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Executive Power in Indonesia: Independent Institutions and the Unitary Executive Theory Perspective

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Abstract

This article examines the presence of independent agencies that perform executive functions within Indonesia's constitutional system as a normative critique of post-reform institutional design. The article discusses the concept of the Unitary Executive Theory, which developed in the United States as an adherent of a pure presidential system, the position of the President under the 1945 Constitution of the Republic of Indonesia, as well as the relevance and operationalization of this theory within the context of Indonesia's constitutional system. The research employs a normative legal approach using four methodologies: the statutory approach, the conceptual approach, the comparative approach, and the historical approach. The conclusion of this article is that the 1945 Constitution of the Republic of Indonesia contains a sufficient constitutional basis for the application of the Weak Unitary Executive Theory; therefore, institutions performing executive functions should be under the President's chain of command to ensure presidential accountability and consistency.

Keywords: *Unitary Executive Theory, UUD NRI 1945, Presidential System, Independent State Institution, Weak Unitary Executive Model.*

A. INTRODUCTION

This article is grounded in a normative thesis that serves as its central thread: the Unitary Executive Theory is the most coherent doctrinal framework for reinterpreting Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia and assessing the constitutionality of the design of independent agencies within Indonesia's post-reform presidential system. This thesis is not merely a comparative link, but an

analytical proposition, that the phrase “state executive power” contained in Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia embodies the logic of executive unitarism, which has not yet been operationalized doctrinally in Indonesia’s constitutional practice. Using the Unitary Executive Theory as its primary analytical framework, this article poses a question that has long been overlooked in academic discourse: whether the design of independent agencies established post-reform, such as the KPK, Komnas HAM, and KPU, aligns with or, conversely, contradicts the fundamental principles of presidentialism mandated by the 1945 Constitution of the Republic of Indonesia.

Executive power occupies a central position in Indonesia’s constitutional system. The 1945 Constitution of the Republic of Indonesia explicitly designates the President as the holder of executive power, as stated in Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In practice, this authority is not merely symbolic but serves as the primary driving force behind the functioning of the government, encompassing the formulation of public policy, the enforcement of laws, the management of international relations, and the conduct of national defense. Furthermore, constitutional changes through amendments to the 1945 Constitution of the Republic of Indonesia during the 1999–2002 period brought about a fundamental transformation of this power configuration, affirming the principle of checks and balances while reducing the previously dominant executive branch (executive-heavy) (Hendri, 2024). However, this is precisely where the doctrinal issue arises: has this transformation shifted or even negated the logic of executive unitarism that is still textually embedded in Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, or can the two be harmoniously constructed?

Indonesia and the United States both adhere to a presidential system—a system of government in which the executive is directly elected by the people and whose term of office does not depend on the confidence of the legislative branch (Kurnia, 2020a). Presidentialism is characterized by three main elements: the existence of a single executive leader, the direct election of that executive by the people, and a fixed term of office that cannot be terminated through a legislative vote of no confidence. Although they share the same framework of presidentialism, the two countries have significantly different traditions of constitutional theory. The United States has developed a mature body of executive doctrine over more than two centuries, while Indonesia is still in the process of building a solid framework of executive power doctrine, particularly following constitutional reform (Sirajuddin, 2015).

One of the doctrines that has gained significant traction in the practice of presidentialism in the United States is the Unitary Executive Theory. This theory is grounded in the Vesting Clause of Article II of the United States Constitution, which asserts that all executive power is vested in the President. Based on this view, the President is positioned as the sole controller of the executive branch, including the authority to direct, appoint, and remove executive officials, as well as to oversee the enforcement of laws by all agencies under executive authority. In the development of U.S. Supreme Court jurisprudence, the decision in Seila Law LLC v. Consumer Financial Protection Bureau affirmed that all officials within the executive branch are subject to the President's supervision and control. Consequently, agencies that limit the President's authority to remove executive officials are deemed unconstitutional (Kanter & Rosser, 2020). This decision reflects a significant strengthening of the position of the Unitary Executive Theory in U.S. constitutional law, and simultaneously serves as a

relevant comparative mirror for testing similar logic in the Indonesian context.

Scholarly studies on presidentialism in Indonesia have thus far tended to focus on the institutional relationship between the President and the People's Representative Council (DPR), particularly in the context of governing coalitions, legislative-executive checks and balances, and the dynamics of lawmaking (Harjanti, 2022). The doctrinal dimension regarding the nature of the President's independent executive power, namely, the extent to which the President holds, controls, and is accountable for executive authority institutionally, has received relatively little attention in the academic literature in Indonesia. The results of the normative analysis indicate that the 1945 Constitution of the Republic of Indonesia actually contains various limitations on the President's power while simultaneously strengthening the role of the DPR, thereby suggesting an imbalance that warrants further in-depth doctrinal study (Harjanti, 2022).

Efforts to fill this gap in the discourse are beginning to emerge. Kurnia has made a significant initial contribution by linking the framework of the 1945 Constitution with the Unitary Executive Theory, particularly in identifying the textual and structural foundations that could support or refute the applicability of this theory in the Indonesian context, including an analysis of the KPK as an "abnormal constitutional arrangement" that intersects with questions regarding executive control (Kurnia, 2020b). This study opens the door to a more in-depth discussion regarding the President's position as the sole holder of executive power. Nevertheless, this study remains at a basic theoretical level and is general in terms of applicability, thus failing to address the specific implications of the Unitary Executive Theory within the more complex realm of Indonesian state governance.

