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## **The Constitutional Power Of The Executive in The Age of Rule of Law: A Comparative Study on Malaysia and Indonesia**

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### **Abstract**

The rule of law sets as an important principle entrenched in the Constitution of Malaysia and Indonesia. This principle stand as a guardian against abuse of power by the government as nobody shall be above the law. This paper examines the practices of the executive power relating to decision-making policy, execution of power and enforcement activities in Malaysia and Indonesia. It also analyses how the executive branch performs the powers in accordance to the rule of law. It mainly focuses on the institutional framework of the head of the government and head of state. The analysis allows for identifications of issues and proposals on the enhancement of the executive branch in both countries that would increase the quality of state administration as well as promoting the rule of law. The study adopts a normative method where the fundamental discussions are based on normative approach with content analysis approach on the constitutional and legal provisions, legal cases, circular and directive. The data acquired through doctrinal study is supported by semi-structured interviews with respondents that have been selected through purposive approach. This article concludes that the executive branch plays important roles in promoting the rule of law in both countries. The Constitution, in this case, provides constitutional limitation for the institutional branch of the executive to perform its powers. In the age of rule of law, the executive powers has to be limited. There is no power without limits. The laws has to provide a clear legal direction and reliable mechanism of checks and balances to govern the exercise of the executive powers.

**Keywords:** Executive, president, prime minister, rule of law

### **I. INTRODUCTION**

The study of Asian countries governmental structures sees that although they hold similar system but often function differently. Most of the Constitution provides clearly on the scope of power and the administration system of a country. However, whether the actual intention of the constitution drafters is reflected in the execution of administration is an area that needs to be explored. Thus, this study sets a pilot study on one of the administration body ie the executive. Both Malaysia and Indonesia are selected to see the administration of an Asian country that adopts a Parliamentary democratic system and a presidential system. The study of these two governmental structures progressed within the actual occurrence of the political of each country.

### **II. METHODS**

The study adopts a normative method where the fundamental discussions are based on normative approach with content analysis approach on the constitutional and legal provisions, legal cases, circular and directive. The data acquired through doctrinal study is supported by semi-structured interviews with respondents that have been selected through purposive approach.

### **III. RESULTS AND DISCUSSION**

#### ***Form of Government and the Rule of Law***

##### *The Head of State: Constitutional Monarchy of Malaysia*

The unique Malaysian monarchy system existence is secured by the embedment into the Malaysian constitution. The monarchy in Malaysia is gathered in what is known as the Conference of Ruler (Ahmad Ibrahim and et.al, 1995; Aliran, 1987; Andrew Harding, 1996). Among the significant role of the Conference of Rulers is on the appointment of the Yang di Pertuan Agong (YDPA) as the Head of State. The rotation of throne by each YDPA lasted for five years allowing his brother Rulers the opportunity to resume the role of the YDPA (3<sup>rd</sup> Schedule: Federal Constitution). In Malaysian constitution, the YDPA is given the discretionary (Article 40(1) and 40(1A): Federal Constitution) and non-discretionary power (Article 40(2): Federal Constitution). The exercised of discretionary power sees that it will only be constitutional for YDPA to execute the power after receiving advice of either the Prime Minister, Cabinet or other consultative bodies (Aziz Bari, 2003; Andrew Harding, 1996; Shad Saleem Faruqi, 2019). On another point, the exercise of discretionary should be literally understand to give exclusive privilege to the YDPA to decide, yet by the precedent made by Malaysian judges (Madhavan Nair v. Government of Malaysia [1975] 2 MLJ 286, Teh Cheng Poh v. Public Prosecutor [1979] 1 MLJ 50; Balakrishnan v. Ketua Pengarah Perkhidmatan Awam Malaysia and Government of Malaysia [1981] 2 MLJ 259) indicated that the power of YDPA to decide must be limited to the constitutional provision and are still subject to the received of advice. The YDPA roles in Malaysia is distinct from an elected president in the Indonesian republican parliamentary regimes. Since the 80's the Rulers' position has been, to a considerable extent, diminished by various confrontation (HP Lee, 1993; Raja Aziz Addruse, 1998). The major factors were the disclosures in the media on the abuse of power, immoral behaviors and the use of public monies and the vast business ventures of some of the Rulers (Joseph Fernando, 2014). The Malaysian monarchy is usually associated with the issue of under-power. Although they are the head of state at federal or state level, but their functions are limited to consultation that carries lesser weight than the power to give advice (Aziz Bari, 2003).

