

## Problems of Appointing Party Leaders as State Ministers in the Indonesian Constitutional System

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### ABSTRACT

Indeed, the stability in running the wheels of government using the presidential system is very promising. However, at present, in Indonesia, the presidential system of government is not maximized, this is because the presidential system of government that is applied has been collaborated with a multi-party system. The application of the system is not maximized as evidenced in the formation of the cabinet, namely the selection of ministers by the president is only used as a forum for "compromise" with his coalition political parties during the election battle. Furthermore, the issue of the appointment of political party leaders as state officials is not only a matter of political interest and power, but also a matter of violation of the provisions of Law Number 39 of 2008 concerning State Ministries. Prerogative rights as the basis for the president in appointing state ministers and forming the cabinet should still be based on the provisions of the applicable laws and regulations. Because the president's disorderly use of his prerogative will lead to his impeachment as president. The implementation of a presidential system of government combined with a multi-party system will continue to experience problems in the appointment of state ministers by the elected president and vice president. Thus, the prerogative right, which is essentially the absolute authority of the president, has now been reduced. Thus, the appointment of a minister who also serves as a leader of a political party should pay attention to the provisions of Law Number 39 of 2008 concerning the Ministry of State and Law Number 2 of 2008 concerning Political Parties as well as Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties.

### Keywords:

Minister of State;  
Dual Position;  
Cabinet Formation

### INTRODUCTION

The presidential system of government has promised stability in running the wheels of government, this is because the president's term of office is fixed (fix term), especially coupled with the election of the president directly elected by the public, so that the legitimacy possessed by the president becomes very strong (Linz, 1994). However, in the institutional structure, the strength of the presidential system with the president and vice president directly elected by the people will have the opportunity to create dual democratic legitimacy between the parliament and the president and his representatives (Mainwaring, 1993). This dual democratic legitimacy will potentially lead to conflict in the relationship between the executive, in this case the president and vice president, and the legislature, because the two institutions will claim to have strong legitimacy and political representation, because they are both elected by the people (Wijayanti & Iswandi, 2021).

The potential for conflict and deadlock in the relationship between the executive and the legislature will be even greater if the political structure adopted is a multi-party system. Therefore, a presidential system based on a multi-party-political structure is a very difficult combination (Wijayanti & Iswandi, 2021). Indeed, the bargaining power provided by the presidential system gives fresh air to the office of the president to create stability in the government he leads, but in fact the presidential system paired with a multi-party system always has party maneuvers in parliament that result in the

ineffectiveness and even rejection of government programs (Wahid & Haruni, 2023, p. 2). The presidential system in general has the main characteristic that the president is the head of government as well as the head of state. Consequently, the president has the right to select, appoint and dismiss ministers to assist him in his duties (Junaidi, 2009).

For the value of the bargain, the State of Indonesia also accuses itself of adhering to the presidential system in its government, although expressly verbiis in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) does not say so, but the presidential system applied in Indonesia can be found implicitly in several articles in the 1945 Constitution of the Republic of Indonesia (Wahid et al., 2022), one of which is in Article 17 of the 1945 Constitution of the Republic of Indonesia which essentially explains that the president in carrying out his duties is assisted by state ministers and the ministers are appointed and dismissed by the president.

Such rights are generally referred to as presidential prerogatives. Of course, in the use of prerogative rights, the president to choose his ministers should choose the best and qualified ministers both in experience and knowledge in each field, this is because the selection of the right minister will lead to the performance of the government in accordance with the aspirations (Rauf, 2009). However, the problem that then arises is that the implementation of a multi-party system in Indonesia within the framework of the presidential system has influenced the president's leadership in exercising his powers, including in the formation of the cabinet (Saraswati, 2012). The influence in the formation of the cabinet is the interference of political parties that support the president during the election. The result is that the selection of ministerial members in a cabinet tends not to be in accordance with what is expected, because there are several "ration" distributions made by the president as compensation to political parties when winning the election constellation (Fahlevi & Huda, 2020).

Of course, in a constitutional perspective, the selection of ministers by involving political parties supporting the president, including ministers who will later be selected and appointed as assistants from among political parties, is valid, as long as it still pays attention to the effectiveness of government performance and remains in accordance with the qualifications in each field. If we look at some of the previous ruling regimes, the appointed ministers were also filled with politicians. This can be seen in the following table:

**Table 1.** Cabinet Structure from the Gusdur Period to Joko Widodo

The Ruling Regime	Government Cabinet	Political Party Elements	Non-political party elements	Description
Abdurrahman Wahid (1999-2001)	Cabinet of National Unity	23 People	31 People	One-time Reshuffle
Megawati Soekarno Putri (2001-2004)	Gotong Royong Cabinet	13 People	17 People	No Reshuffle
Susilo Bambang Yudhoyono (2004-2009)	United Indonesia Cabinet Volume I	23 People	19 People	Twice Reshuffle
Susilo Bambang Yudhoyono (2009-2014)	United Indonesia Cabinet Volume II	20 People	14 People	Three times Reshuffle
Joko Widodo (2014 - 2019)	Working Cabinet	18 People	27 People	Three times Reshuffle
Joko Widodo (2019-2024)	Advanced Indonesia Cabinet	24 People	21 People	Three times Reshuffle

