



Constitutional Design of Strengthening DPR Role in Forming, Changing, and Dissolving State Ministries in the Constitutional Views

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ABSTRACT

As a country that maintains a presidential system of government, it is essential to concentrate on creating the framework and structure of government. This is closely tied to the establishment, evolution, and dissolution of such institutions. As a consequence, the President and the DPR will be capable of determining responsive and constitutional legal politics. This legal policy study focuses on how the growth and regulation of state ministries and state institutions were connected to the constitutional system's establishment, modification, and dissolution. Second, how can legal politics address this in a manner that seems to be constitutional? The objective of this study is to assess the arrangements pertaining to the formation, alteration, and dissolution of ministries and state institutions under the constitutional system in order to define the ideal political legislation. This research uses normative legal research methods with descriptive research specifications and is analyzed through library research and data analysis methods using juridical-qualitative. The results of the research and discussion in this study include: First, the arrangements regarding the formation, modification, and dissolution of ministries and state institutions do not yet have a clear legal basis so that the President as the holder of power, is irregular in issuing his policies. Second, the legal politics that was initiated wanted the Government and the DPR to be more synergized in terms of drafting legal considerations and normalizing them based on statutory regulations and principles in a presidential system of government.

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1. Introduction

"Never blame a legislative body for not doing something. When they do nothing, they don't hurt anybody. When they do something is when they become dangerous" -Will Rogers-

In forming and complying with institutions that are directly under the President, the President's position is as stipulated in Article 4 paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia (UUD), which states, "The President of the Republic of Indonesia holds government power according to the Constitution Constitution" is the leading legal basis. As the holder of state government power, the President has the authority to determine the framework and structure

of the government under him. The framework and structure referred to are state ministries and non-ministerial state institutions as government apparatuses in charge of specific affairs in government.

Because, in order to run the wheels of government, determining the framework and structure of government is very important. That way, the government framework and structure have precise mechanisms and rules related to the establishment, change, and dissolution of these institutions. Uniquely in Indonesia, when viewed from a normative constitutional perspective, only the organs of the state ministry explicitly regulate the establishment, change and dissolution of a ministry based on the mandate of Article 17 paragraph (4) of the 1945 Constitution.

They are only limited to regulating the formation and position of a state institution without then regulating the form and mechanism regarding the change and dissolution of a state institution. These two matters may be re-regulated through laws or the opportunity for both to become a space for discretion for the President as the highest authority in the government, which is then issued through instruments of Government Regulations and Presidential Regulations. The problem is that after examining several levels of statutory regulations that regulate each state institutional matter, none of the norms contains a matter of changing and dissolving a state institution.

As a result, when the President feels that a state institution needs to be streamlined to save budgets and prevent bureaucratic obesity, the President directly, through his prerogative then carries out his mission to change and dissolve state institutions through legal instruments of government regulations or presidential regulations. This has often happened from the regime of President Susilo Bambang Yudhoyono to the regime of President Joko Widodo. Interestingly, recently President Joko Widodo plans to dissolve 18 state institutions that are considered to be ineffective in running his government. One of the reasons for the dissolution was to reduce the budget in order to streamline the organization so that the government could move more quickly.

Of course, this will then become a legal issue when the question arises what is the legal basis for the President issuing a government regulation or presidential regulation for the change and dissolution of a state institution? This is necessarily a form of the implication of Article 4 paragraph (1) of the 1945 Constitution, which states, "The President of the Republic of Indonesia holds government power," or it needs a political choice of law that is clear when and what kind of legal considerations can be used as a basis for the President in issuing the policy.

If you use the terminology of Article 4, paragraph (1) of the 1945 Constitution, everything is finished. However, as a country that upholds the law, there must be clear limits and considerations regarding when a president can change and dissolve a state institution and what legal instruments can be used as a basis for the government to issue this policy. Until now, there are no clear rules governing the framework and structure of government up to the stages of change and dissolution of a state institution, except for state ministries which are then delegated by the constitution to laws to regulate them. However, the state ministries also have not concretely described the mechanism for changing and dissolving state ministries under a presidential system of government.

When referring to a presidential system of government, the President and the People's Representative Council (DPR) like the locomotive of government, have a huge role and portion in determining this. Even as a country that adheres to a quasi-presidential government system, the DPR has enormous authority in determining everything related to the administration of government, including in designing the government structure, which is attached to the 3 (three) functions of the DPR, namely legislation, budget, and supervision. This is because the form of people's sovereignty will be more touched if the DPR's position in carrying out its supervisory and legislative functions is appropriately used in developing the framework and structure of government by involving community participation in it.

In the sense of the word, to realize the principle of checks and balances, even though the appointment and dismissal of ministers is the full authority of the President (Article 17 paragraph (2) of the 1945

Constitution), however, to change ministerial nomenclature, the President must seek consideration and approval from the DPR. This is intended to fulfill one of the principles of reasoning, namely the principle of sufficient reason which states that a change that occurs in a particular thing must be based on sufficient reasons. In other words that something can't change suddenly without reason. These provisions are binding for the President based on Article 17, paragraph (4) of the 1945 Constitution. In the context of democracy in a quasi-presidential government system, the President requests consideration and approval from the DPR to adopt a strategic policy which is a form of public participation to channel the aspirations of his constituents when he sits in parliament. The same should be said regarding forming, changing, and dissolving state ministries. So that the President needs to have responsive legal politics through his legal instruments in terms of forming, changing, and dissolving state ministries.

