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The Existence of the State Minister in the Government System after the Amendment to the 1945 Constitution

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Abstract: Constitutionally, the existence of ministers called cabinet or council of ministers in a presidential government system is an inseparable part of the executive power held by the President. The 1945 Constitution after the amendment, that the presence of state ministers as constitutional organs is part of the power of the President in running the government. This study aims to provide ideas about separate arrangements between state ministries placed separately in Chapter V Article 17 to Chapter III of the 1945 Constitution of the Republic of Indonesia concerning the authority of the state government or the power of the President, and also regarding the formation, amendment and dissolution of the ministries regulated in legislation. This study uses a normative juridical research approach.

The results of the study show that the Minister of State is the President's assistant who is appointed and dismissed to be in charge of certain affairs in the government, which actually runs the government, and is responsible to the President. The governmental affairs referred to are regulated in Law No. 39 of 2008 concerning the State Ministry, consisting of: government affairs whose nomenclature is mentioned in the 1945 NRI Constitution, government affairs whose scope is mentioned in the 1945 NRI Constitution, and government affairs in the context of sharpening, coordinating, and synchronizing government programs. Judging from the intrinsic meaning of the state minister in the provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia and from the aspect of the presidential government system, that appointing and dismissing a minister is the prerogative of the President. However, the reality of multiparty politics complicates this and due to the fact that a number of political parties are coalesced, the prerogative cannot be implemented in full, because cabinet formation tends to be intervened by political parties supporting the President. Changes in ministries, the President is required to ask for consideration of the Parliament, while regarding the dissolution of ministries that deal with religious, legal, financial, and security matters must be with the approval of the Parliament. While the ministry of foreign affairs, the interior ministry, and the ministry of defense, cannot be changed or even dissolved by the President. Considering the practice of state administration in the formation of the cabinet so far has not found the ideal format and still depends on the authority of the President, the arrangement of ministries needs to be done. The arrangement is directed to strengthen the presidential cabinet which is zaken in nature, the composition of which is not based on the balance of power of existing political parties, even though this matter is still considered.

Keywords:existence, constitution, presidential government, minister of state, post amendment to the 1945 constitution

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I. INTRODUCTION

One very interesting thing related to the change in the structure of the constitution after the amendment to the 1945 Constitution is the restructuring of the State Ministry as one of the state institutions or state organs in the Indonesian constitutional system according to the 1945 Constitution (Asshiddiqie, 2011). This arrangement is reflected in the regulation of the State Ministry through changes in the content of the provisions of Article 17 of the 1945 Constitution, which not only regulates the existence of State Ministers in exercising the power of state government, but also governs the formation, amendment and dissolution of State Ministries stipulated in the law.

Constitutionally, the provisions concerning the State Ministry have been regulated and placed separately in Chapter V of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), separate from Chapter III on State Government Power. Such an arrangement naturally raises the question, why do the Framers of the Constitution, many of whom are the Founding Fathers, provide a separate systematics between the State Government's Power and the State Ministry? This problem needs to be understood and studied

considering that the State Ministry is still an inseparable part of the State Government Power or the authority of the President.

Arrangements regarding State Ministries which are separate in a separate chapter from Chapter III of the 1945 Constitution regarding the Power of State Government relating to the power of the President, also have their own meaning (Asshiddiqie, 2011). The separation is basically, due to the existence of the State Ministers that are considered to have a very important and necessary role in the state administration system to achieve the objectives of society, nation and state of Indonesia, namely a society that is prosperous, just and prosperous based on Pancasila.

According to the theory of the separation of powers and the distribution of power, what is meant by governmental power is executive power. In the presidential system of executive power held by the government or the President. The use of the word executive means the head of government along with his Ministers or state bodies that are authorized by the constitution to implement the law. The broader understanding is the power to implement all legal products and other policies issued by the legislature which are the duties and responsibilities of the executive.

The term government or government is used to indicate to an institution or institution and processes, whether formally or not, in which people or groups of people in a country or society are bound, controlled and regulated by various types of goals. The government in this connection is a body of a state that binds organizations and procedures in which laws are enforced, objectively realized, and legal decisions are carried out fairly.

Theoretically, the President's power in the presidential government system is very large, in addition to being the head of state, the President is also the head of government or chief executive. This system of government has placed the President as the center of executive power as well as the center of state power, where the two centers of power are different in the administration of state government.

In the construction of the provisions of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia NRI affirmed, "The President of the Republic of Indonesia holds the power of government according to the Basic Law". The formulation contains two meanings in relation to the "Basic Law". The first understanding, in carrying out its duties in the field of state government power, the President of the Republic of Indonesia must be based on the Basic Law. The second understanding, the power held by the President is the power of government that is regulated in the Basic Law (Stefanus, 2000).

From the second understanding, it can be drawn an understanding that the power of state government is strictly regulated in Chapter III of the 1945 Constitution and contained in articles outside of Chapter III of the 1945 Constitution. The President holding governmental power in this article refers to the understanding of the President according to the system presidential government (Asshiddiqie, 2011).

Therefore, in the government system of the 1945 Constitution, the President not only has a position as head of government but also as head of state, which represents the highest position in the Republic of Indonesia. In his position as head of state, the President's institution reflects the authority, honor and existence of the State (Wahidin, 2002). It is different in the parliamentary system of government, where the President is merely the head of state, not as the chief executive. As head of state, the President is a symbol and performs more cerimonial tasks and some tasks in the environment of prerogative constitutional rights (Manan, 1999). As a result of the recognition of the two qualities of the President's position, a juridical need arises to distinguish the two in the regulation of more technical and operational matters (Asshiddiqie, 2011).

Executive power exercised by the President can be distinguished between the power of administering the government in general and the authority of governing that is specific. General authority is the power to administer the state administration. The President is the leader of the highest state administration, while the special nature is the implementation of the duties and authority of the government which constitutionally rests with the President who has a prerogative nature in the field of government (Manan, 1999).

In order to carry out its duties and obligations, the President is assisted by one Vice-President. The Vice President, according to Article 4 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, is an assistant to the President in carrying out presidential obligations (Manan and Magnan, 1993). In accordance with its name, the Vice President acts on behalf of the President in the event that the President is unable to attend activities or do something within the President's constitutional obligations.

Then in Article 17 of the 1945 Constitution of the Republic of Indonesia NRI it is stated that in exercising governmental power, the President is assisted by State Ministers who are appointed and dismissed by the President in charge of certain affairs in government. The position of the Ministers of State as an assistant to the President is certainly different from the position of the Vice President who is both the President's assistant. The position of the Vice President as an aide to the President is much higher and more important is the degree, weight and scope of his duties when compared to the position of the Minister of State as an aide to the President.

Therefore, it can be said that the quality of the Vice President and the Ministers of State as the President's assistants has very principle differences from one another. The State Ministers are appointed and

dismissed and are subject and accountable to the President, while the Vice President, even though his position as aide to the President and is responsible to the President does not mean the President is free to dismiss him, because the President and Vice President according to Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia -all elected in one pair directly by the people.

A presidential institution is an institution that leads executive power in a political system. This presidential institution includes the President along with the Vice President and a number of government officials who are executors of executive power. For example, Ministers who are cabinet members or officials of the same level are appointed or appointed by the President. According to BagirManan, that the presidential institution as the organizer of the presidential government system is single (single executive). The Vice President and the Minister are the President's assistants. In other words, the relationship between the President and the Vice President and the Minister is not collegial (Manan, 1999).

Therefore, in a presidential cabinet the prime minister is not known because the President himself is in charge of the cabinet. So the President functions as the leader and at the same time as executor of executive power in the framework of the administration of the state and government. The implementation of the state in this case is all activities of state institutions and government from the central level to the regions which are based on the constitution as the highest political decision of popular sovereignty, the mechanism of which is carried out through general elections, as one of the instruments of democracy.

Thus, even though the provisions of the State Ministry are located separately in Chapter V which is separate from Chapter III of the 1945 Constitution, when viewed from the material it is still part of the power of the state government or the power of the President. Chapter V regulates the State Ministers who have strategic positions and participate in implementing the authority of the state government. Even according to the Explanation of the 1945 Constitution on the State Government System, it was the Ministers who mainly exercised the authority of the government (pouvoirexecutief) in practice. Therefore, the notion of state government power also includes the power exercised by the Ministers of State.

In accordance with this understanding and seen from the provisions of the Elucidation of the 1945 Constitution, Asshiddiqie (2011) argues that the actual chief executive is the Minister responsible to the President. Ministers are government leaders who must be accountable to the President. Therefore Ministers cannot cast the responsibilities of the ministries they lead, both legal, political and moral responsibilities (Akbar, 2013).

Thus, although the terminology is often used that the Ministers are assistants to the President, they are not arbitrary people or officials. Therefore, to be elected as Minister, it should be seriously considered that he is expected to work as executive government leaders in their respective fields effectively to serve the people's needs for good governance.

The relationship between the President and the Ministers of State before and after the Amendment to the 1945 Constitution is basically no different, just because the structure of the constitution has undergone a fundamental change, so it must also be understood in the changed perspective. A fairly basic difference in Chapter V concerning State Ministries containing Article 17 before and after the amendment to the 1945 Constitution lies in paragraph (4). Ratification of paragraph (4) carried out on the Third Amendment in 2001, is different from ratification of paragraph (1), paragraph (2), and paragraph (3) which was carried out on the First Amendment in 1999.

Before the Amendment to the 1945 Constitution the provisions of Article 17 only consisted of three paragraphs, namely: (1) "The President is assisted by state ministers"; (2) "The ministers are appointed and dismissed by the President"; and (3) "The ministers lead government departments". After the Amendment to the 1945 Constitution the content of the provisions of Article 17 was added paragraph (4), so that it became four paragraphs, namely: (1) "The President is assisted by state ministers"; (2) The ministers are appointed and dismissed by the President "; (3) "Each minister is in charge of certain affairs in government"; and (4) "The formation, amendment and dissolution of state ministries is regulated by law".

With this change the question certainly arises, what is the meaning contained in the refinement of Article 17 paragraph (3) which was originally mentioned in the words "The ministers lead government departments" and now after the changes are mentioned in the words "Each minister in charge of certain affairs in government". This problem needs to be examined, examined and examined in the system of governance of the Indonesian state.

If judging from the history of Indonesian state administration, the provisions of Article 17 paragraph (3) of the 1945 Constitution have been practiced. Ministers of State do not have to always lead the organization of government departments, but also found ministries without leading government departments, commonly referred to as State Ministers. The names of the organizations of the Ministers of State are in the form of government departments, and some are not in the form of departments. Therefore, in the formulation of Article 17 paragraph (4) of the 1945 NRI Constitution only referred to as "state ministries" only. Thus, the regulation of

the constitution regarding the form of organization of state ministries becomes flexible, not necessarily in the form of a department.

Thus, the organization of the State Ministry cannot be held, changed or dissolved only by consideration of the personal desires or wishes of a President. All matters relating to the organization of the State Ministry must be regulated in law. This means that changes in the formation or dissolution of State Ministry organizations must be regulated by the DPR and the President. That is the essence of the provision that it must be regulated in law.

As a consequence of the provisions of Article 17 paragraph (4) Law Number 39 of 2008 (Law No. 39 of 2008) concerning the State Ministry has been enacted. Before this law was passed into law or when the Draft Law (RUU) was discussed by the House of Representatives with the President for mutual agreement, the government viewed the bill as a disturbance to the President's prerogative rights, and was even suspected of being an attempt by the DPR to reduce prerogative rights President.

This state of mind life needs to be understood in the practice of state administration, especially in the appointment of three ministerial positions commonly called triumvirate (triad), namely the Minister of Foreign Affairs (Menlu), the Minister of Home Affairs (Mendagri), and the Minister of Defense (Menhan). Because according to the provisions of Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, if there are vacancies in the jabata of the President and Vice President together, the presidency is held temporarily by the three Ministers together, namely the Minister of Foreign Affairs (Menlu), The Minister of Home Affairs (Mendagri), and the Minister of Defense (Defense) until the election of the President and Vice President is definitive by the MPR. This provision confirms that the holders of the positions of three Ministers have a very important and strategic constitutional position, which is different from the other Ministers.

Based on these various circumstances, it is necessary to conduct research to find out the problems faced and what efforts should be made to overcome these problems, both in the form of laws and regulations and in the form of institutions. Therefore, this research will be directed to the basic questions regarding the existence of the State Minister in the government system after the 1945 amendment.