Thus, there is a significant doctrinal gap in the study of Indonesian presidentialism:

the lack of an adequate analytical framework to assess, from a constitutional perspective, whether the design of independent agencies that have flourished in the post-reform era—such as the National Commission on Human Rights (Komnas HAM), and the General Elections Commission (KPU), as well as independent bodies performing executive functions, align with the fundamental principles of presidentialism mandated by the 1945 Constitution of the Republic of Indonesia, particularly the logic of the delegation of governmental power enshrined in Article 4, paragraph (1). Existing studies, both in the literature on Indonesian constitutional law and in comparative studies of presidentialism, have not yet addressed this doctrinal dimension in a systematic and operational manner.

It is this gap that forms the basis for this article. By employing the Unitary Executive Theory as a normative analytical tool rather than merely a comparative framework this article seeks to address this gap through textual, historical, and comparative analysis of the relationship between the President's executive power and independent agencies within the framework of presidentialism under the 1945 Constitution of the Republic of Indonesia. The research questions that guide this examination are formally outlined after the theoretical framework is established.

This article employs the Unitary Executive Theory as the primary analytical framework for examining the relationship between the President and independent agencies within Indonesia's presidential system. This theory is chosen not merely as a point of comparison, but as a normative analytical tool to test whether the design of independent agencies that emerged after the reform era aligns with or contradicts the fundamental principles of presidentialism mandated by the 1945 Constitution of the Republic of Indonesia. The use of the Unitary Executive Theory as an analytical

framework is based on three premises. First, the Unitary Executive Theory is a doctrine that has been tested jurisprudentially within the pure presidential system of the United States for over two centuries, thereby possessing a sufficient theoretical and empirical foundation to serve as a comparative reference. Second, Indonesia and the United States share the same framework of presidentialism, so the constitutional logic of the Unitary Executive Theory can be tested for its relevance within the context of the 1945 Constitution of the Republic of Indonesia. Third, the Unitary Executive Theory offers clear normative criteria for assessing whether the design of independent institutions that perform executive functions but are outside the President's control constitutes a deviation from the constitutional principles of presidentialism.

This article is built upon two interrelated dimensions of the issue, which together form the analytical framework that will be applied throughout this paper. The first research question is doctrinal-institutional in nature and serves as the foundational question: How can the logic of the Unitary Executive Theory constitutionally explain and reorganize the existence of independent agencies such as the KPK, Komnas HAM, and KPU, and can these institutions truly be reintegrated into the President's executive chain of command without violating the constitution?

This question is fundamental because it determines whether the logic of executive unitarism contained in Article 4(1) of the 1945 Constitution of the Republic of Indonesia possesses sufficient operational capacity to test the constitutionality of the post-reform design of independent institutions. If this logic cannot be effectively applied within the context of Indonesia's constitutional framework, then all institutional restructuring efforts based on this framework will lose their normative foundation. Conversely, if this logic can be operationalized, then the subsequent question becomes

an urgent constitutional issue that must be addressed immediately.

The second research question is of a normative-democratic nature and constitutes a substantive dimension that distinguishes this article from previous studies: How can the application of the Unitary Executive Theory actually strengthen rather than weaken human rights protection through clearer democratic accountability mechanisms, given that a President who is directly accountable to the people has stronger constitutional incentives to protect citizens' rights compared to unelected institutions that cannot be held democratically accountable? This second question directly challenges the most frequently cited objection to the application of the Unitary Executive Theory in Indonesia—namely, that the concentration of executive control in the President will weaken the protection of independent institutions. This article reverses that assumption by proposing that it is precisely the fragmentation of executive power into institutions that cannot be held democratically accountable that creates an accountability deficit that is truly dangerous for the protection of citizens' rights.

This article aims to demonstrate that the Unitary Executive Theory is not only relevant but can also be operationalized within the framework of the 1945 Constitution of the Republic of Indonesia, by identifying points of convergence between the theory's logic and the constitution's normative structure. Through two questions, this article offers two contributions. Theoretically, this article constructs a more coherent doctrine of executive power within Indonesian constitutional law by establishing Article 4(1) of the 1945 Constitution of the Republic of Indonesia as the foundation of executive unitarism—a contribution that has long been absent from Indonesian academic literature. Practically, the findings of this article provide a constitutional framework that can be used by lawmakers in restructuring the state's institutional design, by the

President in comprehending and asserting his constitutional authority in its entirety, and by the Constitutional Court in interpreting the relationship between executive power and independent agencies born of the reform era.

B. RESEARCH METHOD

This study employs a normative legal approach, focusing on the analysis of applicable legal norms. The research method employed is library research, utilizing data collection techniques through the review and analysis of various literature sources such as books, scientific journals, and relevant legal documents. Methodologically, this study employs four complementary approaches as follows: **statute approach** in a grammatical and systematic analysis of specific provisions, particularly Article 4(1) and Article 17 of the 1945 Constitution of the Republic of Indonesia, to trace the normative meaning of the phrase 'holding executive power' in the context of its relationship with independent institutions. **Conceptual approach**, the use of the Unitary Executive Theory as a conceptual framework to interpret and evaluate the institutional design of the Indonesian executive branch, referencing the work of Calabresi & Yoo (2008), as well as developments in doctrine within U.S. jurisprudence. **Comparative approach** a systematic comparison between the executive power structures of the United States and Indonesia, including a comparison of the Vesting Clause with Article 4 of the 1945 Constitution, removal power with Article 17 of the 1945 Constitution, and the design of independent agencies with Indonesia's independent state institutions. Historical approach, an examination of the historical formation of constitutional norms, particularly the amendments to the 1945 Constitution during the 1999–2002 period, to understand the context and intent of the framers of the Constitution in designing the

executive power structure. Through this approach, it is hoped that a more comprehensive and systematic understanding will be gained to explain the conceptual relationships and the limits of authority within the executive power structure.

