Reconstruction Implementation of the Prerogative of the President in the Appointment of Ministers Based on the 1945 Constitution is Associated with the Indonesian Constitutional Law System

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Abstract. Based on post-reform accentuation is the implementation of amendments to the 1945 Constitution, in its formulation both before and after the amendment still gives the authority for the president as head of government to appoint ministers of state. This study aims to analyze the implementation of the prerogative of the president in the appointment of Ministers both based on the 1945 Constitution and the Indonesian Constitutional Law System. This research is descriptive with normative juridical research types, using a statutory approach and a comparative approach. Data were collected through literature studies, then analyzed qualitatively. This research shows, first, Article 17 of the 1945 Constitution is the individual authority of the President as an implication of the presidential system with a multiparty coalition which in practice is in the appointment of Ministers as the president's petitioner in the intervention of political parties. Second, the reconstruction of the implementation of the president's prerogative in appointing Ministers as presidential aides cannot be separated from the involvement of political parties that play a role in the presidential election process, so that in the process of appointing these Ministers which boils down to the formation of a cabinet there is a need for an improvement in legislation or improvement of state ministry laws, regulation of presidential institutions, and methods of selecting Ministers.

Keywords: reconstruction; presidential prerogatives; 1945 constitution

1 Introduction

Based on the accentuation of reforms in the Indonesian state that occurred in 1998, it had an impact on all aspects of people's lives, both in the fields of politics, economy, social, culture, and security. The acceleration is a change in the political sphere as well as the implementation of the Indonesian constitution with its estuary on changes or amendments to the 1945 Constitution.

Amendment diction is understood literally as an act of changing or correcting the errors of the essence of an Act or constitution. In another sentence that, an amendment is an act to improve or reform in the field of law [1]. The intellectual conscience of the researcher argues that an amendment is a renewal by a predetermined method with its estuary for the better. If this

MIC 2022, November 12, Semarang, Indonesia

DOI 10.4108/eai.12-11-2022.2327283

is related to the 1945 Constitution, then the amendment to the 1945 Constitution is a renewal of the 1945 Constitution by the prescribed method of obtaining a good constitution.

Reflecting on the above arguments, the amendment to the 1945 Constitution is an expectation in the process of realizing a constitutional system that boils down to the rights of the people. The 1945 Constitution is based on the principle of people's adhesion in accordance with the mandate of Article 1 paragraph (2) of the 1945 Constitution, namely:

"Sovereignty is in the hands of the people and is exercised according to the Constitution"

The accentuation is the distribution of people's sovereignty in this case, namely that the president has a position and duty as to the State as well as to the government. His job is to lead and account for every activity of the executive agency. Diction the president is the highest organizer of government [2]. With another sentence. If you look at a State order wherever the constitution is actually used to give and limit power, then in terms of relation to this research, the power of the president who has power must be clearly regulated in the constitution and the laws and regulations under it.

Indonesia has a president who is defined as the organizer of the state government. Assisted by ministers to realize the vision and mission of a precedent who is in line with the objectives of the Indonesian State as stated in the preamble to the 1945 Constitution in the fourth paragraph, namely:

"Protecting the entire nation and all Indonesian bloodshed and to promote the general welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice"

To understand this ideal, a leader of the Republic of Indonesia practices government power in view of the Constitution. This is as per Article 4 section (1) of the 1945 Constitution, the embodiment of the article is that the power and obligation of government is held by the president with an official arrangement of government, implying that the public authority framework centers around the place of a president as head of government and head of State [3].

Seeing such a huge weight from a president as the sense of the peruser's reasoning, then, at that point, a president in understanding his vision and mission which is connected with the objectives of the Indonesian State as recently made sense of, the president is helped by state priests with a particular need to finish his vision and mission. The clergymen are delegated and excused by the president and every one of those priests is responsible for specific undertakings in the public authority.

Speak about prerogative according to language literature comes from latin i.e. *praerogrativa* means to be chosen first to vote, then *Praerogrativus* which is interpreted to be asked as the first to vote, and *praerogare* with the meaning of being asked before asking for another [4]. If you look at the application process, prerogative is the power of the president, which causes many problems that result in pros and cons in the implementation stage. For example, the issue of presidential power is not continued with clear and unequivocal mechanisms and accountability, even though if you look at the rights given to the president, it is a substantial matter for the life of the nation and state with its estuary on the interests of society [3].