II. LITERATURE REVIEW

Rule of Law Theory

In the history of state life the concept of the rule of law has existed since ancient Greece, as can be seen from the thoughts of Plato and Aristoles. Plato gives higher attention and meaning to the law, that the implementation of good governance is based on good legal regulation, or referred to as "nomoi". Then Aristotle asserted, a good country is a country governed by the constitution and rule of law. According to Aristotle, the ruling in that country is actually not human but a fair mind set forth in the rule of law, while the authorities only hold law and balance only (Palguna, 2013).

Recognition of a country as a rule of law is very important, because state and political power are not unlimited or not absolute. Restrictions on state and political power need to be done to avoid arising from the authorities. This principle of limitation of power is known as the rule of law concept, namely the state must be strictly regulated through the rule of law.

In general, the rule of law can be interpreted as a state in which the actions of the government and its people are based on the law to prevent arbitrary actions on the part of the government and people's actions carried out according to their own will. Good law is a law that protects various public interests and is a sign of a free society that all people are allowed to follow their own inclinations as long as they do not violate the law (Sunaryo, 1993).

In a theoretical perspective, several concepts of the rule of law are known: first, Rechtsstaat; second, Rule of law; third, Socialist legality; fourth, Islamic Nomocracy; fifth, the State of Law of Pancasila (Arinanto, 2010). From these various concepts, concepts that are widely known in various countries are rechtsstaat and rule of law. These two terms are often exchanged to refer to the term rule of law, as if there were no differences. In the second case these terms have differences related to the legal tradition adopted.

The term legal state Rechtsstaat was born in the 19th century, even though the idea had been around long before that. It arose after the growth of understanding of the sovereign state and the development of the theory of treaties regarding the formation of the state and the agreement on the use of its power. Rechtsstaat in Continental Europe is the result of a long process of resistance from the bourgeoisie who wants freedom against a state / kingdom that is hungry for power. According to Immanuel Kant, the goal of rechtsstaat or the rule of law is to guarantee the legal position of every individual in society. In this concept the state can only act if there is a dispute between its citizens in carrying out their interests. In its development, the concept of rechtsstaat is not enough to guarantee the realization of social welfare. Therefore arises the concept of a rule of law where the state not only acts as a night watchman or police officer, but also has to guarantee the welfare of its people. This thinking was later developed by J.F. Stahl by expressing the characteristics of rechtsstaat as follows. First,

guarantee and protection of human rights; Second, the distribution of power; Third, the rule of law; Fourth, the administration of state administration (Asshiddiqie, 2011).

The rule of law concept is the concept of the state that is considered the most ideal today, although the concept is carried out with different perceptions. There are three important characteristics in "the rule of law", namely:

a. Absolute supremacy is in the law, not in the prerogative or prudogative actions of the authorities,
b. The application of the principle of equality in law, where all people must submit to the law, and no one is above the law,
c. The constitution is the basis of all laws for the country concerned. In this case, law based on the constitution must prohibit any violation of the people's rights and independence (due process of law).

Although the concept of rechtsstaat and the rule of law concept in many ways go hand in hand, but because of the different historical births, the differences between the two concepts are found. The two concepts together lead to one main goal, namely the recognition and protection of human rights. Because the concept of rechtsstaat was born from a struggle against absolutism so that it was revolutionary, on the contrary the concept of the rule of law developed evolutionarily. This is reflected in the rechtsstaat criteria and the rule of law criteria. The notion of rechtsstaat relies on the continental legal system called civil law with administrative characteristics, while the concept of the rule of law rests on the common law system with judicial characteristics.

In the Continental European legal system, it is more aimed at improving and limiting the functions of executives and administrative officials, while in the concept of the rule of law, because it was born in the Anglo Saxon legal system, its application is more focused on improving and enhancing the role of legal institutions and court bodies to uphold law and human rights (Soebechi, 2013). The principles of the rule of law always develop along with the development of society and the state. In its development the rule of law can be distinguished between a formal rule of law or a classic rule of law with a material rule of law or a modern rule of law. The formal legal state concerns legal definitions that are formal and narrow, in the sense of written statutory regulations. The task of the state is to implement the laws and regulations to create order. This traditional type of country is known as the night watchman (nachtwakerstaat) (Utrecht, 1964). The rule of law includes a broader understanding including justice in it. The duty of the state is not only to maintain order by carrying out the law, but also to achieve social welfare as a form of justice (welfarestate).

Constitutional Theory

Each country, however simple the level of growth, always has a set of rules governing the composition of the state organization consisting of organs or state offices. Such a set of rules is called the constitution (Manan, 1995). In this understanding, there is no and there is never a country without a constitution. However, there are also no countries that have exactly the same constitution, each other always found differences. The differences occur because of different backgrounds, such as history, culture, ideology, and philosophy. Differences can also occur due to the influence of the growth and development of thinking about material content which should be contained in the constitution.

The constitution literally means formation which comes from the French "Constituer" which means to form. In terms of the constitution means the basic rules regarding the formation. In this case what is formed is a state, then the constitution contains the beginning of all sorts of basic regulations concerning the first joints to enforce a large building called the state, or the constitution contains the basic rules regarding the joints needed for the establishment of the state.

In the science of constitutional law applies the doctrine of "legal fiction theory" which states that a state is considered to have a constitution since the state was formed. The formation of the state lies in the actions that formally declare it to be formed, namely through the transfer of sovereignty from the parent country such as the invaders to the colonies through statements of proclamation and declaration, or through revolutions and power struggles through coups. Thus, the state and the constitution are two institutions that cannot be separated from one another. The enactment of a constitution or constitution then after the existence of a state does not mean that the two institutions can be separated.

In the view of Paine (1996) that the constitution was made by the people to form a government, not vice versa set by the government for the people. Thomas Paine further said that "A constitution is a thing antecedent to government and a government is only the creature of a constitution". The constitution precedes the government, because the government was actually formed based on the constitution. Therefore, the constitution first came from the government. The understanding that the constitution precedes the government still applies, even though in practice many countries have already been proclaimed before the constitution or the basic law is passed.

According to Bryce as quoted by Strong (2004), that "A constitution as a frame of work of political society, organized through and by law" (Constitution is the framework of political society (state) organized with and through law. In other words, the law establishes permanent institutions with recognized functions and established rights). This definition implies that the constitution is a frame of state power (politically organized society). Thus the constitution as a basic legal rule stipulates the existence of permanent or regular state institutions which are accompanied by the functions, duties and authorities of these state institutions.

Judging from its appearance, the constitution can be distinguished between a written constitution and an unwritten constitution. Written constitutions can be distinguished between those written in one special document or in several documents that are closely related to each other and those written in other statutory regulations. This means that the term constitution can be used to show two meanings. The first understanding is to designate all the rules and provisions that describe a country's state administration system. The second understanding is to designate a document or several documents that contain basic rules or provisions which are the main points about a country's constitutional system.

According to Wheare (1996), that the notion of constitution is usually understood in a broad and narrow sense. In the political perspective the constitution is interpreted in a broad sense, namely to describe the entire system of state administration, a collection of regulations is partly legal and partly non-legal or extra legal in the form of customs, agreements, customs or conventions. In a narrow sense, the constitution is not used to describe the entire set of regulations, both legal and non-legal, but the result of the selection of regulations that are manifested in one document or in several documents that are very closely related.

Among the constitutional law experts there are interpreting the constitution as the constitution, but there are also those who give the meaning that the constitution is only one part of the constitution. Therefore the notion of the constitution is often identified with the understanding of the constitution. This error is caused partly by the influence of the codification that requires all legal regulations to be made in written form with the intent to achieve legal unity or legal unification, legal simplicity, and legal certainty.

Theories of the Separation and Distribution of Power

Efforts to impose restrictions on power are carried out by establishing patterns of restrictions in the internal management of power itself, namely by making distinctions and separations or division of state power into several different functions. Therefore, limitation of power is usually closely related to the theory of separation of power and division of power or distribution of power.

The doctrine of separation of powers is generally ascribed to Charles de Secondat Baron de la Brede et de Montesquieu (abbreviated as Montesquieu) with his trias of politics. But in its development, many versions commonly used by experts relating to the terminology and distribution of this power. The doctrine of separation of power proposed by Montesquieu basically originated or was inspired by Locke's thought. John Locke developed the idea of the separation of powers in his book, "Two Treatises of Civil Government (1690)" which states, the power to establish the rule of law should not be held by those who implement it. According to John Locke, state power is divided into three powers namely legislative power, executive power, and federative power, each of which is separated from one another. Legislative power includes making rules, executive power includes maintaining rules and adjudicating matters, and federative power encompasses everything that is not included in the field of legislative and executive power as well as foreign relations power.

The term "separation of powers" is a translation of the term "separation of power" based on the theory of "triaspolitica" or three functions of power, which, in Montesquieu's view, must be structurally distinguished and separated in organs that do not interfere with each other's affairs. Legislative power is only exercised by legislative institutions, executive power is only exercised by executive institutions, and judicial power is only exercised by judicial authority. In essence, one organ can only have one function, or conversely one function can only be carried out by one organ. These three powers must be given to different parties, especially to keep people's rights from being violated. The accumulation of these three powers in one hand is very dangerous and can lead to inefficiency, corruption and arbitrariness.

In general, the doctrine of separation of powers as envisioned by Montesquieu, is considered by experts as an unrealistic view and far from reality. That view is regarded by experts as Montesquieu's mistake in understanding the British constitutional system which was used as a study to reach conclusions about the triaspoliticanya in his book L 'desprit de Lois (1748).

Triaspolitica is the development of the teachings of the state form from tyrannical monarchy to the form of a democratic state. In a modern state, the relationship between the three types of power is often a complex relationship. Triaspolitica or commonly called trichotomy is a habit, although the boundaries of the division are not always perfect and even affect each other between these branches of power. Strengthening each branch of power gives rise to various models of government systems.

Government System

The government system is understood as a system of relations and work procedures between state power institutions. The government system is used to determine the relationship between the legislature and the executive as a continuation of the exploration of the concept of division or separation of powers. According to Soemantri (1976), the government system is the relationship between the legislative body and the executive body; while Suny (1987) argues, the government system is a particular system that explains how the relationship between state equipment is the highest in a country. Then Kantaprawira (1980) said, the government system is a pattern of regulating relations between one state institution and another state institution, namely the relationship between the legislature and the executive. The relationship includes both legal relations, organizational relations, power relations, and functional relations.

In line with the thoughts of these experts, Asshiddiqie (2007) argues, the government system is related to the understanding of regeringsdaad, namely the administration of government by the executive in relation to the legislative function. Such a perspective is in accordance with the theory of dichotomy, namely the legislature as policy making while the executive as policy executing, the legislature makes legislative rules, executives carry out legislative rules. In carrying out government functions, relations that affect each other in the implementation of executive and legislative power occur.

Basically in the theory of state administration law, the government system is commonly known to be of two kinds, namely:

a. Parliamentary government system, i.e. if the executive body gets direct supervision from the legislative or parliamentary body.
b. A presidential government system, in which the executive is outside the control of the legislative or parliamentary body.

Verney (1992) put forward the characteristics of a parliamentary government system as follows.

1) The hand of the government (prime minister, chancellor), and his or her cabinet are dependent on the confidence of the legislature and can be dismissed from office by a legislative vote of no confidence of censure;
2) That Prime Ministers are selected by the legislature. The process of selection can range widely from formal election to the informal emergence from inter-party bargaining in the legislature followed by an official appointment by the head of state;
3) Have collective or collegial executive s;
4) That Prime Ministers are mere heads of government; and
5) That Prime Ministers and others members of their cabinet unusually are legislature.

From this understanding it can be seen that in the parliamentary system of government, the head of government held by the Prime Minister or the Chancellor and his cabinet depends on the support or trust of the legislature and can step down from office through a vote of no confidence from the legislature. Or in other words, that the continuity of executive power depends on the trust and support of the majority of the votes in the legislature. The Prime Minister is elected by the legislature or parliament. The electoral process ranges from formal to informal elections in negotiations between parties in parliament with an official appointment by the head of state. Has executive power collegially or together. The Prime Minister is only a member of his cabinet, usually a member of the legislative body.

