

The Indonesian President's Prerogative Rights in the Appointment of Ministers After the Amendment to the 1945 Constitution

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Abstract

The president possesses the prerogative right to appoint and dismiss his government personnel without having to seek approval from other branches of power. In practice, the president often does not use the rightfully because of the coalition consequences of the multiparty party system, which also has implications for the practice of appointing ministers and deputy ministers. Therefore, the president is not independent to choose figures for strategic political positions. This study examined the Indonesian president's prerogative right in appointing ministers after the amendment to the 1945 Constitution. This study used doctrinal legal research with statutory regulations, conceptual approaches, and comparative approaches. This study concludes with two points. First, the presidential system is rigid compared to the more flexible parliamentary system. The presidential system also tends to be more prone to causing immobility and deadlock. A multiparty system has implications for inconsistency in governance with a presidential system of government. Second, the combination of a multiparty system has implications for the president's prerogative right not being used effectively. Thus, a reconstruction of the model of minister appointment is required. The appointment should no longer be the absolute authority of the president. The president must involve other institutions that represent the people as a form of checks and balances.

Keywords: multiparty system, prerogative right, presidential system.

A. Introduction

In every democratic country, the practice of government administration is usually included in the constitution to maintain stability and run the government. The

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constitution is an ideal foundation for running the government.¹ It is important to understand the system of government in carrying out the government. Indeed, in administering the government, there is a system of government that drives the governance. The purpose of a government system is to maintain the stability of the country. It means maintaining the stability of society, maintaining the behavior of the majority and minorities, maintaining the foundations of government, and maintaining political, defense, and economic power.² Another goal is that the system of government becomes the basis for each country to regulate relations between state institutions in the hope of producing a stable government.³

Popular types of government systems include presidential⁴ and parliamentary systems of government.⁵ In addition to these two systems, there is a mixed⁶ or quasi-parliamentary or quasi-presidential system. Each constitution has its own style or characteristic of the system of government. Since the proclamation of Indonesian independence, three types of constitution have been enacted, the initial period was the 1945 Constitution (18 August 1945-27 December 1949), the second period was the 1949 Constitution of the United States of Indonesia (27 August 1949 -17 August 1950), the third period was the Temporary 1950 Constitution (17 August 1950 -5 July 1959), and the fourth period is the return of the 1945 Constitution.

After the collapse of the new order regime, the demands for reform were so massive that they wanted to change. Thus, they finally made amendments to the 1945 Constitution (period 1999-2002). Therefore, by referring to the basic agreement of the *Ad Hoc* Committee I of the People Consultative Assembly (*Majelis Permusyawaratan Rakyat –MPR*) (PAH I MPR) which states: (1) do not change the preamble of the 1945 Constitution; (2) continuing to maintain the Unitary State of the Republic of Indonesia; (3) strengthen the presidential government system; (4) the elucidation of The 1945 Constitution is abolished and normative matters in the elucidation are included in the articles; and (5) changes are made by way of “addendum.”

The implication of the basic agreement of the MPR’s *Ad Hoc* Committee I which emphasized the presidential system was that the president was given the prerogative right to appoint and dismiss his government personnel without having to seek approval from other branches of power. The president has special privileges, namely, the president is assisted by state ministers, ministers are appointed and dismissed by the president, and each minister oversees certain affairs in the government. However, looking at the factual situation raises an assessment that

¹ Muntoha, *Negara Hukum Indonesia: Pasca Perubahan UUD 1945* (Yogyakarta: Kaukaba, 2013), 15.

² Bagas Hendardi, *Sistem Pemerintahan Negara Indonesia* (Yogyakarta: Istana Media, 2017), 4.

³ Fitra Arsil, *Teori Sistem Pemerintahan: Pergeseran Konsep dan Saling Kontribusi Antar Sistem Pemerintahan di Berbagai Negara* (Depok: Rajawali Pers, 2017), 11.

⁴ Saldi Isra, *Sistem Pemerintahan Indonesia: Pergulatan Ketatanegaraan Menuju Sistem Pemerintahan Presidential* (Depok: Rajawali Pers, 2020), 22.

⁵ Sri Soemantri, *Sistem-sistem Pemerintahan Negara-negara ASEAN* (Bandung: Tarsito, 1976), 76.

⁶ Saldi Isra, 38.

prerogative rights are not purely exercised to fulfill the president's constitutional obligations but are used as a return for political favors, as a gift to those who have contributed politically to the president for their support during the candidacy of the president and vice president. However, the establishment, change, and dissolution of state ministries based on the 1945 Constitution is no longer the absolute authority of the president but must be based on the 1945 Constitution.

In practice, the president often does not fully use this right because of the determination of political parties, so that the president is not free to choose a figure for the political strategy of positions in certain agencies. This can be seen in the era of President Susilo Bambang Yudhoyono's Government, the president had to gather strength by way of a coalition because the democratic party only got 10% of the power in the House of Representatives (*Dewan Perwakilan Rakyat* –DPR). Even for the second period, the democratic party won the general election, but the democratic party did not get a majority, so Susilo Bambang Yudoyono-Boediono had to return to collect most political parties in parliament with the consequence of forming a cabinet filled with ministers from government supporters. Likewise, what happened in the two periods of President Joko Widodo, the authors noted that in the second period of President Joko Widodo, the number of ministers and deputy ministers who came from political parties increased significantly to 28 names, the number was greater than in the first period.