**Source:** wikipedia.org, [https://id.wikipedia.org/wiki/Kabinet\\_Indonesia\\_Bersatu](https://id.wikipedia.org/wiki/Kabinet_Indonesia_Bersatu).  
 (Data Results Processed by Researchers / Writers)

The selection of ministers described in this article by making a distinction between ministers from political parties and those from non-political parties is certainly outside the success team. The selection of the cabinet by involving many elements of political parties is none other than because in a presidential system with multi-parties is a necessity, because winning in the constellation of elections is none other than a joint effort built through coalition channels (Huda, 2001). However, in its application, the presidential system with multi-party government, in forming coalitions, always experiences fragility, the fragility is mentioned by the difficulty of parties to build coalitions based on one ideological idea. This is in contrast to the parliamentary system, which is slightly easier in terms of building coalitions (Kausar & Gaussyah, 2021).

Thus, the difficulty of combining a presidential system of government with a multi-party system has led to the absence of majority party power that would be key in any policy taken. Since majority power is not available, what will happen is a stalemate between the legislative and executive branches of government. Based on the above events, the president will tend to rely on the method of distribution or rations or involve political parties in the process of forming the cabinet of course by using his prerogative (M. Shofwan Taufiq, 2021).

In fact, as has been stated in the table description by the author, the selection and appointment of ministers not only involves political parties but what is more extreme is to make the head of a political party a minister. Why does the author say this is extreme? This is because in the context of Indonesian law, the position of political parties in financing resources also receives injections from the State Budget (APBN) and Regional Budget (APBD) funds. If we refer to Article 34 paragraph (1) of Law Number 2 of 2008 concerning Political Parties as well as Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties. (Political Party Law) explains that "Political Party finances come from: (a) membership fees; (b) lawful donations; and (c) financial assistance from the State Revenue and Expenditure Budget / Regional Revenue and Expenditure Budget.

From this description, the Political Party Law states that political parties also receive a budget from the APBN and APBD in accordance with the number of votes (Republik Indonesia, 2008).

Whereas if you look at the provisions for the appointment of members of the state ministry, it is explained in Article 23 of Law Number 39 of 2008 concerning the Ministry of State (State Ministry Law) which basically explains that "ministers are prohibited from concurrently serving as: (a) other state officials in accordance with statutory regulations; (b) commissioners or directors of state companies or private companies; or (c) leaders of organizations funded by the State Budget and / or Regional Budget. Based on this explanation, a minister should not be a leader or chairman of a political party.

However, in empirical fact, the Chairman of a political party has been appointed as a Minister of State by the President by utilizing his prerogative. For example, the appointment of Yusril Ihza Mahendra who served as chairman of the Lunar Moon Star Party was appointed minister in the era of President Abdurahman Wahid (Gus Dur) and the era of President Megawati, Jusuf Kalla who served as Chairman of the Golkar Party was appointed minister in the era of President Megawati, Hatta Rajasa who served as Chairman of the National Mandate Party was also appointed Minister in the era of President Susilo Bambang Yudhoyono, and in the era of President Joko Widodo

also appointed several political party chairmen as ministers in his cabinet, such as Prabowo Subianto as Minister of Defense, Zulkifli Hasan as Minister of Trade and Airlangga Hartanto as Coordinating Minister for Economic Affairs (Biro Pers, Media dan Informasi Sekretariat Presiden - Kementerian Sekretariat Negara, 2019).

The appointment of the Chairman of a political party as a Minister of the President has resulted in disparity with the authority or prerogative of the president in selecting and appointing ministers based on the Law on State Ministries and also the prerogative of the president in selecting and appointing ministers in assisting government duties should be based on applicable law. Thus, although prerogative is a necessity, in the selection and appointment of ministers, the president involves political parties too deeply or even the selection of ministers can be "arranged" by political parties in a coalition in a multi-party presidential structure, of course the president's prerogative also takes into account the applicable legal provisions (Rannie, 2021).

Related to the discussion raised by this article, actually in previous research there have been studies that also raised the same issues as this article, namely research conducted by Moh Baris Siregar, Chess Wido Haruni and Surya Anoraga in his journal entitled Analysis of the Prohibition of Concurrent Ministerial Positions Coming from Elements of Political Parties in the Indonesian Constitutional System (Siregar et al., 2021).

The research is inconsistent with the discussion of political party leaders in serving as ministers, which in the article only dwells on political issues and is not in-depth related to the discussion of the legal implications both by ministers who hold concurrent positions, as well as the president who chooses them. In another article, written by Retno Saraswati (Saraswati, 2012) only provides an overview of the effective design of cabinet formation in the presidential system of government.

For some of these articles, the author in this article provides a new form of offer with a more rigid and detailed discussion, including in this case related to the design of the ideal cabinet formation in the next period by taking into account political considerations as the mouth of the resulting president and vice president as well as legal products. Of course, this article will complement some of the shortcomings in the previous articles. Thus, this article will discuss the juridical implications of the selection and appointment of state ministers who are concurrently the Chairman of a political party and will be continued with the reduction of the president's prerogative due to political interpretation so that the president only tends to accommodate party interests in carrying out his cabinet, and this article will be closed with the ideal concept of cabinet formation in a presidential government stelsel combined with a multi-party structure by considering simple majority party power by combining the relationship between central and regional governments in Indonesia with The Agency Model system. So that the stability of the country in running the wheels of government that also applies a multi-party-political structure can be expected by this article.

