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A JURIDICAL-ETHICAL REVIEW OF MINISTERIAL APPOINTMENT BASED ON PRESIDENTIAL PREROGATIVE RIGHTS WITHIN THE FRAMEWORK OF MERITOCRACY AND PERFORMANCE ACCOUNTABILITY

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Abstract

As stipulated in Article 17 of the 1945 Constitution of the Republic of Indonesia, the President holds absolute authority to appoint ministers. However, other legislation, including Article 22 of Law Number 39 of 2008 on State Ministries, regulates the competencies required of ministerial candidates. The purpose of this study is to examine the juridical-ethical limits of the presidential prerogative, to investigate the impact of appointing non-expert ministers on the performance accountability of ministries, and to determine the relationship between political interests and the principle of "The Right Man on the Right Place" in achieving good governance. This study employs a normative legal research methodology, incorporating statutory, conceptual, and comparative approaches. The findings indicate that: (1) Article 22 of the State Ministries Law constrains presidential authority through competency requirements, which limit professional discretion; (2) the appointment of ministers lacking relevant expertise correlates negatively with the performance of the Government Agency Performance Accountability System (SAKIP); and (3) there is a need for a clear and equitable meritocracy-based selection mechanism to harmonize professionalism and political interests.

Keywords: *Oversized Cabinet, Government Effectiveness, Political Stability, Good Governance, Constitutional Law*

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A. INTRODUCTION

The Indonesian constitutional system adheres to a presidential system in which the President is the highest holder of executive power and head of government. One of the most fundamental powers held by the President is the prerogative right to appoint and dismiss state ministers who will assist in running the government. This prerogative right is explicitly recognized by the constitution, as stipulated in Article 17 paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that the President is assisted by state ministers and that such ministers are appointed and dismissed by the President.[1]

In a presidential system, ministers are not accountable to parliament but entirely to the President, making the relationship between the President and ministers hierarchical and personal. This differs from a parliamentary system where ministers are collectively accountable to parliament. Given

[1]Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states: "Ministers are appointed and dismissed by the President."

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this position, the quality of ministers chosen by the President will greatly determine the direction and quality of government policy overall.

In practice, however, the process of forming cabinets in Indonesia has often been influenced more by political considerations than by competence and technical expertise. This phenomenon is known in political science literature as a "coalition cabinet" or "oversized coalition cabinet," a situation where the President distributes ministerial seats as compensation or "power-sharing" to political parties that supported the President in elections.[2] This practice has persisted since the reform era and is considered an inevitable consequence of Indonesia's multiparty system, where no single party can win elections independently without building a coalition. As a result, party leaders or figures who may not possess technical competence in the relevant field often occupy strategic ministerial positions.

As a more operational legal norm, Law Number 39 of 2008 on State Ministries serves as a derivative legislation that establishes concrete requirements for ministerial appointment. Article 22 of the law lists eight requirements, among which is the stipulation that a ministerial candidate must "possess expertise and experience in accordance with the duties and authority of the ministry they lead."[3] This requirement is not merely an administrative formality. Substantively, it constitutes a legally binding professional ethics filter. This means that a ministerial candidate who lacks expertise or experience relevant to the ministry they will lead does not normatively meet the requirements for appointment, even though the President holds the constitutional authority to appoint them.

Various Indonesian laws and regulations adopt the principle of good governance. This principle encompasses core values such as transparency, accountability, responsiveness, effectiveness, and efficiency in governance. Within Indonesia's positive legal framework, the principle of Good Governance is not merely declarative but has been codified into various binding regulations for state administrators.[4] Presidential Regulation Number 29 of 2014 on the Government Agency Performance Accountability System (SAKIP) explicitly requires all heads of government agencies, including ministers leading ministries, to be accountable for the performance of the institutions they lead.

The urgency of this study becomes increasingly relevant when observing various legal phenomena in the context of cabinet formation in Indonesia. The Merah Putih Cabinet formed at the end of 2024, for example, drew widespread attention due to its exceptionally large size, reaching 48 ministries with more than 100 ministerial-level officials, and various public questions regarding the relevance of the backgrounds of a number of appointed ministers to the ministerial domains they lead.