The prerogative rights of the president do not work effectively because they must be shackled to the pragmatic interests of political parties even though prerogatives are privileges that arise from the residue of discretion. Conceptually, discretion is used by government officials in the framework of administering government by taking administrative policies. Discretion is a policy which is the realm of *doelmatigheid*, discretion has no legal dimension, it is not a statutory regulation but factually explains the will of statutory regulations in the administration of government.⁷ Even though the final decision lies with the president to determine his cabinet based on discretion or free authority, the president still must consider the pragmatic interests of political parties that support the president.

Based on the description above, it is interesting to carry out comprehensive research, this is supported by material in the body of the 1945 Constitution (hereinafter referred to as the UUD NRI 1945) which does not explicitly state which government system is adopted by the Indonesian State. The ambiguity of the substance of the 1945 Constitution which contradicts the basic agreement of the MPR's Ad Hoc Committee I, one of which is to emphasize presidential government. One of the practices that are considered the antithesis of the presidential system of government is that the president must form a coalition of consequences from the multiparty party system that is implemented so that it also has implications for the practice of appointing ministers and deputy ministers filled by party elites who

⁷ Laica Marzuki, "Menyoal Diskresi yang Terpasung (Mengkritisi Undang-Undang Administrasi)," *Jurnal Amanna Gappa* 25, no. 2 (2017): 1-2, <https://doi.org/10.20956/ag.v25i2.2505>.

support the government. Based on this explanation, it is interesting to explore comprehensively how the Indonesian government system is after the amendment to the 1945 Constitution.

To answer the legal issues raised, this paper would use normative legal research. There were three approaches used: first, with a statute approach. The approach to statutory regulations is related to the theme being researched, second, the conceptual approach is usually used to describe and analyze research problems that originate from empty norms.⁸ Hence, a conceptual approach is needed to move from the views and doctrines that develop in the science of law. Third, a comparative approach will be used with the aim of knowing the institutionalization of the legal system implemented by various countries. Based on this comparative approach, the similarities, differences, advantages, and disadvantages of the legal system will be identified.⁹

B. Presidential Government System

The government system in language consists of two terms system and government. The system is a whole, consisting of several parts that have a good functional relationship between the parts and a functional relationship to the whole, so that the relationship creates a dependency between the parts which consequently if one part does not work properly will affect the whole.¹⁰ According to Pamudji, the system is an integrality or whole in which there are components, which in turn are separate systems, which have their respective functions, interconnected with one another according to certain patterns, procedures, or norms in order to achieve a goal.¹¹ The definitions of government system are:¹²

- (1) A complete structure consisting of various components of government that work interdependently and influence each other in achieving government goals and functions;
- (2) The regulatory unit used by parties entitled to decide policies or give orders; and
- (3) The system owned and used by the government to regulate the government of the country.

The definition of government by Manan is defined as the overall position environment in an organization. In state organizations, government as an office environment is the completeness of the state apparatus such as executive positions, legislative positions, and judicial positions, and other superstructures.¹³ If the

⁸ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Kencana, 2017), 159.

⁹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2008), 313.

¹⁰ Carl J. Freidrich, "Man and His Government, An Empirical Theory of Politics," in *Pengantar Hukum Tata Negara*, Moh. Kusnardi and Harmaily Ibrahim (ed.) (Jakarta: Pusat Studi Hukum Tata Negara Indonesia dan Sinar Bakti, 1988), 171.

¹¹ Pamudji, *Perbandingan Pemerintahan* (Jakarta: Bina Askara, 1985), 9.

¹² Bagas Hendardi, *Sistem Pemerintahan Negara Indonesia*, 5.

¹³ Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum FH UII, 2001), 100.

definition is related to the system of government, then the unanimity or whole that is intact is government while the components are legislative, executive, and judicial.¹⁴ Thus, it can be understood that all power holders in the state legislative, executive, and judiciary such as Montesquieu's *trias politica* theory are included in the government in a broad sense.¹⁵ Government systems can be classified by the division of powers into horizontal and vertical lines. First, the division horizontally is based on the nature of the different types of tasks that give rise to various kinds of institutions within a country. Second, the vertical distribution of power creates two lines of relationship between the center and the regions in a decentralized and deconcentrated system.¹⁶

According to Mahfud, the government system is defined as a system of working relationships between state institutions.¹⁷ Meanwhile, according to Soemantri, the government system is defined as the relationship between the legislature and the executive.¹⁸ Ismail Suny has the opinion that the government system is a certain system that explains how the relationship between the highest state equipment in a country.¹⁹ By referring to the opinions above, the system of government can be interpreted as a relationship between executive, legislative, and judicial powers to achieve goals. Specifically, according to Solly Lubis, the direction and goals of the state have been described in the constitution, these directions and goals, these policy lines become the directions and goals and work lines for all government bodies, be it the legislature, executive, and judiciary.²⁰

Government systems can be classified into two main systems, presidential and parliamentary systems, apart from the two systems are mixed or quasi-parliamentary or quasi-presidential systems. Asshiddiqie classifies a presidential system of government (the American Model), a parliamentary system (the "British Model"), a mixed system (the French Model), and a referendum system (the Swiss Model). In contrast to Lijphart who classifies it into three, parliamentary, presidential, and hybrid.²¹ The presidential system applies in the United States and most of the Latin American countries, while the parliamentary system applies in England and former British colonial areas such as Australia, India, Malaysia, and Singapore. In this paper, what will be the focus of the discussion lies in the presidential system of government which is also implemented by the Indonesian state.