## METHOD

The research method used in discussing this matter is the normative research method, with primary legal material consisting of laws and regulations and secondary legal material consisting of literature. The approaches used are legislative approach and conceptual approach. Research is conducted with various efforts to achieve coherence truth by connecting the results of the identification of harmony between

applicable regulations and legal norms and / or principles that apply in society (Marzuki, 2017). Researchers use data analysis using a deduction pattern to explain various regulatory norms related to legal issues first and then explain legal facts later. Data analysis is organized systematically, regularly, logically, carefully, and explained holistically and in detail. Thus, the reasoning pattern is organized systematically so as to reach a conclusion from the legal issues studied (Disantara, 2021).

## RESULTS AND DISCUSSION

### 1. The Juridical Implications of a Minister of State Serving Concurrently as Chairman of a Political Party

The political leadership of a president will be easier to implement through a presidential system of government with a simple pluralist party system (two poles of power). However, if a multi-party system is implemented with a parliament that is not controlled by one party, the political leadership factor of a president will potentially not be able to garner support for his policy plans in a parliament consisting of many political parties. Too many political parties in the parliament makes inefficiency in the presidential system (Surbakti, 2011). Because of this, accommodating coalitions through ministerial positions is also an effort to make the system more efficient. The following is the composition of the parliamentary seats obtained by each political party in the 2019 elections.

In the background description, it has been described about the combination of the presidential system with a multi-party system that has led to a form of "compromise" by the president against the many parties that are in coalition during elections that are not oriented towards ideological and program similarities that have produced ministers from various circles, including those who become ministers are the Chairmen of Political Parties. The Ministers who also serve as General Chairmen in the Advanced Indonesia Cabinet are:

**Table 2.** Ministers who are also Chairpersons in the Onward Indonesia Cabinet

No.	Name of Minister	Ministerial Position	Party Name
1	Prabowo Subianto	Minister of Land	Chairman of Gerindra Party
2	Airlangga Hartanto	Coordinating Minister for Economic Affairs	Golkar Party Chairman
3	Zulkifli Hasan	Minister of Trade	Chairman of the National Mandate Party

Source: Advanced Indonesia Cabinet, <https://www.presidentri.go.id/kabinet-indonesia-maju>. (Results of Data Processing Researcher / Writer)

The existence of three political party chairmen who also served as ministers in the era of President Joko Widodo has caused a violation of the applicable laws and regulations, namely the State Ministry Law. By looking at the provisions of Article 23 of the State Ministry Law which explains that "ministers are prohibited from holding concurrent positions as: (a) other state officials in accordance with statutory regulations; (b) commissioners or directors of state companies or private companies; or (c) leaders of organizations funded by the State Budget and / or Regional Budget." Based on this explanation, it has actually been explicitly stated by the Ministry Law that a minister is prohibited from holding concurrent positions as the head of an organization funded by the APBN or APBD.

When referring to the regulation of political parties, it can be traced in the Political Party Law, precisely in Article 34 paragraph (1) of the Political Party Law concerning party finances which explains that "Political Party finances come from: (a)



membership fees; (b) lawful donations; and (c) financial assistance from the State Budget / Regional Budget." Of course, the description of Article 34 paragraph (1) of the Political Party Law is related to the financial problems of parties that also receive assistance from the APBN and APBD. Furthermore, the question that arises is whether the phrase "assistance" contained in Article 34 paragraph (1) of the Political Parties Law can be translated as the provision of funds by the State for a certain period or only at any time according to the wishes of the State itself? Of course, this will become more complicated because the explanation of the Article does not specify.

The article will explore the meaning of the phrase "assistance" through the interpretation commonly used by the legal discipline. According to the Big Indonesian Dictionary (KBBI), the phrase "aid" is translated as what is used to help. Aid has a meaning in the class of nouns or nouns so that aid can express the name of a person, place, or all objects and everything that is materialized. If continuing from the translation of the KBBI, of course, it can be continued by interpreting the phrase "goods or objects" which is the node point of the phrase "assistance" can be translated looking at the provisions of legal doctrine, according to R. Soesilo (Aries, 2013) in his book explains that Everything that is tangible, including animals (humans are not included), for example money, clothes, necklaces and so on. In the sense of goods enter also "electric power and gas", although intangible, but flowed by wire or pipe. These goods do not need economic price (value) (Wahid, 2023).

Thus, this article interprets the phrase "assistance" to mean that everything done by a legal subject to help another subject, with the nature of the assistance can be repeated or sustainable and can be spontaneous. Furthermore, if referring to the sentence from "assistance from the APBN / APBD as one of the three sources of finance for Political Parties as from the provisions of Article 34 letter (c) of the Political Party Law, it can be a further question, whether assistance from the APBN / APBD to the finances of Political Parties is sustainable or spontaneous through the distribution of grants?