C. RESULT AND DISCUSSION

1. Unitary Executive Theory

The theory of the unitary executive is a theory that developed in the United States. Article II, Section 1 of the Constitution of the United States—"The executive Power shall be vested in a President of the United States of America"—establishes the President as the sole holder of executive power. The implication of this is that all officials and agencies within the executive branch are under the President's authority, so that the chain of accountability within the executive structure is hierarchically centered on the President as the head of the executive branch. This aligns with Daniel Brick's view, who states that "The unitary executive theory holds that Article II's declaration that 'the executive Power shall be vested in a President of the United States of America' means that there is one—and only one—person constitutionally authorized to wield the executive power: the President of the United States. Thus, all executive-branch officers exercise authority only as delegates of the President and must be subject to his control" (Birk, 2021).

Steven G. Calabresi and Christopher S. Yoo, two figures who popularized the Unitary Executive Theory in its modern form, argue that the unitary executive is not merely an institutional design option but a constitutional prerequisite for the functioning of an effective and accountable government. According to them, democratic accountability can only be realized if voters are

able to designate a single actor who is clearly responsible for the performance of the executive branch. Conversely, the distribution of authority to independent agencies outside the President's control risks obscuring that line of accountability (Calabresi & Prakash, 1994).

The Unitary Executive Theory has not developed into a uniform doctrine but exists along a spectrum. At its moderate end, the theory emphasizes only the President's authority to oversee all executive officials. Meanwhile, at the stronger end of the spectrum, the theory asserts the President's prerogative to dismiss executive officials at any time without legislative constraints. The philosophical foundation of the Unitary Executive Theory can be traced to Federalist No. 70, where Alexander Hamilton put forward the idea that energy within the executive branch is a key element of good governance. In his view, such energy can only be realized through a unified command structure, not through fragmented collective bodies like councils or committees in decision-making. A fragmented executive is not only inefficient but also structurally incapable of fulfilling the constitutional duty to faithfully execute the laws ("take Care that the Laws be faithfully executed"). When this framework is applied to the Indonesian context, the consequences are clear: if the President lacks control over the institutions carrying out executive functions, then responsibility for the performance of those institutions cannot be effectively attributed to him, thereby risking the erosion of democratic accountability.

The development of case law regarding the Unitary Executive Theory in the United States has followed an evolutionary pattern that, while not entirely consistent, has nonetheless led to the strengthening of the principle of executive

unity. The decision in Myers v. United States served as a starting point by affirming the President's inherent authority to remove executive officials without Senate involvement. This direction was subsequently expanded in Free Enterprise Fund v. PCAOB, which held that a "double-for-cause removal" scheme violates the Constitution by limiting the President's ability to ensure faithful execution of the law. Finally, in Seila Law LLC v. Consumer Financial Protection Bureau, the Court affirmed that protections against the removal of a single head of a large independent regulatory agency are inconsistent with the Constitution, thereby reinforcing the position of the doctrine of executive unity in the context of modern institutions.

The main criticism of the Unitary Executive Theory is often raised by Lawrence Lessig and Cass R. Sunstein, who argue that interpreting the Vesting Clause as the source of exclusive and unlimited executive power is a forced historical construction. They contend that the framers of the U.S. Constitution actually established a system of checks and balances with the aim of distributing, not concentrating, power. Nevertheless, this criticism is insufficient to undermine the UET for at least two reasons. First, the UET does not assert that the President is free from legislative or judicial oversight; rather, it merely affirms that, within existing constitutional limits, control over the executive branch rests with the single figure of the President. Second, even Sunstein later acknowledged in his works that presidential oversight of the regulatory review process holds democratic value that cannot be entirely disregarded, as it creates a point of accountability identifiable by the public (Sunstein, 1987) In their latest article, Bamzai and Prakash even extend the scope of the power of

dismissal to various new institutional contexts (Bamzai & Prakash, 2023), demonstrating that the doctrine of the Unitary Executive Theory remains relevant in addressing modern institutional challenges, including those faced by Indonesia.

In academic discourse, the Unitary Executive Theory is divided into two main variants: the strong version and the weak version, distinguished by the extent of the President's control over the executive branch. The strong version relies on a textual interpretation of the Vesting Clause of Article II of the United States Constitution, which positions the President as the holder of full and unlimited control, including the authority to dismiss executive officials at any time without restrictions from Congress. Conversely, the weak version acknowledges the President's authority as head of the executive branch but still allows Congress to establish certain limitations, such as mechanisms for removal for cause, provided they do not hinder the President's constitutional functions. According to Sunstein, the weak version argues that Congress possesses broad discretion under the Necessary and Proper Clause to regulate the structure of the state administration, whereas the strong version rejects this in principle (Sunstein, 2020). The difference between these two variants is not merely a matter of degree but carries highly significant institutional consequences. Looking at the development of this theory in the United States within the Indonesian context, the President faces limitations in carrying out his duties imposed by the Constitution and laws enacted by the legislature.

While the United States draws upon the history of jurisprudence, Indonesia has its own classical doctrines; one of these is Philipus M. Hadjon's typology of

sources of authority, which forms the foundation of modern Indonesian administrative law. Hadjon asserts that every exercise of governmental authority must be accompanied by legal accountability. Such authority is then derived through attribution, delegation, and mandate. Interpreted from the perspective of the unitary executive theory, this typology actually affirms that the President's authority under Article 4, paragraph (1), constitutes an attributive authority derived directly from the Constitution—one that is original, comprehensive, and independent of the legitimacy of other institutions. This gives rise to a strong argument regarding the centrality of the President: his authority is not granted by the House of Representatives (DPR) or the Constitutional Court (MK), but stems directly from the Constitution as the supreme law. Given Hadjon's perspective, this division of authority directly narrows the scope for applying the strong version of the Unitary Executive Theory in Indonesia. Unlike practices in the United States, which allow for presidential intervention in all executive decisions, within the Indonesian framework, every governmental action must be grounded in lawful authority. The Principle of Legality requires that every exercise of executive power have a clear and traceable legal basis, whether in the Constitution or in legislation.