¹⁴ Pamudji, *Perbandingan Pemerintahan*, 10.

¹⁵ SF. Marbun and Moh. Mahfud MD, *Pokok-pokok Hukum Administrasi Negara* (Yogyakarta: Liberty, 2011), 8.

¹⁶ Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia* (Jakarta: Pusat Studi Hukum Tata Negara Indonesia dan Sinar Bakti, 1988), 351-363.

¹⁷ Moh. Mahfud MD, *Dasar dan Struktur Ketatanegaraan Indonesia* (Jakarta: Rineka Cipta, 2000), 83.

¹⁸ Sri Soemantri, *Sistem-sistem Pemerintahan Negara-negara ASEAN*, 37.

¹⁹ Ismail Sunny, *Mekanisme Demokrasi Pancasila* (Jakarta: Aksara Baru, 1987), 9-10.

²⁰ Solly Lubis, *Hukum Tata Negara* (Bandung: Mandar Maju, 2008), 108.

²¹ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999), 116-121.

Before exploring the characteristics of the presidential system in Indonesia, it is necessary to know the basic concept of the presidential system, based on the Dictionary of Modern Politics the presidential system is defined as a system which gives a strong role to the head of the executive who participates fully in its actual decision-making processes. It is, therefore, to be contrasted with systems where the head of state has purely ceremonial duties or merely has the function of appointing a prime minister or other officials to head the government. Forms of presidential government vary but, in many countries, including the USA and France, the president is elected separately from the legislature.²² That is in a presidential system, the role of the head of government is so crucial in contrast to a parliamentary system of government which tends not to have strong bargaining power because it has to be *vis a vis* the political parties in parliament.

In a presidential system, the existence of the executive does not depend on the people's representative body.²³ The presidential government system is a system that separates executive power from legislative power so that this system is also known as the separated powers system.²⁴ This is traced from the history of the presidential government system which was not developed through a slow and long evolutionary process. The birth of a presidential system of government cannot be separated from the struggle of the United States to oppose and break away from British colonial rule²⁵ and the brief history of the formation of the United States Constitution.²⁶

According to one of Madison's historical actors, the parliamentary government system does not produce effective government, because it places parliament at the heart of government administration, resulting in all government policies having to proceed from parliament.²⁷ Today, the criteria for a presidential system put forward by experts are relatively the same. For example, Verney mentions the characteristics of a presidential system are:²⁸

- (1) The assembly remains as an assembly only;
- (2) The executive is not divided but is a president elected by the people for a definite term at the time of assembly elections;
- (3) The head of the government is the head of state;
- (4) The president appoints the head of a department who are his subordinates;
- (5) The president is sole executive;
- (6) Members of the assembly are not eligible for office in the administration and vice versa;
- (7) The executive is responsible to the constitution;

²² David Robertson, *A Dictionary of Modern Politics* (London and New York: Europa Publications, 2002), 402.

²³ Moh Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, 176.

²⁴ Fitra Arsil, *Teori Sistem Pemerintahan, Pergeseran Konsep dan Saling Kontribusi Antar Sistem Pemerintahan di Berbagai Negara*, 23.

²⁵ Fitra Arsil.

²⁶ Fitra Arsil.

²⁷ Margarito Kamis, *Jalan Panjang Konstitusionalisme Indonesia* (Malang: Setara Press, 2014), 97.

²⁸ Arend Lijphart, *Parliamentary Versus Presidential Government* (New York: Oxford University, 1992), 40-46.

- (8) The president cannot dissolve or coerce the assembly;
- (9) The assembly is ultimately supreme over the other branches of government and there is no fusion of the executive and legislative branches as in a parliament;
- (10) The executive is directly responsible to the electorate; and
- (11) There is no focus of power in the political system.

On the other hand, Hague (et.al.) states that the criteria for a presidential government are:

- (1) Elected president steers the government and makes senior appointments;
- (2) Fixed terms of offices for the president and the legislature, neither of which can ordinarily bring down the other;
- (3) Presidents are usually limited to a specified number of terms in office (usually two);
- (4) Little overlap in membership between the executive and the legislature; and
- (5) President serves as head of government as well as head of state.