This article traces that, assistance from the APBN / APBD to political parties is periodic or sustainable. The argumentation of this article is based on the provisions of Government Regulation Number 1 of 2018 concerning the Second Amendment to Government Regulation Number 5 of 2009 concerning Financial Assistance to Political Parties (PP BKPP) which negates that in essence political parties that get seats in the central DPR receive an injection of funds from the APBN of Rp. 1,000.00 (one thousand rupiah) per valid vote. Next, political parties that get seats in the Provincial DPRD get a funding allocation from the APBD of 1,200.00 (one thousand two hundred rupiah) per valid vote. Meanwhile, funding from the Regency / City APBD is 1,500.00 (one thousand five hundred) per valid vote to political parties that get seats at the DPRD level. The APBN allocation to political parties that get seats in the DPR is as follows:

**Table 3.** State budget allocations to political parties with seats in the DPR

No.	Party Name	Vote Acquisition	Amount of Funding Allocation from the State Budget
1	Indonesian Democratic Party of Struggle	27,053,961 National Valid Votes or (19.33%)	Rp. 27,053,961,000 (twenty-seven billion fifty-three million nine hundred sixty-one thousand rupiah)
2	Gerindra Party	17,594,839 National Valid Votes Or 12.57%	Rp. 17,594,839,000 (seventeen billion five hundred ninety-four million eight hundred thirty-nine thousand)
3	Golkar Party	17,229,789 National Valid Votes or 12.31%	Rp. 17,229,789,000 (seventeen billion two hundred twenty-nine million seven hundred eighty-nine thousand)
4	National Awakening Party	13,570,097 National Valid Votes or 9.69%	Rp. 13,570,097,000 (thirteen billion five hundred seventy million ninety-seven thousand rupiah)
5	NasDem Party	12,661,792 National Valid Votes or 9.05%	Rp. 12,661,792,000 (twelve billion six hundred sixty-one million seven hundred ninety-two thousand)
6	Prosperous Justice Party	11,493,663 National Valid Votes or 8.21%	Rp. 11,493,663,000 (eleven billion four hundred ninety-three million six hundred sixty-three thousand rupiah)
7	Democratic Party	10,876,057 National Valid Votes or 7.77%	Rp. 10,876,057,000 (ten billion eight hundred seventy-six million fifty-seven thousand rupiah)
8	National Mandate Party	9,572,623 National Valid Votes or 6.84%	Rp. 9,472,623,000 (nine billion four hundred seventy-two million six hundred twenty-three thousand rupiah)
9	United Development Party	6,323,147 National Valid Votes or 4.52%	Rp. 6,323,147,000 (six billion three hundred twenty-three million one hundred forty-seven thousand rupiah)

Source: Decree of the General Election Commission of the Republic of Indonesia," Pub. L. No. 1316/PL.01.9-Kpt/o6/KPU/VII/2019 (2019)

The obvious violation committed by the President in the appointment of political party leaders as ministers is a form of defiance of legal obedience. Thus, *mutatis mutandis* all political party leaders who also serve as state ministers are invalid and null and void, so that because the consequences are null and void, all policies and decisions should have no legal basis. Even though the Law on the Ministry of State does not provide assertiveness on organizations financed by the state, whether periodically or not, according to this article it does not really matter, because according to this article any organization that is financed by the state or gets funding from the state through the APBN or APBD is the same, so its leaders are prohibited from concurrently serving as state ministers.

Based on this description, this article also considers that the use of the president's prerogative by appointing political party leaders as ministers, which clearly violates the provisions of the State Ministry Law, can also be translated as a form of misconduct committed by the president, namely by violating the law. Thus, the president can be impeached as contained in Article 7A of the 1945 Constitution of the

Republic of Indonesia. Thus, the discussion on the implications of the appointment of the Chairman of a Political Party as a Minister by the president. Furthermore, the discussion will continue with a discussion of the ideal form of cabinet formation and ministerial appointments by considering simple majority party power.

## **2. Ideal Concept of Cabinet Formation in the Presidential Government Stelsel to Realize Good Governance**

As previously described, in the political process, policy formulation cannot be separated from the political constellation that has been built in the legislature (Reynolds, 2001). map of political power in the DPR in the formation of electoral regulations is still dominated by the same two forces after the 2014 presidential elections and also after the 2019 elections, which led to the formation of a government coalition and a coalition outside the government, although the supporting parties are relatively not permanent. This political condition will distinguish it from the political dynamics of the formation of electoral regulations in the previous period. Political conditions like this will distinguish it from the political dynamics of the formation of electoral regulations in the previous period. Thus, the division of rations in the cabinet is one of the middle ground options.

Looking at recent developments, the composition of coalitions has evolved quite dynamically. Although these developments are quite dynamic, there is a pattern that has consistently been applied in the last three elections, namely supporting the government and other attitudes that are critical of government policies. If you look at the provisions of the 2019 election result data recapitulation (Komisi Pemilihan Umum, 2019) the victory of the PDIP party is not much different from the vote acquisition of the other three parties, namely the Gerindra Party and the Golkar Party. PDIP won around 128 seats, Gerindra Party 78 seats and Golkar Party 85 seats (CNN Indonesia, 2019). With these results, it is possible to draw a map that the political power that there is no too strong dominance in the political constellation in the DPR. PDIP's victory with 19 percent of DPR seats can be said to be a simple majority, which raises the problem of getting the support of the majority of DPR votes in every policy decision.