In addition, non-ministerial institutions in charge of specific affairs in government that are not regulated in the 1945 Constitution, regarding their amendment and dissolution, still do not have a clear legal basis. Even though the President holds full power in government, in the optics of legal, and political demarcation, at least regulations or legal instruments are needed for the president when he wants to change and dissolve state institutions.

This is because the establishment, change, and dissolution of a state institution will be determined based on the level or position at which a state institution is regulated. If the state institutions are regulated through the constitution, then the constitution should provide delegation to laws to regulate further, like state ministries. If then, it has been regulated through law. The formation, modification, and dissolution will be carried out through a political mechanism with the approval of the DPR. Then, if the institution was formed at the government's initiative through a government or presidential regulation, the president also has the prerogative for this.

It means there needs to be a clear demarcation of executive and legislative powers to determine the establishment, change, and dissolution of a state ministry and institution. The legal demarcation will be answered and resolved when using legal instruments and politics that can be applied effectively. Therefore, based on the dynamics and conditions of the norms contained in the laws and regulations regarding the establishment, change, and dissolution of the current state ministries and institutions and taking into account the importance of the roles and functions of each power in determining the matter referred to, the author needs to conduct a study comprehensively entitled, Political Law Formation, Amendment, and Dissolution of Ministries and State Institutions in the State Administration System.

In order to realize the ideals of living as a state as stated in the Preamble of the 1945 Constitution, the entire process of administering the state must proceed in a continuous legal way, including in the formation of structures and frameworks for state institutions, whether forming, changing or dissolving. Therefore, what is the focus of the problem in this study that can be identified from the background that has been presented is How are the Development and Arrangement related to the Formation, Amendment, and Dissolution of State Ministries and State Institutions According to the State Administration System, second, How is Political Law Formation, Change, and Dissolving State Ministries and Constitutional Institutions.

2. Methode

This research is legal research. According to F. Sugeng Istanto, legal research is applied or specifically applied to the science of law. Legal research is divided into normative legal research and empirical legal research. The type to be used in this research is normative legal research. This research was conducted by examining library materials or secondary data. In terms of nature, this research is descriptive research (descriptive research). Descriptive research is a study to describe something in a particular time and space. In legal research, this descriptive research is fundamental in presenting

existing legal materials appropriately, in which it is according to these materials that legal prescriptions are prepared.

This research is prescriptive research. Research that aims to provide an overview or formulate a problem following the circumstances/facts that exist. This prescriptive nature will be used to analyze and test the values contained in the law. Not only limited to the values in the area of positive law alone, but also the values that underlie and encourage the birth of these laws. With its descriptive nature and its prescriptive form, this research can reveal How Developments and Arrangements are related to the Establishment, Amendment, and Dissolution of State Ministries and State Institutions According to the State Administration System, secondly, How is the Legal Politics of Formation, Amendment, and Dissolution of State Ministries and Constitutional Institutions. This study uses several approaches, namely: a comparative approach, a conceptual approach, a statute approach, and a historical approach. The collection of legal materials is carried out through library research on primary legal materials, secondary legal materials, and tertiary legal materials.

3. Developments and Arrangements related to Formation, Amendment, and Dissolution of State Ministries and Institutions According to the State Administration System

3.1. Development and Arrangements for Formation, Amendment, and Dissolution of State Ministries

Indonesia is a country that has implemented a presidential system of government and a parliamentary system of government in the history of state administration. Both government systems were run based on the constitution that was in effect at their respective times. It is commonly known that the two government systems have different characteristics of power styles. In a presidential system of government, the power of the president as head of government and head of state is very dominant compared to a parliamentary system of government which places more emphasis on power in the power of the parliament.

In line with the thoughts of Lijphart and Sartori who stated that traditionally, presidential systems have non-ecological characteristics in the decision-making process, usually only led by one person or figure, namely the president.¹

The sole decision-making possessed by the President is not only limited to forming and selecting ministers who will sit in his cabinet but can be interpreted broadly as the sole authority of the President to determine the formation, change, and merger of ministries.

Mainwaring and Shugart elaborate on Lijphart and Sartori's thoughts regarding the authority possessed by the President, especially in forming cabinets and institutional development where, according to Mainwaring that the President's authority in forming cabinets and institutions is not always the absolute authority of the President as the head of government, but instead there is the role of the legislature. The more fragmented the legislative power is, such as a presidential system of government with multi-party, the role of other institutions in selecting ministers and forming, changing and merging ministries will pay attention to the considerations of the legislature.².

Mainwaring's opinion illustrates from a political perspective how the political configuration of the parliament will always influence the policies made by a president, even through a presidential government system. Nevertheless, in the study of constitutional law, which also intersects with the study of political science, the role of representative institutions, especially in the formation, change,

¹ Victor Araujo, Thiago Silva dan Marcelo Vieira, *Measuring Presidential Dominance over cabinets in Presidential Systems: Constitutional Design and power sharing*, Journal of The Brazillian Political Association, (1981), Hlm 3

² *Ibid.* Hlm 4

and merger of ministries, is not only limited to accommodating aspects of political interests, but also must take into account considerations of the wider public interest.