Asshiddiqie provides the characteristics of a presidential government system in detail that are:²⁹

- (1) Specific presidential term, usually term of office strictly limited;
- (2) The president and vice president are not responsible to parliament but are directly responsible to the citizen. The president and the vice president can only be dismissed from their positions for reasons of law violations which are usually limited to certain criminal cases;
- (3) The citizen elects the president and vice president directly or through certain intermediary mechanisms that are not parliamentary representatives;
- (4) The president is not subject to parliament, the president cannot dissolve parliament, and conversely parliament cannot overthrow the president and dissolve the cabinet;
- (5) There is no distinction between heads of government and heads of state; and
- (6) The responsibility for government lies with the president, therefore, in principle, the president has the authority to form the government, arrange the cabinet, appoint, and dismiss ministers (concentration of governing power and responsibility upon the president).

Some experts have arguments about the presidential system, according to Giovanni Sartori the pattern of the presidential system implemented in the United States is a presidential system that tends to be more stable due to the separation of power. According to Sartori, there are problems that become a presidential system that need to be considered (1) term of office and re-election (re-electability); (2) a combination of presidentialism and multiparty; and (3) simultaneous elections, electing the DPR, senate, and president.³⁰ Sartori concludes that a presidential system with two parties is more functionally effective than presidentialism and multiparty.

²⁹ Jimly Asshiddiqie, see Fitra Arsil, 24.

³⁰ Giovanni Sartori, *Comparative Constitutional Engineering* (London: MacMillan Press LTD, 1994), 83-178.

Linz argues presidential systems of government are less flexible than parliamentary systems. Flexibility is seen from the limitations of a president who is directly elected by the people has a fixed term of office so that he cannot be dismissed from office if the person concerned does not carry out his policies effectively. Therefore, a presidential system will lead to instability, he says the presidential immobility system and gridlock. The division of power between the executive and the legislature, both of which are elected by the people has the effect of political conflict and instability. the presidential system is not conducive to developing countries or consolidation of democracy because the winner of the election controls the executive.³¹ Mainwaring argues that the possibility of a deadlock between the executive and the legislature is greater because of separate elections for the two branches of government and exacerbated by a fixed term of office. Presidential systems are more prone to immobility than parliamentary systems for two main reasons.³²

Based on the arguments by Sartori, Linz, and Mainwaring, it shows several facts about presidential government systems, including: first, presidential systems are rigid compared to parliamentary systems which are more flexible. By reason of the presidential system accommodates fixed term restrictions, direct popular election, and impeachment mechanisms with predetermined standard conditions, it is different from the parliamentary system which is more flexible. Second, presidential systems tend to be more prone to causing immobility and deadlock, Mainwaring noted that from 1945 to 1992, there were 16 countries with presidential systems that experienced unstable democracies. Third, the four experts have a consistent view of multiparty presidentialism which will split the government. However, Cheibub mentioned two possibilities for multiparty presidentialism, namely presidential majority and minority presidential support. Thus, coalitions caused by multiparty do not always become a disaster, if this is the case the president gets the support of the majority (presidential majority).³³

If we look at the combination of presidentialism and multiparty, this is a complicated matter, but it can still be overcome with the full support of political parties in parliament, although further analytical research is needed. Despite its weaknesses, in the Indonesian context, multiparty presidentialism is the right choice considering that Indonesia has a heterogeneous multicultural society, so it is difficult to overcome this by simplification of the party into two parties. Thus, multiparty presidentialism is a necessity.

³¹ Juan J. Linz, "The Perils of Presidentialism," *Journal of Democracy* 1, no. 1 (1990): 51-69.

³² Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination," *Journal of Comparative Political Studies* 26, no. 2 (1993): 198-228, <https://doi.org/10.1177/0010414093026002003>. See Matthew Soberg Shugart dan Scott Mainwaring, *Presidentialism and Democracy in Latin America: Rethinking the Terms of the Debate* in Scott Mainwaring dan Soberg Shugart, *Presidentialism and Democracy in Latin America* (New York: Cambridge University Press, 1997), 14.

³³ Jose Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (New York: Cambridge University Press, 2007), 68.

C. Coalitions in Multiparty System

Problems that need to be evaluated from the results of the amendments and the basic agreement of the MPR, one of which stated that it emphasized the presidential system. With the results of the amendment which did not provide limitative conditions for the party system, it resulted in an assessment that was contradictory to the presidential system. The editorial section of Article 6A paragraph (2) of the 1945 Constitution states that the pair of candidates for president and vice president is proposed by a political party or a coalition of political parties participating in the general election. Reaffirmed in Article 28 of the 1945 Constitution which reads that freedom to associate and assemble, express thoughts orally and in writing, and so on is stipulated by law.

Based on Article 10 paragraph (1) of the Law Number 2 of 2008 on Political Parties as amended which states that the general objectives of political parties are: a. Realize the national ideals of the Indonesian nation as referred to in the Preamble to the 1945 Constitution; b. Maintain the integrity of the Unitary State of the Republic of Indonesia; c. Developing democratic life based on Pancasila by upholding citizen's sovereignty in the Unitary State of the Republic of Indonesia; and d. Realizing prosperity for all Indonesian people.