Given the lack of majority party power and the possibility of a stalemate between the legislature and the executive, which has yet to be resolved. The president will tend to rely on the distribution of cabinet rations and other political positions as compensation for political parties that provide support in parliament. Such compensation occurs because the high level of legislative and executive conflict in compromise presidentialism causes the government to run ineffectively, and the right of inquiry and withdrawal of support always become tools for parties to negotiate with the president (A. R, 2010). This phenomenon occurs in multiparty systems because it is very difficult for the president to get majority parliamentary support. In addition, political polarization and fragmentation in parliament are also quite high in multiparty systems.

Thus, the implementation of the presidential system combined with a multi-party system has degraded in quality and is ineffective in terms of its application, because the basic principles of the presidential system have been reduced due to current political interpretations. Finally, it is not an exaggeration if the current presidentialism system is reductive. Based on this reality, there are several political institutional designs that need to be rescheduled. According to Hanta (A. R, 2010) in his writing, these designs include: First, simplifying the number of political parties in parliament through elections. This can be done by increasing the number of parliamentary



thresholds. Second, the simplification of the power of political parties in parliament through reducing the number of factions with the design of parliamentary institutions, such as the regulation of parliamentary coalitions directed to two political blocks (supporters and opposition), and institutional strengthening and authority of the Regional Representative Council (DPD) to balance the DPR. Third, the design of presidential institutions to strengthen the position of the president when dealing with parliament, this can be implemented through strengthening the cabinet. The actualization of this design is for example like giving the president the right to veto when forming laws.

Based on Hanta's proposal for reform, this article disagrees with the institutional design of the president, especially by giving him the right to veto. This is based on the fact that in the formation of laws, the DPR is also not maximizing its performance in the field of legislation (Saraswati, 2012). Actually, this article also focuses more on the addition of a parliamentary threshold to create political parties that become simple so that they can balance the duties of the executive. By reducing the number of parties in the parliamentary institution, it also means that the number of factions in the parliament will be reduced. Thus, political processes in parliament become simpler and more efficient within the framework of proportional checks and balances.

It is emphasized that the central position of the president in executive power in the presidential system is due to the fact that the selection, appointment and formation of the cabinet is the absolute right of the president. This absolute right or prerogative is a very fundamental principle in the presidential system. However, today, if you look at the composition of President Jokowi-Ma'ruf Amin's cabinet, where many ministers are from the party elite, even the party chairman has also become a minister, it is clear that the president's prerogative has been reduced due to political interpretation, for this political interpretation, the formation of the cabinet is strongly influenced by coalition parties.

Indonesia as a country that has adopted the principles of a modern legal state, should be realized through good governance, accountability and professionalism (good governance). Thus, to realize the implementation of government in accordance with the lines of good governance, it can be started with the process of selecting ministers who are not only concerned with the political process, but the election must be based on aspects of the professionalism of prospective ministers later. The demand for professionalism of a minister in assisting the president has become a public desire that until now is still only utopian. In fact, the development of the modern world requires the presence of ministers who can synergize.

If you look at the actions of several "unscrupulous" ministers in the era of President Jokowi-Ma'ruf Amin, it turns out that they do not reflect professional bureaucratic officials. Launching the year-end report issued by Indonesia Corruption Watch (ICW) in 2022 (Indonesia Corruption Watch, 2022) it was stated that the Jokowi government again received a bad gift about eradicating corruption where Indonesia's Corruption Perception Index (IPK) plunged from a score of 38 to a score of 34 or ranked 110 out of 180 countries. According to TI Indonesia's records, Indonesia is now ranked in the third most corrupt country in the world and in Southeast Asia is far below Singapore, Malaysia, Timor Leste, Vietnam and Thailand.

According to ICW(Indonesia Corruption Watch, 2022) the allowance of multiple positions of public officials, bureaucratic apparatus with fat accounts both at the central and regional levels has caused many potential losses to the state. Recently, the

corruption case of the 4G BTS national strategic project involving the Minister of Communication and Information Jhonny G Plate as a suspect was revealed. The involvement of the Minister of Communication and Information Jhonny G Plate is not new, because before the determination of Jhony G Plate as a suspect in the 4G BTS corruption, there were several ministers in the era of President Jokowi who also did the same thing, such as Edhy Prabowo as Minister of Maritime Affairs and Fisheries who was caught in bribery related to cultivation and export licenses for lobster seeds, Juliari Batubara as Minister of Social Affairs who committed corruption of the Covid-19 Social Assistance Fund (Bansos) (Putri, 2023).

This fact is certainly the result of the inability of the ministers selected and appointed by the president to do their jobs professionally. Even in carrying out their duties, there is a mixture of obligations to groups, political parties and so on (Ismail, 2009, p. 34). In fact, if we look at the principles of bureaucracy in modern government administration, it requires the principle of work and rational recruitment so that it can produce a condition that *the right man on the right place* (Kumorotomo, 2011). Since the establishment of the Indonesian State, it has been intended to protect all the interests of the Indonesian people. Protecting the interests of the people or the public interest is a form of state existence. The concept of public interest is derived from the concept of democracy adopted by Indonesia where, in a democratic constitutional system, state authority comes from the consent of the governed (Tome, 2012).