Although rooted in different legal traditions, the presidential systems of Indonesia and the United States both contain elements that are functionally consistent with the Unitary Executive Theory. Both place the President as the sole leader who derives direct legitimacy from the people, possesses broad authority in managing the state administration—including the appointment of executive officials (through the Appointments Clause in the U.S. and Article 17

of the 1945 Constitution in Indonesia)—and bears the constitutional duty to ensure the law is enforced (through the Take Care Clause and the obligation to govern in accordance with the 1945 Constitution). However, while in the United States the development of jurisprudence has shown a trend toward strengthening the President's position, in the Indonesian context such consolidation remains structurally limited, where the President's direct chain of command is explicitly focused on the ministries as stipulated in Article 17 of the 1945 Constitution of the Republic of Indonesia.

Table 1
The fundamental differences between the implementation of unitary executive theory principles in the systems of the United States and Indonesia

	Unitary Executive Theory	**UUD NRI 1945**
Vesting Clause	Article II Section 1: *The executive Power shall be vested in a President of the United States of America*	Article 4, paragraph (1): The President of the Republic of Indonesia exercises executive power in accordance with the Constitution
Removal Power	The Federalist Papers No. 70 by Alexander Hamilton: The President and the removal of executive officials is the exclusive prerogative of the President; Myers v. U.S.: The President possesses the inherent authority to remove executive officials; Seila Law: protection against dismissal by a single official lembaga independen inkonstitusional	Section 17(2): Ministers are appointed and dismissed by the President
Independent Agency	Independent regulatory agencies	The National Commission on Human

	(FTC, FED, CFPB) were established by Congress; developments in case law have led to restrictions on their autonomy	Rights (Komnas HAM) and the General Elections Commission (KPU) were established by law (not the Constitution

Source : Author's Work, (2026

Based on this, this article does not fully adopt either the strong or the weak version of the Unitary Executive Theory; however, it leans toward the weak version of the Unitary Executive Theory regarding the independence of independent institutions in carrying out their duties. This approach is based on the recognition that Article 4(1) of the 1945 Constitution of the Republic of Indonesia does indeed contain the logic of executive unitarism that cannot be ignored; the President, as the sole holder of governmental power, must serve as the starting point for constitutional interpretation. Within this framework, a review must be conducted in the form of a functional testassessing whether the relevant institution performs executive functions in the constitutional sense and a proportionality test assessing whether the level of the institution's independence actually hinders the President in carrying out his constitutional mandate, or whether it constitutes a form of institutional arrangement that remains justifiable because it is based on legitimate and proportional constitutional objectives.

2. Executive Power in the Constitutional System According to the 1945 Constitution of the Republic of Indonesia

Article II, Section 1, Clause 1 of the U.S. Constitution: "The executive Power shall be vested in a President of the United States of America." Grammatically, the word "vested" is a passive verb meaning "permanently attached," as opposed to "granted," which carries the connotation of a limited

bestowal. The phrase "the executive Power" uses the definite article "the," which refers to the entirety of executive power, not just a part of it. This grammatical meaning supports the position that the entire executive power is vested in the President. Meanwhile, Article 4, Paragraph (1) of the 1945 Constitution states: "The President of the Republic of Indonesia holds governmental power in accordance with the Constitution." Grammatically, the key phrase is "in accordance with the Constitution" — a qualifying clause not found in the U.S. Vesting Clause. The word "according to" literally means "in accordance with" or "based on," implying that the President's executive power is not inherent and absolute, but rather dependent on and limited by the Constitution. This grammatical difference has a fundamental normative effect: the U.S. Vesting Clause grants plenary executive power to the President, while Article 4, paragraph (1) of the 1945 Constitution grants governmental power to the President subject to inherent constitutional conditions. Based on this, both formulations affirm the concentration of authority in the President as the central controller of government affairs, which is the defining characteristic of the presidential system (Arnita, 2020). At the same time, these provisions carry the normative implication that the exercise of such authority must always be subject to the constitutional mandate

A common objection to this interpretation is the qualifying phrase "in accordance with the Constitution" in Article 4, paragraph (1), which is claimed to indicate that the President's powers are limited by the Constitution and are therefore not exclusive. This objection requires a thorough response. This phrase is not a clause limiting power, but rather a clause regarding the source of

legitimacy that affirms that the power held by the President derives from the Constitution—not from a grant by Parliament, not from legislative delegation, and not from political patronage. The appropriate comparison is the phrase "in accordance with the Constitution," which in U.S. jurisprudence is not interpreted as a limitation, but rather as an affirmation that executive power is constitutional. A systematic reading of Article 4(1) of the 1945 Constitution must be conducted in conjunction with Chapter III of the 1945 Constitution to reinforce this argument. Article 4(1) serves as the starting point, followed by various concrete powers inherent to the office of the President: The President's powers include supreme command over the armed forces (Article 10), the authority to declare war and conclude international treaties (Article 11), to declare a state of emergency (Article 12), to conduct diplomatic relations (Article 13), and to grant pardons, amnesties, abolitions, and rehabilitations (Article 14). These powers support the argument that the President's authority is limited by the Constitution through a system of checks and balances. These powers depict a President who is constitutionally regarded as the apex of the entire executive system. This interpretation aligns with the logic of the Unitary Executive Theory, which positions the President not as the "highest official in the executive hierarchy," but as the executive itself.