##### *The Indonesian Presidency in a Presidential System of Indonesia*

The Indonesian presidential system has evolved as the Constitution has been changed. Several aims of the amendment process were mainly focussing on reducing Presidential power through the separation of powers, to increase the role of the DPR to oversee the executive power of the president, to bring the sovereignty to the people through direct elections and to establish the separation of power with a check and balances mechanism within the three branches of government (Mulyosudarmo, Soewoto, 2004).

Blair Andrew King observed that the Indonesian Constitution (the Amendment) is the constitutional basis for anticipation of the institutional presidency conflicts since the President acted as the most powerful branch without any control from other branches in the Indonesian Constitution (before the Amendment) (Blair Andrew King, 2004). The 1945 Constitution (before the Amendment) gave extraordinary emergency powers to the First Indonesian President (Edward Schneier, 2011). Under the 1945 Constitution (before the Amended Constitution), the Indonesian presidency was applied in combination of presidential system along with some parliamentary elements. The President was not directly elected by the people but was appointed by the MPR (the Peoples Representative Assembly). To be appointed, the President of Indonesia must, in effect have a majority vote in parliament and must keep that majority to stay in office. Therefore, the MPR could directly dissolve the government, as the Parliament in a Westminster or parliamentary system (Stephen Sherlock, 2011). The presidency before the Amendment of the Constitution was indeed depend on the MPR but could not be deposed by the DPR (the legislative) (ICG International Crisis Group, 2011). The Constitution before the Amendment gave the opportunity to the President to dominate the three powers: the executive, the legislative and the judicial powers within the presidential system at the time (Christopher Candland and Sity Nurjanah, 2011).

The experiences shown that the President of Indonesia at the time retained broader powers and used to have the power strengthened. For example, in the emergency powers, the President enjoyed the power to declare a state of emergency and take any actions or even take any extra constitutional actions in

order to overcome the situation without any checks and balances from any institutions. On the legislative power, Article 5 of the UUD 1945 (before the Amendment) was the constitutional basis for the President to take control of the legislative process. The President was given the power to make legislation, while the DPR only formalized it. On the pardoning power, Article 14 of the 1945 Constitution gave the President unlimited power to grant pardon, amnesty, and abolition. In the lawmaking area, the Constitution granted the president the power to make government regulations in lieu of a law (the emergency law) and the presidential decision that had frequently used by the President to benefit his family and cronies (Blair Andrew King, 2004). The Constitution (before the Amendment) emphasized that the president had the power and responsibility to conduct government affairs as the highest chief of government (Annotation IV the UUD 1945 Constitution). As the head of the government, the President had a prerogative power to establish a cabinet (Annotation of the UUD 1945 Constitution). The president had full control over the cabinet and manipulated the government policies to strengthen his powers.

Under the Amendment of the Constitution, the executive powers in Indonesia were reduced in many ways. The Constitution (the Amended) still vested the executive powers in the hands of the President. According to Chapter III, Article 4, Section 1 of the Constitution, the President of the Republic of Indonesia should hold the power of government in accordance with the Constitution. The provision set a constitutional basis that the executive power is vested in a single executive, the President, and reflects that there is no form of collective leadership within the state. Moreover, unlike before the Amendment which gave the president a broader sense of power without check by other branches, the Constitution set sufficient constitutional control over the executive power by other branches (Deny Indrayana, 2008).