Thus, in a presidential government system, the President as head of government is elected for a specific term governed by the constitution, and under normal circumstances cannot be forced to resign or resign from a legislative body, although it is possible to dismiss the President through impeachment institutions, namely justice by the Congress (Trial by Congress). The president is elected by the people either directly or through an electoral collage. Executive power is held by the president, while members of his cabinet are only advisors and subordinates to the president. The President is the head of government and at the same time the head of state that cannot be concurrently a member of the legislative body.

In the history of state administration, the country that was first considered to embrace and run a parliamentary system of government was the British Empire, through the convention of state administration (convention of the constitution); whereas for a presidential system of government, the country that was first considered to embrace and implement it was the United States.

Because there are still groups of countries that cannot be included in one of the two systems of government mentioned above, a third alternative is needed, namely countries or countries which do not fully embrace and implement a parliamentary or presidential government system. Such a government system according to Sri Soemantri can be called a combined government system or a mixed government system. Mixed government system is a system of government that seeks to find a meeting point between presidential government systems and parliamentary government systems.

France, based on De Gaulle's constitution or since the fifth Republican period in 1958, has experienced a change in the system of government from a parliamentary system to a system that in certain circumstances

contains presidential variations. France based on the 1958 constitution practices a system of government which simultaneously combines or combines a parliamentary system of government (Britain) and a system of presidential government (United States).

Thus, the outline of a government system that is known in the world can be divided into three types, namely: (i) presidential system of government (presidential system); (ii) a parliamentary system of government; and (iii) mixed systems (hybrid systems) (Asshiddiqie, 2007).

By looking at the model of the United States presidential government system, BagirManan put forward the characteristics of the presidential government system as follows.

1. The President is the sole authority.
2. The President is the organizer of the government which is responsible in addition to the various constitutional powers which are prerogative and are usually attached to the position of head of state.
3. The President is not accountable to the People's Representative Body (Congress), so the Congress cannot vote on a motion of no confidence.
4. The president is not elected and appointed by Congress. In practice, it is directly elected by the people, even though it is formally chosen by the electoral body.
5. The President holds a four-year term (fixed) and can only be elected for two consecutive terms (8 years). In terms of replacing the position of President who is unable to remain permanent, the position is no longer than 10 years in a row.
6. The President may be dismissed from his term of office through impeachment, because of reasons related to "treason, bribery, or other hight crime and misdemeanors", (committing treason, accepting bribes, or committing serious crimes).

Manan (1999) further states the characteristics of a parliamentary government system as follows.

a. The president in the parliamentary system is usually elected and appointed by or includes a representative body of the people, but is not responsible to the representative body with various modifications.
b. The President is not responsible for the administration of government. The responsibility for administering the government rests with the cabinet or council of ministers responsible to the people's representative body. The president cannot be contested, so he is a kind of king in the parliamentary system of government (the king can do no wrong).
c. The President is merely the head of state, not as the head of the administration of government (chief of executive). As head of state, the President is a symbol and performs more ceremonial tasks and some tasks in the prerogative environment of constitutional rights.
d. Every government or political action taken by the President outside the prerogative constitutional rights is justified by the cabinet. To demonstrate this accountability, any presidential decree outside the prerogative constitutional rights must have a signature (conterasign) from the Prime Minister and or the Minister concerned. The law that is passed by the President must have the signature of the Prime Minister and or the Minister concerned.

If the understanding of the government system is analyzed for the Republic of Indonesia, the constitution of the 1945 Constitution has produced a presidential government system. Rachman (2009), argues that the government system produced by the 1945 constitution is a presidential government system. According to Rachman (2009), there are at least four main reasons that become the founding fathers' reference points from the framers of the constitution choosing presidential government systems, namely:

First, Indonesia needs strong, stable and effective leadership to ensure the continued existence of the newly proclaimed Indonesian state. The nation's founders believed that a strong and effective model of state leadership could only be created by choosing a presidential government system in which the president not only functions as the head of state but also as the head of government. Second, due to theoretical reasons, those are reasons related to state ideals (staatsidee), especially integrative state ideals during the discussion of the 1945 Constitution in the BPUPK session. Presidential presidential system is believed to be very compatible with the understanding of integralistic state. Third, at the beginning of independence the president was given full power to exercise the authority of the DPR, MPR and DPA. The choice of presidential system is considered appropriate in carrying out this extraordinary authority. Moreover, with a presidential system, the president can act more quickly in overcoming the problems of the state in the transition period. Fourth, it is a symbol of resistance to all forms of colonialism because the parliamentary system is considered a product of colonialism by the founders of the state.

In terms of government systems there are various types of executive bodies as follows. According to the parliamentary system called the parliamentary cabinet, and according to the presidential system called the presidential cabinet. Even so, in organizing this grouping it should be remembered that in each group there are some variations.

Government organizations in the context of the state mentioned government officials, namely people who occupy positions in government institutions (executive body) (Handayaningrat, 1990). Because every

position in a government organization must be occupied by an official, the problem is, how to fill those positions with officials. In this connection Logemann argues, the work environment, which is a position, must be occupied by a human being; a person, who is a position, must be represented by a human being; This is the office holder. To appoint position holders can be done among others through appointment and election. Thus, positions in government organizations must be occupied by officials called position holders. To complete it can be done, among others, by appointment or election.

In terms of the state staffing system according to Mosher, there are at least four main areas or types of staffing systems. One of the main types is the political appointment system. Political executives are state officials in an agency with limited tenure. Political executives have the power to make policies and are outside the country's civil service system.

In the Indonesian government administration system there are political positions, and in the government bureaucracy there are also known bureaucratic career positions. The term political office was known after the reform era because many of the positions came from the strength of political parties. Political positions are officials elected by the people or appointed by political officials elected by the people. This political office has a term of office, which is limited by the term of office based on elections (general or regional head elections), usually once every five years.

Various opinions were found which stated that the Minister is a political position. The assistant ministers of the President are known as political officials because they are appointed by the President as political officials elected by the people in general elections. However, the involvement of political institutions such as the Parliament in providing due diligence does not exist. Of course the positions of Ministers must be occupied by political figures. If so, then the problem is, how is the responsibility of the Minister as a political official, and should the minister's political office be tested for eligibility by the DPR's political institutions.

Political Parties

In state life, political parties are instruments that have a central and important role and role in every democratic system. Political parties are commonly referred to as pillars of democracy, because they play an important role as a liaison between the state government and its citizens. Good or bad democracy in a country lies in the quality of political parties. Therefore, improving democracy without touching the reform of political parties and party systems is an essential reform (Karsayuda, 2015). A strong democracy is when supported by a party system that is institutionalized or institutionalized. The degree of institutionalization of political parties will determine the quality of democratization of a country's political life. The hallmark of a democratic government is marked by the presence of political parties.

All countries in the world must agree that democracy, which means the government of the people, is an acceptable system so that people's sovereignty is truly realized. Conventionally a country is called democratic if its government is formed based on the will of the people, which is realized through competitive elections to elect people who will occupy public office. Herein lies the importance of the existence of political parties as providers of cadres who will participate in general elections. It is through political parties that the circulation of elite and political leadership of a country runs.

In addition to a positive view of the role of political parties, there is also a critical and skeptical view of political parties. Some argue that political parties are actually nothing more than political vehicles for a group of ruling political elites. Political parties only function as a tool for a handful of people who happen to be lucky to win the people's votes through elections.

Maurice Duverger argues, the starting point for the formation of political parties takes place in the dynamics of competition between individuals and political blocks in parliament, so that it widens to find sympathy for support in the midst of the community raised through the formation of electoral committees to support certain elite figures (Firdaus, 2015). Because it was deemed necessary to obtain support from various groups of society, political groups in parliament also gradually tried to develop mass organizations. At the end of the 19th century a political party was born, which later developed into a link between the people on the one hand and the government on the other. Political parties will grow and develop along with the increasing level of public awareness in politics, so the presence of a political party is expected to be able to accommodate their interests.

According to RamlanSurbakti, there are three theories that explain the origin of political parties in terms of their developmental aspects, namely:

a. Political parties are formed by the legislature (and executive) because there is a need for members of parliament determined based on their appointment to establish relations with the public.
b. Political parties are formed during the transition of society from feudal society to modern society.
c. In the modern era where modernization occurs in various fields, the need for a political organization that is able to integrate and fight for various aspirations and interests of modern society.

The above understanding shows that political parties are part of the political infrastructure in a country. In political science, various concepts or restrictions regarding political parties are found. According to Carl J. Friedrich: A political party is a group oh human beings, stably organized with the objective of securing or maintaining for its leaders the control of a government, with the further objective of giving to members of the party, through such ideal control and material benefits and adventages (A political party is a group of people who are stably organized with the aim of seizing or maintaining power over the government for the leadership of their party and based on this mastery, giving their party members idiotic and material benefits).

According to Budiardjo (2015), a political party is an organized group whose members have the same orientation, values and ideals. The purpose of this group is to gain political power and seize political position, usually by constitutional means to carry out its programs.

In the science of law, political parties are associations of citizens and can therefore be a legal entity (rechts-persoon). However, as a legal entity, political parties cannot have other legal entities, other than only citizens. The status of political parties as legal entities is very important in relation to the position of political parties as subjects in the legal entity traffic. In jurisprudence the subject of law is the bearer or bearer of rights and obligations in legal relations.

In this connection HafiedCangara put forward three basic principles of political parties, namely:

1) The party as a coalition, namely forming a coalition of various interests to build a majority power.
2) The party as an organization, to become an existing, dynamic, and sustainable institution, political parties must be managed.
3) Party as policy maker. Political parties are also different from other social groups in terms of policy making. Political parties concretely support the candidates they propose to hold political positions. From this position they have the power to influence or appoint officers or employees within their sphere of authority, and even to influence the decision making in ministries where party cadres occupy the same position through party collegiality.

Of course, political parties are only one form of institutionalization as an expression of free ideas, thoughts, views, and beliefs in a democratic society. In addition there are still other forms of expression such as freedom of the press, freedom of association and association through political non-party organizations, such as non-governmental organizations (NGOs), community organizations (CBOs) and so forth. But in relation to state activities, the role of political parties as media and vehicles is very prominent. Political parties act as intermediaries in the processes of state decision making, which connects citizens with state institutions.

Political parties have become an important feature in a modern politics because they have a strategic function. In general, political parties have functions, namely: a means of political communication, a means of political socialization, a means of political recruitment, and a means of managing conflict. The main function of political parties is to seek power, gain power and maintain it.

Normatively, the fundamental function of the establishment of a political party is to institutionalize certain values in an orderly and stable manner from the level of civil society to the state level. The party organizational structure is structured in such a way as to carry out these functions, especially in the effort to mobilize support through the dissemination of values and interests to be fought for in party policy programs. Dissemination of real values is the stage of institutionalization after the establishment of standard and stable values as the basic value of the party's struggle.

To strengthen modern democracy, the most important thing to improve the quality of democracy is not the existence of the number of political parties, but the extent to which the robustness and adaptability of the party system is ongoing. In order for a party to be able to sustain the stability of democracy and political stability, the institutionalization of parties is an inevitable need. According to SigitPamungkas, the institutionalization of the party will make the party work in the corridor of the proper functions while eliminating unnecessary changes in political participation from citizens as a result of modernization and the movement of the times (Pamungkas, 2012). The institutionalization of political parties can be traced through aspects of the development of political parties in a country through several stages, namely: 1) factionalization or grouping, 2) polarization or separation, 3) expansion or expansion, and 4) institutionalization or institutionalization.

General Election

The development of democracy and democratization in a country is certainly related to the general election, because the election is considered a symbol, as well as a benchmark of democracy. The results of general elections held in an atmosphere of openness with freedom of opinion and association are considered to reflect the participation and aspirations of the people. Even so, it was realized that the election was not the only benchmark and needed to be supplemented by the measurement of several other activities that were more sustainable.

Elections are a means for the public to participate in voting to elect representatives of the people, as well as evidence of efforts to realize democracy. In abstract and philosophical terms, elections are an instrument for realizing people's sovereignty that intends to form a legitimate and legitimate government, as well as a means of articulating people's aspirations and interests.

As a very important tool in order to elect and participate in determining the representatives of the people who sit in parliament as well as the people's leaders who will sit in government, elections provide an opportunity for citizens to elect government officials who are truly considered capable of aspirating their wishes. In democratic life, elections are a substantial process of refreshing a government. It is said so, because elections are conducted regularly are a means to regenerate leadership so as to prevent the emergence of leadership that is authoritarian. Through elections, the people assess the performance of officials they have previously elected and punish them by not re-electing them in the next election, if their performance as an official is deemed inadequate or poor. Thus, the people's leaders who are members of parliament or legislature and who hold executive positions are selected and supervised by the people themselves.

