

Appointment of the Head of the Indonesian National Police according to the 1945 Constitution

Sodikin

Faculty of Law, Universitas Muhammadiyah Jakarta, Indonesia

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ABSTRACT

The President as Head of government has absolute authority (prerogative right) to appoint and dismiss heads of government agencies under his control, including in terms of appointing the Head of the Indonesian National Police. The problem is that the appointment of the Head of the Indonesian National Police must obtain approval from the House of Representatives, even though the President has the prerogative. The research method used is the library research method, which is normative juridical. The results of the study explain that, the appointment of the Head of the Indonesian National Police must obtain approval from the People's Representative Council, even though the 1945 Constitution as a written constitution and basic law provides a strong basis for a President in running his government including in appointing his assistants who are administratively the authority of the President as Head Government.

Keywords: Police; the 1945 Constitution; President; House of Representatives.

I. INTRODUCTION

Indonesia is a constitutional state which uses a presidential system in its government system. The Republic of Indonesia is a country that has tribes, races, cultures that are spread across Indonesia. Sovereignty adopted in the 1945 Constitution of the Republic of Indonesia is the sovereignty of the people as well as the sovereignty of law (Gaffar, 2012). The state is a tool (agency) of society that has the power to regulate human relations in society and regulate the symptoms of power in society (Budiarjo, 1997). Indonesia adheres to a Presidential system with the President as Head of government and also as Head of State. The president as head of government has absolute authority (prerogative) to appoint and dismiss heads of institutions under his authority. This is even though the President has

absolute authority in appointing heads of government under the President, in such cases the President cannot do it alone because there are other state institutions which are partners in a democratic system based on people's sovereignty. The institution referred to as the embodiment of the people is the People's Representative Council.

Roger H. Soltau stated, the state is an agency or authority managing or controlling these (common) affairs on behalf of and in the name of the community (Budiarjo, 1997). In this way the state can integrate and guide the social activities of its citizens towards a common goal. In this framework it can be said that the state has two tasks. First, control and regulate the social phenomena of power, namely those that contradict one another, so that they do not become dangerous antagonists. Second, organizing and integrating the goals of society as a whole. The state determines how the activities of social associations are adapted to each other and directed towards national goals (Budiarjo, 1997). The philosopher Aristotle stated that those who rule in the state are not actual human beings, but a just mind, while the real rulers are only law and balance holders. The decency that will determine whether or not a statutory regulation and making a law is part of the ability to run a state government. Therefore, the most important thing is to educate people to become good citizens, because from a just attitude, the happiness of the lives of its citizens will be guaranteed (Kusnardi & Ibrahim, 1988).

The Republic of Indonesia recognizes the existence of executive, legislative and judicial institutions in the 1945 Constitution by carrying out the distribution of power between state institutions. The power of state institutions is not held in a rigid and sharp separation, but there is coordination between one and the other. The 1945 Constitution of the Republic of Indonesia, in addition to using the concept of triaspolitica, the State of Indonesia is

also familiar with the theory of a government system, namely the Presidential system as stipulated in Article 4 paragraph (1) of the 1945 Constitution, which reads "The President of the Republic of Indonesia holds government power according to the law". So, the President holds supreme power over the government of a country. Therefore, the President is entitled to his prerogative to appoint the ranks of his government without being influenced by other institutions, including appointing ministers as assistants or as subordinates who are responsible to him. One of the President's subordinates who served as law enforcers was the Indonesian National Police. This police agency is an independent institution under the authority of the President whose job is to guard the Indonesian state in maintaining stability and security from an internal perspective.

The problem in the description or discussion above is regarding the appointment of the Head of the Indonesian National Police which is the absolute authority or prerogative of the President must obtain the approval of the House of Representatives. The Police of the Republic of Indonesia are carrying out their duties as government administration in the field of law enforcement, so that the appointment of the Chief of Police does not have to obtain approval from the House of Representatives. The 1945 Constitution as the foundation of the state and nation also does not explicitly stipulate that the appointment of the Head of the National Police of the Republic of Indonesia must obtain the approval of the House of Representatives. The reality is that currently in Indonesia, namely the House of Representatives participates in the appointment of the Head of the Indonesian National Police together with the President, even though the government system in Indonesia adheres to a Presidential system, the authority to appoint the Indonesian Police Chief should be fully in the hands of the President because the President has the prerogative right in appointing the Indonesian National Police Chief.