Article 17 of the 1945 Constitution of the Republic of Indonesia complements the framework of Article 4 by providing a concrete mechanism for executive unity: the authority to appoint and dismiss ministers. This design normatively mirrors the dismissal authority as outlined in Myers' work, although it is limited to ministries. If the President can dismiss a minister at any

time without the consent of another institution, then logically that minister is subject to the President's discretion in every substantive policy decision. This reflects a principal-agent relationship that structurally ensures the ministry's policy direction aligns with the President's will; in the Indonesian context, this formulation most closely approximates the doctrine of removal power within Unitary Executive Theory. Bagir Manan explicitly states that the authority to appoint and dismiss ministers is a presidential prerogative that cannot be interfered with by any institution. This formulation is the closest equivalent in the Indonesian context to the doctrine of removal power within the Unitary Executive theory.

From a teleological perspective, the interpretation of Article 4, paragraph (1) must take into account the goal of democratic accountability. The democratic legitimacy of the direct election of the President introduced through the third amendment adds an important dimension to this argument. The President of Indonesia is the only national official directly elected by the entire Indonesian people with an explicit mandate to govern. Based on this direct democratic legitimacy, the President, as primus inter pares, has the authority to determine the direction of the government, while also possessing the authority to ensure that the entire executive apparatus acts in alignment with that direction. In a democratic rule of law (democratische rechtsstaat), the principle of legality (legaliteitsbeginsel) requires that every government action be based on authority that is lawful under the law. This authority serves as the basis for both the government's legitimacy and its accountability for every action (Widodo et al., 2020). This creates what Mahfud MD refers to as the "single and direct line of

accountability to the people": the people elect the President with the expectation that the President—and the President alone—controls the direction of the government. This statement is grounded in the principle that there is no authority without accountability (een bevoegdheid zonder verantwoordelijkheid). Therefore, every office must be accountable as a consequence of the authority inherent in it. Such accountability is essential for assessing whether authority has been exercised appropriately or not.

The argument regarding democratic accountability, in line with Article 1, paragraph (2), reinforces this by stating: "Sovereignty resides with the people and is exercised in accordance with the Constitution." Thus, executive power derives from the people and is accountable to the people. If executive power is fragmented among institutions not elected by the people and cannot be controlled by the President, then the will of the people as expressed in the presidential election becomes meaningless. This is the strongest democratic argument against a model of executive power that is ambiguous and fragmented. This aligns with the argument of the unitary executive theory developed by Celebrasi and Yoo, who state: "Unity in the executive is not a matter of executive aggrandizement; it is a structural safeguard of democratic accountability. When power is diffused, accountability diffuses with it. The people's ability to hold their government accountable depends on being able to identify who made the decisions."

Before the amendments, the 1945 Constitution was a "highly executive-oriented" constitution that granted so much power to the executive branch without adequate constitutional checks and balances. Meanwhile, after the

amendments, a shift occurred that some parties view as actually stripping the executive branch of too much power and excessively strengthening the House of Representatives. Criticism stating that the 1999–2002 amendments have shifted Indonesia's system of government toward a semi-presidential system must be addressed directly. These amendments did introduce an impeachment mechanism (Article 7A), strengthened the oversight functions of the House of Representatives (Article 20A), and established the Constitutional Court as the guardian of the constitution. However, none of these changes touched the executive's command structure: Article 4, paragraph (1), remains unchanged. The amendments focus on the horizontal accountability of the mechanisms of mutual oversight and checks and balances among the branches of government rather than on the intra-executive hierarchy. This is not semi-presidentialism; it is limited presidentialism that retains the single executive as its fundamental principle.

This is what makes the constitutional analysis of the President's executive power post-amendment a complex issue. On the one hand, Article 4, paragraph (1) remains intact and has never been altered. On the other hand, various provisions of the amendments create mechanisms that require the President to share authority with the House of Representatives in matters that are inherently executive in nature. The question is not whether these provisions are constitutional—clearly they are—but rather whether they alter the fundamental meaning of Article 4, paragraph (1). This article argues that the answer is no: the checks and balances mechanisms introduced by the amendments constitute procedural limitations on the exercise of the President's power, not a substantive

transfer of executive power itself from the President to another institution.

3. Independent agencies in Indonesia

Following the amendment of the 1945 Constitution of the Republic of Indonesia, the separation of powers was established among state institutions, replacing the previous system of distribution of powers (Mangar & Rosyid Ridho, 2022). The history of Indonesia's constitutional system, shifting from the New Order era to the Reform era, has brought about changes with the emergence of various new state institutions that, based on their duties and functions, play a role in the implementation of national development. Reform served as the backdrop for the establishment of independent institutions, including both independent regulatory agencies and state auxiliary agencies (Mochtar, 2016), or the "fourth branch of government." The emergence of independent agencies was driven by the increasing complexity of state affairs and the limitations of existing state institutions in handling these various functions. Therefore, new independent agencies were established to meet these institutional needs, characterized primarily by freedom from intervention by any branch of government (Aurelia et al., 2024). In Indonesia's constitutional system, there are at least 34 state institutions explicitly mentioned in the 1945 Constitution of the Republic of Indonesia. These institutions are categorized as constitutional state organs because their authority is granted directly by the constitution. Additionally, there are more than 100 independent agencies established under laws and regulations pursuant to the 1945 Constitution of the Republic of Indonesia (Mangar & Rosyid Ridho, 2022).