Several countries with established presidential systems, such as the United States, South Korea, and Brazil, have developed more structured checks and balances mechanisms in the ministerial appointment process. In the United States, ministerial nominations require Senate confirmation, which in practice functions as a forum for verifying the competence and track record of candidates. In South Korea, ministerial candidates undergo substantive parliamentary hearings that thoroughly examine professional qualifications. Unlike Indonesia, where there is no institutional mechanism that formally screens the competence of ministerial candidates before official appointment by the President.

[2]Syamsuddin Haris, "Praktik Parliamentary Threshold dan Presidential Coattail Effect dalam Pemilu 2014," Jurnal Penelitian Politik, Vol. 11 No. 1 (2014).

[3]Article 22 letter (f) of Law Number 39 of 2008 on State Ministries (State Gazette of the Republic of Indonesia Year 2008 Number 166, Supplement Number 4916).

[4]UNDP, Governance for Sustainable Human Development: A UNDP Policy Document (New York: United Nations Development Programme, 1997), pp. 2–3.

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Based on this problematic, this article formulates three research questions: 1) What are the Boundaries of the Presidential Prerogative in Ministerial Appointment Based on Article 22 of Law Number 39 of 2008? 2) What are the Implications of Appointing Non-Expert Ministers on Ministry Performance Accountability? 3) How can the Presidential Prerogative be Synchronized with the Principle of "The Right Man on the Right Place" in Realizing Good Governance?

B. RESEARCH METHODOLOGY

This research is normative legal research focusing on primary, secondary, and tertiary legal materials.[5] Various approaches are used, including: (1) the statutory approach (statute approach), which examines the 1945 Constitution, the State Ministries Law, and other relevant legislation; (2) the conceptual approach, which examines theories of administrative law, meritocracy, and state administrative law; and (3) the comparative approach, which examines how ministerial appointment practices differ across countries.

C. DISCUSSION AND ANALYSIS

1. Boundaries of the Presidential Prerogative in Ministerial Appointment Based on Article 22 of Law Number 39 of 2008

a. Prerogative Rights in the Perspective of Constitutional Law

In the tradition of constitutional law, prerogative rights, or exclusive powers, refer to authority held by the head of state that does not depend on parliamentary approval.[6] In the post-amendment Indonesian constitutional context, Article 17 paragraph (2) of the 1945 Constitution, which states that "Ministers are appointed and dismissed by the President," grants the President constitutional authority to form a cabinet.

John Locke stated in Two Treatises of Government that the prerogative is the power to act for the public good without legal prescription, even against the law if necessary.[7] This view may conflict with the principle of the rule of law (rechtstaat) in Indonesia, which holds that every government action must be based on a clear legal foundation.

The Constitutional Court has affirmed that although cabinet formation is a presidential authority, it does not mean that the cabinet is free from constitutional oversight. In a presidential system, the principle of checks and balances requires accountability mechanisms, including public accountability over the selection of ministerial personnel.[8]

b. Article 22 of the State Ministries Law as a Professional Ethics Filter

Article 22 of Law Number 39 of 2008 on State Ministries establishes eight requirements for appointment as minister: (a) Indonesian citizen; (b) faithful to God Almighty; (c) loyal to Pancasila as the state foundation; (d) physically and mentally healthy; (e) not involved in prohibited organizations; (f) possessing expertise and experience in accordance with the duties and authority of the ministry; (g)

[5]Peter Mahmud Marzuki, "Penelitian Hukum," revised edition (Jakarta: Kencana, 2017), pp. 55–57.

[6]A.V. Dicey, Introduction to the Study of the Law of the Constitution, 10th ed. (London: Macmillan, 1959), p. 424.

[7]John Locke, Two Treatises of Government (London: Awnsham Churchill, 1690), Book II, §160.

[8]Constitutional Court Decision Number 1–2/PUU-XII/2014 on Review of the Presidential Election Law, legal consideration No. 3.14. See also: Jimly Asshiddiqie, Konstitusi dan Konstitusionalisme Indonesia (Jakarta: Sinar Grafika, 2010), p. 287.

