



# The President's Legal Position in Doing The Reshuffle Of The Cabinet

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## ARTICLE INFO

### **Article history:**

Received Jul 9, 2022

Revised Jul 20, 2022

Accepted Aug 11, 2022

### **Keywords:**

President;  
Cabinet reshuffle;  
Prerogative.

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## ABSTRACT

The president has a very strong position in a government that adheres to a presidential system of government because in addition to being the head of government, the president is also the head of state. The President is based on Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states: The President appoints and dismisses ministers. The power that the President has over the powers granted by the Constitution of the Republic of Indonesia directly without interference from other institutions. This study aims to determine the legal position of the president in carrying out a cabinet reshuffle according to laws and regulations and to find out the legal consequences of a cabinet reshuffle carried out by the President. This research method uses normative legal research. The results of this study indicate that the power of the President in running the government is as the chief executive. In addition to the President and also the Vice President as the main center in the government, ministers are assisted. These ministers are not ordinary high-ranking employees but are technically executor of the president's duties. The president has a very strong position in a government that adheres to a presidential system of government because in addition to being the head of government.

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## ABSTRAK

Presiden memiliki kedudukan yang sangat kuat dalam pemerintahan yang menganut sistem pemerintahan presidensial karena selain sebagai kepala pemerintahan, presiden juga sebagai kepala negara. Presiden berdasarkan Pasal 17 ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 yang menyatakan: Presiden mengangkat dan memberhentikan menteri. Kekuasaan yang dimiliki Presiden atas kekuasaan yang diberikan oleh Undang-Undang Dasar Negara Republik Indonesia secara langsung tanpa campur tangan dari lembaga lain. Penelitian ini bertujuan untuk mengetahui kedudukan hukum presiden dalam melakukan perombakan kabinet menurut peraturan perundang-undangan dan untuk mengetahui akibat hukum dari perombakan kabinet yang dilakukan oleh Presiden. Metode penelitian ini menggunakan penelitian hukum normatif. Hasil penelitian ini menunjukkan bahwa kekuasaan Presiden dalam menjalankan pemerintahan adalah sebagai kepala eksekutif. Selain Presiden dan juga Wakil Presiden sebagai pusat utama dalam pemerintahan, para menteri dibantu. Para menteri ini bukanlah pegawai biasa yang berpangkat tinggi, tetapi secara teknis merupakan pelaksana tugas presiden. Presiden memiliki kedudukan yang sangat kuat dalam pemerintahan yang menganut sistem pemerintahan presidensial karena selain sebagai kepala pemerintahan.

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## I. INTRODUCTION

That in principle the presidential system of government adopted by modern countries that claim to be very democratic countries in carrying out their government. That the President has a very strong

position in a government that adheres to a presidential system of government because apart from being the head of government, the president is also the head of state. That the position of power of a president has been regulated in the provisions of laws and regulations. The President's power to appoint and dismiss ministers is based on Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia after the amendment. In the practice of state administration in the presidential concept where the exercise of absolute power is left to the President and here there is no involvement from other institutions whose position is equal to the President. The appointment or dismissal of a minister can be done while the President's term of office is in progress.

That the task of administering government is to carry out the duties and authorities of the government in accordance with the constitution which is outlined in the provisions of the existing regulations so that everyone, whether state officials or the public, must obey the law. Cabinet reshuffles have always overshadowed the current government, which is not only related to objective measures of cabinet performance but is also closely related to the subjective problem of power-sharing politics. Whereas as an assistant to the president in carrying out his duties and authorities as a minister who is appointed and appointed, politically and subjectively it can be categorized as having no uncertainty because at any time he can be dismissed in a ministerial position. That the cabinet reshuffle has sparked a debate about strengthening the presidential system. That is, the basic considerations for taking a reshuffle step or not must be in accordance with the prerogative authority of the president as head of government. Seeing the prerogative of the authority possessed by a president in reshuffling his assistants, it is constitutionally valid. A cabinet reshuffle can simply be interpreted as an event where the head of government of a country rotates or changes the composition of ministers in the cabinet. The author is interested in conducting research on the power of a President who is so very special, said to be so special because there is a power given by the 1945 Constitution to reshuffle ministers in each ongoing period of government as determined by the legislation.