II. RESEARCH METHODS

The type of research method used in this case is the library research method, which is normative juridical in nature, namely research that refers to the role of the House of Representatives in terms of appointing the Head of the Indonesian National Police. Furthermore, the relationship between the House of Representatives and the President in terms of the Appointment of the Head of the Indonesian National Police and the mechanism for appointing the Indonesian National Police Chief. The data collected uses primary legal

materials, secondary legal materials and non-legal legal materials that are described and connected in such a way. The results of the data collection were analyzed in a more systematic way to answer the problems that had been formulated.

III. RESULTS AND DISCUSSION

Indonesian National Police Institute

The term Police comes from the term police which has various designations in each country, and for the first time the term police come from the Greek, namely *politeia* which was put forward by Plato whose background is the idea that an ideal country is in accordance with its ideals, a country that is free from leaders. a greedy and evil country, where justice is held in high esteem (Azhari, 1995). Other variations of the term police can be seen in England with Police, in Germany *Polizei*, and in the Netherlands with *Politie* (Sadjiyono, 2010). At the time of the Majapahit Kingdom, the Commander-in-Chief, Maha Patih Gajah Mada, formed a security force called *Bhayangkara* whose job was to protect the king and the kingdom (Gunawan, 2009). Unlike the case during the Dutch Colonial government, where at first the police only consisted of Dutch citizens, then during the Daendels government in Indonesia, the Police at that time were divided into two, namely the armed police filled with Dutch people and the civil service police which were filled by native people are not allowed to hold weapons. Furthermore, a unit called *gewarpendepolitie* was formed which later turned into *veld politie* which was part of the anti-rebellion suppression unit at that time. Thus, the police as part of the government's organs can be said clearly that the police are an organization and a tool of the government. In addition, the police is a bureaucracy without counters and partitions that separate it from the community, so the relationship between the police and the community is like water with fish in it, and there is no society without police (*ubi society ubi politie*) (Yuwono, 2011).

The history of the formation of security forces began with the formation of troops taken from indigenous people (native Indonesians) to protect the assets and wealth of Europeans in the Dutch East Indies (Indonesia at that time). In 1867 a number of European citizens in the city of Semarang recruited 78 native people to maintain their security (Blombergen, 2011). The operational authority of the police lies with the resident who is assisted by an assistant resident. *Recht Politie* is accountable to the procurer general (Attorney General). During the Dutch East Indies era there were various forms of policing, such as *veld politie*

(field police), bestuurspolitie (civil service police), and others.(Blombergen, 2011).In line with the state administration at that time, the police also applied differential positions for the Dutch and natives. Basically, indigenous people (a term for native Indonesians) are not allowed to serve as hood agents (non-commissioned officers), inspectors van politie, and commissioners van politie. Positions for natives during their time as police agents were made into positions of police officers, assistant wedana, and police wedana. Indigenous people were not given high positions because at that time the Dutch colonial government was wary of the Indonesian people fighting back to expel the Dutch. The modern Dutch East Indies Police which was formed between 1897-1920 was the forerunner of the formation of the current State Police of the Republic of Indonesia(Blombergen, 2011).The position, duties, functions, organization, relations and work procedures of the Police at that time were used for the benefit of the Dutch East Indies government. The police are tasked with receiving cases, whose obligation is to carry out the King's Instruction Letter and create a peaceful state of government/kingdom/state(Anonymous, 1971), as well as being a party that displays the face of the colonial state while simultaneously carrying out the task of carrying out and completing the unfinished work of the colonial state (Anonymous, 1971).