Based on the editorial text of the articles mentioned above, it shows that the Indonesian state adheres to a multiparty system and has opened a door that was closed in the direction of the democratization process of the Indonesian state. However, it should be noted that with the existence of a multiparty system adopted by the Indonesian state of course there is an assessment of this multiparty system having the following advantages and disadvantages:³⁴

- a. Advantages of a multiparty system:
 - 1. Democracy works well.
 - 2. People's aspirations can construct.
 - 3. People are free to speak.
 - 4. Opposition between one party and another.
- b. Disadvantages of a multiparty system:
 - 1. Give rise to unhealthy competition.
 - 2. Bring down each other between one party and another.
 - 3. Can hinder the smooth running of all government work programs.
 - 4. Political parties in the sense of unhealthy doing money politics and giving money to the people to vote for that party. This is where the characteristics of corrupt governments emerge.
 - 5. Leading to hostilities and divisions between one party and another.
 - 6. The government no longer focuses on the people but focuses on how to maintain power.
 - 7. Tribal, religious, racial, and group conflict.

³⁴ Angga Natalia, "Peran Partai Politik Dalam Mensukseskan Pilkada Serentak di Indonesia Tahun 2015," *Jurnal TAPIS* 11, no. 1 (2015): 59, <https://doi.org/10.24042/tps.v11i1.841>.

8. The power of political parties from one another will not be too far apart so that the estuary will lead to the division of power.
9. The government will get fatter because of the many party interests that must be accommodated and it is difficult to put the "right in the right place" person.
10. Political costs are very large because of government subsidies to parties.
11. "Vicious circle" logic, the more parties the more choices. The more choices, the more difficult it will be to choose. The harder it is to choose; the more people do not vote.
12. A lot of money is invested in things that are less productive for many people.

The results of the research which show the many deficiencies or weaknesses of the multiparty system have implications for inconsistency in the administration of government, especially in countries that adhere to a presidential system of government. The electoral system adopted, theoretically tends to give rise to a fragmented legislative party system.³⁵ Although the multiparty system has many weaknesses and cannot be combined with a presidential system, in the Indonesian context, Haris argued that the Indonesian version of a moderate multiparty system model could be an alternative to the party system implemented by the United States which is not very suitable for the reality of the plurality of the Indonesian. In addition, historical factors, cultural divisions, political divisions, demographic disparities, and the sensitivity of majority-minority issues.³⁶

Mainwaring and Shugart also stated that government instability will occur if a presidential system is combined with a multiparty system which tends to give birth to unlucky presidents (minority presidents) and divided government.³⁷ Therefore, with so many parties in a presidential system of government, the president in carrying out his role as chief of state as well as chief of the executive must require party support in a coalition way,³⁸ as stated by Chaisty "that the president has broad powers of appointment and that they use these appointments to secure political support"³⁹ with the aim of maintaining the stability of government administration. However, in the end, the choice of a fat or majority coalition (oversized coalition) is the choice of every elected president. Pragmatism is the main consideration for political party elites to form a coalition with their party's short-term interests.⁴⁰

A further consequence of implementing coalitions is for the president and political party elites (or supporters of the presidential campaign when he was still a

³⁵ Djayadi Hanan, "Memperkuat Presidentialisme Multipartai di Indonesia: Pemilu Serentak, Sistem Pemilu, dan Sistem Kepartaian," *Jurnal Universitas Paramadina* 13 (2016): 1470.

³⁶ Syamsuddin Haris, *Menuju Reformasi Partai Politik* (Jakarta: Gramedia Pustaka Utama, 2020), 41.

³⁷ Denny Indrayana, *Negara Antara Ada dan Tiada: Reformasi Hukum Ketatanegaraan* (Jakarta: Kompas, 2008), 10.

³⁸ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, 134-138.

³⁹ Paul Chaisty, "The Coalitional Presidentialism Project Research Report" *University of Oxford*, accessed on January 2015, <https://reshare.ukdataservice.ac.uk/852003/6/ProjectOverview.pdf>.

⁴⁰ Asrinaldi, "Koalisi Model Parliamenter dan Dampaknya Pada Penguatan Kelembagaan Sistem Presidential di Indonesia," *Jurnal Penelitian Politik* 10, no. 2 (2013): 69, <https://doi.org/10.14203/jpp.v10i2.435>. See Idul Rishan, *Hukum dan Politik Ketatanegaraan* (Yogyakarta: FH UII Press, 2020), 109.

presidential candidate) in the context of political compensation while maintaining government stability. The president, who has good intentions to form a cabinet consisting of professional experts is trapped in an unavoidable transactional politics. Conceptually the *zaken* cabinet has a double meaning, first, the *zaken* cabinet is filled by experts and is not part of a political party, second, the *zaken* cabinet can contain professional ministers from political parties or non-political parties.⁴¹ As a result, the promised formation of the *zaken* cabinet (expert and professional cabinet) could not be realized. Even the fit and proper test which was originally practiced to screen ministerial candidates at the last cabinet formation was no longer a major consideration and during a cabinet reshuffle.⁴² According to Huda, the influence of political parties in the appointment and dismissal of ministers is a political ethic to confirm with them if the president wants to appoint or dismiss his ministers. Even though in practice presidential and multiparty systems are often combined as special variants, the Indonesian government system leads to a mixed government system style like in France.

