

# CHAPTER I

## INTRODUCTION

### A. Background

The polemic around multiple positions in the context of constitutional practice in Indonesia is still a topic that continues to be debated. This is not only limited to the problem of not having many laws and regulations governing multiple positions, but also regarding the moral ethics and bureaucratic culture in the process of administering government.<sup>1</sup> This is because multiple positions often have a broad impact on changes in work culture within the bureaucratic system. Apart from that, multiple positions will be prone to cause abuse of power and conflict of interest because after all, each position has a task, each of which of course differs according to the position occupied.<sup>2</sup> When someone occupies multiple positions, it will require a deeper focus in carrying out their duties. Due to the bad impact that can arise from multiple positions, practice of holding multiple positions still triggers pros and cons in several countries, especially in Indonesia.<sup>3</sup>

The existence of a regulation prohibiting multiple positions for State Ministries is regulated in Article 23 of the Law on State Ministries<sup>4</sup>. Another

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<sup>1</sup> Harjono Dhaniswara K, 2022, *Aspek Hukum Rangkap Jabatan Pada Korporasi di Indonesia*, Jakarta, Uki Press, p. 18.

<sup>2</sup> Ibid.

<sup>3</sup> Charity, M, L., “Ironi Praktik Rangkap Jabatan Dalam Sistem Ketatanegaraan Indonesia (Irony Practices of The Double Duty in The Indonesian State System)”, *Jurnal Legislasi Indonesia*, Vol. 13, No. 01 (2016), p.1.

<sup>4</sup> Article 23 Law Number 39 of 2008 about Ministries of State.

Regulations regarding prohibition of multiple position by public officials in Indonesia is regulated in Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 25 of 2009 concerning Public Services and Others.

One position that is prone to multiple positions lately is in the ministry of state. Ministers are selected by the president to help him carry out the duties of the state. In Article 17 of Law number 39 of 2008 concerning State Ministries it is explained that first, the president is assisted by his ministers. Second, ministers are appointed and dismissed by the president. Third, each minister has special tasks and affairs in the government. Fourth, the establishment, change and dissolution of state ministries is regulated by law.<sup>5</sup> The ministers in the cabinet are under the president and are the responsibility of the president.<sup>6</sup> So that the president has full authority in compiling his cabinet and no other party interferes. Ministers chosen by the president must also have the capability, loyalty, and integrity of the tasks they carry out.<sup>7</sup>

President Joko Widodo during his tenure in the Working Indonesia cabinet implemented a regulation in which his ministers were prohibited from holding multiple positions. This prohibition aims to make ministers have good capability, loyalty, and integrity. But there are still multiple

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<sup>5</sup> Article 17 Law Number 39 of 2008 about Ministries of State.

<sup>6</sup> Huda. N, 2019, *Presiden dan Pembantu Presiden dalam Sistem Ketatanegaraan Indonesia*, Yogyakarta, UII Press, p. 318.

<sup>7</sup> Gaylord, S., & Rennó, L, "Opening The Black Box: Cabinet Authorship of Legislative Proposals in A Multiparty Presidential System", *Presidential Studies Quarterly*, Vol. 45, No. 2 (2015), p. 250.

positions in his cabinet. The example of minister holding multiple positions is Luhut Panjaitan as Coordinating Minister for Legal Politics and security also held multiple positions as Chief of Staff of the President.<sup>8</sup>

Another example of the multiple position case that occurred in Indonesia is the multiple positions carried out by the Chancellor of the Universitas Indonesia, Prof. Ari Kuncoro, who has also served as Deputy Main Commissioner of State-Owned Bank since 2020.<sup>9</sup> The President as the leader of the state, revises the Government Regulations that regulate the multiple positions of the rector of the University of Indonesia. Initially, the multiple positions for rectors in this Government Regulation were specifically regulated, then it was revised to become more general so that it is difficult to determine what positions are prohibited from holding multiple positions specifically. This proves that the president is not anticipating and preventing the occurrence of multiple positions, but the actions taken instead revise the regulations for multiple positions to become more abstract.

It is very interesting to examine further regarding the practice of multiple positions carried out by public officials in Indonesia. In this case there is a difference between *das sollen* and *das sein*, where a public official

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<sup>8</sup> Saputra. A, 2015, *Ahli Tata Negara Nilai Rangkap Jabatan Luhut Pandjaitan Langgar UU*, <https://news.detik.com/berita/d-2990809/ahli-tata-negara-nilai-rangkap-jabatan-luhut-pandjaitan-langgar-uu>, (May 20, 2023)

<sup>9</sup> Rahel, 2021, *Rektor UI Mundur Usai Polemik Rangkap Jabatan, Ini 6 Faktanya*, <https://news.detik.com/berita/d-5653822/rektor-ui-mundur-usai-polemik-rangkap-jabatan-ini-6-faktanya>, (March 10, 2023)

who holds multiple positions should resign from one of his positions and refuse to serve as another public official because it is clearly prohibited by law.<sup>10</sup> However, in fact, multiple positions by public officials still often occur and even occur over a long period of time without any legal action or awareness. In the case of ministerial selection, the president should consider carefully in choosing his ministers. Although the president has the prerogative in appointing and dismissing his ministers, this does not mean that he can legalize multiple positions for his ministers. However, concurrent positions held by public officials as other public officials have violated the regulations.<sup>11</sup>

As we know that Indonesia is a constitutional state and adheres to the supremacy of law.<sup>12</sup> The law has the highest power in Indonesia while the executive body only carries out its duties according to the law. From these cases there can be indications of abuse of power as evidenced by the regulations that follow the wishes of the holders of power rather than the holders of power following the rules set out in laws and other legal products.