### ***The Executive Branch: The Malaysian Prime Minister v. The Indonesian President***

#### *The Election System in Malaysia*

Election is a mechanism that upholds the practice of democratic government in the country. As Malaysia practice a Federal-State administration (Article 76 and 9<sup>th</sup> Schedule: Federal Constitution), elections in Malaysia are carried out at federal level and state level (Article 113 and 115: Federal Constitution). The election at Federal level aims at electing members of the Dewan Rakyat, (the lower house of Parliament), while state level elections are for membership in the various State Legislative Assemblies.

An Election Commission (EC) is formed and appointed by the Yang Dipertuan Agong (YDPA) after consultation with the Conference of Rulers for the purpose of governing the law and rules related to election (Article 114: Federal Constitution). The enforcement of laws that falls within the jurisdiction of EC are the Election Act 1958 (Act 19), Elections (Conduct Of Elections) Regulations 1981, Election Offences Act 1954 (Act 5) and Elections (Registration Of Electors) Regulations 2002. The EC shall conduct elections to the House of Representatives and the Legislative Assemblies of the States and prepare and revise electoral rolls for such elections (Article 114, of the Federal Constitution). Malaysian Election system follows the Westminster style where it adopts the first-past-the-post approach. The government of the day is formed through the victory to secure simple majority seats in the House of Representative (*Dewan Rakyat*). The utmost important event after election is the appointment of the Prime Minister (Article 43(2)(b): Federal Constitution) that shall later advise the YDPA on the appointment of cabinet members.

In 2017, Malaysia 14<sup>th</sup> Election marked a twist in history over the tumbling down of the Malayan Alliance and its successor, Barisan Nasional (BN), the governing coalition dominated by the United Malays National Organisation (UMNO) party that had ruled Malaysia for more than 61 years (James Chin and et al., 2018; [Mohamad M.M Nadzri, 2018](#)). BN also recorded its lowest share of the popular vote, capturing only 33.8 per cent (a sharp drop of 13.6 per cent). Commenting on this development, author (Mohamad M.M Nadzri, 2018) agreed that BN bore the brunt of anger, political polarisation and rising inequality. Mohamad M.N Nadri (2018) further identified that there were four major factors that has contributed to the conquest of the new government (Pakatan Harapan-PH) in the election. The factors includes the existence of a reliable representative within PH; the break of the elites within the ruling regime; the presence of impactful issues surrounding Najib's administration; and, the advancement of information and communications technology as well as its impact on the emergence of a

digital and much more participative society in Malay. This history had multiple peaks to be remembered among other was the return in power of the 4<sup>th</sup> Malaysian Prime Minister, Tun Dr Mahathir Mohamad and he was also acknowledged to be the oldest Prime Minister who had gain victory in Election.

#### *The Presidential Election in Indonesia*

The Third Amended Constitution, a direct process of presidential election was established. According to Article 6A section 1, the President and vice President shall be elected directly by the people. This Article sets a strong basis for a presidential system where an elected president has a strong legitimate position. The president is directly elected and thus, solely responsible to the people. During the campaign, a presidential candidate is already assumed to have political responsibility to fulfill his/her political commitments. However, the mechanism still has some potential disadvantages specifically when the President comes from an unpopular political party and raises weak support from the legislature. This situation, in the end may cause gridlock in a legislative-executive relationship in both the legislative process and the government policy-making. On the other hand, a direct election is expected to have more advantages to strengthen the character of the presidential system as such in Indonesia. The President has since not been elected through an indirect democracy mechanism such as what had been set in the UUD 1945. The president has more legitimacy from the people and in consequence, the president is constitutionally responsible to the people and not only to other branches. Besides, it is addressed to give a more democratic atmosphere in Indonesia, and it is intended to provide a constitutional protection for the presidential office. Unlike before the Amendment of Constitution, according to the Amended Constitution, it would be difficult for other branches to bring down the President since he is elected by the people.