Although in fact, efforts to protect the public interest are sometimes carried out unilaterally by state officials including state ministers. The tendency to protect the public interest that only targets certain groups has unwittingly resulted in distrust of the small community, so that this distrust can be directed into an attempt to take actions that have the potential to destabilize the government. For this reason, the selection of members of the State Minister by the president and the formation of the cabinet by the president must pay attention to the principles or principles of good governance, such as the selection and appointment of ministers by accommodating the cabinet zakken and also the relationship between the central and regional governments so that the elected minister also knows what is needed by the region and can also be the selection and appointment of ministers will be more accountable and accountable if using the merit system.

The desire of the Indonesian people to have a professional working cabinet (zekken cabinet) has long been unrealized. In fact, if we look at the first use of the zekken cabinet, namely during the government in the 1950s when it was the era of the Natsir cabinet and the second was the Wilopo cabinet formed on June 3, 1953, but the two zaken cabinets were not able to last long even less than 1 year had been dissolved (Astuti, 2022). This was due to the lack of support from parliament where the coalition parties withdrew their ministers so that the Prime Minister could easily be stepped down. A zaken cabinet is a cabinet in which the ministers are professional experts in their fields and do not merely represent political parties.

As described earlier through the breakdown of the number of cabinet members from political parties and those from non-political parties, the change of cabinet is very clear pattern where the formation of the cabinet fulfills the representation of coalition political parties rather than taking professional Ministers. Of course, the phrase "professional" itself is very interesting to discuss further. Conventionally, professionals refer to groups of people who have capabilities according to their educational background, experience and have high integrity. However, from the point of view of

contemporary thinking, quoting Gus Dur's thoughts, that professionals are not only seen from a person's expertise which is considered in accordance with the institution he handles. But what is more important according to Gus Dur is a person's ability to create a healthy work climate in the institution and be able to apply expertise responsibly (Madjid, 2009).

With the zekken cabinet, it is expected that the ministers who have been appointed by the president are people who uphold the work ethic, focus on the duties and functions of the institution and are highly responsible for their work, so that the ministerial institutions they lead are able to realize the president's vision-mission and program (Lelisari et al., 2020). The Zekken cabinet, which carries the concept that ministries should be led by someone who is a professional in their field, does not limit the ministry leaders whether they are pure professionals or from political parties, as long as they are committed to the roles, duties and responsibilities in the institutions/ministries they lead. However, public distrust of ministers with political party backgrounds is due to the arrogance of political parties over the interests of the nation and state.

Based on this description, this article asserts that the formation of a zekken cabinet with the intention of creating a minister who serves is someone who is professional certainly does not legitimize that the position of a minister must be from the political party sector or non-party (Strong, 1960). The point of emphasis is that regardless of the background of a minister appointed by the president, he should be able to behave professionally as described in the description above (Huda, 2014). Therefore, to create a professional minister with a political party background whose level of trust by the public is decreasing, according to the article, a form of bargaining power can be given, for example, Maximizing the role of political education and communication functions, accommodating aspirations and as a means of community participation, as well as political control functions and regulating conflicts in society with methods of applying ethical and moral standards and modern political party management, especially for the recruitment and regeneration process based on standard rules.

Thus, the zekken cabinet, in which a minister will come from a political party, is also due to his professionalism, related to the matter in accordance with the field in the ministry institution, a very simple thing can be known a sich is through the educational background of a minister and the experience of a minister in taking care of a form of work that is in line with the duties of the ministry institution. Also, the formation of the zekken cabinet still refers to and is based on the State Ministry Law. Furthermore, the zekken cabinet can also be applied with the merit system method commonly known in the world of constitutional law.

By definition, the merit system is a procedure for placing someone in a position based on their competence (Islamic Azad University, Tehran Shomal branch, Tehran, Iran et al., 2019). Through this merit system, the recruitment of officials in structural positions is not based on subjective evaluations that override professionalism. Generally, the merit system is always applied to the selection process for career positions, such as the State Civil Apparatus (ASN) or Civil Servants (PNS) (Indika, 2019). However, it is not wrong of course if this merit system can be applied during the selection or determination of the cabinet, of course through competency-based indicators through adjustments to the vision and mission of the elected president and vice president. Thus, objectivity in the selection of ministers will become clear and

minimize the potential or possibility of ministerial positions being occupied by those who are not competent.

## CONCLUSION

Based on the description in the discussion of this article, it can be concluded that the discourse related to the appointment of political party leaders as ministers by not releasing their positions as party leaders is as follows: First, that the appointment of political party leaders as state ministers should and should be forbidden by Law Number 39 of 2008 concerning the Ministry of State, because in essence political parties are organizations that also get funding from the APBN or APBD. By appointing political party leaders as ministers without releasing their positions as leaders of political parties, the president who chose them has committed a despicable act, namely not complying with applicable laws and regulations, so that they have the potential to be impeached as contained in Article 7A of the 1945 Constitution of the Republic of Indonesia. Secondly, the collaboration of the presidential system with the multi-party system has resulted in the formation of a "compromise" cabinet which has resulted in the reduction of the meaning of the president's prerogative itself, thus the prerogative which is a presidential authority has essentially been usurped by the coalition parties, so that the resulting cabinet is not as it should be.