Soekarno and Mohammad Hatta proclaimed Indonesian independence on August 17, 1945, and officially the police became the independent Indonesian Police. Subsequent developments, the Indonesian police cannot be separated from the history of the struggle for independence of the Republic of Indonesia since the proclamation. The history of the journey of the Indonesian National Police, especially with regard to the structural position of the police organization, has undergone changes(Rianto, 1999). After the proclamation of independence of the Republic of Indonesia on August 17, 1945, then on August 19, 1945, the Preparatory Committee for Indonesian Independence (PPKI) determined that the police be included in the Ministry of Home Affairs. On August 22, 1945, the birth of the Indonesian National Police was declared. On October 1, 1945, the government issued a government decree signed by the Minister of Home Affairs, Minister of Justice, and the Attorney General, stating that all offices of the Prosecutor's Office belong to the Ministry of Justice, while all offices of the Police agency belong to the Ministry of Home Affairs(POLRI, 2008).

President Soekarno reformed the police organization, and two months later President

Soekarno appointed Raden Said Soekatmo as the first Chief of Police. Initially, the position of the Police was within the scope of the Ministry of Home Affairs, then after the issuance of Presidential Regulation Number 11 of 1946 dated July 1, 1946, the National Police was separated from the Ministry of Home Affairs and became an independent institution directly under the Prime Minister(POLRI, 2008). July 1 is designated as the birthday of the Indonesian National Police, known as Bhayangkara Day.During the presidential cabinet, on February 4, 1948 Government Regulation No. 1 of 1948 was issued which stipulated that the Indonesian Police be led directly by the President/Vice President in the position of Prime Minister/Deputy Prime Minister.

Subsequent developments The Police were united with the Indonesian National Armed Forces (TNI) based on Law Number 13 of 1961, that the Police were under the Ministry of Defense and Security.Furthermore, the position of the Police was under the Armed Forces of the Republic of Indonesia (ABRI) based on Presidential Instruction No. 2 of 1999 and then the Decree of the People's Consultative Assembly Number VI and VII of 2002 concerning the role of the Indonesian National Armed Forces and the Police of the Republic of Indonesia was also issued, which subsequently separated the Indonesian National Police (POLRI) of the Indonesian National Armed Forces (TNI).This separation was confirmed by the amendment of Law Number 27 of 1997 to Law Number 2 of 2002 concerning the Indonesian National Police.

According to the theory of the division of powers and the presidential system of government, the functions of government are carried out by an executive branch led by the President, so that the President is responsible for running the government.Therefore, studying the position of the police based on its main function cannot be separated from the main function of the government led by the President.Every state institution must exercise its authority based on law as a logical consequence that Indonesia is based on a rule of law, so with the rule of law and government that adheres to a presidential system that must place all state institutions under the 1945 Constitution. Soewoto Mulyosudarmo stated that, the consequences of a presidential system, namely as a system that places all state institutions under the 1945 Constitution(Mulyosudarmo, 2004). In addition, in a presidential system of government, the President is responsible for the administration of security, peace and public order.Within the framework of constitutional theory, a country that

adheres to a presidential government system, the country is led by a President in his position as head of state and head of government is associated with the meaning of the police as "a tool of the state" as stated in Article 30 paragraph (4) of the 1945 Constitution, which means the police exercising its authority is under the President as Head of State and Head of Government.

The function of the police in carrying out the government implies that the government held by the President as the holder of governmental power (executive) delegates some of his powers to the police institution, especially the duties and authorities in the field of security and order. As stated by Bagir Manan (1999), that "the President is the highest leader in the administration of the State". The implementation of state administration includes a very broad scope of duties and authorities, namely every form of administrative action or activity that is grouped into (a) administrative duties and authorities in the field of security and public order; (b) the duties and authorities of carrying out government administration starting from correspondence to documentation and others; (c) duties and powers of state administration in the service sector; and (d) the duties and powers of state administration in the field of public welfare. Therefore, there are several legal instruments that before Law Number 2 of 2002 had regulated the position of the police agency under the President, such as Law Number 89 of 2000 and the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VII/MPR/2000 concerning the Role of Indonesian National Armed Forces and Indonesian National Police. Several laws and regulations, namely Article 30 paragraph (4) of the 1945 Constitution, Article 6 paragraph (1) of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VII/MPR/2000, and Article 5 paragraph (1) of Law Number 2 of 2002, that the National Police of the Republic of Indonesia as an instrument of the state that carries out one of the functions of government, especially in the field of maintaining security and public order through protection, protection and service to the community and law enforcement, so that the consequence is to carry out one of the functions of the government.