#### *The Prime Minister of Malaysia Scope of Power*

The famous phrase in Malaysia says that the YDPA is the *de jure* head of the country and the Prime Minister is the *de facto* head of the government. This impliedly explains the situation in Malaysian administration where vast power is granted to the Prime Minister through the exercise of power by the YDPA (Kevin Tan and et al, 2009; Shad Saleem Faruqi, 2019; Wu Min Aun, 2003). The YDPA reign and he does not rule. Article 40(1) and Article 40A(1) emphasizes the need for the YDPA to exercise his power following the advice of either the prime minister, Cabinet Members or other person who takes a decision in the name of the King. The YDPA is a Constitutional Monarch is enshrined first, in Article 40(1) which provides that in the exercise of his functions under the Constitution or federal law, the YDPA shall act in accordance with the advice of the Cabinet, and secondly in Article 40 (1A) that in all such cases the YDPA shall accept and act in accordance with such advice. In this category of decisions, which form the vast majority, the actual decision maker is the Prime Minister, Cabinet or other person who takes a decision in the name of the King. In the case of *Teh Cheng Poh v PP(1979)* which stated that the YDPA does not have a personal discretion under the Article 150(1) but has at all-time act on the Cabinet advice. In *Madhavan Nair v Government (1975)*, Justice Chang Min Tat opined that emergency rule does not displace the King's position as the constitutional monarch, bound by the Constitution to act at all times on the advice of the Cabinet (Teh Cheng Poh (1979), Stephen Kalong Ningkan v Tun Abang Haji Openg (No. 2) (1967); Balakrishnan v KP Perkhidmatan Awam (1981); Merdeka University (1982); Stephen Kalong Ningkan v Government (1968); Abdul Ghani Ali @ Ahmad (2001); and Karam Singh (1969).

The powers of YDPA to act the advice of the Prime Minister can be summarized as follows:

When COR deliberates on matters of national policy, the YDPA is accompanied by the PM or DPM

YDPA and Rulers/Governors are required to act on advice – Art 38(3).

COR can act as a check and balance on the power of PM on functions in Art 38(2), 38(4), 38(5) and 38(6).

The wide exercise of implied power by the Prime Minister is control by some factors namely the Cabinet is not PM's instrument at any given time. Most of the powers are in fact exercised by Minister. A Minister is free to introduce an opposing viewpoint for debate in Parliament, once a decision is taken by the Parliament, all ministers are bound to abide by the decision (Shad Saleem Faruqi, 2014).

#### *The scope of executive power of the President of Indonesia: check and balance, impeachment and term limits*

In exercising the executive powers, the President of Indonesia is limited by several constitutional mechanisms. Besides the mechanism of check and balances by the DPR and the Court, other

mechanisms such as the impeachment mechanism and term office of president clause in the Constitution provides limitation for the President to exercise the executive power only within his official capacity and during his office. Under the presidential system in Indonesia, the President could be impeached. The Constitution (the Amendment) clarifies the grounds of impeachment. According to the Third Amended Constitution, the president could only be brought down on specific grounds of criminal offences. According to theory, the impeachment mechanism in a presidential system is to be used to correct grave abuses by the executive and not as a routine means of unseating presidents (Fukuyama Francis, Bjorn Dressel, et al, 2005). The Amended Constitution allows the DPR to deliver motion of presidential impeachment whenever they indicate that the President has committed crimes or other constitutional impeachment grounds. The indication would then be submitted to the Constitutional Court to be affirmed. At this point, the Court may play a critical mediation role in this matter (Fukuyama Francis, Bjorn Dressel, et al, 2005). However, there is still no experience of presidential impeachment in Indonesia.