The formation, change, and merging of ministries require complete, comprehensive and mature planning because it involves the public interest and an efficient and effective government bureaucracy. So far, there has been no comprehensive and multidimensional study that examines the role of representative institutions in the formation, change, and merger of ministries. Is this authority the full authority of the President as the head of government, or is it necessary to involve representative institutions? Even if there is the involvement of the legislature in forming, changing, and merging ministries, what needs to be measured is the extent of this involvement so as not to injure the presidential system of government adopted in Indonesia. Because the supervision of the President as the executive carried out by representative institutions is a form of control and a means of limiting the powers of the rulers.³

Following the traces of the arrangements for ministers and ministries in the numerous Indonesian constitutions reveals that there is no definite number and kind of ministries. Everything relies on the demands and decisions of the president. Even the number of ministries has changed and is quite active since the country's independence till now. The constitution also makes no express reference of the formation, alteration, or merger of ministries. It's only that a lot of sections in the constitution give basic guidelines for ministries and ministers. The following are the clauses of the constitution concerning ministries:

Table 1. Provisions in the Constitution concerning Ministers and Ministries that have been in effect

UUD 1945	Konstitusi RIS	UUDS 1945	UUD 1945 Perubahan
The President is assisted by state ministers (Article 17 paragraph (1))	Those who can be appointed as Ministers are people who are 25 years old and who are not people who are not allowed to participate in or exercise their right to vote or people whose right to be elected has been taken away (Article 73)	President establishes ministries (Article 50)	The President is assisted by state ministers (Article 17 paragraph (1))
The ministers are appointed and dismissed by the President (Article 17 paragraph (2))	The President agrees with the people who are authorized by the regions as referred to in Article 69, appointing three cabinet members (Article 74 paragraph (1))	The President appoints one person or several people to form a cabinet (Article 51 paragraph (1))	The ministers are appointed and dismissed by the President (Article 17 paragraph (2))

³ Bayu Satria Muis Ali Patong, dkk, "Pengawasan Dewan Perwakilan Rakyat Papua Terhadap Keputusan Gubernur Provinsi Papua tentang Upah Minimum Propinsi 2018", Nagari Law Review, Vol. 3 No. 2, April 2020, Hlm. 46.

The ministers lead government departments (Article 17 paragraph (3))	In accordance with the recommendation of the three cabinet members, the President appointed one of them to become prime minister and appointed other ministers. (Article 74 paragraph (2))	In accordance with the recommendation of the cabinet formation, the President appoints one of them to become prime minister and appoints other ministers (Article 51 paragraph (2))	Each minister is in charge of certain affairs in the government (Article 17 paragraph (3))
	In accordance with the recommendations of the three formers, the President determined which of the ministers was obliged to lead their respective departments. It is also possible to appoint ministers who are not in charge of a department. (Article 74 paragraph (3))	In accordance with the recommendations of the former, the President determined which of the ministers was required to lead their respective ministries. The President may appoint Ministers who are not in charge of a ministry. (Article 51 paragraph (3))	Formation, Amendment, and Dissolution of state Ministries regulated in law (Article 17 paragraph (4))
	Presidential decisions containing the appointments described in paragraphs (2) and (3) of this article and signed by the three cabinet members (Article 74 paragraph (4))	Presidential Decrees containing the appointments described in paragraphs (2) and (3) of this article are also signed by the cabinet members. (Article 51 paragraph (4))	
	Appointment or termination between the time the ministers are carried out with a government decision. (Article 74 paragraph (5))	The interim appointment or termination of ministers as well as the termination of the cabinet is carried out by presidential decree (Article 51 paragraph (5))	

Source : Undang-Undang Dasar 1945

Based on the table above, it can be described that in the 4 Constitutions that have been in force in Indonesia, none of the constitutions explicitly regulates the mechanism for forming, changing and dissolving a ministry. All of them talk about the procedure for filling ministerial positions who will occupy a ministry.

This can be understood because the constitution is structured to explain matters that are important and fundamental. The style or model for filling ministerial positions is very important to be regulated in the constitution because it relates to the system of government that will be implemented. For example, in a presidential system of government, which is known by the jargon "the winner takes all", the elected president has absolute authority to determine his aides and to guarantee presidential power, it is regulated in the constitution.

Meanwhile, the formation, change and dissolution of ministries are not clearly regulated and are only implicitly stated because in fact the formation, change and dissolution of ministries are not directly related to the presidential system of government. That means the formation, change and dissolution of a ministry must involve state power such as a representative institution because it relates to public needs.

The absence of rigid arrangements in the constitution regarding the formation, change and dissolution of ministries has resulted in the number of ministries in the cabinet of each leader in Indonesia being very varied and numbering differently.

Compared to the composition at that time, the number of ministries during this period has increased quantitatively and is very dynamic. Even though the increase in the number of ministries is very relevant considering the development of people's lives and the need for these ministries, their formation still needs to be controlled and supervised by the authorized institution so that there is no abuse of power in distributing government affairs. That is why a Law on state ministries was issued in order to regulate the governance of ministries in Indonesia.