The importance of elections being held periodically for several reasons, namely:

a. People's opinions or aspirations regarding various aspects of shared life in society are dynamic, and develop over time. In a certain period of time, it can happen that most people change their opinions about a state policy.
b. In addition to the people's opinions can change from time to time, the conditions of shared life in society can also change, either because of the dynamics of the international world or because of domestic factors themselves, both because of human internal factors and due to external human factors.
c. Changes in people's aspirations and opinions can also be possible due to the increase in the population and adult population. They, especially new voters or new voters, do not necessarily have the same attitude as their own parents.
d. Elections need to be held regularly for the purpose of guaranteeing a change of state leadership, both in the executive and legislative branches of power.

Election activities are also one of the most principled means of channeling the rights of citizens. Therefore, in the context of implementing the rights of citizens, it is imperative for the government to guarantee the implementation of elections in accordance with the predetermined state calendar or calendar. Is a violation of the rights of citizens if the government does not guarantee the implementation of elections, or does nothing so that the elections are not held as they should. Thus, elections are an absolute requirement for democratic countries, namely to exercise popular sovereignty and the rights of citizens.

In a modern democratic system, the legality and legitimacy of governance are very important factors. On the one hand, a government must be formed in accordance with legal and constitutional provisions, so that it can be said to have legality. On the other hand, the government must also be legitimate, in the sense that besides being legal, it must also be trusted. Certainly there will be doubts, if a government declares itself to be a government derived from the people, in the case that its formation is not based on election results. That is, every democratic government that claims to come from the people must be based on the results of the election as an important feature or a central pillar in the modern democratic system.

In various studies on elections there are two aspects that must be present, namely: the electoral system / laws, and the electoral processes. Electoral systems mean instruments for translating votes in elections into seats won by political parties or candidates; while the election process is related to the choice of technical elements.

The electoral system needs to be designed appropriately in order to realize the election objectives. According to Asshiddiqie (2007), that the objective of holding the election is 4 (four), namely:

1. To enable an orderly and peaceful transition of government leadership;
2. To enable the replacement of officials who will represent the interests of the people in representative institutions;
3. To implement the principle of popular sovereignty; and
4. To implement the principle of the rights of citizens.

Thus, it can be said that the election is not only important for citizens, political parties, but also state officials. For state administrators who are appointed through honest elections means that the government has the actual support of the people or the government that comes from the people. Conversely, if the government is formed from dishonest election results, then the people's support is only apparent.

In the Indonesian constitutional system according to Article 22 E of the 1945 Constitution of the Republic of Indonesia, elections are held to elect DPR members, DPD members, the President and Vice President, and DPRD members. Election is a manifestation of people's sovereignty, as a means for the people to elect leaders through the election of the President and Vice President who are elected in a single pair directly and elect their representatives who will carry out functions to supervise, channel the political aspirations of the people, make laws as a foundation for all parties in the Unitary State of the Republic of Indonesia in carrying out their respective functions, as well as formulating revenue and expenditure budgets to finance the

implementation of these functions. Elections are held directly, publicly, freely, confidentially, honestly and fairly once every five years.

The rule of law theory is used because the conception of the rule of law is based on the understanding of the rule of law which places that the highest authority in a country is based on law. The rule of law is a fundamental substance of the social contract of the Indonesian people. The contract states that the obligations to the law are to maintain, obey and develop it in the context of legal development to achieve the welfare of the community. The significance of the rule of law in the administration of governmental power by the President as head of government and as head of state also places the position of minister of state based on law or legislation as the implementation of the rule of law.

The relevance of constitutional theory as a theoretical basis for discussing the existence of state ministers because constitutions or basic laws are official political and legal documents of a country, whose material content primarily regulates the fundamental constitutional structure, including institutions executive, as well as the division and limitation of power which is also fundamental. Therefore, the authority of state institutions including the executive, and specifically the minister of state is also regulated in the 1945 Constitution of the Republic of Indonesia and its implementing regulations.

As it is known that the theory of separation and distribution of power used as a theoretical basis is intended to support the theory of the rule of law and constitutional theory. This means that the existence of a minister of state is an embodiment of the power of the President as head of state and head of government. Considering that the power of the minister of state is closely related to the activities of the administration of the state, in order to avoid the abuse of authority and power, it needs to be limited and separated. Therefore, the form of separation and division of power in his teachings shows a variety of styles in various countries. however, its manifestation is not free and is a further development of the doctrine of the separation of powers pioneered by John Locke and Montesquieu. The theory of the separation and distribution of power is closely related to the theory of the rule of law, in addition the division and separation of powers is an important element of the rule of law. Therefore, the separation and distribution of power in a rule of law is necessary and must be strictly regulated through the rule of law or constitution. To ensure legal certainty, the existence of separation and distribution of power is absolute, it aims to avoid the possibility of arbitrary actions by the government so that it can be prevented and the truth is in the context of creating a checks and balances system among state institutional functions including state ministers.

The relevance of political parties and general elections is used as a theoretical basis based on the formulation of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads: "The President of the Republic of Indonesia holds the power of government according to the Basic Law". Furthermore, in the case of the Presidential election according to the provisions of Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it reads: "The President and Vice President are elected in a pair directly by the people". Then Article 6A paragraph (2) states: "The pair of candidates for President and Vice President are proposed by the political prtai or a combination of political parties participating in the general election before the implementation of the general election". Thus the formulation of the articles of the constitution correlates with the theory of political parties and elections. The implication is certain to have a big influence on the choice of the candidates for President and Vice President in the general election, and the subsequent implications have an impact on the President and Vice President elected on the composition or composition of the cabinet or council of ministers. When viewed from the poroses of the nomination of a pair of President and Vice President at the political level, reality shows that the nomination of candidates for President and Vice President is usually carried out at party conventions that carry them. This shows that the choice of political party theory and general elections has strong significance.

Then in Article 17 paragraph (1) through paragraph (4) of the 1945 Constitution of the Republic of Indonesia NRI states that in paragraph (1) the President is assisted by state ministers. In paragraph (2) it is stated that the ministers are appointed and dismissed by the President. Next paragraph (3) reads: Each minister is in charge of certain affairs in government. Finally, paragraph (4) determines that the formation, amendment and dissolution of ministries are regulated by law. Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia academically indicates the use of the President's prerogative in appointing and dismissing state ministers. However, the reality of multiparty politics now also complicates this. The President cannot simply dismiss the opinion that developed in the DPR. The prerogative of the President in his dynamics as during the New Indonesia Cabinet led by President SusiloBambangYudhoyono (SYB).After one year to lead the cabinet President SBY conducted an evaluation of his cabinet where it was not easy for President SBY to remodel his cabinet given the risk of political clashes. This phenomenon indicates that one of the important elements that plays a role in cabinet reshuffle is the role of political actors as well as other factors, such as the economy and alignments with the public interest. Prioritizing one element, for example a politician means that the problem of reshuffle is more due to political considerations. Prioritizing other factors will also influence the composition of state ministers who are experts or professionals to respond to market needs or to aspects of public service.

III. RESEARCH METHODS

Originality of Research

Factually, in the study of legal and political literature, there have been many scientific writings that discuss the existence of state ministers. From secondary data research about the existence of state ministers, studies have not yet been found that specifically relate to the government system and more specifically to discuss the relationship between the three concepts after the amendment of the 1945 Constitution.

Assumptions

1. The existence of the Minister of State according to the construction of the 1945 Constitution of the Republic of Indonesia explicitly determined the arrangements both before and after the 1945 Constitution amended all of which are directed to achieve national goals, and are aimed at building an effective and efficient presidential government system towards the goals that are aspired.
2. In the administration of state government based on the 1945 Constitution of the Republic of Indonesia, the position of the Minister of State and its filling as the prerogative of the President, but both factors are also determined by the political environment and its influence which also contributes to the existence of the Minister of State as the government organizer.
3. The existence of a Minister of State is in the context of exercising governmental power held by the President, therefore both government affairs whose nomenclature are explicitly mentioned in the 1945 Constitution of the Republic of Indonesia, and government affairs whose scope is mentioned in the 1945 Constitution of the Republic of Indonesia and the sharpening, coordination, and synchronization of government programs can certainly be influenced by the style of the President's leadership to his assistant as Minister of State.

The object of Research Problems

Seeing the object of the problem that will be explored in this study is the existence of state ministers in the state government system after the amendment or amendment to the 1945 Constitution, it is clear this research is research in the field of constitutional law.

This type of research is normative legal or normative legal research that is research that doctrinally examines the basis of rules and legislation regarding the existence of state ministers as assistants to the President in carrying out governmental powers. Through this research, projections can be formulated in the performance of state ministers and the efforts that need to be made to streamline the position, function, and accountability of ministers. This type of research can also be called analytical evaluative research. Descriptive research intended to do the description, analysis or classification.

To answer all the issues comprehensively, this research uses several approaches, namely analytical approach, legislative approach and comparative approach, and historical approach. In terms of form, this research is a study that examines the causes of a problem, its description, and an assessment of a problem. Therefore, this research is directed as an evaluative study, to assess the material contained in legislation relating to the state ministry as one of the state institutions in the Indonesian government administration system.

IV. RESEARCH RESULTS AND DISCUSSION

1. The Existence of the State Minister in the Government System Based on the 1945 Constitution of the Republic of Indonesia.

The system of government reflected in the constitution or constitution is the basis and starting point for understanding the structure of the executive as the holder of government power. In the system of government administration of the Republic of Indonesia, both before and after the amendment to the 1945 Constitution did not mention directly and firmly about the system of government adopted. Explanation of the 1945 Constitution only mentions the main points of the Indonesian state government system, namely the seven key principal systems of the state government which include: 1) Indonesia is a state based on the law (rechtsstaat); 2) constitutional system; 3) The highest state power is in the hands of the MPR; 4) President is the highest organizer of the state government under the MPR; 5) The President is not responsible to the DPR; 6) The Minister of State is the President's assistant; 7) The power of the head of state is not unlimited.

Based on the state government system listed in the Explanation of the 1945 Constitution, A. Hamid Attamimi said, the government system is essentially a description of how the state government mechanism is run by the President as the highest organizer of the state government. Thus, the notion of "system of government" in the words of the system of state government is the system of the operation of the government as a function that exists in the President.

Even though the 1945 Constitution does not state explicitly about the government system it adopts, but by examining and understanding the various provisions of the 1945 Constitution governing relations between state institutions, particularly between the DPR and the President and State Ministers the government system

reflected in the 1945 Constitution Constitutionally based on Article 4 and Article 17 of the 1945 Constitution, it is clear that the 1945 Constitution adheres to a presidential government system. According to this provision, the President is the holder of government power, and in exercising that power, besides being assisted by the Vice President, he is also assisted by State Ministers.

Thus, discussions on the existence of Ministries and State Ministers as assistants to the President (in addition to the Vice President) cannot be separated from the discussion and analysis of the theory and practice of filling presidential positions in the presidential government system according to the 1945 Constitution, both before and after the amendment.Textually, the 1945 Constitution as the highest written basic law for the State of the Republic of Indonesia, has designed the Presidential aides in two groups, namely the Vice President and the State Ministers. About the Vice President Article 4 paragraph (2) of the 1945 Constitution determines: "In carrying out its obligations, the President is assisted by one Vice President".

Likewise with the next President's aide, according to the amendment to Article 17 of the 1945 Constitution, the President was assisted by State Ministers who were appointed and dismissed by the President to lead the government department. This provision shows that the existence of State Ministers as President's aides is a must that cannot be ignored in the system of governance.

Although the Vice President and the Ministers of State are both the President's assistants, the political position of the Vice President's elect is different from the Ministers of State. In exercising the political power of the government of the State which is the responsibility of the President, practically the position of the Vice President also becomes an inherent part of the constitutional obligations assumed by the President. Thus, in carrying out government politics, the constitutional position of the Vice President who is a candidate for the successor to the President (Article 8 paragraph (1) of the 1945 Constitution) is different from that of the State Ministers.