D. Presidential Prerogative and Appointment of Ministers

In the building of a presidential system of government, the power of the president is relatively large because the president is not only the center of executive power but also the center of state power, in the sense that the president has a dual function as chief of executive and chief of state. Therefore, the power of the president does not only cover the executive area but also legislative and judicial functions. Thus, it can be said that the role and character of the president is more prominent than the role of groups, organizations, or political parties in the country.⁴³

Meanwhile, Isharyanto citing the formulation of Shugart, Carey, Metacalf, and Frye stated that there is a prerogative dichotomy namely a presidential legislative prerogative and a presidential non-legislative prerogative. The president's legislative power is the power to declare a state of emergency; veto; authority to submit bills of law; the competence to form and amend the budget and the authority to propose a referendum. While the president's non-legislative powers include the power to elect and dismiss ministers and the power to freeze parliament.⁴⁴ Meanwhile, this can be understood as a prerogative, which means that the right belongs to a head of government or head of state without any intervention from any party in exercising that right. Thus, the prerogative can be interpreted as the privilege or privilege of a

⁴¹ Reja Fahlevi and Darul Huda, "Kolaborasi Kabinet Zaken dan Kabinet Koalisi dalam Pembentukan Kabinet Efektif," *Jurnal Ilmiah Mimbar Demokrasi* 19, no. 2, (2020): 50. <https://doi.org/10.21009/jimd.v19i02.14939>.

⁴² Moh. Mahfud MD, *Perdebatan Hukum Tata Negara: Pasca Amandemen Konstitusi* (Jakarta: Pustaka LP3ES, 2007), 159.

⁴³ Saldi Isra, *Lembaga Negara: Konsep, Sejarah, Wewenang, dan Dinamika Konstitusional* (Depok: Rajawali Pers, 2020), 193.

⁴⁴ Isharyanto, *Presiden, Sistem Pemerintahan, dan Kabinet* (Yogyakarta: Jejak Pustaka, 2021), 60.

head of state and head of government in carrying out his state duties.⁴⁵ In its implementation, there needs to be limitations in regulations so that there is no intervention from any party because of the use of these rights⁴⁶ For example, the prerogative is to appoint and dismiss ministers and deputy ministers.⁴⁷

The prerogative right of the President of Indonesia in appointing ministers is regulated in Article 17 paragraph (2) of the 1945 Constitution, which states that ministers are appointed and dismissed by the president. The same thing was stated by Isra that at the level of implementation one of the prerogatives is filling ministerial positions.⁴⁸ On the other hand, Manan and Wahidin say that the appointment and dismissal of ministers is not a prerogative. According to Manan, prerogative rights are regulated in Articles 10 to 15 of the 1945 Constitution. The president's authority, which is commonly called a prerogative is legally sourced and created by and in the 1945 Constitution. This power does not merely exist, but as something created by the 1945 Constitution and the kind of birth determined by law.⁴⁹

Furthermore, according to Wahidin, matters of state ministries are not the responsibility of the president in his position as chief of state. The Minister of State is the president's assistant in the field of government and in the capacity of the president as government.⁵⁰ Meanwhile, Wahidin's opinion negates that the power to run a government is not provided with prerogatives, but prerogatives are only given to the president as the chief of state. This is contrary to Locke's understanding that prerogative is a form of discretionary surrender of power to those who administer the government.⁵¹ Following this understanding, Dicey says that prerogative is a privilege that arises from discretionary residues.⁵² Conceptually discretion is used by government officials in the framework of administering government by taking administrative policies. Discretion is a policy which is the realm of *doelmatigheid*, discretion has no legal dimension, it is not a statutory regulation but factually explains the will of statutory regulations in the administration of government.⁵³ Therefore, the prerogative of the president is in the context of administering government. According to Mensah, discretion is a choice to do or not

⁴⁵ B. Henky Widhi Antoro and Rosita Miladmahesi, "Mengukur dan Menanggulangi Kompleksitas Hak Prerogatif Presiden Pada Pengangkatan Menteri dalam Kabinet," *Jurnal UAJY* (2018): 8.

⁴⁶ Harpani Matnuh, "Arrangement and Implementation of the President's Prerogative in Appointment and Dismissal of Ministers of State in the Presidential System in Indonesia," *Baltic Journal of Law and Politics* 16, no. 3 (2023): 4, 10.2478/bjlp-2023-000001.

⁴⁷ Jazim Hamidi and Mustafa Lutfi, *Hukum Lembaga Kepresidenan Indonesia* (Bandung: Alumni, 2010), 85.

⁴⁸ Decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XIII/2015, 22-23.

⁴⁹ Ni'matul Huda, *Presiden dan Pembantu Presiden Dalam Sistem Ketatanegaraan Indonesia* (Yogyakarta: FH UII, 2019), 221.

⁵⁰ Ni'matul Huda, 222.

⁵¹ Ni'matul Huda.

⁵² A. V. Dicey, *An Introduction to the Study of the Law of The Constitution* (London: The Macmillan Press, 1973), 424.