Lord Acton argued about the theory of power, namely "Power tends to corrupt, and absolute power corrupts absolutely" that humans who have power will tend to abuse their power, but unlimited (absolute) or excessive

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<sup>10</sup> Suryanto, J. A., Amanda, H. K., Sakinah, H. N., & Maherdikka, R., "Rangkap Jabatan Kepala Daerah Sebagai Pejabat Negara Lainnya Ditinjau Berdasarkan Undang-Undang Pemerintahan Daerah Dan Undang-Undang Kementerian Negara", *Jurnal Education and Development*, Vol. 9, No. 1, (2021), p. 165.

<sup>11</sup> Kohongia, Z., & Achir, N., "Position Capability Practices in Local Government Kabupaten Bolaang Monggondow Utara", *Jurnal Legalitas*, Vol. 12, No. 2 (2019), pp. 124-141.

<sup>12</sup> Nabievna, N. D., "The Importance of The Constitution in The Life of Our Society", *Ijtimoiy Fanlarda Innovasiya Onlayn Ilmiy Jurnal*, Vol. 2, No. 2, (2022), pp. 1-3.

power tends to be abused.<sup>13</sup> That is, power tends to make people commit acts of abuse of power.<sup>14</sup> This shows a tendency when having multiple positions will be prone to conflict of interest, prone to abuse of power, and prone to Corruption, Collusion, and Nepotism.<sup>15</sup>

The author is hoping for a better discussion about the multiple positions by public official that occur in Indonesia since the frequent cases of multiple positions that occurred until recently. The author will analyze how is the practice of multiple positions in Indonesia and how the law enforcement for multiple positions by looking at various practices and regulations that are related to efforts to build a bureaucratic culture that prioritizes government ethics and professionalism.

The author attempts to compare it with South Korea, since South Korea adheres to a presidential republic system of government. Under the Presidential system adopted by South Korea, the Head of State and Head of Government are held by a President who is elected by the people based on the results of the General Election for a term of 5 years. Indonesia and South Korea have similarities in the selection of Ministers, namely appointed and dismissed by the president. South Korea has a close case about the multiple positions that are carried out by public officials. It has been found that there

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<sup>13</sup> Rini, & Sarwo, N., "Penyalahgunaan Kewenangan Administrasi Dalam Undang Undang Tindak Pidana Korupsi", *Jurnal Penelitian Hukum De Jure*, Vol.18, No. 2, (2018), p. 260.

<sup>14</sup> Lazarski, C, 2012, *Power Tends to Corrupt: Lord Acton's Study of Liberty*, United States, Northern Illinois University Press, p. 155.

<sup>15</sup> Setiawan, M. & Suyatna, I, N., "Pengaturan Aparatur Sipil Negara Eselon I Yang Merangkap Jabatan Sebagai Komisaris di BUMN", *Jurnal Kertha Negara Fakultas Hukum Universitas Udayana*, Vol. 6, No. 03, (2018), pp. 1-15.

have been cases where public officials who by the nature of their status cannot engage in multiple positions. As we know that South Korea is one of the developed countries, by comparing the regulation on multiple positions it is hoped that it can be a reflection or role model for Indonesia in upholding the law. The author will compare law enforcement and how the mechanism for selecting public officials between the two countries to prevent the occurrence of multiple positions.

#### **B. Research Problems**

Based on the description of the background of the problem above, it can be drawn the formulation of the problem by the author for the study as follows:

1. How is the practice of multiple position by the public official in Indonesian and South Korean Constitutional System?
2. How is the mechanism of law enforcement in case of multiple position by public official in Indonesian and South Korean Constitutional System?

#### **C. Objectives of Research**

Based on the formulation of the problem in the research, as for the objectives the research intended by the researcher, namely:

1. To understand the practice of multiple position by public official in Indonesian and South Korean constitutional system.
2. To analyse the comparison of the practice of multiple position by public official in Indonesia and South Korea.

3. To propose the improvement of the mechanism of law enforcement in case of multiple position in both country Indonesia and South Korea.

#### **D. Benefits of Research**

There are some benefits of the research, namely:

1. Theoretical Benefits

This study contributes to knowledge in the field of Constitutional Law regarding legal implications of multiple position on the government agencies in Indonesian and South Korea Constitutional system.

2. Practical Benefits

This research is expected to provide benefits to the government to develop a better quality of law in Indonesia and its enforcement, especially on the issue of multiple position in Indonesian constitutional system. This research is also expected to be useful for all Indonesian people to increase awareness of the Law and code of ethics that must be considered in a position.