In addition to being based on governmental power, the difference between the position of the Vice President and the Ministers of State can be traced to the process of filling both positions. As regulated in Article 6 paragraph (1) and Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the nomination and election of the Vice-President shall be one package with the nomination and election of the President. That is, filling the position of Vice President is the result of people's choice through direct elections. Position of Vice President in the level of democratic government, he was elected by the people together with the President. This makes the position of the Vice President equally strong with the President, moreover, this pair can be from a collection of different parties or two political parties, or it can also be from the same political party. If the President and Vice President come from two different parties, then hypothetically there can be differences of opinion in carrying out governmental power during a five-year term.

Unlike the Vice President, referring to Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Ministers are appointed and dismissed by the President. Even this provision, according to JimlyAsshiddiqie, is an affirmation that the 1945 Constitution adheres to a presidential government system. Theoretically, the President's enormous power in selecting, appointing and dismissing his ministers did not automatically increase when the President formed, changed and dissolved state ministries. In the case of the formation, modification, and dissolution of state ministries, the power of the President is regulated by law. Thus, the President's prerogative only appoints and dismisses the Ministers, not in forming, changing and dissolving state ministries. The formation of a state ministry with the appointment of a Minister is two different things.

As a consequence of the different filling processes between the Vice President and the Ministers of State, the Vice President's tenure is the same as the President's tenure which is explicitly stipulated in the constitution for five years, as stated in Article 7 of the 1945 Constitution. That is, using the logic of the period a permanent term unless proven to violate Article 7A and be dismissed following the process of Article 7B of the 1945 Constitution of the Republic of Indonesia, the Vice President will not be dismissed in the middle of his term of office. While the State Minister can at any time be dismissed by the President. Another position of the Vice President to distinguish it from the Minister of State is that the Vice President can replace the President if the President dies, stops, is dismissed or cannot carry out his obligations as President, regulated in Article 8 paragraph (1) of the 1945 Republic of Indonesia Constitution.

In addition to the constitutional provisions regarding the existence of the State Ministers mentioned above, also in the Explanation of the 1945 Constitution in the subtitles "State Ministers are not ordinary high-ranking employees", also emphasized the position and function of State Ministers. As mentioned in the previous section, if the provisions of Article 17 and the Elucidation of the 1945 Constitution regarding State Ministers are formulated, then the following indicators can be stated. 1) Ministers of State are not ordinary high-ranking employees. 2) The position of the Minister of State depends on the President. 3) The State Ministers exercise government power (pouvoir executive) in practice under the leadership of the President. 4) The State Minister is the leader of the Government Department. 5) The Minister of State has a great influence on the President in determining State politics. 6) The Ministers of State are the Leaders of the State.

In the meantime, if the provisions above are reviewed further, it turns out that the 1945 Constitution has not provided clarity on the meaning of these indicators. Therefore it is necessary to find what the meanings or meanings of the indicators meant. As stated "State Minister is not an ordinary high employee". What is the meaning of this statement? Are employees in the sense contained in the staffing law? If it is not an employee according to the employment law it means that it is a state official or a political official. If this is what is meant, then the problem is, how far the 1945 Constitution understands the Minister is a political position with all the legal consequences.

Employees are essentially a human element for an organization which is also a resource for the organization. Because of this element of human resources, an organization is called a living organization. Government organizations in the context of the state mentioned government officials, namely people who occupy positions in government institutions or executive bodies. Because every position in a government organization must be occupied by an official, the problem is, how to fill those positions with officials. In this connection, Logemann said: Work environment which is a position, must be occupied by a human being; a person, who is a position, must be represented by a human being; This is the officeholder. To appoint position holders can be done among others through appointment and election.

Thus, positions in government organizations must be occupied by officials called position holders. The position is the personification of rights and obligations in the organizational structure of government. To be able to walk or be concrete and useful, it requires a representative. As for who runs the representative are officials. Position as a permanent work environment carried out for the benefit of the state, so the position intended in this case is a state position. To complete it can be done, among others, by appointment or election.

In-Law No. 5 of 2014 (Law No. 5 of 2014) concerning State Civil Apparatus (ASN) in place of Law No. 8 of 1974 concerning Personnel Principles as amended by Law No. 43 of 1999 concerning Amendment to Law No. 8 of 1974 concerning Personnel Principles, only mentions the term "state official", while the statement "not a high ranking employee" and "state leaders" is not found. Therefore the question arises, do "state officials" carry the same meaning as "not ordinary high officials" and "state leaders"?

In connection with this problem Zainun (1990) gave an interpretation, High-ranking ordinary employees are civil servants or employees of the Republic of Indonesia who are careerists, while state leaders are political officials or that is what is meant by State officials. According to Mosher (1988) in terms of the state staffing system, there are at least four main areas or types of staffing systems. One of the main types is the political appointment system, namely: political executive. Political executives are state officials in an agency with limited tenure. Political executives have the power to make policies and are outside the country's civil service system.

From this opinion, it can be said that ordinary high-ranking employees are career civil servants, while state leaders are political officials or state officials. In connection with that and when connected with Law No. 5 of 2014 concerning the State Civil Apparatus (ASN), the term "state official" was discovered. In Article 121 of Law No. 5 of 2014 emphasized, "ASN employees can become state officials". ASN employees are civil servants and government employees with a work agreement that is appointed by a staff development officer. What is meant by staff development officers are officials who have the authority to determine the appointment, transfer and dismissal of ASN Employees and ASN Management coaches in government agencies following statutory provisions?

Thus it can be emphasized, state officials are political officials. Likewise, ministers are not ordinary high-ranking employees and are state leaders who are state officials or political officials. It is said so because ministers (state officials) are appointed or elected based on political considerations (outside the staffing system) and can set government or state policies. So, even though state officials (Ministers) are included in the structure of the employees of the Republic of Indonesia, it does not mean that the regulations that apply to ASN Employees apply. Because for nonstructural state officials, the relationship with the government is covered by political elements, separate regulations apply.

Likewise, indicators regarding the position of the Minister of State depend on the President for clarity. Constitutionally, the position of the Minister as an assistant to the President is stated in Article 17 paragraph (1) of the 1945 Constitution. Strictly speaking, this provision states: "The President is assisted by State Ministers". The understanding assisted in this provision is to assist with superiors' positions in leading or guiding State policy. This means, that the position of State Ministers in the constitutional structure according to the 1945 Constitution is the President's aide, where the President as superiors and Ministers are subordinated to the President. Since the Ministers are only assistants to the President, then the right to appoint and dismiss are the President, according to Article 17 paragraph (2) of the 1945 Constitution. If the President is not given such power, it will be difficult for a collaboration between the assisted and aides. Therefore there is no need for a cabinet formation body to compile a cabinet regardless of the position of the President, as in the parliamentary cabinet.

2. Existence of the State Minister in the Administration of State Government Based on the 1945 Constitution of the Republic of Indonesia.

As stated in the previous section that the first Cabinet after the enactment of the 1945 Constitution as the highest written basic law applicable to the Unitary State of the Republic of Indonesia is a Presidential Cabinet headed by President Soekarno. Following the provisions of Article 17 of the 1945 Constitution that Ministers of State are Presidential Assistants who are appointed and dismissed and are responsible to the President. Forming a presidential cabinet is still very simple without being interfered with or influenced by political parties. This cabinet consists of ministries led by Ministers who have portfolios and Ministers of State without portfolios. However, in the course of the existence of the presidential Cabinet, it changed into a parliamentary cabinet based on the Government's Notice on November 14, 1945. Through this information, the position of the Ministers who were initially as aides to the President and was responsible to the President, turned into a parliamentary Cabinet led by the Prime Minister and responsible to the parliament namely BP-KNIP in its position as the DPR. The practice of a parliamentary cabinet starts from the formation of the Syahrir I Cabinet and returns to the presidential cabinet led by Vice President Moh. Hatta.

In the period 1945-1949 based on the 1945 Constitution, the formation of the Cabinet was strongly influenced by political parties, except for the first presidential cabinet led by President Soekarno. The existence of political parties was recognized through the Government's Announcement on November 3, 1945. Since then the existence of political parties has developed and has considerable influence in every Cabinet formation. From the various Cabinet series that had been formed during the coming into effect of the 1945 Constitution it turned out to be in the form of a parliamentary Cabinet led by a political party with coalition and opposition, it could also be in the form of a presidential Cabinet led by a non-part Vice President, but supported by Ministers from political parties. Thus, in the atmosphere of the 1945 Constitution that adopts a presidential system, it turns out that it can also be applied to a parliamentary system that is contrary to the principles of a presidential system, without changing the 1945 Constitution. This also shows that the presence and support of political parties in a presidential cabinet are not prohibited or foreign, but has never been practiced by the government in the 1945 Constitution.

After being interspersed with the enactment of the 1949 RIS Constitution and the 1950 Constitution, then the 1945 Constitution was re-enacted through the Presidential Decree of July 5, 1945. The first cabinet formed after returning to the 1945 Constitution was a Working Cabinet led by President Soekarno, who also acted as Prime Minister. In this Cabinet, there are classifications of Ministers as Core Cabinet Ministers consisting of Minister of Security-Defense, Minister of Finance, Minister of Production, Minister of Development, Minister of People's Welfare, Minister of Foreign Affairs, Minister of Internal Affairs and Regional Autonomy, Minister of Culture. There are also ex-officio State Ministers who are not members of the Core Cabinet, among others filled by all Chiefs of Staff of the Force including the Police, Attorney General, Deputy Chairperson of the DPA, and Chair of the National Designer, as well as the position of Deputy Minister. One of the practices of governance which are considered to be deviant or not following the meaning and spirit contained in the 1945 Constitution is the granting of the status of the Coordinating Minister to the Chair / Deputy Chairperson of the Highest / Highest Institution of the State.

The Working Cabinet does not reflect the elements of political parties or the role of political parties is no longer prominent. President Soekarno's political thought was followed by all the existing political forces to simplify political parties into National, Religious and Communist (Nasakom) political forces. The composition of the Cabinet has been reshuffled almost every year, from the Working Cabinet to the Dwikora Cabinet. Then before the fall of President Sukarno perfected the Dwikora Cabinet by adding Deputy Ministers, so that the improved Dwikora Cabinet was called the Cabinet of 100 ministers.

The series of Cabinet changes led by President Soekarno showed that a presidential Cabinet that was considered capable of creating a democratic and stable government when compared to the parliamentary Cabinet, apparently during the guided democratic government did not materialize. Even in several changes to the Cabinet, and in every change in the Cabinet there are always additional Cabinet members and additional departments.

Throughout the Dwikora Cabinet led by President Soekarno, various events occurred to bring down the government. One of them was in the form of the PKI G30S rebellion in 1965, as an effort to seize power from the President by the PKI. Because the incident arose from the community in the form of the Three Demands of People's Hatinurani (Tritura), one of which contained the dissolution of the PKI. As a result of these events and to realign the implementation of the 1945 Constitution, President Soekarno issued a March 11, 1966 (Supersemar) Order. This supersemar was addressed to Lieutenant General Suharto, who during the Dwikora Cabinet served as Minister / Commander of the Army.

Based on Supersemar, Soeharto controlled the government and organized the life of the constitution based on a democratic rule of law and the implementation of the government following the provisions of the 1945 Constitution. Supersemar in the Indonesian constitutional system could be considered and declared as the

beginning of the birth of the New Order government led by Suharto as President, to replace the government old of the Republic of Indonesia.

Historically in the atmosphere of the Old Order, executive relations with the legislature were dominated by the executive, when President Soekarno began to implement guided democracy. The concept of democracy is what drives the President to become an authoritarian leader and to use all his power to create a regime that is contrary to parliamentary democracy. President Soekarno appointed himself Prime Minister and composed the Cabinet. Besides, the President forms a parliament called the GotongRoyong DPR (DPR-GR), where most of the members are the result of his appointment. As an institution controlled by the President, the DPR-GR cannot carry out its functions properly, so that the existence of Parliament is only a giver of legitimacy for the legitimacy of executive power. Likewise, the existence of political parties during President Soekarno's leadership, not because of the interests of the election, but to support the power pyramid controlled by President Sukarno by balancing the two forces which had enormous influence and were never in line, namely the Indonesian Communist Party (PKI) and the Indonesian National Army (Indonesian National Army TNI).