Mechanism for the Appointment of the Chief of Police of the Republic of Indonesia

The legal basis for appointing a Police Chief is regulated in Law Number 2 of 2002 concerning the Indonesian National Police. Law Number 2 of 2002 was followed up by Presidential

Regulation Number 52 of 2010. The proposal for the appointment of the National Police Chief is carried out by the National Police Commission whose task is to provide advice to the President in the appointment and dismissal of the Head of the Indonesian National Police. The National Police Commission Institute was formed based on Presidential Regulation Number 17 of 2011 concerning the National Police Commission.

The composition of the membership of the National Police Commission consists of three people from the government, three people from police experts and three people from community leaders. Based on Article 16 paragraph 1 of Presidential Regulation Number 17 of 2011, the chairman and deputy chairman of the National Police Commission are elected and appointed by the President. The National Police Commission is a structural institution and is responsible to the President. The National Police Commission provides an evaluation of the performance of the Chief of Police of the Republic of Indonesia in the context of dismissal. Of course, the National Police Commission is an adviser to the President on the performance of a Chief of Police of the Republic of Indonesia whether to be proposed or dismissed. After the Council decides, the names of the candidates for police chief will be submitted to the Head of the National Police Commission for consideration. After that, the National Police Commission will submit the name to the President. A candidate for Chief of Police of the Republic of Indonesia cannot come from an external police institution and certain political party cadres, because based on Article 11 paragraph 6 of Law Number 2002 concerning the police that "Candidates for Chief of Police are High Officers of the Indonesian National Police who are still active taking into account the level of rank and career", because the position of a police chief is free from elements of external police parties.

The appointment of the Chief of Police is the prerogative of the President, a special or special right given to the government or ruler of a country and given to a person or group of people, which is separate from the rights of the community according to applicable law. The President's prerogative is the privilege that belongs to the President to do something without seeking approval from other institutions (Mahfud, 1999). This is intended so that the functions and roles of government are stretched in such a wide way that it can take actions that can build people's welfare. This should be with the prerogative given to the President which is a special or special right given to the government or the President because of

his position as head of government according to the 1945 Constitution. Therefore, the involvement of the House of Representatives in the matter of appointing and dismissing the Head of the Indonesian National Police as stipulated in Article 11 paragraph (1) of the Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police that: "The Head of the Indonesian National Police is appointed and dismissed by the President with the approval of the People's Representative Council", this is contrary to the 1945 Constitution.

The Role of the House of Representatives in Appointing the Head of the Indonesian National Police

The role of the House of Representatives in terms of appointing the Head of the Indonesian National Police is contained in Law Number 2 of 2002 concerning the Police, especially Article 11 paragraph (1) which states: "The National Police Chief is appointed and dismissed by the President with the approval of the House of Representatives". Article 11 paragraph (1) of Law Number 2 of 2002 can be interpreted that, the Police of the Republic of Indonesia in carrying out their duties have a dual role both as law enforcers and as social workers in social and community aspects (service and dedication) (Nawawi, 2005). Thus, abuse of power by branches of state power can be avoided. Therefore, it is necessary to request the President's approval from the House of Representatives in terms of appointing the Head of the Indonesian National Police. The appointment of the Head of the Indonesian National Police is included in the checks and balances mechanism. A system of checks and balances is needed to create a state administration structure that gives authority between branches of state power (legislative, executive and judicial) to mutually control and balance the exercise of their respective powers.

The form of participation carried out by the DPR is by conducting a fit and preference test, which is an assessment of the fit and properness of a candidate for Chief of Police. Basically, the words fit and proper in English are adjectives that have the same meaning, namely proper, proper or proper. So that in simple terms many interpret the Fit and Proper Test (hereinafter referred to as the Fit and Proper Test) as a fit, proper or appropriate test which is condensed in the sentence fit and proper test (Naja, 2004). The People's Representative Council has a very important role in determining the administration of the state to achieve the ideals of the nation's struggle to create a just and prosperous society as stated in the 1945

Constitution. Along with the times, the Constitutional Law in Indonesia began to slowly strengthen the apparatus base in government, in terms of strengthening the state apparatus which is the spirit of the Law of the Republic of Indonesia Number 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism.