If the benchmark for the exercise of the prerogative of appointment and dismissal of ministers is based on political interests, then it can be judged that post-reform there has not been a single cabinet of homogeneous political background elements. In other words, the cabinet is always by people who come from one cadre of a political party. For example, the development unity cabinet was wiped out by the KH. Abdurrahman Wahid and the Mutual Cooperation cabinet led by Megawati Soekarno Putri, as well as during the reign of Susilo Bambang Yudhoyono with the united Indonesian cabinet still maintaining political heterogeneity in the

appointment of his ministers. Meanwhile, another case related to this research is the prerogative to dismiss three ministers, namely Admiral Sukardi, Yusuf Kalla, and Mahmudi Ismail in the KH. Abdurahman Wahid who was at that time as president.

In view of the foundation of the issues that have been introduced, the issue that can be recognized is how is the execution of the president's privilege in the arrangement of clergymen in light of the 1945 Constitution and the Indonesian Protected Regulation Framework ?, and how is the recreation of the activity of the right of the president in the arrangement of pastors?

Past exploration on the Execution of Official Rights in the arrangement of priests in light of the 1945 Constitution and the Indonesian Protected Regulation Framework was completed by [5] with the title Of The Privilege of the President in the Arrangement and Excusal of the Top of the Public Police of the Republic of Indonesia In view of the 1945 Constitution. Next [6] on the Juridical Consequences of the System of Government On the Prerogatives of the President in the Appointment of Ministers According to the 1945 Constitution, and [7] with the title Right of the President in the Arrangement of Pastors as per the 1945 Constitution.

In light of past examination on the connection between the execution of the execution of the president's right in the arrangement and excusal of clergymen in view of the 1945 Constitution, this study centers around reproducing the execution of privileges in selecting priests in light of the 1945 Constitution and the Indonesian sacred regulation framework.

2 Methodology

The specifications in this study are descriptive with the type of normative juridical research through literature research in the form of primary, secondary, and tertiary legal materials. The approach methods used are the legislation approach and the policy approach. Its data collection techniques are collected to examine secondary data obtained through document studies. Further it is analyzed by qualitative methods.

3 Results and Discussion

a. Implementation of the prerogative of the president in the appointment of ministers based on the 1945 Constitution and the Indonesian Constitutional Law System

Based on the government system in Indonesia using the presidential government system. The presidential system in Indonesia is said to be like a presidential system of government like America which adheres to the principle of separation of powers can also be said to be not the same. The power-sharing system adopted by Indonesia is not separated between state institutions with one another [8]. The government system when viewed from the literature of State science is defined as an order of relation to the accountability of the administration of government between the executive and legislative [9].

The conception of the government system in Indonesia cannot be separated from Montesquieu thinking with the idea of separation of powers and then there is also from John Locke with his idea of power sharing. The concept of thinking from Montesquieu actually boils down to the non-centralization of power and the formation of absolute power which results in arbitrariness. The separation of powers is carried out and becomes three separations, namely legislative, executive, and judicial powers [10].

The existence of these three institutions is a pattern of thinking not to have abuse of power by individuals or institutions. The mechanism of checks and balances is natural because the estuary is on the democracy of a State. These mechanisms end up supervising or controlling each other and can even control each other. The idea and idea of separation of powers aims for a guarantee of freedom from the politics of the people because the diction of freedom is an important thing, so Montesquieu formulated the concept of limiting power. Moreover, freedom from politics needs to be maintained if a State power boils down to centralization by the ruler or is monopolized by certain political institutions, then the power of that State must be divided or often called a separation of power.

In relation to the 1945 Constitution as previously explained, amendments to the 1945 Constitution have been carried out four times which have an impact on fundamental changes in Indonesian constitutional law. If it is related to the first problem, namely regarding the prerogative of appointment of ministers, it is closely related to Article 17 of the 1945 Constitution in CHAPTER V on State ministries which reads:

1. The President shall be assisted by the minister of state;
2. The minister is appointed and dismissed by the President;
3. Each minister is in charge of certain affairs in government;
4. The establishment, alteration, and dissolution of state ministries shall be regulated in law.