Although referred to as the "fourth branch of government," the characteristics of these state institutions—whose authorities are quasi-executive, combined, or an accumulation of the three existing governmental functions—make them difficult to identify within the framework of the Trias Politica. They can thus be described as state institutions performing mixed functions (mix-function). In Indonesia, executive institutions are divided into state institutions with quasi-executive, non-executive, and purely executive functions, as described below:

Table 2
Classification of State Institutions in Indonesia

I. Purely Executive Body		
Ministry of State	Article 17 of the 1945 Constitution; Law No. 39 of 2008	Assistant to the President; appointed and removed by the President; reports directly to the President
Non-Ministerial Government Agencies (LPNK): BRIN, BNN, BNPT, BSSN.	Presidential Regulation (Perpres); Government Regulation No. 46 of 2021	Reports directly to the President or through the coordinating minister
Presidential Advisory Council	Law No. 64 of 2024 Amending Law No. 19 of 2006 on the Presidential Advisory Council	The President's advisory body; members are appointed and dismissed by the President
Indonesian National Armed Forces (TNI)	Article 30 of the 1945 Constitution of the Republic of Indonesia; Law No. 3 of 2025 Amending Law No. 34 of 2004 on the Indonesian National Armed Forces	His mandate derives directly from the 1945 Constitution of the Republic of Indonesia; the Commander of the Indonesian National Armed Forces is appointed and dismissed by the President with the approval of the

		House of Representatives; he is directly accountable to the President
Indonesian National Police	Article 30 of the 1945 Constitution of the Republic of Indonesia; Law No. 2 of 2002 on the National Police of the Republic of Indonesia	His mandate derives directly from the 1945 Constitution of the Republic of Indonesia; the National Police Chief is appointed and dismissed by the President with the approval of the House of Representatives; he is directly accountable to the President.
The Corruption Eradication Commission (KPK)	Law No. 19 of 2019	It is classified as part of the "executive branch"; the Supervisory Board is appointed by the President; it operates independently in the performance of its duties
II. Quasi-Executive Agency		
National Consumer Protection Agency (BPKN)	Law No. 8 of 1999; Presidential Regulation No. 4 of 2019; Constitutional Court Decision No. 235/PUU-XXIII/2025	Its mandate is derived from the law; members are selected by a selection committee and submitted to the President for appointment; the appointment of members takes into account the recommendations of the House of Representatives; it

		is independent in carrying out its duties; it is accountable to the President.
The Witness and Victim Protection Agency (LPSK)	Law No. 31 of 2014 Amending Law No. 13 of 2006 on the Protection of Witnesses and Victims	Its mandate is derived from the law; members are selected by a selection committee, elected by the House of Representatives, and appointed by the President; it operates independently in carrying out its duties; it is accountable to the President
III. Independent non-executive bodies		
Komisi Nasional Hak Asasi Manusia (Komnas HAM) Republik Indonesia	Law No. 39 of 1999	Its mandate is derived from the law; members are selected by a selection committee, elected by the House of Representatives, and appointed by the President; it operates outside the executive branch and functions as an independent state oversight body.
Judicial Commission (KY)	Article 24B of the 1945 Constitution of the Republic of Indonesia; Law No. 22 of 2004 on the National Capital	Its mandate derives directly from the 1945 Constitution; members are nominated by the Judicial Commission itself and approved by the House of Representatives; it

		operates independently of both the executive and judicial branches
General Election Commission (KPU)	Article 22E, paragraph (5) of the 1945 Constitution of the Republic of Indonesia; Law No. 7 of 2017	A direct constitutional mandate under the 1945 Constitution; national in scope, permanent, and independent; entirely outside the President's command

Source: Compiled by the author based on Mochtar (2016), Mangar & Rosyid Ridho (2022), and the 1945 Constitution of the Republic of Indonesia and related laws

The existence of independent institutions gives rise to an inherent structural tension between the design of institutional independence and the constitutional mandate of Article 4, paragraph (1) of the 1945 Constitution, a tension that has never been resolved in legal doctrine. The most acute constitutional issue arises from the formula used to describe the position of independent institutions within Indonesia's system of government: they are stated to be part of the "executive branch" but "not part of the president's authority." This statement was most clearly articulated by Mahfud MD. The institutional development of the KPK following the enactment of Law No. 19 of 2019 on the Second Amendment to the KPK Law explicitly places the KPK "within the executive branch" (Article 3 of the new KPK Law) and establishes a Supervisory Board whose members are appointed by the President (Wiryadi et al., 2023). These changes were implemented following Constitutional Court Decision No. 36/PUU-XV/2017 and Constitutional Court Decision No. 70/PUU-XVII/2019. Regardless of the controversy surrounding these changes from the perspective

of anti-corruption efforts within constitutional law, they reflect a step toward consistency with the concept of the Unitary Executive Theory namely, the recognition that the KPK, as an institution performing executive functions, cannot be entirely placed outside the chain of accountability within the executive branch.

Although the KPK has been placed within the executive branch, the President's level of control over the institution remains limited and does not compare to the control the President holds over ministries or other government agencies. This situation indicates that the changes that have occurred do not stem from a coherent and consistent constitutional doctrine, but rather constitute a political response to situational pressures (Kurnia, 2020b). Therefore, without a coherent doctrine of executive power as offered by the Unitary Executive Theory, institutional reform will continue to proceed in a piecemeal and patchwork manner, failing to achieve a systematic and principle-based resolution.