In the current *ius constitutum*, further arrangements regarding ministries are regulated in Law Number 39 of 2008 concerning State Ministries. According to Article 1 number 1 defines the state Ministry, hereinafter referred to as the ministry, is a government apparatus in charge of certain affairs in government. Furthermore, what is the scope of the government's work is all the affairs regulated in the 1945 Constitution. Due to the extent of government affairs in the Constitution, the *a quo* law explains what government affairs are in Article 4 paragraph (2) letter a, b, c Law Number 39 of 2008 as follows:

- a. Government affairs whose ministerial nomenclature is expressly stated in the 1945 Constitution;
- b. Government affairs whose scope is stated in the 1945 Constitution;
- c. Government affairs in the context of sharpening, coordinating and synchronizing government programs;

Of the three groups which are government affairs whose institutions need to be formed, it is stated that not all of these affairs must be formed in a separate ministry, but some of these government affairs can be carried out by one institution as long as these government affairs have the same main duties or functions. Even so, the legal politics of forming, changing and dissolving ministries places a limit on the number of ministries that can be formed to carry out government affairs, namely a maximum of 34 ministries.

The role of the legislature in the formation, change and dissolution of ministries is very diverse. This depends on the form of legal action whether formation, modification or dissolution. More about the mechanism for forming, changing and dissolving ministries and the role of the legislature can be seen in the matrix below:

**Table 2. Mechanism of Establishment, Amendment and Dissolution
Ministries and the Role of Legislatures**

No	Changing	Dissolution
1	Ministry of Foreign Affairs, Ministry of Home Affairs and Ministry of Defense are ministries that cannot be changed by the President (Article 17)	The Ministry of Foreign Affairs, Ministry of Home Affairs and Ministry of Defense cannot be dissolved by the President (Article 20)
2	In addition to the 3 Ministries above, other ministries can be changed with the following considerations: a. Efficiency and effectiveness; b. Changes and/or development of duties and functions; c. scope of work and proportionality of work load; d. Continuity, harmony and integration of task implementation; e. Increasing government performance and workload; f. The need for handling certain affairs in government independently and/or g. A growing need for terminology adjustments (Article 18 paragraph (2))	The ministries referred to in Article 13 can be dissolved by the President by asking for the consideration of the People's Representative Council, except for ministries that handle religious, legal, financial and security affairs with the approval of the People's Representative Council (Article 21)
3.	Changes as a result of separation or merging of ministries are made with the consideration of the DPR (Article 19 paragraph (1))	
4.	The considerations referred to in paragraph (1) are given to the DPR no later than 7 working days after the presidential letter is received (Article 19 paragraph (2))	
5.	If within 7 working days as referred to in paragraph (2) the DPR has not submitted its considerations, the DPR is deemed to have given its considerations (Article 19 paragraph (3))	

Source : Undang-Undang Dasar 1945

Based on the table above it can be concluded several points as follows:

1. There are 3 ministries that are explicitly mentioned in the constitution, namely the ministry of foreign affairs, the ministry of home affairs and the ministry of defense which cannot be changed and dissolved by the president. The nature of this ministry is that it is a permanent institution. This

is so considering that in the condition that the President and Vice President are permanently unavailable at the same time, the three ministry heads in question will temporarily take over power in accordance with the mandate of the 1945 Constitution;

2. Changes to ministries other than the ministries mentioned in point one can be made by taking into account the considerations of the House of Representatives. At first glance, the considerations of the DPR are complementary or merely notification because the authority to change ministries is wholly in the hands of the president;
3. The dissolution of ministries other than the ministries mentioned in point one can be carried out by taking into account the considerations of the House of Representatives and the exception of a few ministries which require more than just consideration, namely the approval of the DPR. The ministries in question are as follows: religious affairs, law, finance and security.

The role of the House of Representatives in the mechanism for changing or dissolving ministries is very diverse, starting from giving consideration to giving approval. The mechanism for giving consideration and approval is a form of control mechanism in the context of mutual supervision and checks and balances in the presidential government system in Indonesia.

Such a relationship is a necessity to avoid absolute power or abuse (abuse of power). The constitution as the supreme law does not only contain the norms of guaranteeing human rights and the social contract between the people and the authorities. But the Constitution also contains limiting rules and patterns of interaction between state institutions. Every authority attached to an institution always has a relationship with other state institutions. Such a design is developed so that there is a supervisory/control function between state institutions.

In the 1945 Constitution, a number of articles clearly state the relationship between state institutions in carrying out their duties, functions and authorities. Such as the authority to form laws between the President and the DPR and the DPD, the Authority to grant clemency and rehabilitation which must take into account the considerations of the Supreme Court, Amnesty and abolition with due regard to the considerations of the House of Representatives. And others.

The involvement of representative institutions in the exercise of this authority is inseparable from the position of representative institutions as representatives of people's sovereignty. The involvement of representative institutions is a manifestation of public participation represented by their representatives. In forming, changing and dissolving ministries, the role of representative institutions also needs to be assessed. To what extent then must representative institutions be involved in the formation, change and dissolution as a manifestation of people's sovereign participation.

However, in the view of the author, the authority to provide consideration in the formation and change of these ministries confirms the unbalanced position of the House of Representatives in the concept of a presidential system of government implemented in Indonesia.

This is because the nature of the considerations which are only limited to confirmation to form and change the ministry gives a stigma that the pendulum of presidential power is very large (powerful) in government. Whereas in fact the impact arising from the formation of ministries or changing ministries will also have an impact on budgeting and management which will ultimately have an impact on fulfilling people's rights in government affairs such as budgeting, effectiveness and efficiency of government bureaucracy and others. therefore, the form of confirmation of the change and dissolution of ministries should not be merely a consideration.