The Presidential System can be seen from the main characteristics: first, the President is always the head of government and is elected by popular vote or in the case of the US by an electoral college; and second, the term of the President has the right to retain the cabinet ministers of his choice regardless of the composition in the DPR (Abubakar Eby Hara, 2014). In addition, there are four characteristics that describe the presidential system according to Ribkha Annisa Octovina (2018), namely:

1. It is based upon the separation of power principles.
2. The executive has no power to solve the legislature nor must be resign when he loses the support of the majority of its membership.
3. There is no mutual responsibility between the president and his cabinet, the latter is, wholly responsible to the chief executive.
4. The executive is chosen by the electorate. Thus, according to S.L.

Then Ribkha Annisa Octovina (2018) states the characteristics of the presidential system are as follows:

1. It is based on the principles of separation of powers.
2. The executive does not have the power to dissolve parliament nor does it need to stop when it loses the support of a majority of parliamentarians.
3. In this case, there is no reciprocal responsibility between the president and his cabinet, because in the end the entire responsibility rests entirely on the president (as head of government).
4. The president is directly elected by the voters.

From the description above, it can be stated several characteristics of a presidential government system, namely:

1. President as head of state and as head of government
2. The president is not elected by the representative body but by the electoral council and later the role of the electoral council is no longer visible so that it is elected by the people

3. The president has the same position as the legislature
5. The Cabinet is formed by the President, so that the Cabinet is responsible to the President
6. The president cannot be overthrown by the legislature, and vice versa the president cannot dissolve the legislature.

That it needs to be emphasized regarding the presidential system of government in which there is a time limit for the presidential power to exercise which is regulated in more detail and firmly in the 1945 Constitution of the Republic of Indonesia, how long the power is exercised and the government is more stable, the executive power in this case the president and vice president and his assistants. as the presidential system of government separates strict powers between the Executive, Legislative and Judiciary institutions, so that between one another they should not be able to influence each other. Ministers are not responsible to the Legislature, but are responsible to the President who elects and appoints them, so that these ministers can be dismissed by the president without the approval of the legislative body Ribkha Annisa Octovina (2018).

The power of the president in the appointment of ministers in Indonesia The presidential system is only one system of government besides the parliamentary system and the semi-presidential system as well as several other variations caused by the need for different situations and conditions that give birth to forms of combination (quasi) (Wahyu Gunawan, 2018 ).

The general characteristics of the presidential government system according to Mahfud MD in Abdul Ghoffar (2009) include:

1. The President is the head of state and head of government, whose term of office has been determined with certainty by the constitution;
2. The president is the head of government (executive) who leads the cabinet. All cabinet members are appointed, dismissed and are responsible to the president
3. The president is not elected by the legislature, but is elected by a number of voters (elected directly by the people. So he is not part of the legislature as in a parliamentary system of government;
4. The president is not responsible to the legislature, and cannot be overthrown by the legislature, except through an impeachment or impeachment mechanism;
5. As a counterpart, the president also cannot or does not have the power to dissolve the legislature;
6. The positions of the legislative and executive bodies are equal and equally strong.

Prerogative rights are defined as the power of the president in leading a state government. As is known, the President as the highest position in the country holds the power (chief executive) which is equipped with various constitutional rights (Kumparan). That the President's power is very special in a government where a President is the holder of control in the government because in this case the ministers are appointed and dismissed by him as long as they do not violate the provisions of the legislation. Whereas there is a prerogative which, linguistically, comes from the Latin *praerogativa* (chosen as the first to vote), *praerogativus* (to be asked to be the first to vote), *praerogare* (to be asked before asking for the other) ( Bagir Manan, 2000). And it is necessary to know that as a legal institution (constitutional law), the prerogative comes from the British constitutional system. Until now, the prerogative remains one of the sources of law, especially the source of constitutional law in the United Kingdom. It is not easy to formulate the notion of prerogative power, both because of its historical source as a legal institution and its scope. At this time, prerogative power is increasingly being limited, either because it is regulated by law or restrictions on how to implement it (Ni'matul Huda, 2001).