To run the government, the People's Suffering Commission (Ampera) was formed. In the Ampera Cabinet, there are three elements, namely: the leadership element held by President Soekarno, the assistant leadership element is held by the Presidium, and the cabinet members are held by the Ministers. In this Cabinet, the leadership of the Cabinet is still held by President Soekarno, while in the enhanced Ampera Cabinet, General Soeharto is directly held. After this Cabinet finished carrying out its duties, then the Development Cabinet I was formed, led by President Soeharto. After Suharto was appointed as President and elections are held every 5 (five) years, Suharto is always confirmed as President for 7 (seven) periods, from the Development Cabinet I to the Development Cabinet VII. In every Cabinet formation, it is always connected with the main tasks of the Cabinet determined by the President.

During the New Order administration, President Soeharto (1966-1998) controlled all governmental authority, in the form of recruitment of political positions, a bureaucracy, and the election of political party leaders. The President restructured the multi-party system during the parliamentary government into three parties: the Work Group (Golkar), the United Development Party (PPP), and the Indonesian Democratic Party (PDI). Then it creates a mechanism that puts the DPR under its control so that it is under the control of the President through an institutional mechanism.

After experiencing various constitutional turmoil and demands for reform, finally, President Soeharto was reappointed as President (Cabinet Development VII) based on the Tap. MPR No. IV / MPR / 1998 could not complete his term of office for five years (supposedly until 2003), because on May 21, 1998, Suharto resigned or resigned as President, and his position was replaced by B.J. Habibie who previously served as Vice President. Suharto's resignation as President is inseparable from the demands for reform carried out by students, students, and citizens during the economic and monetary crisis that has engulfed the entire country.

The collapse of the New Order regime, led by President Soeharto, is considered the beginning of the birth of the reform era, a time that promises new hopes in a better life for the nation and state of Indonesia. This expectation is fairness, considering that up until now the political system practiced by the New Order was considered unsuccessful in creating national and state life arrangements that fulfilled the characteristics of a democratic, egalitarian, liberating state and provided space for every citizen.

To run the government of President Habibie to form a Development Reform Cabinet with the main task of preparing the reform process in the political, legal and economic fields. The Development Reform Cabinet, led by President Habibie, was called the transitional government. The transitional government can be understood in two senses, namely, first, referring to "provisional government" whose term of office is limited to the formation of a new government resulting from elections. Second, the transitional government is an authoritarian and centralistic government in a decentralized and democratic government.

Habibie's appointment as President to replace President Soeharto was not without resistance, it even led to a quite deep polemic in the state administration. The polemic revolves around two main issues, namely the legitimacy of Habibie replacing Suharto, and the appointment of Habibie's oath as President which is only carried out at the State Palace. Politically, the appointment was certainly questionable because Habibie was considered a loyal student and loyal to Suharto. However, legally (constitutional law), questioning the legitimacy of the change can be said to not have a solid basis, because Article 8 of the 1945 Constitution mandates that if the President dies, stops or cannot perform his obligations, then his position will be replaced by the Vice President until the end of his term of office. That is, with the fulfillment of Article 8 of the 1945 Constitution clause, whoever becomes the Vice President will automatically replace the President who stops in his term of office.

Based on these provisions, under normal circumstances, taking the oath of Habibie to be President should be carried out before the DPR. However, because students and demonstrators were occupying the DPR / MPR building, it was not possible to hold a DPR meeting or session. Therefore, the clause used in Article 2 paragraph (3) Tap. MPR No. VII / MPR / 1973, namely the taking of the Vice President's oath was taken before

the Supreme Court. Moreover, the place of taking an oath is not specifically required. So, taking the oath of the Vice President to be President before the Supreme Court conducted at the State Palace is legally and constitutionally valid.

Constitutionally based on the provisions of Article 8 of the 1945 Constitution, B.J. Habibie was supposed to be President until President Soeharto's tenure ended, namely in 2003. However, it turned out that President B.J. Habibie took a dramatic and radical decision, namely deciding to hold elections that were accelerated to 1999. The acceleration of the elections was carried out as a constitutional and democratic solution in dealing with the turbulent national political situations and conditions after the community was freed from the shackles of the repressive and militaristic New Order government.

Besides, the President's policy is also based on the pressure and pressure from various community groups who want the election to be accelerated to get members of representative institutions that are more legitimate because it results from democratic elections. DPR members from the 1977 election results and MPR members in that period were seen as lacking strong legitimacy because they were considered as election products that were still characterized by fraud, pressure, and coercion to voters. Likewise, the holding of elections was considered not able to be independent and impartial from the authorities at that time.

Although President Habibie was seen as a continuation of the Suharto regime, running a government was different from its predecessor. This was apparent when the Development Reform Cabinet formed by President Habibie did not describe the family and crony Cabinet as seen in the 1977 Cabinet. The Habibie Cabinet consisted of technocrats, senior officers of the Indonesian National Armed Forces and elements of political parties. Members of the Cabinet who came from elements of political parties, President Habibie not only placed government responsibility on a single political party (such as the New Order) but had begun to involve figures from other political parties, such as BambangSubianto from PAN (Minister of Finance), AdiSasono from Golkar (Minister of Cooperatives, Small and Medium Enterprises), AM Saefuddin from PPP (Minister of Food and Horticultural Affairs) and several other names. The technocrats involved in the Cabinet are KuntoroMangkusubroto (Minister of Mines and Energy), RachmadiBambangSumadijo (Minister of Public Works), JuwonoSudarsono (Minister of Defense) and several other names. All of this aims to dampen the views of some people who think that the Habibie Cabinet is a crony Cabinet as compiled by President Soeharto before resigning.

In the era of his administration which lasted from 21 May 1998 to 19 October 1999 or since the appointment of Abdurrahman Wahid as President, President Habibie succeeded in laying the foundations for strong governance for the Indonesian people, including holding elections in 1999 peacefully and democratically. Even the general election is no longer carried out by the General Election Institution (LPU) which is controlled by the government through the Ministry of Home Affairs, but by the Election Commission (KPU) which is independent and independent.

Likewise, the space for freedom of association and assembly which was so open after the reformation of 1999, was well manifested under Law No.2 of 1999 concerning Political Parties. This was appreciated by the community as an opportunity to get involved in the national political process. The form of community appreciation is manifested through the establishment of political parties. If during the New Order era there was a political party stunt, then during the reform era the political parties grew again and developed as instruments of democracy.

Political euphoria is marked by the emergence of various political parties as election participants. It is not surprising that ahead of the 1999 elections, there were 141 political parties, and 48 political parties had successfully passed verification to become contestants in the elections held on June 7, 1999. Of the 48 political parties that competed, only 21 political parties managed to obtain seats in the DPR, and there are five major political parties in the DPR namely the Indonesian Democratic Party of Struggle (PDI-P) as many as 153 seats, the Group of Work (Golkar) as many as 120 seats, the United Development Party (PPP) as many as 58 seats, the National Awakening Party (PKB)) 51 seats, and the National Mandate Party (PAN) 34 seats. The composition of the acquisition of seats in the DPR shows that there is not a single political party that can control the majority of votes in the DPR.

During the era of President Habibie's administration, legal structuring also began, in the form of the lifting and revocation of several laws and regulations which were considered to hamper the democratic process, as well as the idea of amending the 1945 Constitution. first of the 1945 Constitution. This achievement is considered a big leap in the life of democracy and law in Indonesia, considering that during the New Order era planning or discussing, let alone implementing changes to the 1945 Constitution is taboo, and even considered as an effort to disrupt the integrity of the nation and state unity of the Republic of Indonesia.

The demand for an amendment to the 1945 Constitution which revolved during the reform period was not something new. Constitutionally according to Article 37 of the 1945 Constitution, the amendment to the Basic Law was carried out by the MPR as an institution for the embodiment of people's sovereignty, with determined conditions. Judging from practical political reasons, the 1945 Constitution needs to be refined in the

context of legal reform, that consciously or indirectly, directly or indirectly, in practice the 1945 Constitution has undergone several changes and/or additions that deviate from the original text both in the 1945- 1949 and 1959-1998.

Although the Development Reform Cabinet led by President Habibie has succeeded in laying the foundation for a more democratic and transparent state administration, the reality shows Habibie must stop as President. During a tense political situation full of rallies and partly anarchic, and an unstable security situation, because in the stage of political euphoria of the reform era, President Habibie's accountability was rejected by the MPR through Tap.MPR No. III / MPR 1999 dated 19 October 1999 by the MPR. Responding to the MPR's rejection, Habibie did not continue his plans to move forward as a candidate for President in the next election period. Finally, President Habibie had to resign his position as President through a process in the MPR resulting from the democratic election as a product of his administration.

After rejecting President Habibie's accountability through voting, the MPR from the 1999 election appointed Abdurrahman Wahid to become President replacing Habibie, and Megawati Soekarnoputeri as Vice President. This fact is considered as an important event for the development of democracy, namely the election of the President and Vice President through a vote in the MPR, which was previously both during the Old Order and during the New Order through the appointment process by the MPR.

To support his duties and authorities in running the government, President Abdurrahman Wahid formed the National Unity Cabinet, whose members were prepared based on recommendations from the elites of their supporting political parties. Although President Abdurrahman Wahid tried to please his supporters, the Cabinet formed was more breathtaking in the interests of political parties. This happened because the National Awakening Party (PKB) as the main supporter of President Abdurrahman Wahid was not the political party with the most votes or was dominant in the DPR, but only the political party that was ranked third, after the Golkar Party and PDI-P. In other words, PKB is a political party whose executive power is largely determined by the coalition that it builds in parliament. If they wish to last longer, then the various interests of political parties must be prepared by the executive headed by the PKB. As a result of this unwritten agreement, of course, the presidential government system adopted by the 1945 Constitution of the Republic of Indonesia becomes problematic, because the President no longer has the prerogative to determine policies in running the government. After all, every attitude of executive action is shackled by the interests of political parties in parliament. If the President does not fulfill the interests of the coalition of political parties, the implication is certain that they will withdraw support from the Cabinet led by the President. Therefore, maintaining the common interests of the coalition in the Cabinet becomes important in political life. In other words, the formation of the National Unity Cabinet was strongly colored and influenced by political parties that were built to support Abdurrahman Wahid to become President. This means that there has been a coalition practice by dividing the Minister's quota to the political parties supporting the coalition, with the intention that the President can cooperate with coalition partners in parliament.

Coalition in a presidential government system should be an emergency measure because actually coalition is only commonly done in a parliamentary system. Coalition in a presidential system is far more difficult than in a parliamentary system because coalition partner parties usually stand on two legs, one foot supports the government and the other at the foot oversees the President in parliament, or there will be a kind of divide government.

Academically the character of the presidential system does not recognize coalitions. The coalition model is only known in the parliamentary system because the composition of parliamentary seats determines the format of political power from the Prime Minister to his Cabinet. Because the elected Prime Minister usually comes from political parties that control the majority seats in parliament, while the Ministers who sit in the Cabinet are the result of a coalition of political parties in parliament.

The combination of a presidential system with a fragmented and polarized multiparty of ideological and political interests encourages conflictual relations between the President and the Parlement because the public policies undertaken by the President tend to be colored by compromise, coalition and accommodation of interests between political parties in different parliaments with the President's supporting political parties. In the case of coalitions or consensual government formation in a presidential system is much more difficult when compared to the parliamentary system. A multi-party presidential system in parliament makes the President often face tremendous political pressure from political parties in parliament so that the President can accommodate the interests of political parties. The running of a government that is full of political pressure that makes the President lose his prerogative in determining government policies based on the vision and mission and the program that is carried out, is a hallmark of an unstable and ineffective government.

In the context of running the government, President Abdurrahman Wahid seeks to divide the power between the President and Vice President through Presidential Decree No. 123 of 2000. President Abdurrahman Wahid's attitude was considered by Mahfud MD as an appropriate step both politically and constitutionally. Politically it can be said that the President made the transfer of power based on his power, not unilaterally

imposed by the MPR. The action can also be constitutionally justified because what is done by the President is not to separate or release the power of the government of the country from his hands, but rather assign it to the Vice President while still being under the responsibility of the President himself.

The impact of the many interventions by political parties in the government bureaucracy, as shown above, is the deteriorating performance of the Cabinet. For example, corruption can occur freely within the ministry, ministry activities are recognized as political party activities, collusion in employee recruitment, the appointment of officials based on kinship and closeness to certain political parties and so on. Therefore, President Abdurrahman Wahid then took the initiative to reshuffle or reform the Cabinet to improve the performance of his government, by moving and dismissing several Cabinet members.

