**BALTIC JOURNAL OF LAW & POLITICS**
A Journal of Vytautas Magnus University
VOLUME 16, NUMBER 3 (2023)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 16:3 (2023): 01-16
DOI: 10.2478/bjlp-2023-000001

# Arrangement and Implementation of the President's Prerogative in Appointment and Dismissal of Ministers of State in the Presidential System in Indonesia

**Harpani Matnuh**
Universitas Lambung Mangkurat, Indonesia
harpani.matnuh@yahoo.com

**Chairil Faif Pasani**
Universitas Lambung Mangkurat, Indonesia

**Susan Fitriasari**
Universitas Pendidikan Indonesia

Received: December 06, 2022; reviews: 2; accepted: January 19, 2023

## Abstract

The purpose of this research is to analyze the arrangement and implementation of the prerogative of the President of Indonesia in appointing and dismissing ministers during the reform era. The type of research is normative legal research which examines the appointment and dismissal of Ministers in Law Number 39 of 2008 concerning state ministries and the practice of appointing and dismissing Ministers in the reform era. The formulation of Law Number 39 of 2008 is expected to be a guideline for the President in appointing and dismissing Ministers. Still, based on the analysis, there are juridical problems in ministerial appointments, namely 1) educational requirements and competence of ministerial candidates, 2) mechanism and process for ministerial appointments, 3) composition of political parties and non-political parties in the cabinet, 4) requirements and the number of Deputy Ministers, and 5) Minister's oath of office. In addition, there are reasons and procedures for dismissing Ministers that are unclear and unstipulated in Law Number 39 of 2008, namely 1) it is not clear why the President, 2, determines the reasons for dismissal) The procedures for temporarily dismissing Ministers who have status as defendants are not precise, and 3) conditions for dismissal have not yet been set when the Minister no longer fulfills the requirements as a minister. For legal certainty, it is necessary to revise Law Number 39 of 2008.

## Keywords

Prerogative, President, Minister, Presidential System.

## A. Introduction

Every modern country conceptually adheres to a system of government, where the system used varies depending on the socio-cultural conditions of the people living in that country, which are usually contained in the country's constitution (Arts et al., 2004; Inghilleri, 2005). Likewise, Indonesia as a modern country also has a constitution, namely the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), which reflects its government system (Praptini et al., 2019; Dimyati et al., 2021).

The government system, in general, can be interpreted as an organic structure that has functioned as executive, legislative, and judicial in the constitutional order, which has an attachment to a cooperative relationship and influences one another (Trench, 2006; Baquero Cruz, 2008). In line with the above understanding, Schneider & Soskice (2009) argues that "a system of government is a certain system that explains how the relationship between the highest state equipment in a country." so the government system can be referred to as the whole of the orderly arrangement or arrangement of state institutions that are related to one another, either directly or indirectly according to a plan or pattern to achieve the goals of the country (Zolberg, 1968; Gordenker, 1995).

For the sake of realizing prosperity for the people, state administrators must put in place a strong system to run the country properly and follow the rules for the prosperity of the people (Bolton, 1992). The leading authorities of this state administration are the Legislature, executive, and judiciary. These three main institutions exist in the government system in a country which has an important role in implementing the wheels of government (Majone, 2002). In short, Mahfud MD argues that the way of working and relating the three axes of power, namely the executive, legislative, and judiciary, can be referred to as the system of state government. So that what is meant by the system of state government is the system of relations and work procedures between state institutions (Mafud M D., 1999).

An important concept of a presidential system is the separation of powers. The trias politica initiated by John Locke became the heart of the presidential concept (Locke, 1961). There are three branches of power: executive, legislative and judicial. Because of this division of powers, even though there is a large concentration of authority in the hands of a unipersonal organ, namely the presidency, which can easily make presidential lead to authoritarian deviations, President should still be able to fulfill the expectations of democracy (Mollers, 2013). Then according to Green (1994), explain the principle of checks and balances. This constitutional principle requires that legislative, executive, and judicial power be equal and mutually control one another. State power can be regulated, limited, or even controlled as well as possible so that it can be misused power by state administrators or individuals currently occupying positions in state institutions can be prevented and overcome (Ferejohn & Pasquino, 2004; Krasner, 2004).