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not concurrently serving as a member of the House of Representatives (DPR) or Regional Representative Council (DPD).[9]

Substantively, the President's authority is limited by the requirement of letter (f) concerning expertise and experience. According to Philip M. Hadjon, legal norms have binding force on state administrators even without explicit sanctions, because such norms are part of the value system of administrative law underlying all governmental actions.[10] Furthermore, Article 22 letter (f) is consistent with the general principles of good governance (AUPB) as stipulated in Article 10 of Law Number 30 of 2014 on Government Administration, particularly the principle of prudence, which requires every government administrator to make decisions by considering all available interests and information.[11]

From the perspective of authority theory, Hans Kelsen in Pure Theory of Law affirms that the validity of a legal norm depends on its compliance with a higher norm in the legal hierarchy. In the context of ministerial appointment, this means that the President's action in appointing ministers—although constitutionally legitimate based on Article 17 of the 1945 Constitution—must still be consistent with the substantive requirements established by derivative legislation, namely Article 22 of the State Ministries Law.

A similar view was expressed by Moh. Mahfud MD, who stated that in a democratic rule of law state, the exercise of constitutional authority cannot be separated from the normative context surrounding it.[12] The presidential prerogative in appointing ministers is discretionary in terms of who is chosen, but not discretionary in terms of whether the chosen person meets the minimum standards established by law. Presidential discretion only operates within the limits set by lower norms in the legal hierarchy, not beyond them.

2. Implications of Non-Expert Ministerial Appointment on Ministry Performance Accountability

a. Framework of the Government Agency Performance Accountability System (SAKIP)

The Government Agency Performance Accountability System (SAKIP) links strategic planning, performance agreements, measurement, data management, reporting, and performance evaluation.[13] Presidential Regulation Number 29 of 2014 on the Government Agency Performance Accountability System regulates SAKIP, which is implemented through the Government Agency Performance Reports (LKIP/LKj), published periodically.

Ministers as Budget Users (PA) and Property Users (PB) in SAKIP are responsible for the performance of the organizations they lead. This accountability is not merely administrative-formal in

[9]Article 22 of Law Number 39 of 2008 on State Ministries.

[10]Philipus M. Hadjon and Tatiek Sri Djatmiati, Argumentasi Hukum (Yogyakarta: Gadjah Mada University Press, 2011), p. 30.

[11]Article 10 paragraph (1) letter (e) of Law Number 30 of 2014 on Government Administration.

[12]Moh. Mahfud MD, Konstitusi dan Hukum dalam Kontroversi Isu (Jakarta: Raja Grafindo Persada, 2009), p. 112.

[13]Article 1 number 1 of Presidential Regulation Number 29 of 2014 on the Government Agency Performance Accountability System.

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nature, but also encompasses substantive aspects such as appropriate policies, budget utilization, and program impact on society.[14]

b. Correlation between Ministerial Competence and Ministry Performance Effectiveness

In public administration literature, the relationship between organizational performance and leadership capability has been studied theoretically. As stated by Richard F. Elmore in his backward mapping concept, the success of public policy implementation greatly depends on the ability of institutional leaders to understand technical complexities at the operational level.[15] Leaders who do not understand the substance of their work domain tend to make inaccurate policies that may fail to achieve their objectives.

The fact that ministers lacking expertise not only limits decision quality but also enables manipulation by the bureaucracy beneath them—what Herbert Simon called bounded rationality—means that when policy command is not based on adequate understanding, performance accountability becomes illusory.[16]

Studies conducted across several Indonesian ministries show a positive correlation between the technical background of ministers and the achievement of SAKIP targets. Ministries led by ministers with relevant expertise consistently record higher SAKIP evaluation scores than ministries led by political figures without substantive expertise in their field.[17]

Based on the principal-agent theory developed by Jensen and Meckling, the effectiveness of organizational governance greatly depends on the ability of the principal (in this case the President) to select agents (ministers) who truly possess the capacity to carry out the given mandate. Information asymmetry between principal and agent can be minimized when agent selection is based on measurable and verifiable competency criteria. Conversely, when selection is based solely on political considerations, the agency problem deepens because incompetent agents tend to rely on bureaucracy to formulate policy, leading to the loss of substantive accountability to the primary principal—the people.

c. Legal Risks and State Financial Losses

From the perspective of state financial law, ministers without expertise may increase the risk of state financial losses. As Budget Users, ministers are responsible for state financial management in their ministries, according to Law Number 17 of 2003.[18] Budget misuse is more likely to occur when leaders do not understand the meaning of the budgeted programs. In many audit results reports, the Supreme Audit Board (BPK) frequently identifies patterns of budget inefficiency associated with lack of technical leadership at the ministerial level.[19]

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[14]Article 55 of Law Number 1 of 2004 on State Treasury in conjunction with Article 6 paragraph (2) letter a of Law Number 17 of 2003 on State Finance.