The amendment to the 1945 Constitution is the spirit of perfecting, clarifying, correcting mistakes and correcting the substance of the 1945 Constitution, which either causes multiple interpretations or which is no longer relevant to the development of the Indonesian nation. Of all the reasons for making the change, one of the main objectives is to create a democratic government characterized by strong and effective governance and to organize all state institutions to create checks and balances. From the series of changes, the most extensive and in the discussion are the House of Representatives and the President and the relationship between the two-state institutions.

To test whether the President and the Parliament are in good checks and balances, or what is the impact of changes to the 1945 Constitution on the spirit and order of the presidential government system that was adopted under the 1945 Constitution before changing? For this reason, it is necessary to compare the rights and authorities of the President with the current DPR. Regarding the rights and authority of the President, there is no additional in the 1945 Constitution of the Republic of Indonesia. On the contrary, the number of the President's authority has been reduced. Before the amendment to the 1945 Constitution the President held the power to form a law, now it has the right to submit a bill. Previously the President had full authority in granting clemency, amnesty, abolition, and rehabilitation, now for clemency and rehabilitation with due regard to the Supreme Court's considerations, while amnesty and abolition by taking into account the considerations of the DPR. Previously, the President could immediately appoint ambassadors and consuls, and receive ambassadors from other countries, now all of them taking into account the considerations of the DPR. Previously, the formulation of the Cabinet was a prerogative of the President, now the formation, amendment and dissolution of the State Ministry are stipulated in a law, which is essential to limit. All of this concerns the reduction and limitation of the President's constitutional authority.

Meanwhile, with the same spirit, several statutory provisions have also emerged which also aim to limit the authority of the President. Previously the President could immediately appoint the Commander of the Indonesian National Armed Forces (TNI) and the Chief of the Indonesian National Police (Kapolri), now both must get approval from the DPR. Then to fill the membership of state institutions that were appointed by the President, but now almost all real power to appoint members of various state institutions including the commissions formed in the reform era is in the hands of the DPR. That said, the President is more concerned with the inauguration or endorsement. Some were proposed by the President, but the names were given by an independent selection committee, not by the President, and then elected by the Parliament. For example, the Election Commission (KPU), the Corruption Eradication Commission (KPK), the Ombudsman, and so on. There are also those whose power is truly in the hands of the DPR. That is, both those who propose and those who vote are the DPR, such as the election of members of the Supreme Audit Board (BPK).

The new rules and mechanisms in the selection of many public offices that are in force today indeed often produce criticism and concern. This happens because the election process at the DPR level is essentially political, so it is inevitable that the interests of political parties will color the elections of the public officials. Of course, it is very dangerous if there is then an obligation to return the favor to the political parties that support and vote for it.

Regarding the rights and authorities of the DPR, nothing was reduced in the 1945 Constitution of the Republic of Indonesia, which increased significantly. Before the amendment to the 1945 Constitution, that each law required the approval of the DPR, it was now stated that the DPR held the power to form a law. Besides, the DPR has the right of interpretation, the right of inquiry and the right to express an opinion. Besides, in the 1945 Constitution of the Republic of Indonesia also stipulates that each DPR has the right to ask questions, submit proposals and opinions, as well as the right to immunity. Previously not owned, now the DPR can propose to the MPR to dismiss the President and / or Vice President during his term of office. This power, when united with the provision that the President cannot freeze and/or dissolve the DPR, the DPR according to the 1945 Constitution of the Republic of Indonesia NRI, is indeed very powerful.

With a very large power in the DPR, certainly contrary to the past era, the very powerful is the President. Therefore, the view that currently the 1945 Constitution of the Republic of Indonesia does not fully embrace a presidential system, but has changed to a semi-presidential system, or even a semi-parliamentary system, is indeed justified and non-existent. The same applies to checks and balances which are considered not

to be in the right circumstances, as if they contain truth, whereas checks and balances are important joints in a constitutional democracy. Another interesting phenomenon to be listened to, especially relating to the President's relationship with the DPR is the easy and frequent use of the right of interpretation and inquiry right by the DPR, which in fact in a presidential system such practices are not uncommon.

Seeing the articles in the post-amendment of the 1945 Constitution has reduced the President's prerogative authority because the President's rights have been systematically reduced in placing public officials who will assist the running of the government. On matters that are supposed to be in the realm of managing public policy in placing decisive executive officials. Because the reality is that the President as a user of these officials if he is misplaced, the President will feel the impact.In filling public positions that require DPR's consideration to change to DPR's approval. The additional authority granted by the 1945 Constitution of the Republic of Indonesia is often used by the DPR to carry out political agreements, as happened in the case of filling the position of Deputy Governor of Bank Indonesia, namely Miranda Gultom.

According to Denny Indrayana, changes to the 1945 Constitution have strengthened the presidential system. Likewise, Sri Soemantri said, with these changes, there was indeed a strengthening of the presidential system, but there were still aspects of the parliamentary system. Because of the presidential system is desired, the President and the Parliament must be given authority following the presidential system. As such, the results of the amendment to the 1945 Constitution have not shown all the characteristics of a presidential government system as a whole. This certainly affects the administration of the country which is not yet effective and efficient.

In the presidential government system as reflected in Article Article 4 and Article 17 of the 1945 Constitution of the Republic of Indonesia, the President is given the authority of a prerogative to form the Cabinet without being intervened by anyone. Because the Cabinet in the presidential government system only works and is responsible to the President.Unlike the case with a parliamentary government system, where the composition of the Cabinet of a Prime Minister is highly dependent on the composition of the supporting political party or its bearers and seats in parliament.Because the cabinet in the parliamentary system is not responsible to the head of government (Prime Minister), but to the parliament.

This means that in theory the state administrative law in a presidential government system, a President is very likely to be able to form a Cabinet following the wishes or wishes of the President, not the tastes of the supporting political parties. Conversely, in a parliamentary system of government, there is no gap for the Prime Minister to compile his Cabinet based on his own free will but instead needs to seek approval from political parties in parliament. However, in practice the multiparty-based presidential government system within the bounds of political reasoning, it seems impossible to arrange a Cabinet without involving its supporting political parties and also the composition of seats in parliament. Because the presidential government system is working especially in drafting legislation and budgets is also very dependent on its relations, namely the parliament. It is at this point that a President must be able to form a Cabinet in an effective coalition of political parties.

According to KacungMarijan, effective governance is often associated with a fairly strong government, which has relative autonomy in carrying out government functions. Then Pratikno said, effective governance was not only democratic but also followed by "Govern Ability" or the ability of the government to build and manage its people. Meanwhile, according to Ni'matul Huda, that an effective government is a government that can run its wheels of power with the construction of a constructive relationship between the President and the House of Representatives on the principle of mutual supervision and direct checks and balances.

3. The Existence of an Ideal Minister of State Based on the 1945 Constitution of the Republic of Indonesia

After describing the existence of the Minister of State in the Indonesian constitutional system, so now comes the end of research on the existence of an ideal Minister of State based on the 1945 Constitution of the Republic of Indonesia. An ideal thing is certainly discussing as desired, an ideal, ideas or ideas that are expected to be able to be more both in the future, is no exception regarding the existence of the State Minister as a state institution authorized to assist the President in running the government in the Indonesian constitutional system.

Constitutionally based on the provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia, the existence of State Ministers is very important and strategic in the Indonesian government administration system because it also carries out governmental power following their respective fields of duty. It is even the Ministers who mainly exercise governmental power in practice. Or by following the wishes of the 1945 Constitution that a Minister must know the ins and outs of the work of the ministry he leads. This is confirmed again in the Explanation of the 1945 Constitution which now only applies as a historical document, including the description that the position of Minister is very important. Ministers are high-ranking officials who act as daily government leaders in their respective fields.

Who is eligible can be appointed as Minister, of course fully the authority of the President to determine it. The provisions of Article 17 paragraphs (1), (2) and (3) of the 1945 Constitution of the Republic of Indonesia

state that: "The President shall be assisted by State Ministers", "The Ministers shall be appointed and dismissed by the President", "Each Minister shall be in charge of certain matters in government". Based on this provision, it is clearly and firmly stated that the President is assisted by State Ministers who are appointed and dismissed by the President in charge of certain affairs in government. In other words, the President has the prerogative in appointing and dismissing the Minister. The term "prerogative" comes from the Latin "prerogative", namely privilege. In Thomas Jefferson's language, the prerogative right is the power that is directly granted by the constitution (power granted him directly by the constitution).

The Minister is the President's aide who is appointed and dismissed and is responsible to the President, but they are not arbitrary persons or officials. The requirements to be elected as Minister should be considered that he will be able to work as executive government leaders in their respective fields effectively to serve the needs of the community. Moreover, the Indonesian nation and state are very large and complex in their problems, so that the tasks of government and development cannot be left only to people who cannot be expected to work effectively for the benefit of all Indonesian people.

Minister is a position that is often dreamed of by many people. Especially nowadays when many political parties are established, with the hope that who knows through political parties can become Ministers. The position of Minister in the presidential system must be understood differently from the position of Minister in a parliamentary system that is purely political. In a presidential government system, the purely political nature is only the President and Vice President, while the Minister's position in addition to being political is also technical. Therefore, the Minister in the presidential system requires political qualifications as well as technical qualifications. Moreover, the Minister who will be entrusted with the task of leading a government department certainly needs political and technical qualifications that truly meet the capability requirements (technical qualifications) and high acceptance requirements (political qualifications).

Therefore, the presidential system of government that is built should be based on the idea that the President has the right to appoint and dismiss the Minister as an assistant to the President to support the effectiveness of government performance to serve the interests of the community. Cabinet formation should not be based on the logic of a parliamentary system that is built based on a coalition between political parties supporting the President. The Cabinet is a Council of Ministers whose job is to assist the President in carrying out governmental duties. The number of Ministers in each Cabinet is not always the same, depending on the policy of the President. Thus, someone elected and appointed by the President to hold the position of Minister must be based on the criteria of his ability to work, not solely because of consideration of his political services or compensation for the support of groups or political parties to the President.

That is, the position of Minister of State according to the provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia must be filled based on the merit system. The basis of a merit system covering competence, expertise and professionalism is the foundation for an appointment. Someone who has the competence and expertise required by a position can be appointed to occupy the position. Thus, it is time to tidy up the state administration system including a career in politics, that the original habit of appointing a Minister without being based on one's career record must be terminated.

That is the consequence of the choice of presidential government system adopted by the 1945 Constitution of the Republic of Indonesia, which demands that the Cabinet be a "zaken cabinet" or cabinet of work than the Cabinet in a parliamentary system that further emphasizes its political nature. Thus, in appointing a person to be appointed Minister, the President should have prioritized the technical requirements of leadership rather than the requirements of political support.

Zaken Cabinet is an ideal model that has become a necessity and a demand. The cabinet model needs to be built by the President to realize the vision, mission and government programs following the term of office determined in the constitution. Zaken Cabinet or work cabinet which is also called an expert cabinet is a condition that cannot be negotiable as an entity that carries out state policy. When the Cabinet is filled with people who are chosen based on expertise and professionalism, efforts to realize the welfare of the people as an objective will be more easily realized.

The demand for the establishment of the Zaken Cabinet is reasonable, but it must also be understood that it does not mean that people who are in political parties are not allowed to hold the position of Minister as an aide to the President. Politics is essentially an effort to gain power, so, naturally, political parties members of the coalition get a seat in the Cabinet after winning the Presidential election. Zaken Cabinet must prioritize experts and professionals, but it can also be chosen from among political parties because one of the functions of political parties is political recruitment. Not a few smart people, clever-clever, and professionals who come from political parties. However, the most important thing is how to ensure that experts and professionals from the political parties change their political interests once they are trusted in the Cabinet. They must prioritize the tasks of government led by the President as a representation of the interests of the people. It should be remembered, if the Minister who comes from a political party is very likely to experience double loyalty, that is,

loyalty that is not only to the President but is also obliged to be loyal to the leadership of the political party. This is not right if forced from political parties even though the Ministerial candidate is an expert in his field.

Recruitment of state positions is derived from political power through elections or appointments by political officials elected by the people. Political positions are only needed when designating the origins of existence through elections originating from political parties. However, when officials who are elected by the people and are appointed by elected officials occupy state positions, these officials change functions for the country and all people, not only for political parties and their constituents. Political positions originating from the strength of political parties, if they have been elected as state officials, they should no longer have structural positions in the management of their political parties.