Indonesia is familiar with the fit and proper test mechanism carried out by an institution in order to select candidates for the leadership of that institution, in the oversight function of the House of Representatives as a Legislative institution is to supervise the implementation of the 1945 Constitution, laws and implementing regulations which later related to the process of selecting public officials known as the Fit and Proper Test. Substantively in the oversight function, the Indonesian House of Representatives conducts a Fit and Proper Test through work meetings, opinion meetings and general opinion meetings. Many problems have developed in the implementation of the supervisory function (DPR RI, 2006).

The demand for a law to give the state the title of good governance with the mandate of Law Number 28 of 1999 concerning State Administration that is clean and free from collusion, corruption and nepotism is charged to the House of Representatives which is regulated in Law Number 22 of 2003 concerning Composition and position, the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council. So to maximize these ideals, it takes public officials who have a high level of professionalism in which a public official must be tested before explaining his duties, namely the Fit and Proper Test which is in accordance with the explanation of Law Number 28 of 1999 Article 4 which reads, "To create a state administration that is clean and free from corruption, collusion and nepotism, this law establishes general principles, the principle of openness, the principle of proportionality, the principle of professionalism and the principle of accountability". If it requires the role of the House of Representatives in the process of appointing the Head of the Republic of Indonesia Police, on the other hand it is only limited to giving consideration, because in a good government it is known as a system of checks and balances, Indonesia adheres to a presidential system and also recognizes a system of checks and balances due to the involvement of other institutions in This form of oversight is necessary to

create synergized wheels of government that can carry out their duties and functions better.

Presidential Government System in Appointment of Police Chief According to the 1945 Constitution

The rules regarding the appointment of the Chief of Police as regulated in Law Number 2 of 2002 concerning the Indonesian National Police, especially Article 11 which states that;(1) The National Police Chief is appointed and dismissed by the President with the approval of the People's Representative Council;(2) Proposals for the appointment and dismissal of the National Police Chief are submitted by the President to the People's Legislative Assembly accompanied by reasons;(3) The DPR's approval or rejection of the President's proposal as referred to in paragraph (2) must be given within a period of no later than 20 (twenty) days from the date the President's letter is received by the DPR;(4) In the event that the DPR does not provide a response within the time referred to in paragraph (3), the candidate proposed by the President shall be deemed to have been approved by the DPR;(5) In an urgent situation, the President can temporarily dismiss the Head of the National Police and appoint the acting Head of the National Police and then seek approval from the House of Representatives;(6) Candidates for National Police Chiefs are High Officers of the Indonesian National Police who are still active with regard to rank and career levels.

The author agrees that in running a government system, it must be consistent, because the government system adheres to a presidential system as stated in Article 4 paragraph (1) of the 1945 Constitution, namely: "The President of the Republic of Indonesia holds government power according to the Constitution".Therefore, the President as the holder of the highest authority has the right to choose and appoint the ranks of his government, namely ministers, ambassador consuls, commander of the Indonesian National Armed Forces, Chief of the Indonesian National Police, without the approval of the House of Representatives.

Furthermore, there are those who argue that the process of appointing the Head of the Indonesian National Police requires the involvement of the House of Representatives to check the President's authority.If the approval of the House of Representatives is completely abolished, the President is worried that he will nominate a candidate for Head of the Indonesian National Police who has problems (does not have the qualifications to be a Police Chief) and has the

potential for the President and the DPR to hold each other hostage"(Ahli, 2019).Here, according to experts, the involvement of the House of Representatives to check the authority of the President is indeed necessary, because the Indonesian state adheres to a system of checks and balances, namely mutual supervision between state institutions.Likewise stated by Saldi Isra(Ahli, 2019),that it is sufficient for the DPR to give consideration alone and there is no need for approval, because in such considerations the DPR can provide special notes on the candidate proposed by the President so that it becomes material for consideration.If members of the House of Representatives see that there is a bad record on the candidate for police chief, the President can look for another candidate with better criteria and track record. Harjono also believes that: "...Moreover, in practice the "approval" of the House of Representatives in the appointment of the Head of the Indonesian National Police and the commander of the Indonesian National Armed Forces is prone to being politicized.Even so, if the approval is changed to the consideration of the House of Representatives, he agrees.This is because the political problems of the President and the House of Representatives regarding the process of appointing the Head of the Indonesian National Police and the commander of the Indonesian National Armed Forces do not yet have clear constitutional norms that regulate them.