Meanwhile, the involvement of the DPR is only limited to providing considerations which are of a response nature, not comparable to the impact that can be caused by the formation of a new ministry. A distinction should be made between the President's prerogative in selecting ministerial leaders (ministers), which is an absolute right without the need for consideration and may not even be intervened by the House of Representatives with the process of forming or changing ministries.

Furthermore, there is a difference between changes that only require the DPR's consideration while the dissolution of several ministries must obtain the approval of the DPR, such as the ministries dealing with finance, law, religion and security. The existence of this norm seems to relativize the vital and essential nature of the existence of other ministries so that it can be dissolved easily without having to obtain approval from the DPR. Whereas the other ministries have important meaning in carrying out their duties and functions. This different treatment and discrimination certainly should not be tolerated and applied.

Supposedly, the change and dissolution of ministries must be with the approval of the DPR as a form of embodiment of the public interest that is delegated to the legislature. Having a system for forming, changing and dissolving ministries through the approval of the DPR will strengthen the oversight and control system between the two institutions. In addition, the existence of this form of agreement will make the cabinet form more stable, not only following the practical political interests of the elected President so that government affairs can run in a directed manner. It can be seen in the way the cabinet and institutional departments/ministries in government in Indonesia are always changing. It is only since the issuance of the Law on State Ministries that the number of ministries has remained relatively constant and has not changed much.

3.2. Development and Arrangements for Formation, Amendment, and Dissolution of Non-Ministerial Institutions of the State

A number of state institutions that emerged represented the existence of a separation of powers that wanted to be formed so that there would be no abuse of power due to the accumulation of power in one branch of power *an sich*. Therefore, in the concept of *Trias Politica* put forward by Montesquieu, two common threads can be drawn, namely: first, as a dimension of separation of powers (function). Second, in the dimension of institutional separation (organs). Functionally, *Trias Politica* is divided into legislative powers to form laws, executive powers to enforce laws, and judicial powers to enforce laws.

In its development, state institutions are not only divided and separated based on the classic *Trias Politica* theory, but there is a new theory developed by Bruce Ackerman known as *The New Separation of Power*,⁴ that in addition to the 3 (three) branches of power that have been introduced by Montesquieu. The new institutions gave birth to auxiliary state institutions or independent state institutions. This wave also hit the state institutional system in post-reform Indonesia. The birth of various state institutions was inseparable from the euphoria of the change in Indonesia's political atmosphere from an authoritarian government regime for approximately 32 years to a reform government.

As a result of the crisis of trust in existing state institutions (distrust issue) and the fear of the reform agenda not working, this has led to the establishment of many new state institutions (state auxiliary bodies). Its appearance was described by Indonesian constitutionalists as like a fungus in the rainy season. This is because almost every formulation of a law on a particular issue is almost always followed by the formation of a special state institution that carries out its powers, functions and duties. Yance Arizona calls this phenomenon the spring of state agencies.

Of course, the large number of state institutions has consequences for bureaucratic chains that are fat and tend to be obese. This situation is certainly not good for the implementation of the government. Because fat state institutions make it difficult to create good and clean governance as well as create effective and efficient governance. Not to mention that the amount of budget that needs to be issued from the APBN is sometimes out of balance with the achievements of these auxiliary state institutions.

⁴ Bruce Ackerman, *The New Separation of Power* dalam *Harvard Law Review* Vol 113 No 3, (Boston: Harvard Press, 2000), Hlm. 113

In fact, it is not uncommon for these state institutions to cause authority disputes and conflicts of authority as a result of overlapping authority arrangements.

In addition to the reasons for the institutional system being fat, consuming a large state budget, and overlapping authorities between state institutions. Dissolution of a state institution can also occur due to the implementation of the objectives of the state institution. These state institutions are referred to as temporary (ad hoc) state institutions. For example, the initial idea for the establishment of the Corruption Eradication Commission was to support the performance of the Police and the Attorney General's Office as the main actors in law enforcement in the eradication of corruption.

However, the unpreparedness and incompetence of the 2 (two) institutions led to the establishment of an anti-corruption agency called the Corruption Eradication Commission. so that if the institution is considered to be well-established and capable and corruption has been eradicated to a level of zero corruption in Indonesia, the KPK institution may be disbanded because it is seen as having completed its mission and objectives. Likewise with other institutions such as the Commission for the Protection of Children and Women, Komnas HAM, DKPP and others. If the mission and objectives of the auxiliary state institutions have been completed, the idea of disbanding them may be relevant.

In 2014, the Jokowi administration for the first period dissolved 10 non-structural state institutions through Presidential Regulation Number 176 of 2014. The 10 state institutions referred to are: (1) National Aeronautics and Space Council, (2) Social Welfare Improvement Coordinating and Controlling Institute Persons with Disabilities, (3) National Book Council, (4) National Law Commission, (5) National Housing and Settlement Development Policy and Control Agency, (6) Interdepartmental Committee on Forestry, (7) Development Area Development Agency for Integrated Economic Affairs, (8) National Action Commission for the Elimination of the Worst Forms of Child Labor, (9) Eastern Indonesia Development Council, (10) Indonesian Sugar Council.