That in his historical literature and books about the existence of prerogative rights are the remnants of the developing authoritarianism kingdom that was very extraordinary growing in Europe when it happened On June 15, 1215 at that time the ruling was King John. When the Magna Carta was ratified, there was a very fundamental change because the charter contained the privileges of high nobles. That the existence of the charter is considered a milestone for a very significant change

that initiates efforts to involve the people in the management of power which had never existed before. After the Charter was released, slowly but surely. That this wind of change demands a very powerful wave by the people because the rights that were once so absolute held by the king/queen are starting to lose one by one the power they have which is no longer so prominent. From the history of the existence of the Perogratif Rights of a King/Queen, it indirectly begins to erode or shrink because why is it not regulated in law.

Based on the description of the previous background, the problems raised in this journal are as follows:

Formulation of the problem

1. What is the legal position of the president in carrying out cabinet reshuffles according to the laws and regulations?
2. What are the legal consequences of the President's cabinet reshuffle?
- 3.

## II. METHOD

That research is basically, "a search effort" and not just observing carefully the object. Research is a translation from English, namely research, which comes from the word re (return) to research (search). Thus, the region logically means "to seek back" (Bambang Sunggono, 2002).

According to Sorjono Soekanto, this normative legal research is a legal research conducted by examining library materials or secondary data. This research can also be called normative legal research or library law research (Soerjono Soekanto, 2001). In this research, what will be done is to see legally or normatively regarding the appointment and dismissal of the President.

## III. RESULT AND DISCUSSION

### 1. Presidential Legal Position

Whereas basically a President has the power to appoint, dismiss and change the positions of ministers in the cabinet he leads and that is very commonly done by the President. For mutual knowledge, the President's legal basis for the dismissal or appointment of a minister is stated in the provisions of Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states:

"The president is assisted by the ministers of state". These ministers are appointed and dismissed by the President. Each minister in charge of certain affairs in the government consists of:

- a. Government affairs whose ministerial nomenclature is expressly stated in the 1945 Constitution of the Republic of Indonesia
- b. Government affairs whose scope is stated in the Constitution of the Republic of Indonesia
- c. the Indonesian public in 1945; and
- d. Government affairs in the context of sharpening, coordinating, and synchronizing government programs. The power of government in this case is held by the President who is so strong in carrying out the policies taken as stipulated in the provisions of the legislation. In addition to the interests of synchronization and coordination of coordination ministry affairs. When viewed in the context of a presidential government, all ministries are under his control, which means direct supervision. For then the provisions are specifically regulated further under the nomenclature of the "coordinating ministry".

The coordinating ministry is led by the coordinating minister. The coordinating ministry has the task of coordinating, synchronizing, and controlling the affairs of the ministries in administering the government in the field of synchronization, and controlling the affairs of the ministries in the administration. The work of the minister in administering the government, in this case public services or in any other form, is actually carrying out the functions of a President in a technical sense and of course the most principled thing is to always coordinate, synchronize, and control the affairs of government among others. Ministry is under the command of a President. The exercise of this power in state practice has so far been absolutely left to the president without the involvement of other state institutions. Dismissal of ministers by the president can be done in the middle of his term of office. All of these actions in practice can be carried out behind closed doors without the need to seek advice, obtain proposals and accountability from other state institutions, because this is the prerogative of the president.

That then it is also necessary to know that the President regarding the formation, modification and dissolution of state ministries, at this time the president cannot do it immediately, because all of this has been regulated in the Act. That in Law no. 39 of 2008 concerning the Ministry of State as stipulated in Article 1 point (2) states that the next minister of state is an assistant to the President who leads the Ministry. The head of government and technically there are assistants, namely a minister who leads the ministry and under it there are departments. These departments are career officials whose leadership is a minister who in this case is not a career official but holds a political position in the context of a public office in a government.

That the minister is directly responsible to the president regarding the ministry he leads. However, these departments which are under the ministry are not responsible to the President but the responsibility lies with the minister. Whereas the explanation part of the 1945 Constitution states that "ministers are not ordinary high-ranking employees." Although the provisions of the 1945 Constitution of the Republic of Indonesia indicate that state ministers depend on the President for both his appointment and dismissal, these ministers are not ordinary high-ranking employees (Wahyu Gunawan, 2018). The absolute power of the President is given by the Constitution of the Republic of Indonesia. And every ministry administers the government and moreover every minister must submit and obey the President and at any time a President can dismiss and appoint a minister according to his will and will but still pay attention to the provisions of laws and regulations and in addition to that must look at economic, political, and social aspects. social and legal.