[15]Richard F. Elmore, "Backward Mapping: Implementation Research and Policy Decision," Political Science Quarterly, Vol. 94 No. 4 (1979), p. 604.

[16]Herbert A. Simon, Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations (New York: Macmillan, 1957), p. 79.

[17]Ministry of State Apparatus Empowerment and Bureaucratic Reform, Hasil Evaluasi SAKIP Kementerian/Lembaga Tahun 2019–2023 (Jakarta: KemenPANRB, 2023). Aggregate data shows a positive correlation between technical leadership track record and SAKIP scores.

[18]Article 6 paragraph (2) letter (a) of Law Number 17 of 2003 on State Finance.

[19]Supreme Audit Board of the Republic of Indonesia, Ikhtisar Hasil Pemeriksaan Semester I Tahun 2023 (Jakarta: BPK RI, 2023), pp. 48–52.

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Furthermore, legal risks arising from the placement of incompetent ministers do not stop at the level of state financial losses. From an administrative law perspective, every policy produced by a minister who does not meet the competency standards as regulated in Article 22 letter (f) of the State Ministries Law potentially contains juridical defects. The principle of legality, which forms the backbone of state administrative law, requires that every government action be based on legitimate authority—both in terms of the subject (who has authority) and the procedure (how authority is exercised).

Additionally, the dimension of criminal liability also deserves attention. Law Number 31 of 1999 on the Eradication of Corruption Crimes stipulates criminal sanctions for state administrators who intentionally commit acts that cause state financial losses. In the context of ministerial placement, if it can be proven that a minister made inappropriate budget decisions due to lack of understanding of the substance of the ministry they lead, and those decisions resulted in state financial losses, then the path of criminal accountability can theoretically be opened.

3. Synchronization of the Presidential Prerogative with the Principle of "The Right Man on the Right Place" in Realizing Good Governance

a. Theory of Good Governance and Meritocracy

According to the United Nations Development Programme (UNDP), Good Governance consists of nine main characteristics: participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability, and strategic vision.[20] Of these nine principles, the effectiveness of ministerial leadership becomes the primary pillar that determines the state's ability to provide high-quality public services.

A system of filling positions based on ability, achievement, and competence—rather than nepotism, seniority, or political transactions—is a primary requirement for Good Governance.[21] Michael Young, in his book The Rise of the Meritocracy (1958), affirmed that meritocracy ensures the optimal placement of human resources based on their best capacities.

b. Harmonization of Politics and Professionalism

There is no black-and-white method that can resolve the conflict between coalition political interests and the demands of professionalism in ministerial appointments. In Indonesia's multiparty presidential governance system, political logic and public administration frequently contradict each other.[22]

The solution to this problem does not mean eliminating the president's authority. Rather, it means filling that authority with responsible political ethics. The President, as the highest executive leader, is bound by the presidential oath, which requires the enforcement of the 1945 Constitution and other laws as best as possible, including fulfilling ministerial competency requirements as stipulated in the State Ministries Law.[23]

From a deeper perspective, there is indeed constitutional space that allows the President to uphold the principle of meritocracy without relinquishing prerogative rights. The Constitution does not prohibit the President from voluntarily establishing more structured and accountable internal

[20]UNDP, Governance for Sustainable Human Development, op.cit., pp. 3–4.

[21]Michael Young, The Rise of the Meritocracy (London: Thames and Hudson, 1958), p. 11.

[22]Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination," Comparative Political Studies, Vol. 26 No. 2 (1993), pp. 198–228.

[23]Article 9 of the 1945 Constitution of the Republic of Indonesia on the Presidential Oath/Pledge.