Thus, by increasing the parliamentary threshold from the current one, it will be an offer to the presidential government system with a multi-party structure to maximize the role and performance of the regime in realizing the ideals of the state. Third, of course, with the low level of trust in ministers with political party backgrounds, Indonesia should implement a system that can produce a professional cabinet, namely through a *zekken* cabinet with a merit system method. Through the *zekken* cabinet with the merit system method, the needs of each region are also taken into account, especially ministerial institutions that are directly related to both policies and authority with local governments. So that a cabinet can be produced that is performance stable and professional and politically has the power with minimal political party intervention.

## Reference

- A. R, H. Y. (2010). *Presidensialisme setengah hati: Dari dilema ke kompromi*. PT Gramedia Pustaka Utama.
- Aries, A. (2013, February 19). *Hal-hal yang Dikategorikan "Barang" Menurut Hukum Pidana*. <https://www.hukumonline.com/klinik/a/hal-hal-yang-dikategorikan-barang-menurut-hukum-pidana-lt510e18862fa58/>
- Astuti, S. J. W. (2022). *Zaken Kabinet, Mungkinkah?* Bhirawa Online. <https://www.harianbhirawa.co.id/zaken-kabinet-mungkinkah/>
- Biro Pers, Media dan Informasi Sekretariat Presiden - Kementerian Sekretariat Negara. (2019). *Kabinet Indonesia Maju • Presiden RI*. Presiden RI. <https://www.presidentri.go.id/kabinet-indonesia-maju/>
- CNN Indonesia. (2019). *575 Anggota DPR RI Periode 2019-2024 Resmi Dilantik nasional*. <https://www.cnnindonesia.com/nasional/20191001083709-32-435557/575-anggota-dpr-ri-periode-2019-2024-resmi-dilantik>
- Disantara, F. P. (2021). Tripartite Collaborative Institutions: Skema Konvergensi Institusi Untuk Mewujudkan Ketahanan Siber Indonesia. *Istinbath: Jurnal Hukum*, 18(2), 194–215. <https://doi.org/10.32332/istinbath.v18i2.3641>



- Fahlevi, R., & Huda, D. (2020). Kolaborasi Kabinet Zaken dan Kabinet Koalisi dalam Pembentukan Kabinet Efektif. *Jurnal Ilmiah Mimbar Demokrasi*, 19(02), 48–54. <https://doi.org/10.21009/jimd.v19i02.14939>
- Huda, N. (2001). Hak Prerogatif Presiden dalam Perspektif Hukum Tata Negara Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 8(18), 1–18. <https://doi.org/10.20885/iustum.vol8.iss18.art1>
- Huda, N. (2014). *Perkembangan Hukum Tata Negara: Perdebatan dan Gagasan Penyempurnaan* (Yogyakarta). FH UII Press.
- Indika, A. (2019). Perlindungan Hukum Terhadap Pegawai Negeri Sipil Akibat Pelanggaran Sistem Merit Pada Proses Pengisian Jabatan Pimpinan Tinggi. *Jurist-Diction*, 2, 1559. <https://doi.org/10.20473/jd.v2i5.15217>
- Indonesia Corruption Watch. (2022). *Laporan Akhir Tahun ICW 2022 | ICW*. <https://antikorupsi.org/id/laporan-akhir-tahun-icw-2022>
- Islamic Azad University, Tehran Shomal branch, Tehran, Iran, Dadatashzadeh, A., Mehr, A. B., Islamic Azad University, Chaloos branch, Mazandaran, Iran, Afshari, M., & Islamic Azad University, Damavand, Iran. (2019). Good Governance and Anti-Corruption Based on Patterns of Ombudsman Management. *Public Administration Issues*, 6, 41–60. <https://doi.org/10.17323/1999-5431-2019-0-6-41-60>
- Ismail, H. M. (2009). *Etika Birokrasi: Dalam Perspektif Manajemen Sumberdaya Manusia* (Malang). Ash-Shiddiqy Press.
- Junaidi, V. (2009). Menata Sistem Penegakan Hukum Pemilu Demokratis Tinjauan Kewenangan MK atas Penyelesaian Perselisihan Hasil Pemilu. *Jurnal Konstitusi*, 6(3), 103–143.
- Kausar, R., & Gaussyah, M. (2021). Kedudukan Wakil Menteri Dalam Sistem Ketatanegaraan Indonesia the Position of the Vice Minister in the Indonesian Constitutional System. *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan*, 5(2), Article 2.
- Komisi Pemilihan Umum. (2019). *Info Publik Pemilu 2019*. <https://www.kpu.go.id/page/read/1099/hasil-pemilu-2019>
- Kumorotomo, W. (2011). *Etika administrasi negara* (Cet. X). PT. Raja Grafindo Persada.
- Lelisari, L., Imawanto, I., Hamdi, H., & Ahmad, A. (2020). Peningkatan Pemahaman Masyarakat Tentang Pengangkatan dan Pemberhentian Perangkat Desa melalui Sosialisasi Peraturan Perundang-Undangan No 6 Tahun 2014. *JPMB: Jurnal Pemberdayaan Masyarakat Berkarakter*, 3(2), Article 2.
- Linz, J. J. (1994). Presidential or parliamentary democracy: Does it make a difference? *The failure of presidential democracy, 1994*, ISBN 0801846390, págs. 3-88, 3–88. <https://dialnet.unirioja.es/servlet/articulo?codigo=7972358>
- M. Shofwan Taufiq, T. N. (2021). Eksistensi Kementerian Negara Dalam Sistem Presidensial Berdasarkan Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara. *Muhammadiyah Law Review*, 5(1), 1. <https://doi.org/10.24127/lr.v5i1.1496>
- Madjid, N. (2009). *Cita-Cita Politik Islam* (JAKARTA). Dian rakyat.
- Mainwaring, S. (1993). Presidentialism, Multipartism, and Democracy: The Difficult Combination. *Comparative Political Studies*, 26(2), 198–228. <https://doi.org/10.1177/0010414093026002003>
- Marzuki, P. M. (2017). *Penelitian Hukum* (Edisi Revisi). Prenada Media Group.