Regarding the presidential term, the First Amended Constitution has set term limits to the presidential office. It only allows a President to be re-elected for only one term office. Previously, there was no limitation to the presidential term, thus it positions Indonesia under an authoritarian regime. As the Indonesia presidency is expected to be more dynamic than before, the presidential term limit is even more necessary to help make the process even more dynamic and provide a more democratic atmosphere. In the spirit of establishing a presidential government, the Constitution provides articles that allow the executive powers to be jointly exercised by the President and the Legislature or the President and the Court or other institutions, for example, to exercise foreign affairs powers, the war powers, and the treaty powers, the President must jointly share the powers with the DPR. On the administrative power, the President has the power to establish the cabinet of ministers. The president is granted the power to appoint and dismiss ministers. However, by the Third Amended Constitution, such power is limited. The additional Section 4 of Article 17 stipulates that the formation, alteration and dissolution of ministers of state shall be regulated by law. It implies that the presidential power to form the cabinet has been limited by the intervention of legislation.

### ***Parliamentary Cabinet v. Presidential Cabinet***

#### *Cabinet Members in the Parliament of Malaysia*

The Cabinet of Malaysia is the executive branch of Malaysia's government. Led by the Prime Minister, the cabinet is a council of ministers that are accountable collectively to the Parliament. According to the Article 43 of the Constitution, members of the Cabinet can only be selected from members of either houses of Parliament. Formally, the Yang di-Pertuan Agung appoints all Ministers on the advice of the Prime Minister.

To formulate national economic policies and development programs. The Cabinet is responsible to formulate various development programs and projects for the development of the country. The government can generate revenues from the people and plan for various development programs. As an arena for suggestions, debates, and criticisms, the Cabinet can discuss almost any issues of national interests, except those that touch on the special rights of the Malays, Bumiputera's and/or royal privileges (Article 153, Federal Constitution).

By virtue of Article 43(5) of the Federal Constitution it is provided that Ministers shall hold office during the pleasure of the Yang di-Pertuan Agung, unless the appointment of any Minister shall have been revoked by the Yang di-Pertuan Agung on the advice of the Prime Minister but any Minister may resign his office. In the sacking of the Deputy Prime Minister in 1998 (Dato' Seri Anwar Ibrahim v Public Prosecutor (2000)), this provision was exposed to the new interpretation giving enormous power to the Prime Minister to not only advise the YDPA on the dismissal of Ministers, but may also issue and sign the letter of dismissal so long as the YDPA stays in the light of knowing the dismissal.

The swearing of oath by the ministers on the day of appointment sets them to abide by the Doctrine of Ministerial Responsibility provided under Article 43(3) of the Federal Constitution. This requires them to stand united upholding all decision and policy made by the government. There are few incidents that perceive the dismissal of the ministers in event of breaching this doctrine. A minister must resign if a vote of censure is passed against her. In many parliamentary democracies, a minister who is seriously

criticised in Parliament vacates her post (Shad Saleem Faruqi, 2014). The doctrine of ministerial responsibility underlies an especially important aspect of parliamentary democracy: it means that ministers are answerable to the Parliament. The primary aim of this doctrine is to maintain a relationship of check and balance between the executive and the Legislature or Parliament (Kevin Tan and et al, 2009; Ahmad Masum, 2012). In many developed democracies, ministers often resign to accept responsibility for failure of duty by their departments.