Within the framework of the Unitary Executive Theory, the absence of a strong constitutional basis for independent institutions indicates that the 1945 Constitution of the Republic of Indonesia did not establish the fragmentation of executive power as a binding constitutional principle. These institutions are established through legislative policy, not based on a direct constitutional mandate, and thus remain, in a normative sense, within the scope of the President's authority as the executive branch's administrator. This aligns with Maria Farida Indrati's argument that such an institutional design can create tension between the need for independence and the principle of accountability

in a democratic rule-of-law state (Indrati S., 2007). Consequently, independent agencies risk becoming "power without political accountability." A legal analysis of the basis for establishing independent institutions reveals a rather striking normative difference. Institutions established under the 1945 Constitution (constitutional state organs) possess stronger constitutional legitimacy compared to those created solely by law. Maria Farida Indrati distinguishes legal norms based on their hierarchy and sources of legitimacy: norms directly derived from the Constitution possess a qualitatively different binding force compared to those arising from legislative delegation (Indrati S., 2007). If this framework is applied to independent agencies in Indonesia, two distinct categories of normative scrutiny emerge.

First, institutions whose establishment is directly rooted in the 1945 Constitution of the Republic of Indonesia—such as the Judicial Commission (Article 24B) and the General Elections Commission (Article 22E)—possess constitutional legitimacy that cannot be overridden by either the executive or the ordinary legislative branches. Their independence is not a matter of legislative policy, but rather a binding constitutional design. In this context, the *Unitary Executive Theory* cannot be fully applied, because it is the constitution itself that creates this autonomous space.

Second, institutions established solely by law, such as the National Commission on Human Rights (Komnas HAM) and the National Commission on Missing Persons and Victims of Violence (LPSK), have a distinct normative status. The legislature lacks the authority to create a "sphere of autonomy" that is structurally detached from executive power, as this would contradict the

mandate of Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, the independence of such institutions is functional in nature—meaning they are free from interference in the performance of their duties—but cannot be interpreted as structural freedom from accountability mechanisms within the executive branch. This distinction is crucial, as institutional reforms that fail to differentiate between these two categories risk producing inconsistent designs namely, treating institutions that hold constitutionally distinct statuses in the same manner. Institutions established by law within the framework of a unitary executive rather than by direct constitutional mandate normatively remain within the scope of the President's authority as the holder of executive power. This is because the legislature lacks the authority to create an "autonomous space" separate from executive power, as guaranteed in Article 4(1) of the 1945 Constitution. This view aligns with the argument put forth by Maria Farida Indrati, who states that such an institutional design has the potential to create tension between the demands for independence and the principle of accountability in a democratic state governed by the rule of law (Indrati S., 2007).

The Unitary Executive Theory offers a normative framework for addressing the fundamental question: if an independent agency performs functions that are essentially executive in nature (such as law enforcement, oversight of public service delivery, or technical regulation), to whom is that agency constitutionally accountable? From the perspective of the Unitary Executive Theory, the answer is to the President as the people's representative in the executive branch, although such accountability must, of course, be exercised

while respecting the independence necessary for the agency to carry out its specific functions with the limitation that the President's authority is confined to appointing and removing executive officials. Such dismissal implies that the official has failed to carry out the duties prescribed by law as an extension of the President in the administration of government.

4. The Relevance of the Unitary Executive Theory from the Perspective of the 1945 Constitution of the Republic of Indonesia

The question regarding the relevance of the unitary executive theory to the Indonesian system—whether this theory is mechanically applicable—is certainly no, because the constitutional context is different. The correct question is: do the core principles of this theory have a sufficient normative basis in the 1945 Constitution of the Republic of Indonesia to serve as a guide for interpretation and institutional reform? Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia serves as the starting point, explicitly stating the fundamental meaning of the executive power adopted by Indonesia. The relevance of the Unitary Executive Theory from the perspective of the 1945 Constitution of the Republic of Indonesia becomes particularly crucial when addressing the proliferation of Independent State Institutions. From this perspective, the establishment of independent institutions that perform executive functions and operate outside the President's control—as a form of fragmentation of executive power—has the potential to conflict with the fundamental principles of the presidential system. Viewed through the lens of the Unitary Executive Theory, the existence of these independent agencies themselves, as well as the imposition of other limitations on presidential power,

"constitutes a constitutionally inconsistent effort by the legislature to exercise executive power by creating a 'fourth branch of government without a leader' that is not provided for in the Constitution" (R. J. & J. H., 2025). This also makes this branch of government vulnerable due to a lack of public oversight.

The relevance of applying this theory can be seen in the fact that the principle of unity of command within the executive branch has a clear normative basis in Article 4, paragraph (1), in conjunction with Article 17 of the 1945 Constitution of the Republic of Indonesia. Within the structure of government, hierarchical relationships inherently encompass the authority to issue instructions and exercise oversight. Therefore, if this principle is consistently applied, the constitutionality of any legislation that creates an executive branch free from the President's instructions must be tested, and such legislation cannot automatically be considered a valid policy of the legislature. Furthermore, regarding the Principle of Democratic Accountability through the President, this aligns with the logic of Indonesia's post-amendment presidential system. The direct election of the President, as stipulated in Article 1, paragraph (2) in conjunction with Article 6A, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, provides the strongest democratic mandate within the state system. This mandate is not merely formal legitimacy but a constitutional mandate for the President to be responsible for the administration of government as a whole. However, this responsibility must be accompanied by adequate authority. Without this, a contradiction arises because the President is required to be accountable while simultaneously being restricted in controlling the government apparatus. If this condition is allowed to persist, the President will

bear the political burden for failures that are not entirely within his control, which ultimately reflects an unfair accountability design that contradicts the constitution.