The dissolution of this state institution was carried out on the grounds of increasing the effectiveness of government performance. The basic considerations used in dissolving this state institution are Article 4 Juncto Article 17 of the 1945 Constitution, Law Number 39 of 2008 concerning State Ministries and Law Number 5 of 2014 concerning State Civil Apparatus. All state institutions that have been dissolved are state institutions. formed using presidential decree legal instruments. Details of the instruments for establishing state institutions that were disbanded in 2014 can be seen in the table below:

Tabel 3. Instrumen Pembentukan Lembaga Negara yang Dibubarkan Pada Tahun 2014

No	State Institution	Legal Product
1	National Aeronautics and Space Council	Presidential Decree Number 99 of 1993 juncto Presidential Decree Number 132 of 1998
2	Institution for Coordinating and Controlling the Improvement of Social Welfare of Persons with Disabilities	Presidential Decree Number 83 of 1999
3	National Book Council	Presidential Decree 110 of 1999
4	National Law Commission	Presidential Decree Number 15 of 2000
5	Agency for Policy and Control of National Housing and Settlement Development	Presidential Decree Number 63 of 2000
6	Interdepartmental Committee for Forestry	Presidential Decree Number 80 of 2000

7	Integrated Economic Development Area Development Agency	Presidential Decree Number 150 of 2000
8		Presidential Decree Number 12 of 2001
9	Eastern Indonesia Development Council	Presidential Decree Number 44 of 2002
10	Indonesian Sugar Council	Presidential Decree Number 63 of 2003

Source: analysed by author

All state institutions that were disbanded in 2014 are state institutions formed under executive power. The basis for its formation is also homogeneous, namely presidential decrees and their functions are directly related to executive power. So that its dissolution by using legal instruments of presidential regulations is considered quite appropriate. In the study of the science of legislation, the dissolution of a state institution must indeed be synchronized with the instruments initially formed. The logic is simple, only the equivalent and higher rules can cancel the lower rules or replace the equivalent rules. This understanding of law is a manifestation of the theory of levels of norms (Stufenbow Theory) introduced by Hans Kelsen and Hans Nawiasky.

In practice, the dissolution of state institutions that has occurred in Indonesia can be seen where the legal instruments used are equal or higher legal instruments. Example: Dissolving the Supreme Advisory Council (DPA), which is regulated as a constitutional organ, is carried out by abolishing Chapter IV concerning the Supreme Advisory Council in the Constitution. Of course, in the process of dissolving the institution through a mechanism that involved elements forming the Constitution at that time.

Instead, the framers of the constitution gave authority to the president to form a new institution which had almost the same function as stipulated in Article 16 of the 1945 Constitution, namely: in law". So it can be concluded that the dissolution of state institutions outside of executive power must be carried out with the same mechanism. For example, if you want to dissolve the MK or MA, then the dissolution of these institutions can be done by making changes to the 1945 constitution.

The dissolution of a state institution established under a law can only be dissolved by repealing, canceling or revising the law governing the institution. In other words, the process of dissolving a state institution regulated at the law level can only be carried out by the President by involving the legislature.

The President cannot immediately dissolve a state institution whose formation instrument is a law. Based on the juridical review conducted, there is not a single provision in the law which forms the legal basis for the establishment of a state institution which contains a clause regarding the dissolution of a state institution.

This can be seen in the instrument for establishing the independent state institution. Such as: first, the legal basis for establishing the Corruption Eradication Commission is Article 2 of Law Number 30 of 2002 concerning the Corruption Eradication Commission.⁵ however, the a quo law does not regulate the dissolution of these state institutions at all.

Second, the basis for the formation of an ombudsman institution is not specifically regulated in certain articles, it is only mentioned in the weighing part of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. However, there are absolutely no rules regarding the dissolution of the said state institution. Third, the formation of the National Human Rights

⁵ Bunyi Pasal 2 Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Korupsi " Dengan Undang-Undang ini dibentuk Komisi Pemberantasan Tindak Pidana Korupsi selanjutnya disebut Komisi Pemberantasan Korupsi

Commission, Komnas HAM is regulated in Chapter VII Article 75. Further establishment is regulated in Presidential Decree Number 50 of 1993.

The two legal instruments also do not mention the procedures for dissolving the state institution Komnas HAM. Fourth, the establishment of a witness and victim protection institution is regulated in Article 11 of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Similar to the other state institutions exemplified above, there are no rules for dissolving their state institutions.

Fifth, the establishment of the National Police Agency is regulated in Article 37 of Law Number 2 of 2002 concerning the Indonesian National Police, the establishment of the Indonesian broadcasting commission is regulated in Article 6 paragraph (4) of Law Number 32 of 2002 concerning Broadcasting and the establishment of a prosecutor's commission is based on Presidential Regulation Number 18 of 2011 concerning the Prosecutor's Commission. All of them do not include procedures for dissolution at all. All provisions in the establishment of said state institution only provide a legal basis for the formation of said state institution accompanied by the functions, duties, authorities and membership of said state institution.

4. Legal Politics Formation, Amendment, and Dissolution of Constitutional State Ministries and State Institutions

The government as the organizer of the state requires a state institutional structure as the executor of the duties and functions of state power. That is why, the readiness of the president to "run" is determined by the extent to which the productivity and effectiveness of the country's institutions are running. Of course the president must pay attention to and control whether the state institutions under him are functioning properly or not. If not, then what legal steps or politics can the president take so that governance can run effectively.⁶

Patrick Sanaghan, Larry Goldstein, and Kathleen D. Gaval believe that it is not easy for a President to face challenges related to the effectiveness of the state administration.⁷ For example, the President must face: the institutional power culture of an institution, hidden problems within the institution, the relationship between the individual level and the diversity of stakeholders, managing problems that suddenly occur, then what legal instruments are relevant to issue when there is issues relating to state institutions, both for forming, changing, or dissolving.