#### *Presidential Cabinet in Indonesia: Ministerial Cabinet in the Indonesian Presidential System*

The President is the highest organ to hold the authority and responsibility to conduct and manage the state government and administration. To carry out the powers, the President as the head of state and head of government is assisted by a Vice President, state ministers, other executive officers equal to ministers, heads of non-department government institutions, the state prosecutor, chief of military forces, and the chief of Police as part of the governmental system. As the head of the government, the President has the appointment powers. In practice, as the head the executive branch, the President has the power as a manager to set policies, executive guidelines, and government directives for state executive officers to be applied for daily technical practice. On the other hand, the President has the power to monitor the implementation of policies, directives and guidelines as well as forming and reshuffling the cabinet. According to the Amended Constitution, the ministers in a presidential system have especially important and significant roles. Jimly Asshiddiqie (2006) determined ministry as one of the executive organs and one of the constitutional organs. A minister is responsible for leading and managing his ministerial department. The ministers are in practice the daily executive. They run the government affairs. In the executive organization, the ministers have the position to perform the government activities. The ministers have delegated powers from the President, as the chief of the government and responsible for all government affairs to act. According to Article 17 Section 3 of the First Amended Constitution, a minister oversees affairs of government. The minister is a chief of his/her department and in charge of public policy making.

For ministerial appointments, the President is given independent powers to appoint and dismiss the ministers according to Article 17 section 2 the First Amended Constitution. The ministerial appointments are always related to the Presidential programs. It may depend on the programs that the President had campaigned for during the election campaign. In office, the appointed ministers are the President's assistant to work on the President's programs. As the ministers oversee government affairs, each minister is responsible for his ministry. They are constitutionally responsible to the President and not responsible to the parliament or other branches. In practice, the nomination, selection process, and formal appointment are in the hands of the President, but sometimes, political parties and the DPR put the President under great pressure during the ministerial nomination and reshuffle process. According to the third Amended Constitution in Article 17 section (4), the ministers (the Cabinet) structure including the establishment, alteration, and dissolution of the state ministries is protected by the Legislation. In accordance with Article 17 of the Constitution, the Legislation No. 39/2008 set a legal basis for the establishment of a state's ministerial department.

#### *Cabinet Formation, Reshuffle and Dismissal*

Ministers other than the Prime Minister shall hold office during the pleasure of the Yang di-Pertuan Agong (Article 43(5): Federal Constitution), unless the appointment of any Minister shall have been revoked by the Yang di-Pertuan Agong on the advice of the Prime Minister but any Minister may resign his office. In practice, the Yang di-Pertuan Agong is obliged to follow the advice of the Prime Minister on the appointment and dismissal of ministers (Dato' Seri Anwar Ibrahim v Public Prosecutor, 2000). In the case of Dato Seri Anwar Ibrahim, the defense counsel claimed that judges of the Court of Appeal were wrong in not intervening to put right through the judicial process, what was a clear and manifest abuse of power by Mahathir and unconstitutional (The Star, 2009). However the court decided that the King was informed and advised on the revocation of Anwar's appointment and that the King had accepted the advice

In the presidential system of Indonesia, the establishment of a cabinet is commonly as a political deal with the President's supporting parties and the coalition supporting the President. However, in particular circumstances, the appointment of ministers is based on merit. The ministers represent personal

competences, technical qualifications, and professional competences to implement the government affairs (Jimly Asshiddiqie, 2006). Jimly Asshiddiqie(2006) argues that the appointment process of a minister has to be based on the meritocracy system where the President should make a priority for technical leadership qualifications rather than political support qualifications. In a meritocracy ministry, the Cabinet merely works on the professional ground and will be free from the political interest of the political party (Jimly Asshiddiqie, 2006). However, in practice, the President could not be free to form the ministry in the cabinet even though it is said to fit in the President's program (Jakarta Post, 2012). Although the general qualifications are determined by Law, the President has prerogative power in the nomination and selection process. The President himself will conduct fit and proper tests for the minister candidates. He will confirm all the candidate qualifications and competences according to his personal requirement.