The president's right is an honor since there is compelling reason need to look for endorsement from different offices. This happens in light of the fact that it has an objective that reduces to the improvement of local area government assistance. The most common way of understanding the government assistance of society is a fundamental undertaking as well as completing regulations. In the present legitimate State known as Freies Ermessen, this idea really gives the public authority the position to mediate in each action of society fully intent on giving government assistance to the local area.

The President has a place of selecting, excusing, and supplanting and there could be as of now not a body as a the right structure to make bureau faculty. The Pastors of State are the heads of the divisions who practice chief power and who comprehend about the offices are the named priests. Then, the privilege of the president after the alteration of the 1945 Constitution on the off chance that it is connected with this first issue, Article 17 passage (2) of the 1945 Constitution pastors are designated and excused by the president.

In the event that you take a gander at the when the changes to the 1945 Constitution with respect to the privilege of the president, the two of them give the president the position to choose and excuse priests. This change is a change to restrict the force of the president with the expansion of articles, to be specific the foundation, change, and disintegration of services directed in regulation.

Article 17 paragraph (2) its existence in ministers is not an ordinary high-ranking employee, but in its application to exercise the power of government. It is commonly known to the reader that ministers are aides to the president in running the wheels of government. Thus, the appointment of ministers in charge must be people who can cooperate and support the president. In addition, it must also have the ability in certain areas according to the needs of the president. However, the conscience of the intellectual heart of the researcher's authority to appoint and dismiss ministers should not be absolute. This is because the president should pay attention to the considerations of the House even though it is not binding. The goal is for the president not to do anything wrong in the formation and dissolution of a ministry.

Based on the above arguments, the president in terms of exercising his rights should not need to consult with other institutions, this is because the president is given the right by the constitution in carrying out the wheels of government. Post-amendment Article 17 paragraph

(4) states that the ministry of State is regulated in law. The background to the addition of a paragraph in the article is the amount of authority of the president in this matter. For example, when the new order government the number of Ministries of the State is determined by political needs and interests.

b. Reconstruction of the Implementation of the Prerogative of the President in the Appointment of Ministers in the future

If you look at the implementation of the prerogatives of the president from the new order until now, the fact is that the prerogative was intervened by the coalition parties. This has an impact on the exercise of these rights not entirely in appointing and dismissing ministers. The intellectual conscience of the researcher concluded several things why there was intervention from the coalition of political parties, namely:

1. Presidential Elections

Presidential elections here are meant by the reciprocal relation of the victory of a president. The pair of presidential candidates and vice presidential candidates carried by political parties or coalitions of political parties as participants in the general election with the requirement that they get at least 20% (twenty percent) of the total number of DPR seats or 25% (twenty-five percent) of the national valid vote in the general election of DPR members.

The awarding of a minister's seat is in the spotlight because a minister's seat is given to people or cadres from supporting political parties who have contributed to the victory of the presidential candidate and the vice presidential candidate. When the cadres of the political parties they carry are competent and meet the capacity of professionalism to become a minister in a certain field, it is not a problem. The thing that is of concern is that when the cadres of the political party carrying out the position of a minister are not competent, it will have an impact on the presidential system of government, it should prioritize professionalism and have the capacity to conduct government affairs.

2. Law of the Ministry of State

The formation of the cabinet has weaknesses in legislation. This chance of weakness becomes a soft meal for the coalition of political parties against the president in the process of forming the desired cabinet. If you look at Law Number 39 of 2008 concerning the Ministry of State (hereinafter the KN Law), then the president only recommends paying attention to the competence of the ministry field and does not require a person's professionalism according to certain ministry fields. The KN Law does not prohibit a minister from holding office in a political party. It should not happen because it will cause the minister to have dual loyalty. In this case a minister is accountable to the president, and on the other hand the minister must also be accountable to a political party. That's what led to dual loyalty.

When the above things happen, namely the effectiveness of the cabinet performance, as well as the work procedures of the cabinet. Seeing another impact is when a minister has a strong influence because the influence of his position in a political party will be related to the influence of the minister in parliament. If such conditions occur, then it is similar to the parliamentary system.

The process of cabinet formation has its own mechanism. The selection of ministers must also be improved, the fit and proper test should not be camouflaged on the charade of the selection procedure and the recruitment of ministers by the president. There needs to be an improvement to the KN Law and the existence of a ministerial fit and proper test regulation to avoid irregularities in the formation of the cabinet.