- Putri, A. M. H. (2023). *Daftar Menteri Tersandung Korupsi, Era Jokowi Terbanyak?* CNBC Indonesia. <https://www.cnbcindonesia.com/research/20230519073913-128-438578/daftar-menteri-tersandung-korupsi-era-jokowi-terbanyak>
- Rannie, M. (2021). Hak Prerogatif Presiden di Indonesia Pasca Perubahan UUD 1945. *Simbur Cahaya*, 27(2), Article 2. <https://doi.org/10.28946/sc.v27i2.1040>
- Rauf, S. H. F. N. M. (2009). *Sistem Presidensial & Sosok Presiden Ideal* (Yogyakarta). Pustaka Pelajar.
- Republik Indonesia. (2008). *Pasal 34 ayat (2) Undang-Undang Republik Indonesia Nomor 2 Tahun 2008 Tentang Partai Politik*. Database Peraturan | JDIH BPK. <http://peraturan.bpk.go.id/Details/38859/uu-no-2-tahun-2008>
- Reynolds, A. (2001). Merancang Sistem Pemilihan Umum, dalam Juan J. Linz, et. al., *Menjauhi Demokrasi Kaum Penjahat: Belajar Dari Kekeliruan Negara-Negara Lain*. Bandung: Mizan.
- Saraswati, R. (2012). Desain Sistem Pemerintahan Presidensial Yang Efektif. *Masalah-Masalah Hukum*, 41(1), Article 1. <https://doi.org/10.14710/mmh.41.1.2012.137-143>
- Siregar, Moh. B., Haruni, C. W., & Anoraga, S. (2021). Analisis Larangan Rangkap Jabatan Menteri Yang Berasal Dari Unsur Partai Politik Dalam Sistem Ketatanegaraan Indonesia. *Indonesia Law Reform Journal*, 1(1), 88–110. <https://doi.org/10.22219/ilrej.v1i1.16127>
- Strong, C. F. (1960). *Modern Political Constitution: An Introduction to the Comparative Study of Their History and Existing Form*. Sidgwick & Jackson.
- Surbakti, R. (2011, April 3). *Koalisi dan Efektivitas Pemerintahan Halaman all*. KOMPAS.com. <https://nasional.kompas.com/read/2011/04/04/04502013/koalisi.dan.efektivitas.pemerintahan>
- Tome, A. H. (2012). Reformasi Birokrasi Dalam Rangka Mewujudkan Good Governance Ditinjau Dari Peraturan Menteri Pemberdayaan Aparatur Negara Dan Reformasi Birokrasi Nomor 20 Tahun 2010. *Jurnal Hukum Unsrat*, XX(3), Article 3.
- Wahid, D. N. (2023). Judicial Partner: Aktualisasi Nilai Pancasila Terhadap Pembentukan Badan Pembinaan Ideologi Pancasila. *Pancasila: Jurnal Keindonesiaan*, 3(1), 57–69. <https://doi.org/10.52738/pjk.v3i1.148>
- Wahid, D. N., & Haruni, C. W. (2023). Konstruksi Ideal Sistem Parleментарy Threshold Dalam Perspektif Demokrasi. *Jurnal Hukum Kenegaraan*, 1(1), Article 1. <https://journal.aphtnhan-jatim.org/index.php/JHK/article/view/3>
- Wahid, D. N., Ramadhan, F., & Utami, T. P. (2022). Constitutionality of President's Authority Regarding Lockdown Policy During the State's Emergency. *The Indonesian Journal of International Clinical Legal Education*, 4(1), 41–60. <https://doi.org/10.15294/ijicle.v4i1.54040>
- Wijayanti, S. N., & Iswandi, K. (2021). Sinergitas Kabinet Presidensiil Multipartai pada Masa Pandemi Covid-19 di Indonesia. *Jurnal Konstitusi*, 18(2), 437. <https://doi.org/10.31078/jk1828>