⁵³ Laica Marzuki, "Menyoal Diskresi yang Terpasung (Mengkritisi Undang-Undang Administrasi)," 1-2.

to do.⁵⁴ Thus, the president's prerogative in the context of administering government is discretionary without any intervention from any party.

Referring to juridical provisions, the president has absolute authority both to appoint and dismiss ministers. However, at the implementation level, the president cannot fully exercise his prerogative due to the accommodation of a multiparty system which requires the president to gather support by means of a coalition, as is the empirical reality that occurred in President Susilo Bambang Yudhoyono's Cabinet and President Joko Widodo's Cabinet. From several studies, it is stated that the Development Reform Cabinet (1998-1999) was the *zaken* cabinet because almost 75% of it was filled with professionals, although professionals were not separated from political party recommendations. This means that the practice of the prerogative in appointing ministers so far, especially in the reform era, was carried out only as a tribute or token of political gratitude for providing support to the president, both from political parties and from professionals. To find out more about the effectiveness of appointing ministers in the multiparty system accommodated in Indonesia, it is necessary to investigate and make comparisons with the arrangements for appointing ministers in countries that implement a multiparty system as follows:

Table 2. Appointment of Ministers in a Multiparty System

No.	Country	Government System	Legal Basis	Arrangement
1	Myanmar	Presidential	2008 Constitution, Article 202	The president, with the approval of the <i>Pyiadaungsu Hluttaw</i> , may: (a) designate the Ministries of the Union Government as necessary and may make changes and additions to the ministries; (b) designate the number of the Union Ministers as necessary, and may increase or decrease the number.
2	South Korea	Presidential	South Korean 1948 Constitution, Articles 94, 95, and 96	Article 94, The Heads of Executive Ministries are appointed by the President from among members of the State Council on the recommendation of the Prime Minister. Article 95, The Prime Minister or the head of each Executive

⁵⁴ A'an Efendi and Freddy Poernomo, *Hukum Administrasi* (Jakarta: Sinar Grafika, 2017), 120.

				<p>Ministry may, under the powers delegated by law, or Presidential Decree, or <i>ex officio</i>, issue ordinances of the Prime Minister or the Executive Ministry on matters that are within their jurisdiction.</p> <p>Article 97, the establishment, organization, and function of each Executive Ministry are determined by law.</p>
3	Peru	Presidential	Peruvian 1993 Constitution, Article 122	The President of the Republic appoints and removes the president of the cabinet from office. He or she appoints and removes other ministers with the recommendation and consent respectively of the president of the cabinet.
4	Argentina	Presidential	Argentinian 1853 Constitution, Article 99 (7)	The President of the Nation has the following powers: he may appoint and remove ambassadors, Ministers plenipotentiary, and charge <i>d'affaires</i> with the consent of the Senate; on his own, he may appoint and remove the chief of the cabinet of ministers and the other ministers of the cabinet, the officials of his office, consular agents, and employees whose appointment is not otherwise regulated by this constitution.
5	Sweden	Parliamentary	Swedish 1974 Constitution, Article 1 dan Article 6	Article 1, The Prime Minister is appointed in accordance with the rules laid down in Articles 4 to 6. The Prime Minister appoints the other ministers. Article 6, when the <i>Riksdag</i> has approved a proposal for a new Prime Minister, the Prime Minister shall inform the <i>Riksdag</i> as soon as possible of the names of the ministers.

				Government changes hands thereafter at a Council of State before the Head of State or, in his or her absence, before the Speaker. The Speaker is always summoned to attend such a Council.
6	France	Semi Presidential	French 1958 Constitution, Article 8	<p>The President of the Republic shall appoint the prime minister. He shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the government.</p> <p>On the recommendation of the Prime Minister, he shall appoint the other members of the government and terminate their appointments.</p>
7	Sri Lanka	Semi Presidential	Sri Lankan 1978 Constitution, Article 43 (1) and (2); Article 44 (1) and (2)	<p>Article 43, Ministers and their subject and functions:</p> <p>(1) The president shall, in consultation with the prime minister, where he considers such consultation to be necessary, determine the number of ministers of the cabinet of ministers and the ministries and the assignment of subjects and functions to such ministers.</p> <p>(2) The president shall, on the advice of the Prime Minister, appoint from among the Members of Parliament, Ministers, to oversee the Ministries so determined.</p> <p>Article 44 Minister who are not members of the cabinet of ministers:</p> <p>(1) The president may, on the advice of the prime minister, appoint from</p>

				<p>among Members of Parliament, Ministers who shall not be members of the Cabinet of Ministers.</p> <p>(2) The president may, in consultation with the prime minister where he considers such consultation to be necessary, determine the assignment of subjects and functions to Ministers appointed under paragraph (1) of this Article and the Ministries, if any, which are to oversee, such Ministers.</p>
8	Portugal	Semi Presidential	Portuguese 1976 Constitution, Article 184 (1), (2), and (3)	<p>Article 184 Council of Ministers:</p> <p>(1) The Council of Ministers shall be composed of the Prime Minister, the Deputy Prime Ministers if any, and the Ministers.</p> <p>(2) The law may create specialized Councils of Ministers with responsibility for specific matters.</p> <p>(3) Secretaries and Under Secretaries of State may be required to attend meetings of the Council of Ministers.</p>