Furthermore, Article 17 paragraph (4) of the 1945 Constitution of the Republic of Indonesia also stipulates that "the formation, amendment and dissolution of state ministries shall be regulated by law". The point is, even though the matter of his people is the absolute authority of the President, the organizational structure must be regulated in law. The appointment and dismissal of Ministerial officials is the prerogative or privilege of the President. However, the formation, dissolution or amendment of a ministry involves broad interests, because it should not be determined solely by the President, as happened during the administration of President Abdurrahman Wahid.

Therefore, the State Ministry's organization cannot be held, changed or dissolved only because of the President's wishes or wishes. All matters relating to the organization of the State Ministry must be regulated in law. This means that the change, formation or dissolution of the State Ministry organization must be regulated by the President together with the DPR. That is the essence of the provision that it is regulated in the law, and the law in question is Law No. 39 of 2008 concerning the State Ministry.

The law on State Ministries was drafted to build an effective and efficient presidential government system. That is why a Minister is prohibited from holding concurrent positions as other officials, including positions in political parties. Double positions always have the potential to cause conflicts of interest. Also, the divided attention between positions as aides to the President and the leadership of political parties will almost certainly disrupt or make government programs which are the responsibility of the ministry not to be realized optimally. All of that in the context of enhancing professionalism, the implementation of ministerial affairs that are more focused on their duties and functions are more responsible.

In the law of the Ministry of State, the number, title and nomenclature of the Ministry of State have been determined. By law, whoever becomes the President and any work program offered to the public, if they are going to form a Cabinet, of course, must pay attention to the substance of the provisions of the law. Such an arrangement is not appropriate in a democratic and constitutional country where the President is directly elected by the people, because the President is elected as ensnared and limited by law when he will carry out the work program promised (and politically approved by the majority of the people voter). The minister must be built with the right amount in the posture of government needs. The number of Ministers should be adjusted to the posture of the number of government administration needs led by the President. The Law of the State Ministry is not very appropriate if it is forced to provide limits for the President. Although at the same time it is also not good if the President is allowed to form a Cabinet with an amount that is too fat.

Indeed, in the Law of the State Ministry, there are provisions about when and name changes that must be with the DPR's agreement and which ones are sufficient in consultation with the DPR. However, the real problem is more than that, is it appropriate to bind the President to the name, and the number of ministries needed? If there is an argument that the constitution requires that the formation, amendment, and dissolution of the State Ministry be regulated in law. In this case, it does not involve setting the number of Ministries needed. This law should not regulate in detail the affairs and number of ministries to be formed by the President. Strict arrangements such as those in this law do not have constitutional values and practical values. Although the reason is in the spirit of renewal that all state institutions must be regulated by law, should it not emphasize more on the principles and mechanisms of formation, amendment or dissolution of the Cabinet or Ministry in it and not be limited in nature as regulated in the law Ministry of State.

In the Law of the State Ministry, it does not specify who can be appointed as Minister, but only regulates the requirements for appointment and dismissal of the Minister. The stipulations on the terms of appointment of a Minister are not intended to limit the right of the President to elect a Minister, instead emphasizing that an appointed Minister has good integrity and personality. However, the President is expected to also pay attention to competence in the field of ministry tasks, have leadership experience, and be able to work together as an aide to the President. Competence means having expertise and professionalism according to the needs of the position to be held. In this connection, Denny Indrayana said that the matter of electing and dismissing the Minister was the prerogative of the President as the chief of executive. As head of government, the President has the right to exercise the power of appointment and dismissal (appointment and removal) of the Minister. This is one of the strategic powers possessed by the President to form a loyal and disciplined government in carrying out the President's work agenda.

Thus, to prepare and determine the ideal leader profile, (3) three important things are taken into consideration in appointing a candidate for Minister, namely ability, willingness, and moral ethics. Ability is the knowledge, experience, and skills possessed by an individual to carry out certain activities or tasks following the program to achieve the goals that have been set together. Willingness is related to the beliefs, commitments, and motivations to complete the assigned task or program; while moral ethics is related to noble values related to honesty, obedience, discipline, responsibility, and upholding the norms in force. These three things must be able to be implemented and implemented in an integrated manner because without showing ability means people do not have the will. Without the will means that people will not produce anything, then the ability and willingness must be met with high moral ethics so that the work output does not have a negative impact.

Likewise, the existence of the Coordinating Minister needs to be reviewed, bearing in mind the existence of the Minister of Triumvirat as a single unit implementing the presidential duties. Under normal circumstances, the three positions of the Ministry of Home Affairs, the Foreign Minister and the Defense Minister are administratively coordinated by the Coordinating Minister for Political Affairs and Defense. In the theory of government organization law, ministries are a form of departmentalization as a method of distributing the authority of government horizontally to divide up the tasks of government to carry out government functions. Departmentalization is a derivative of the principle of specialization that is intended to distribute power within the government to be able to carry out public services following the specific level of community needs and needs to be addressed sectorally. The position of the Coordinating Minister in the design of government institutions is to carry out the functions of coordination, synchronization, and the sharpening of government functions of certain sectoral ministries that are placed under his coordination. With this coordination, sectionalization does not eliminate integration and synergy between functions.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Theoretically, the constitutional existence of the Minister of State in each Presidential system of government is an inseparable part of the executive power held by the President in exercising governmental power. Likewise in the government system adopted by the 1945 Constitution of the Republic of Indonesia, that although the existence of a Minister of State is regulated separately and separated from the power of the President, it does not mean that the two can be separated. Separate arrangements for relations between the President and the State Minister are basically due to the position and role of the State Ministers which are very important and strategic in the system of governance. This is confirmed by the provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia, 1945. State Ministers are assistants to the President who are appointed and dismissed by the President in charge of certain affairs in government and are accountable to the President. That is why the formation, amendment and dissolution of state ministries are stipulated in the law, and the law in question is Law No. 39 of 2008 concerning the State Ministry. This provision shows that the Minister of State who leads the Ministry is the President's assistant is a state institution whose name and authority are strictly regulated in the 1945 Constitution of the Republic of Indonesia. Thus, the existence and position of the Minister of State are very important in government and have a large enough role to run the government. Therefore the existence of the Minister of State is a necessity that cannot be ignored or eliminated in the government system according to the 1945 Constitution of the Republic of Indonesia.

In the administration of government according to the 1945 Constitution of the Republic of Indonesia, the existence of the Minister of State is a constitutional organ attached to the power of the President in running his administration. State Ministers are government leaders under the President who run the government in certain fields according to the main tasks and functions of the ministries they lead. Ministers in exercising governmental power have the primary role of assisting the President, heads of departments, cabinet members, and community leaders. The Ministers as a whole are incorporated in the Council of Ministers which is the Cabinet. Thus, the President as the holder of government power has the authority to appoint and dismiss the Ministers in charge of certain affairs in government. The governmental affairs referred to are regulated in Law No. 39 of 2008, consisting of: government affairs whose nomenclature is mentioned in the 1945 NRI Constitution, government affairs whose scope is mentioned in the 1945 NRI Constitution, and government affairs in the context of sharpening, coordinating, and synchronizing government programs. Seen from the intrinsic meaning of the Minister of State in the provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia and from the aspect of a presidential government system, that appointing and dismissing the Minister of State as an aide to the President is the prerogative of the President. This means that the appointment and dismissal of the Ministers are entirely under the authority of the President without having to ask for approval or even just confirmation from the representative institution or the Parliament. However, the reality of multiparty politics complicates this and because some political parties are supporting the President, the prerogative cannot be fully implemented by the President. The formation of the Cabinet by the President tends to be influenced by the involvement of political parties supporting the President in the DPR, rather than

competence and professionalism so that the Minister's position is co-opted by or as a political position. In other words, that the President's prerogative in the appointment of the Minister tends to reduce the strength of political party intervention. Similarly, if there is a change in the ministry as a result of the separation or merging of the ministries, the President is required to request the consideration of the DPR, as confirmed in Article 19 paragraph (1) of Law no. 39 of 2008. As for the dissolution of ministries that deal with religious, legal, financial and security affairs, they must be approved by the DPR; while the existence of the foreign ministry, the interior ministry, and the defense ministry, as stated in the 1945 Constitution of the Republic of Indonesia, cannot be changed or even dissolved by the President.

The constitutional framework for the existence of the Minister of State lies in Article 17 of the 1945 Constitution of the Republic of Indonesia, which is then regulated in Law No, 39 of 2008 concerning State Ministries. Through this provision, it is clear how important and strategic the position of the Minister is as the President's assistant in the Indonesian government administration system. Considering the practice of state administration in terms of forming the cabinet so far has not found the ideal format and still depends on the authority of a President, the structuring of the Ministry as one of the state institutions needs to be done. The arrangement is directed to strengthen the presidential cabinet which is zaken in nature, the composition of which is not based on the balance of power of existing political parties, even though this matter is still considered. Zaken cabinet or cabinet work is an ideal model that has become the needs and demands. The model cabinet needs to be built by the President to realize the vision, mission and work programs of the government following the term of office of the President. Zaken cabinet or also called expert cabinet is the Minister chosen must have integrity, capability, and acceptability. Integrity illustrates a clear track record without doubt and capabilities in the form of the ability and willingness to work following their expertise. At the same time, acceptability is also before the public and politics. These three components are far more important than relying solely on political parties. However, this does not mean that people in political parties are not allowed to hold the position of Minister. Politics is essentially an effort to gain power, and one of the functions of political parties is political recruitment. However, the most important and most important thing is how to ensure that experts and professionals from among the political parties change their entire political interests once they are trusted to enter the cabinet. They must prioritize the tasks of government led by the President as a representation of the interests of the people. Therefore, Ministers who come from political parties should not do double loyalty, that is, loyalty not only to the President but also obliged to be loyal to the leadership of political parties. If you have been elected as a Minister, you should no longer have structural positions in political parties.

Recommendations

1. Constitutionally according to Article 17 of the 1945 Constitution of the Republic of Indonesia that the appointment of the Minister is an absolute or prerogative right of the President. However, in the context of transparency in appointing Ministers through constitutional conventions, the DPR can be included to obtain input regarding the ability and integrity of prospective Ministers. This practice can be done utilizing consultation or public hearing with the DPR, which is mainly aimed at candidates for the Minister of Defense, Minister of Foreign Affairs, and Minister of Home Affairs, because according to the provisions of Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia NRI that the third the position of Minister concurrently becomes the holder or executor of presidential duties, if the President and Vice President are dead, stopped, dismissed or unable to carry out their obligations within their term of office. The DPR in this matter does not appoint or appoint Ministers, but its opinion needs to be considered by the President to get the best state leaders from his nation. Only the best of his people are expected to be able to become leaders of the country properly and correctly. This kind of practice is also an effort to get popular support and enlarge people's political orientation from the Minister concerned,
2. Based on the provisions of Article 6 A paragraph (2) of the 1945 Constitution of the Republic of Indonesia that the pair of candidates for President and Vice President are proposed by political parties or a combination of political parties participating in the election. Seeing this provision, it seems that the constitution requires a coalition of political parties. Likewise in the practice of state administration so far the coalition has become an inseparable part of forming a cabinet. On the other hand, there is a strong desire to limit the number of Ministers from political parties. In this connection, the President's prerogative must be interpreted absolutely in the criteria or qualifications of the Minister. Although political parties are allowed to offer their cadres who are experts and professionals to hold the position of Minister, that criterion must be a measure of ministerial election and evaluation by the President.
3. The existence of the Coordinating Minister in the system of government administration needs to be considered for its effectiveness, whether it adds value to the President's performance or not. In the practice of forming the Cabinet, the Coordinating Minister has always been present to coordinate the performance of the Ministers, including the Minister of Defense, the Minister of the Interior and the Minister of Foreign Affairs. With such a position it is as if the Coordinating Minister's position is higher or more special than

the other Minister's positions. In the case according to the provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia, the position of the Ministers is the same and equal as the State Minister. Therefore, the presence of the Coordinating Minister needs to be reviewed for its effectiveness considering the position of the Ministers is both President's assistants who are accountable to the President without any obstructions directly related to the President. Likewise, if there is a provision in Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that the Minister of Defense, the Minister of the Interior and the Minister of Foreign Affairs shall jointly assume the position of the President, not the Coordinating Minister, if the President dies, stops, is dismissed, or cannot carry out its obligations.

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