Within the framework of the Unitary Executive Theory, executive power is understood as a unified entity centered on the President as the holder of the highest authority within that branch of government. This theory emphasizes not only the consolidation of power but also the consolidation of responsibility. In the context of the Indonesian state, this framework finds its relevance in the 1945 Constitution of the Republic of Indonesia, particularly through the provisions on human rights in Chapter XA (Articles 28A–28J). The constitutional provisions on human rights are not merely declaratory but also establish constitutional obligations for the state, particularly the government, as the executor of executive power. From the UET perspective, the logical consequence of this design is the centralization of responsibility for respecting, protecting, and fulfilling human rights upon the President as the head of government. Thus, there is no room for the fragmentation of responsibility among executive organs, as all administrative actions and public policies are ultimately manifestations of the President's authority. Furthermore, Article 28D(1), which guarantees legal certainty and equality before the law, functions as a normative limit on the exercise of executive power. In a unitary executive system, this provision has significant implications: although the President has the authority to direct, control, and even dismiss executive officials, the exercise of such authority cannot be divorced from constitutional principles such as due process of law, non-discrimination, and proportionality. In other words, the

centralization of executive power in the UET remains within the strict confines of constitutional limitations. This relevance is further emphasized in Article 28I(4), which states that the protection and fulfillment of human rights are the responsibility of the state, particularly the government. In Indonesia's presidential system, this norm points directly to the President as the head of government. Therefore, the Unitary executive theory functions not only as a theory of power structure but also as a framework clarifying constitutional accountability, where the President is the primary focal point of responsibility for the fulfillment of human rights.

Thus, the unitary executive theory in the Indonesian context demonstrates that the consolidation of executive power goes hand in hand with the consolidation of responsibility. However, the exercise of such power remains subject to the supremacy of the constitution, so that the protection of human rights functions as a substantive limit that cannot be violated. Another point of relevance between the unitary executive theory and the 1945 Constitution of the Republic of Indonesia is seen in the principle of the supremacy of the constitution over laws, which serves as the foundation for conducting normative reviews of various laws establishing independent institutions—a process that has not yet been optimally implemented. In this regard, the Constitutional Court has the authority to assess whether a law that exempts an institution from the President's control conflicts with Article 4(1) of the 1945 Constitution of the Republic of Indonesia. In Constitutional Court Decision No. 36/PUU-XV/2017, the Court ultimately classified the KPK as part of the executive branch. In its decision, the Court held that the KPK is an institution within the executive

branch and acts as an implementer of the law, particularly in law enforcement—from investigation and inquiry to prosecution in the field of combating corruption, and is independent in carrying out its duties and authorities.

The principle of the supremacy of the Constitution over laws serves as the foundation for conducting normative reviews of various laws establishing independent institutions—a process that has not yet been carried out optimally. In this regard, the Constitutional Court has the authority to determine whether laws that exempt an institution from the President's control conflict with Article 4(1) of the 1945 Constitution of the Republic of Indonesia. A critical point that requires clear clarification is that the relevance of the Unitary Executive Theory to independent institutions in Indonesia must be understood in a limited sense—that is, it applies only to independent institutions that exercise executive power or state administrative authority, not to all types of independent institutions within Indonesia's constitutional system. This limitation is crucial because within Indonesia's constitutional system, there are various types of institutions that are formally designated as "independent institutions" yet perform distinct functions. The Unitary Executive Theory is fundamentally relevant only for analysis within the context of institutions that exercise executive functions—in this case, acting as quasi-executive bodies.
Thus, the relevance of the Unitary Executive Theory in this discussion is to emphasize that although independent institutions are granted autonomy, their existence must not undermine the unity of executive power as mandated by Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The Unitary Executive Theory serves as an analytical tool to examine and

redefine the relationship between the President and these institutions, ensuring that independence does not mean becoming an entity detached from constitutional control and democratic accountability, including in matters of human rights protection that demand clarity regarding the state's responsibilities.

D. CONCLUSION

This paper argues that the Unitary Executive Theory is relevant to Indonesia as a country that adopts a presidential system of government, as enshrined in the 1945 Constitution of the Republic of Indonesia. Within this framework, it asserts that executive power cannot be arbitrarily fragmented without undermining the principles of accountability and the chain of command within the government. Therefore, the application of this theory actually strengthens the logical and systemic consistency of Indonesia's constitutional design. The existence of institutions that perform executive functions yet are not subject to the President's control—particularly regarding appointments and removals—constitutes a deviation from the fundamental principles of presidentialism. This becomes even more untenable when such institutions are legally classified as part of the executive branch. Therefore, to preserve the purity of the constitutional design, all executive organs should fall within the President's sphere of control, unless explicitly exempted by the 1945 Constitution of the Republic of Indonesia. As a normative answer to the research questions: First, the 1945 Constitution of the Republic of Indonesia, as examined through a grammatical analysis of Article 4(1), a systematic interpretation of Chapter III, and the logic of democratic accountability underpinning the direct election of the President, provides a

sufficient constitutional basis for the application of the Unitary Executive Theory within Indonesia's system of government. Second, the UET can be operationalized, albeit not entirely, through the Weak Unitary Executive Model in the 1945 Constitution as a model that preserves space for certain institutional autonomy, yet affirms that: (a) independent institutions performing executive functions must be part of the executive branch and can be controlled by the President through mechanisms for the appointment and dismissal of their officials; (b) institutional independence does not mean being detached from the chain of constitutional accountability; and (c) the law establishing an independent institution cannot unilaterally "exempt" that institution from executive authority as guaranteed by Article 4(1) of the 1945 Constitution. Thus, the Unitary Executive Theory must be established as the primary interpretive foundation for understanding Article 4(1) of the 1945 Constitution of the Republic of Indonesia. Strengthening this principle is not only crucial for maintaining doctrinal consistency but also for ensuring the effectiveness of an integrated and accountable system of government. Without a reinterpretation in this direction, the presidential system in Indonesia will continue to face tensions between constitutional design and institutional practices that are increasingly flourishing, ultimately potentially weakening the position of the president as mandated by the constitution.

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