Based on the table above, the pattern of appointing ministers in various countries has its own character and mechanism. Conceptually, in the pattern of appointing ministers in a presidential system, the president has the prerogative in appointing ministers, in line with what was stated by Neto, that the president as the head of government has the free power to form a cabinet (appoint and dismiss ministers). On the other side, the pattern of appointing ministers in a parliamentary system where the prime minister as the head of government has the right to appoint and dismiss ministers. Furthermore, Neto argued that appointment power allows the

president to freely format the cabinet based on the circumstances he sees. An elected president will form a cabinet that is expected to support the success of the policies he makes. In this case, for the passage of a policy depends on its ability to control the legislature, the president will form a cabinet dominated by ministers from partisan ministers. Through this strategy, the president will gain the support of a majority in the legislature by dividing positions in ministries proportionally to the parties that will support them in parliament.⁵⁵

However, if examined, several arrangements in several countries that implement a presidential system with a multiparty system, the president's prerogative to appoint ministers is not absolute, because there is the involvement of other institutions as a form of checks and balances. For example, in Myanmar, the president must first obtain the approval of Pyiadaungsu Hluttaw to form his cabinet. Then in Argentina, the president in appointing and dismissing ministers must be at the discretion of the Senate. Even in the Philippines, the president in appointing his ministers must consider the Commission on Appointments. The structure of the Commission for Appointments consists of the Senate Chair, 12 (twelve) members of the Senate, and 12 (twelve) members of the DPR.

Meanwhile in Indonesia, in the context of appointing ministers, it is entirely the prerogative of the president without the involvement of other institutions. However, the practice is different in the appointment of other public positions such as the appointment of a Commissioner for the Corruption Eradication Commission, a member of the Ombudsman of the Republic of Indonesia to the appointment of the Commander of the Indonesian Armed Forces, and the Chief of the Indonesian National Police, there is involvement of the DPR in selecting, approving, or giving consideration. In this case, the involvement of the DPR is a manifestation of the representational function possessed by the DPR which consists of people's representatives elected through elections.⁵⁶ However, on the other hand, it is contrary to the existence of the Regional Representative Council (*Dewan Perwakilan Daerah*-DPD) which also carries out the function of regional representation and is not involved in filling public positions. Therefore, a reconstruction of the ministerial appointment pattern should be carried out by involving the DPR and DPD, which carry out the representation function. In addition, considering the function of ministers who have a crucial role in public service so that the ministers who are elected should not be netted from political compromises as the implications of countries implementing a multiparty presidential system that the president must form a coalition to gather political support in parliament by means of a coalition cabinet formation comes from parties supporting the president. The involvement of

⁵⁵ Octavio Amorim Neto, "Presidential Cabinets, Electoral Cycles, and Coalition Discipline in Brazil," see Marcelo Vieira and Thiago Silva, "Cabinet Rules and Distribution of Powers in Presidential and Parliamentary Executives," (Paper presented in the XI Encontro da ABCP, Curitiba, Parana, Brazil, 2018), 4. See also Fitra Arsil, 92.

⁵⁶ Yance Arizona, "Penataan Seleksi Pimpinan Lembaga Negara: Pendekatan Teori *Trias Politica*" in *Pengisian Jabatan Publik Dalam Ranah Kekuasaan Eksekutif*, Khairul Fahmi (ed.) (Jakarta: Rajawali Pers, 2016), 9.

other institutions is a form of checks and balances whose role is to provide consideration in the appointment and dismissal of ministers with standards determined by the constitution.

D. Conclusion

The MPR's Ad Hoc Committee I have been agreed that Indonesia implements and reinforces a presidential system of government. It can be seen from the characteristics set forth in the text of the amendments to the 1945 Constitution of the Republic of Indonesia. One of the characteristics of a presidential system of government is that the president possesses the prerogative right to appoint and to dismiss ministers. It is stated in Article 17 paragraph (2) of the 1945 Constitution. In fact, the president's prerogative right is not implementable, as evidenced by practice in the reform era. During the second regime of President Joko Widodo, the number of ministers and deputy ministers from political parties has increased significantly. The influence of political parties in the appointment and dismissal of ministers is understood as political ethics, especially for parties supporting the president as a sign of the president's gratitude, even if the final decision is in the hands of the president to determine the cabinet.

That is the result of a multiparty system combination, which is difficult to avoid because Indonesia has a heterogeneous-multicultural society. The fact generates implications to the president's prerogative right, which is not used effectively because the right is a discretion which is a free authority. In simple term, a prerogative right can be interpreted as a right that belongs to the president in the framework of administering discretionary government without any intervention from any party. Based on the results of tracing and comparisons regarding ministerial appointment arrangements in several presidential systems with a multiparty system, the appointment of ministers is not the absolute authority of the president because there is the involvement of other institutions as a form of checks and balances. Thus, it is appropriate to reconstruct the model for appointing ministers to no longer be the absolute authority of the president by involving other institutions that represent the people as a form of checks and balances because the position of the minister is a strategic position. The performance directly affects society and reinforces the presidential system.

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