Sanaghan believes that a President must think strategically and proactively design a transition map that makes him ready to face these challenges. Moreover, recently President Joko Widodo plans to dissolve 18 state institutions which are considered to be no longer effective in carrying out their functions which in fact waste the state budget. Of course the choice of legal politics is not only in the hands of the president as the holder of the highest authority in government, but is also determined and influenced by the legal products that govern the institutions of the country. Because that's where the function of checks and balances between the government and the DPR can be seen.

Therefore, in order to realize good choices and steps in forming, changing and dissolving state institutions, policy makers, in this case the president and the DPR, need to determine legal politics and logical considerations based on statutory regulations and principles in the government system. presidential. This is because, in the experience of several government regimes, from President Susilo Bambang Yudhoyono to President Joko Widodo, the president's legal political choices, especially in changing and dissolving state institutions, still seem mixed when issuing policies.

⁶ Moh. Mahfud MD, *Politik Hukum di Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2010), hlm. 45.

⁷ Partick Sanaghan, Larry Goldstein, Kathleen D. Gaval, *Presidential Transitions, It's Not Just the Position, It's the Transition*, American Council On Education/PRAEGER, (Series on Higher Education, 2008), Hlm. 7.

Sometimes the president issues government regulations and one time the president also issues presidential regulations to change and dissolve a state institution. This means that the order regarding the establishment, change and dissolution of state ministries and other state institutions does not yet have clear rules and considerations for execution. That is why, an ideal policy direction is needed to realize standard standards for policy makers when they want to form, change and dissolve state ministries and state institutions.

First, when it comes to the establishment, change and dissolution of state ministries, actually the government's policy or legal politics to do so so far has been going quite well, but has not yet shown the characteristics of a presidential system. This is because when the president wants to form, change and disband the posture of state ministries, the proposal to do so is only symbolic through the DPR. Where, based on the formulation of Article 19 paragraph (1) of Law Number 39 of 2008 it is stated that changes as a result of separation or merging of ministries are made with the consideration of the House of Representatives.

That is why, through Article 19 paragraph (1) of the Law on State Ministries, asking for consideration is an obligation that must be obeyed by the President. It's just that, the request for consideration is merely to confirm which in substance is not binding on the President. The President can only accept and carry out the considerations given by the DPR, on the other hand he can also ignore them. The most important thing from the provisions of Article 19 paragraph (1) of this Law on state ministries is the obligation to ask for consideration.

The non-binding nature of the DPR's deliberations is also strengthened by the provisions of Article 19 paragraph (2) of the Law on State Ministries which states that the considerations referred to in paragraph (1) are given by the DPR no later than 7 (seven) working days after the President's letter is received, and Article 19 paragraph (3) which states that if within 7 (seven) working days as referred to in paragraph (2) the DPR has not submitted its considerations, the DPR is considered to have given its considerations.

Supposedly in the context of reconstructing state ministry institutions, the president should have asked for consideration and approval from the DPR to legalize it. In the sense of the word, when the Government wants to change the nomenclature of ministries, the DPR does not only give consideration but must go through the joint approval of the DPR and the Government just like making a law. It is this norm which then needs to be added to Article 17 paragraph (4) of the 1945 Constitution, so that the norm finds its true spirit. Because actually in the body of representative institutions ideally contained participatory values and sovereignty which are upheld and must be carried out by citizens and state instruments.⁸

Of course, because this concerns the change in ministerial nomenclature, this will be the main reason for delaying the announcement of cabinet names. The people's high expectations and hopes have made them want to find out immediately who will serve as assistants to the President in the new government cabinet. On the other hand, this can only be implemented no later than 7 (seven) working days after the inauguration, because they must first seek consideration for approval from the DPR.⁹

⁸ Indra Syahril dan Dadan Herdiana, "*Calon Tunggal dan Kemenangan Kotak Kosong sebagai Sebuah Realitas Demokrasi di Tingkat Lokal*", Nagari Law Review, Vol. 3 No. 1, Oktober 2019, Hlm. 15.

⁹ Sementara ada juga pendapat yang menjelaskan bahwa Presiden tidak perlu menunggu pertimbangan DPR, karena pertimbangan atau persetujuan baru dapat dilakukan apabila perubahan atau pembubaran kementerian dilakukan pada saat atau di tengah masa jabatan Presiden, sedangkan pada saat awal Presiden dilantik dianggap belum ada kementerian, sehingga pengumuman mengenai susunan kabinet seharusnya dapat lebih cepat untuk dilakukan. Hal pemberian pertimbangan atau persetujuan inilah yang pada akhirnya menimbulkan tafsir dan polemik normat tersendiri di masyarakat. Untuk itu perlu diketahui dalil yang jelas terkait waktu pertimbangan atau persetujuan mengenai pembentukan, perubahan, atau pembubaran

While there is also an opinion that explains that the President does not need to wait for the consideration of the DPR, because consideration or approval can only be made if changes or dissolution of ministries are made during or in the middle of the President's term of office, whereas at the time the President was inaugurated it was considered that there were no ministries, so the announcement regarding cabinet arrangement should be faster to do.¹⁰ This is actually talking about choices, which legal policies or politics are more effective for the president to take as the full power of government.