The author does not deny that political interests do exist, as a result that power does not work because it is unable to carry out what is said, realize what is promised or achieve what has been planned, what happens is only a crisis of power and a crisis of public confidence in the performance of the government can occur.A power crisis can occur because the existing power is unable to show its legitimacy, namely the capacity to carry out its functions according to the expectations of the people.Power does not work when it is unable to direct elements of the nation towards improvement or change.Power is the ability to get what one wants to achieve a goal in short, namely the ability to make changes.Power is also the ability to supervise, check, control, create obedience, make firmness.In fact, all of these capabilities have not been able to be demonstrated optimally by President Jokowi as Head of State and Head of Government.

According to the author, the role of the House of Representatives in appointing the Chief of Police of the Republic of Indonesia as an institution that represents the voice of the people has a negative impact if this country continues to

be guided by Article 11 paragraph (1) of Law Number 2 of 2002 concerning the Police which states that "The National Police Chief is appointed and dismissed by the President with the approval of the House of Representatives". The contents of this paragraph contain the phrase with the approval of the House of Representatives, the author does not agree with this phrase because to the best of the author's knowledge that the State of Indonesia adheres to a presidential system in which the appointment of candidates for the head of the Indonesian National Police is the prerogative of the President without the influence of the House of Representatives. The police agency is an institution that is under the President and is responsible to the President.

This is also stated by Moh.Kusnardi and Harmaily Ibrahim that in a presidential government system, the position of the executive does not depend on the people's representative body. The legal basis of executive power is returned to the people's election (Koesnardi & Ibrahim, 1999). This means that in a presidential government system the position of the President is not influenced by the support of parliament or representative bodies, so that the rules regarding the appointment of the Head of the Indonesian National Police are sufficient for the President alone without going through the approval of the House of Representatives.

If this is still guided by the appointment of the Head of the National Police of the Republic of Indonesia "with the approval" of the House of Representatives, what will happen is: First, there is a shift in the President's power as the head of state and head of government in the Presidential system. The president is a government administrator who is responsible for various constitutional powers which are prerogative and usually attached to the position of head of state (Ahli, 2019). In the presidential system, it is known as the President's prerogative, namely the right that belongs to the President in terms of appointing his government ranks without intervention from other institutions, in terms of appointing the Head of the Indonesian National Police. There is a shift in the President's power in using his prerogative because it is limited by the House of Representatives. As the head of state, it is difficult for the president to make a choice because he has to go through the People's Representative Council first, which is full of political interests. Second, the President is not the sole authority in selecting the Head of the Indonesian National Police. Indirectly the restrictions made by the House of Representatives by voting for the Head of the Republic of Indonesia

Police have reduced the prerogative of the President, so it is clear that the House of Representatives has exceeded its authority, because the President has the right to choose and appoint the ranks of his government to apply to the presidential system. Third, the presidential system does not run consistently. The election of the President and Vice President directly by the people and the position of the President which cannot be dropped by the People's Consultative Assembly except as stipulated in Article 7A of the 1945 Constitution, eliminates the parliamentary aspects of the Indonesian government system. As said by Bagir Manan (1999) that: "...the Indonesian (governmental) system is essentially a presidential system, not intended as a mixed form. Because in the future the President, on the one hand, is directly elected, and on the other hand, is not responsible to the People's Consultative Assembly, the presidential system will become purer (no more mixed elements).