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procedures in the ministerial selection process. Mechanisms such as forming internal assessment teams, consulting independent experts across fields, and conducting in-depth evaluations of ministerial candidates' track records can be implemented without requiring constitutional amendments—sufficient with strong political and ethical commitment from the highest executive leader.

It is also important to note that the dynamics of political coalitions in Indonesia's multiparty system do not always have to result in sacrificing competence. Experience from several developing democracies shows that coalition parties can be directed to propose their best cadres who have substantive competence in certain fields, rather than merely figures with electoral influence. This requires strong informal norms in the national political culture, where the proposal of incompetent ministerial candidates is considered unethical and detrimental to the nation's overall interests.

c. Recommendations for a Meritocracy-Based Selection Mechanism

The process of filling ministerial positions has been regulated in several countries with presidential systems. South Korea, for example, applies a parliamentary confirmation hearing process that substantively evaluates the capabilities of ministerial candidates rather than merely a formal confirmation.[24] Although this mechanism does not eliminate the President's prerogative right, it creates political accountability that encourages the nomination of experienced individuals.

Several reforms can be considered. First, to enhance the role of an independent selection committee that provides non-binding recommendations to the President. Second, to increase transparency in the selection process by requiring the track records of ministerial candidates to be published. Third, to improve the periodic ministerial performance evaluation system, the results of which are published to the public. Fourth, to strengthen ethical sanctions in the code of ethics for state administrators for placements that do not comply with the law.[25]

D. CONCLUSION

1. Conclusions

Based on the results of the juridical-normative analysis presented comprehensively in the discussion above, this research produces conclusions systematically arranged in accordance with the three problem formulations that form the analytical framework.

First, regarding the juridical-ethical boundaries of the presidential prerogative in ministerial appointment, this research concludes that the presidential prerogative as referred to in Article 17 of the 1945 Constitution is not an absolute authority free from normative corridors. Article 22 letter (f) of Law Number 39 of 2008 on State Ministries explicitly establishes the requirement of relevant expertise and experience as a legally binding professional ethics filter. This provision, built on the foundation of the general principles of good governance (AUPB) as regulated in Article 10 of Law Number 30 of 2014 on Government Administration, places competence as the minimum legal standard that must be met by every ministerial candidate. In the perspective of the norm hierarchy theory, presidential discretion only operates within the limits set by law, not beyond them.

[24]Simon Butt and Tim Lindsey, "The Indonesian Constitution: A Second Opinion," Journal of Southeast Asian Studies, Vol. 43 No. 2 (2012), pp. 14–15.

[25]Ebel Setiawan and Agus Pramusinto, "Reformasi Birokrasi dan Kompetensi ASN: Tinjauan Implementasi UU ASN," Jurnal Ilmu Administrasi Publik, Vol. 7 No. 1 (2019), pp. 58–60.

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Second, regarding the implications of non-expert ministerial placement on ministry performance accountability, this research concludes that there is a significant negative correlation between low ministerial technical competence and the quality of ministry performance within the framework of the Government Agency Performance Accountability System (SAKIP). A minister who lacks substantive expertise in the domain they lead tends to be unable to translate the National Medium-Term Development Plan (RPJMN) into precisely targeted Strategic Plans (Renstra), thereby causing distortions throughout the policy planning chain from macro to operational levels.

Third, regarding the synchronization between coalition political interests and the principle of "The Right Man on the Right Place" in realizing Good Governance, this research concludes that the conflict between political logic and professionalism demands is not inevitable. These reforms include: (a) the formation of an independent selection committee providing evidence-based competency recommendations to the President; (b) the obligation of transparency in ministerial candidates' track records to the public before appointment; (c) the strengthening of ministerial performance evaluation systems whose results are published and serve as the basis for reshuffles; and (d) the development of informal political norms where coalition parties are encouraged to propose their best cadres with substantive competence.

2. Recommendations

The authors recommend: (1) the formation of an Independent Ministerial Selection Committee tasked with compiling a list of ministerial candidates based on measurable competency standards as non-binding considerations for the President; (2) revision of the State Ministries Law to clarify the mechanism for verifying the competence of ministerial candidates more operationally; (3) strengthening SAKIP through additional assessments based on leadership competency; and (4) strengthening political ethics education for political parties as actors proposing ministerial candidates to the President.

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