Aside from the improvement of the KN Regulation, it is likewise important to direct the strategy or technique for choosing pastors as regulations and guidelines, for instance the

presence of an official guideline with respect to the enrollment of priests which contains the prerequisites for clergymen who are proficient, have trustworthiness, and have remarkable capacities or can likewise be remembered for the finishing of the KN Regulation.

3. Formation of the Cabinet in the future

The expectations of all parties, especially the community, want the creation of good and correct governance in accordance with Pancasila and the 1945 Constitution with its estuary on the welfare of the community. This ideal will be in vain if there is no character and awareness to improve the important thing, namely the formation of a cabinet with the recruitment of ordinary ministersThe application of the current state system should be the will to improve the nation and the State is still weak, as well as reforms in the field of bureaucracy do not proceed as they should in accordance with the wishes of the people. Good governance is not achieved because there are still many political interests.

A minister's chair is like giving away a pre-ordered cake, regardless of whether the cake tastes good and aesthetic or not. Likewise, the seat of a minister is like sharing the seat of power, regardless of the estuary, namely the interests of the people and the effectiveness of the running of the government.

The first step that must be taken is to perfect the KN Law, this is because the formation of a cabinet is often used as an interest for the president and party coalitions when supporting it. Today's pattern of cabinet formation is like the formation of a cabinet in a parliamentary government, this is due to the strengthening interest of politicians in the context of the appointment and dismissal of ministers.

Here are some of the problems of the KN Law that researchers analyze, namely:

1. Article 22 paragraph (2) letter e of the KN Law, in this article it is explained that to be appointed as a minister, he must have integrity and a good personality. When integrity and good personality should be owned by a minister, the problem lies in his placement. Because the placement of a person to become a minister is up to the president and there are no rules governing the process of placing someone to become a minister.
2. Article 23 of the KN Law, this article actually already regulates the prohibition of duplicate positions, but in its explanation it is only a suggestion. That a minister is expected to relinquish duties and other posts, including in the post of a political party;
3. Article 24 paragraphs (2) and (3) of the KN Law, this article contains the dismissal of the minister. Regulated in Article 24 paragraph (2) letter a to letter e. analysis of the researcher sees in Article 24 paragraph (2) letter e, that is, another reason set by the president. Actually, it is legal to say that the editors in the article will still say that the dismissal of the minister in letter e must be fair and look at the effectiveness of the minister's ongoing or planned performance program. Researchers are more inclined to remove the redaction in letter e and replace it with ineligible as stated in Article 22 of the KN Law;

In short, researchers try to return to the initial fundamentals that the basis for cabinet formation was the mandate of the 1945 Constitution and was regulated in the KN Law such as the formation, change, renewal of State ministries. The current KN Law has not realized the ideals of professional entrepreneurship which boils down to the integrity of ministers, the prohibition of duplicate positions, and the dismissal of ministers.

Provisions regarding the prohibition of multiple offices include offices in political parties with the estuary of a minister of dual-loudness. Then the integrity of the minister as explained earlier must be precise in the field of his ministry and the rules of dismissal of the minister must be emphasized which is useful for the minister because it avoids unilateral dismissal by the president.

4 Conclusion

Based on the explanation that has been submitted above, it can be interpreted as follows:

a. The implementation of the prerogative of the president in the appointment of ministers based on the 1945 Constitution and Indonesian constitutional law is a privilege granted to the president with his estuary regulated in the implementing laws and regulations. Basically, if you look at the fact that the prerogative in the appointment and dismissal of ministers boils down to the intervention of a coalition of political parties carrying the president and vice president. Thus the need for an improvement in the KN Law so as not to intervene in the president in the recruitment of someone to become a minister;
b. Reconstruction of the Implementation of the Prerogatives of the President in the Appointment of Ministers in the future is a way to realize the ideal of forming an ideal cabinet with its estuary on the interests of the people. Thus, the need for improvement in laws and regulations related to the appointment and dismissal of ministers, starting from the improvement of the KN Law, methods or mechanisms for selecting ministers objectively through fit and proper tests that will have an impact on the good or bad formation of cabinets.

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