## 2. Position of Minister in Presidential System

Whereas the Ministry is domiciled in the national capital, namely Jakarta and is under and responsible to the President. The legal arrangements are broadly as stated in the provisions of Article 17 of the 1945 Constitution which states:

- a. The President is assisted by ministers of state.
- b. The Ministers are appointed and dismissed by the President.
- c. Each minister is in charge of certain affairs in the government.
- d. The formation, amendment, and dissolution of state ministries are regulated in law.

That the ministry post is a government apparatus in charge of certain affairs within the government. These ministries are technical administrators within the government in the sense that the ministries work under the orders of the President but the reference in its implementation must always be based on the provisions of laws and regulations and besides

that each ministry must coordinate with each other so that they do not overlap in carrying out their duties. That the minister of state is an assistant to the President who leads the Ministry. And the Ministry Institutions are institutions that work under the orders of the President and the Prime Minister, besides that there are other forms of the President and the Prime Minister and others.

### 3. Appointment and Dismissal of Ministers

A cabinet reshuffle (English: cabinet reshuffle, by the media in Indonesia it is often just called a reshuffle) is an event in which the head of government rotates or changes the composition of ministers in his cabinet. The President in running the government is assisted by one Vice President. And also assisted by ministers of state. Each minister is appointed and can be dismissed by the President. For the requirements for being appointed as a minister, a person is not required to have a field of expertise or professionalism of each candidate for minister, it is enough that a candidate for minister must have integrity and a good personality. If you look at the provisions that do not require any expertise or professionalism, even more so with the level of education possessed by a candidate for minister who will be appointed by the President. That cadres from political parties have the same opportunity to propose to the President to be appointed or appointed as ministers. The president with political parties is a coalition in the government so they have the right to propose their cadres as ministers and there are no specified requirements. Then the President also endorsed ministers from certain political party coalitions, there were also those from professional circles who paid attention to the level of education.

So the President can appoint ministers from political parties in the sense of coalitions as well as professionals and education circles and all of this depends on the decision of the President regarding the appointment or dismissal of ministers. The president has very broad authority in terms of dismissing a minister. And it is possible for a President to dismiss anyone, either ministers or ministerial-level officials who are still under his subordinates from the executive or others for various reasons. There are conditions, either objective or subjective depending on the point of view of each seen in the dismissal of a minister by the President, so this is very varied. Then on the basis of other reasons as determined by the President. That it is common for a president to do this to anyone who is dismissed by a minister under any circumstances and to whoever the minister or ministerial-level official is.

That every elected president has the prerogative or special right to choose the candidate he wants to be appointed as a minister who is considered capable of serving in certain fields in this matter that he controls to assist the work of a president. Political parties and the President in building a government in the next period when elected will make a bargain in the sense that the political party is part of a coalition as a supporter of the president in the presidential and vice presidential elections. That indeed to create an effective and strong government, a coalition of political parties must be formed to support the work of the president and his assistants. In forming a cabinet or in a cabinet reshuffle, the president must be supported by a coalition party, the President cannot appoint from a professional circle or fill the cabinet, it will not be effective the government he builds and runs. So the basic bag is the President is enraged in the sense that inevitably he has to form a coalition cabinet in the government and that is commonly done in every government because it is also the prerogative right of a President in determining the cabinet because in the end it depends on the existence of coalition parties formed together. -same. In the end, the prerogative rights or privileges of the president cannot be used absolutely or completely in accordance with the

will of his heart. Therefore, the formation of a cabinet has become an obligation to accommodate ministers from political parties who are members of coalition parties. With the accommodation of ministers from certain political parties, it is hoped that the ministers who are appointed or appointed from coalition political parties can work hard in accordance with the expectations and requests of the president for each field of the ministry they lead to create change for the people.

#### IV. CONCLUSION

That the President's power in running the government is as the chief executive. In addition to the President and also the Vice President as the main center in the government, ministers are assisted. These ministers are not ordinary high-ranking employees but are technically executor of the president's duties. The president has a very strong position in a government that adheres to a presidential system of government because in addition to being the head of government, the president is also the head of state. The President is based on Article 17 paragraph (2) of the 1945 Constitution of the Republic of Indonesia after the amendment. Whereas as stipulated in the above rules, the President may appoint and dismiss ministers in accordance with the authority granted by the 1945 Constitution of the Republic of Indonesia.

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