referred to in Article 20 paragraph (5) according to the view of siyasa dusturiyah is not interpreted as making laws but helping and facilitating the legislative body in making a law. so that the absence of signature or ratification from the President remains valid as law.

CHAPTER IV

CLOSING

A. Conclusion

1. The legal politics of the Presidential ratification mechanism, reopening opportunities for constitutional amendments to include formulations that forcing the President to pass the constitution. The formulation in the form of provisions for re-voting by the DPR on constitutions that do not ratified by the President whose purpose is not at all to change the substance of the constitution but as an effort to force the President sign the constitution through a session with 2/3 of the DPR for legal purposes.

2. Article 20 paragraph (5) violates the principle of checks and balances because it becomes a means of forcing the President to continue to accept the Constitution from the DPR as implications of strengthening the role of the DPR even by cutting its functions Presidential legislation by not granting a veto to the President. Fiqh siyasa dusturiyah analyzes that in terms of legislation there is no explain in detail the mechanism for the ratification of the qanun. Option President in the signer or endorsement as in Article 20 paragraph (5) according to the view of the siyasa dusturivah is not defined as a legislator but assist and facilitate the legislative body in making a Constitution

B. Suggestion

Based on the results of the research and discussion that has been submitted, suggestions that the author can propose are as follows:

1. There is a need for changes to the provisions of laws and regulations and the imposition of sanctions, especially in the ratification carried out by President.

2. It is necessary to conduct further research regarding the elimination of conditions formal ratification in making laws.

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