The presidential system of government can be said to be a sub-system of republican government, because it is only run in a republic-shaped state, one of which is the State of Indonesia (Manan, 1999). The characteristics of the United States presidential system model are referred to as a reflection of a pure presidential system of government, according to Bagir Manan that: The President is the sole executive power holder (Manan, 1999). Because the police agency is part of the executive, the President as the sole executive holder has the right to choose and appoint the Head of the Indonesian National Police without going through the approval of the House of Representatives.

Indonesia has a presidential system of government, but it is not implemented consistently because the President's prerogative is limited by the House of Representatives. According to the author, the State of Indonesia adheres to a system called presidential impure because the House of Representatives almost every process of appointing a public office involves the role of the House of Representatives. The House of Representatives in constitutional administration carries out the oversight function of the President contained in Article 11 of Law Number 2 of 2002 by participating in approving the appointment of the Head of the Indonesian National Police, according to the authors the authority of the House of Representatives in terms of appointing the Indonesian National Police Chief has indeed limited the President's prerogative. It would be better for the People's Representative Council to supervise the President as a form of positive

relations in carrying out a system of checks and balances, but simply by giving consideration.

Law Number 2 of 2002, especially regarding articles related to the appointment of the Chief of Police, must obtain the approval of the House of Representatives for a judicial review at the Constitutional Court. The results of the judicial review by the Constitutional Court were rejected (Mahkamah Konstitusi, 2015), because in terms of the appointment of the Chief of Police according to Law Number 2 of 2002 that obtaining the approval of the House of Representatives is already in accordance with the 1945 Constitution. However, several constitutional law experts gave a different opinion from the Constitutional Court. For example, Heru Widodo's opinion that the Constitutional Court should be consistent with this presidential system, the President is given the prerogative right to appoint and dismiss his government personnel, without having to obtain approval from other branches of power. The existence of restrictions on the prerogative of the President is contrary to the presidential system. If there are restrictions, then they must be regulated in the 1945 Constitution, then these restrictions can only be implemented if expressly regulated in the 1945 Constitution, the representation of the people is subject to judicial review at the Constitutional Court. The results of the judicial review by the Constitutional Court were rejected (Konstitusi, 2018).

The term for obtaining the approval of the House of Representatives in Law Number 2 of 2002 concerning the Indonesian National Police in terms of the process of filling in the Head of the Indonesian National Police is inappropriate because the Indonesian state adheres to a presidential system. The same thing was stated by Harjono that, the appointment of the Head of the Indonesian National Police and the Commander of the Indonesian National Armed Forces as the holders of government and state security powers, was inappropriate when considering the involvement of the People's Representative Council in the appointment of the Head of the Indonesian National Police and the Commander of the Indonesian National Armed Forces as a check and balance. This is because checks and balances between state institutions are located in the constitution and fall under the authority of the People's Consultative Assembly, not the authority of legislators (Konstitusi, 2018). Therefore, the appointment of the Chief of Police is the authority of the President.

This is if the legislator wants to regulate the involvement of the House of Representatives in

the appointment of the Head of the Indonesian National Police, then the right that can be granted by law is the right to give consideration. The provisions of the law will regulate the involvement of the House of Representatives in the election of the Head of the Indonesian National Police, the maximum rights that can be granted by law are the right to give consideration only, not approval (Konstitusi, 2018). Therefore, as stipulated in the 1945 Constitution, especially regarding the system of state government, the role of the House of Representatives is only to provide consideration in the process of appointing the Head of the Republic of Indonesia National Police.

IV. CONCLUSION

Indonesia adheres to a power-sharing system for state institutions which is expressly regulated in the 1945 Constitution, so that each state institution has its own duties, functions and authorities. The Presidential Institution is a state institution that has broad powers because it has the authority as a state institution and government institution. In the case of the President as a government institution, the President is assisted by institutions under the President to assist the administration. One of them is the Indonesian National Police to run the government in the field of state security. Because the 1945 Constitution adheres to the state government system, the President has the prerogative right to appoint a Police Chief without having to obtain approval from the House of Representatives. This is because administratively it is the absolute authority of a President. However, Law Number 2 of 2002 stipulates that the appointment of the Police Chief must obtain the approval of the House of Representatives, so that Law Number 2 of 2002 concerning the appointment of the Police Chief is not in line with the 1945 Constitution.

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