In a presidential system of Indonesia, the Cabinet is under the executive branch. The President, as manager, is accountable for their performance by controlling the cabinet bureaucracy to influence public policy and meet public expectations. One of the mechanisms to control the cabinet bureaucracy is by conducting a fit and proper test to have the best, professionals, and ministers of integrity (David E.Lewis, 2003). A minister's appointment is a mechanism to design and create a bureaucracy that will support the President (Nolan Mc Carthy and et al., 1999). In Indonesia, DPR may control the Cabinet only with regard to the ministerial state budget and number of ministers (Jimly Asshiddiqie, 2005). To this extent, the DPR could be regarded as the co-state administrator in which the DPR has the right to confirm the President's power in establishment and dissolution of a ministry in the Cabinet (Jimly Asshiddiqie, 2005). To this extent, the cabinet formation politics were therefore much more than a matter of devising acceptable compromises between parties on policies and interests (Herbert Feith, 2007). In fact, the political party interest involved in the cabinet formation may potentially create a cabinet weakness and further may lead to governmental instability. The President is mostly under pressure by political parties and bound by parties' coalition commitments. At this point, the policy and the minister appointments may only be a moral duty for the President to give a significant position in the government system, in particular to the political parties which have supported the President in the coalition parties before, during, and after the election process.

#### *Policy Making and Cabinet Responsibility*

In Indonesia, ministers could play a virtual role and make important decisions (Herbert Feith, 2007). Ministers may issue Minister Regulations on a wide range of subjects, sometimes without anyone outside their ministries knowing that a particular regulation had been made or what it involved (Herbert Feith, 2007). They could exercise a broad degree of discretion as regards the distribution of funds and the flows of patronage; they had considerable freedom in the matter of appointments and transfers (Herbert Feith, 2007). Accordingly, in the Indonesian presidential system, the actual chief executive is the minister and as a consequence, they are responsible to the President (Jimly Asshiddiqie, 2005). The constitution sets a constitutional basis in Article 17 Section (3) that "a minister is in charge of a particular affair in the government". To this extent, in practical terms, the ministers are the highest chief of government in their particular domain. The ministers have authority to set policy in establishing government affairs particularly in their field even though their constitutional position is as the President's assistant (Jimly Asshiddiqie, 2005). In elaborating the President's program for the five years of the President's office, the ministers have the authority to set policies. They should be separated from politics and should not insert their political ideology into the policy they made (Jimly Asshiddiqie, 2005). In setting the policy, the ministers are empowered by legal competences to issue three products of legal regulation namely, the Ministerial Regulations (Peraturan Menteri/ Permen)( Article 8 section (2) Legislation 12/2011 ) which set technical guidelines in a particular field. The argument of giving ministers the authority to issue legal products is that the ministers are in a very important position in administering government affairs; they are the chief in their department and exercise daily management in a particular sector. Another argument is that it is impossible and not efficient for the President to set a very detailed standard and guidelines with the Presidential Rules. It would lead to a concentration of powers in the hands of the President if every guideline should be set by the Presidential Rules (Jimly Asshiddiqie, 2005). The President in this matter, as the chief of the ministers, sets guidelines through the Government Directive and the Presidential Regulation that bind ministries. In day-to-day

administration, the ministers represent the President. On the other hand, the role of the ministers can also be very significant in the legislation process (Article 65 section 1 of the Legislation No. 12/2011) Ministers are the key initiators for bills proposed by the President. In a joint discussion and a joint approval session of legislative process, a minister may be assigned by the President and represent him and execute his power to negotiate, bargain, and conclude the Bills. The Ministers are also in charge of framing the state development strategy for long term, mid term, and short-term state development planning. For this reason, also the ministers may initiate priority programs for the establishment of Legislation programs (PROLEGNAS) in the National Law System.

#### **IV.CONCLUSION**

In summary the critical discourse provided by this writing uncovered that there is a need of new principles and methods for enforcing executive responsibility, answerability, and accountability of the executive power. The head of government who sits in the executive holds a vast power that may well shield the head of government to effectively run the country without exposing them to legal actions or allowing them to abuse the enormous power allocated to them by the constitution and political culture of the country. In balancing these powers there is indeed the need for the other branch of government namely legislative and judiciary be given a room to effectively plays their check and balance role.

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