Second, if one traces the matter of the formation, modification and dissolution of non-ministerial state institutions, the government's legal policies or policies for doing so are often irregular. One reason is that there is no clear legal basis for consideration and legal instruments that must be issued by the government to follow up on this matter. Even though the President holds full power in government, in terms of the optics of legal political demarcation, at least regulations or legal instruments are needed for the president when he wants to form, change and dissolve state institutions.

This is because regarding the establishment, change, dissolution of a state institution will be determined based on the level or position at which a state institution is regulated. Therefore, within reasonable reasoning limits, if these state institutions are regulated through the constitution, then the constitution should provide delegation to laws to regulate further like state ministries. If then it has been regulated through law, of course the formation, modification, and dissolution will be passed through a political mechanism with the approval of the DPR and the product issued to form, change, and dissolve these state institutions is law. Because there is a political agreement that is represented there.

In fact, in the historical context for the last 200 years, the legislature is a key institution in the development of modern state politics.¹¹ Examining the historical development of state institutions, the legislature is the first branch of power that reflects people's sovereignty.¹² In line with what was stated by C.F. Strong, the legislature is the government that takes care of the formation of law, as long as the law requires the power of law (statutory force).¹³ In this regard, Hans Kelsen emphasized:

*“By legislative power or legislation one does not understand the entire function of creating law, but a special aspect of this function, the creation general norm. “A law” a product of a legislative process is essentially a general norm or a complex of such norm”.*¹⁴

That is, when there is an initiative by both the government and the DPR to form, amend, and dissolve non-ministerial state institutions whose scope is regulated at the law level, then the idea is that it needs consideration and approval between the government and the DPR based on logical legal considerations which are then issued by law. It also simultaneously includes the considerations of the initiative in the form of academic texts on draft laws. This is because so far there has been no clear mechanism for changing and dissolving a state institution that is regulated by law.

The assumptions why there is no clause regarding the mechanism for changing and dissolving state institutions, first, the state institutions formed based on the law are intended and intended to be permanent in carrying out their functions, duties and authorities, second, the process of dissolving

kementerian dilakukan, apakah dilakukan pada masa awal.

¹⁰ Zaqiu Rahman, “Ketentuan Pertimbangan atau Persetujuan dalam Undang-Undang Kementerian Negara”, Jurnal Rechtvinding, Media Pembinaan Hukum Nasional, (2014), Hlm. 2.

¹¹ GR. Boynton dan Chong Lim Kim, Introduction, dalam GR. Boynton dan Chong Lim Kim (Edition), *Legislative System in Developing Countries*, (Duke University Press, 1975), Hlm. 15., dalam Saldi Isra, 2018. *Pergeseran Fungsi Legislasi*, *Op.cit.*, Hlm. 1.

¹² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, 2006), Hlm. 33.

¹³ C.F. Strong, *Modern Political Constitution An Introduction to the Comparative Study of their History and Existing Form*, (London: Sidwick & Jackson Ltd, 1975), Hlm. 8.

¹⁴ Hans Kelsen, *General Theory of Law and State*, (New York: Russel & Russel, 1971), Hlm. 256.

these institutions depends on the agreement of the legislators, namely the President and the DPR.

So the dissolution process is indeed not regulated in the law that forms the basis for the formation of the institution, but it may be carried out through a political process in the revision and repeal of the law that regulates the institution. According to the author's opinion, apart from dissolving state institutions through the political process of legislation between the DPR and the President. There is another possibility for the dissolution of state institutions regulated in the law, namely by reviewing and canceling the law governing these state institutions in the Constitutional Court.

Apart from institutions regulated by law, because there is no political agreement in the DPR that is passed, even though the president has the prerogative to dismantle these institutions, the president must remain consistent in issuing his policies. This means that when the president wants to form, change, and dissolve institutions that are regulated through government regulations and presidential regulations, the president continues to issue policies based on the source of the legal instruments that state institutions stand. Besides that, administratively, the president must also include his legal considerations in the form of academic studies when he wants to form, change, and dissolve these state institutions.

Based on the explanation above, it is thus necessary to have a clear demarcation of executive and legislative powers in order to determine the establishment, change, and dissolution of a state ministry and institution. The legal demarcation can be determined when the legal policy and political directions described earlier are carried out effectively and consistently.

5. Summary

In order to run the wheels of government, determining the framework and structure of government is very important. That way, the government framework and structure has clear mechanisms and rules related to the establishment, change, and dissolution of these institutions. The regulation of these three issues in Indonesia, if viewed from a constitutional normative perspective, only the organs of the state ministry explicitly regulate the formation, change and dissolution of a ministry based on the mandate of Article 17 paragraph (4) of the 1945 Constitution. However, if you look at other state institutions which carry out government functions in the constitution, laws and other regulations, are only limited to regulating the formation and position of a state institution without then regulating the form and mechanism regarding the change and dissolution of a state institution. As a result, the president has no legal basis to execute his policies and seems mixed up in issuing legal instruments.

In addition, currently the DPR as a people's representative institution is not really involved in this process, so there is concern that the principle of checks and balances is not being implemented. That is why, in order to realize good choices and steps in forming, changing and dissolving state institutions, policy makers, in this case the president and the DPR, can determine their legal politics through legal considerations and good norms based on statutory regulations and principles in presidential system of government. So that the meaning of Article 4 paragraph (1) of the 1945 Constitution becomes clear and real as the main legal basis for the president in administering government

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