In a presidential government, executive power with legislative power is interpreted as that executive power is held by an agency or organ that, in carrying out its executive duties, is not responsible to the people's representative body (Junior et al., 2015; Kuswanto, 2018). The composition of the executive body consists of a President as the head of government, accompanied by a Vice President. In carrying out his duties, the President is assisted by ministers. Automatically, the Minister is responsible to the President and is appointed and dismissed by the President (Hudi, 2018). The people's representative body must recognize one or several ministers, even though the people's representative body does not approve of the policies issued by the Minister concerned. In another context, the President and Vice President are actually "one package", so whatever the Vice President's actions represent the President (Saraswati, 2012).

The power to appoint and dismiss ministers is based on Article 17, paragraph (2) of the 1945 Constitution after the Amendment. The implementation of this power in state practice has so far been left to the President without the involvement of other state institutions (Huda, 2001). Dismissal of ministers by the President can be done in the middle of his term of office. In practice, all of these actions can be carried out behind closed doors without the need to seek advice and obtain suggestions and accountability from other state institutions because this is the prerogative of the President (Neto, 2006).

Friedrich (1972) calls prerogative rights: the power to act according to discretion, for the public good, without the prescription of the Law and sometimes even against it. John Locke also said that "prerogative is supposed to be used only in extraordinary circumstances and only until the Legislature can remedy whatever defects in the Law require to resort to extra-legal measures, but the notion that any individual is ever allowed to exercise such enormous discretionary power is difficult to square with a commitment to limited government and the rule of Law (Langston & Lind, 1991). History shows that prerogative rights originally belonged to the King of England (royal prerogatives) as commander in chief of the armed forces, the right to reject draft regulations (absolute veto), full authority to appoint officials and judges, grant clemency and amnesty, make agreements with the state others, as well as sending and receiving ambassadors and other key officials (Pasquino, 1998).

The prerogative that belongs to the President is the privilege that belongs to the President to do something without asking for approval from other institutions. This is intended so that the functions and roles of government are stretched so widely that they can take action to build people's welfare (Baital, 2014). The meaning of prerogative rights in constitutional law literature, the issue of being one of the powers of the President, often creates differences and debates. Even Fatovic (2004) says: "scholars, the courts, and the public have been ambivalent about prerogative." According to Fatovic (2004), ambivalence lies in the meaning of the prerogative as the President's power to take great action (extraordinary) without any law that explicitly regulates it, which is sometimes contrary to the principles of constitutionalism.

There is an understanding of prerogative rights as rights owned by a head of government or head of state without any intervention from any party in exercising these rights. Therefore, the prerogative is said to be the privilege or privilege of a head of state in carrying out his state duties (Berger, 2013). If the right is special, of course, the user of the right is free to act on the right he has because that is the concept of that right. It is just that the use of these rights must always be limited by the rules that apply. So that if the user of the right wants to use his right properly, the use of the right can be used without intervention from any party from the consequences of using the right (Rozell, 2010).

Therefore, it is interesting to analyze further how the use of the President's prerogative in the regulation, and appointment of ministers, including the requirements to become a minister, recruitment, and mechanism for appointment of ministers, is the arrangement for appointing ministers in Law Number 39 of 2008 sufficient and does not shackle or limit prerogatives? President in appointing Ministers. This analysis needs to be carried out considering that in practice, there are still irregularities in the appointment of ministers that are against the Law, appointing ministers whose track record is lacking, and appointing ministers from supporting political parties (Goetz & Wollmann, 2001). It is also interesting to analyze the presence of ministers from political party elites, bearing in mind that in practice, the President always provides several ministerial seats for political party officials/elites to support him in the Presidential Election and even provides ministerial seats for his rivals in the Presidential Election. In addition, it analyzes the arrangements for dismissing ministers, regarding the reasons for dismissing ministers, who replace ministers who resign or pass away, and when replacement ministers are chosen and installed. This research will analyze the arrangement and implementation of the prerogative of the President of Indonesia in appointing and dismissing Ministers during the Reformation era based on Law Number 39 of 2008 concerning State Ministries.

## B. Method

This type of research uses normative legal research. Normative juridical research is a method or procedure used to solve research problems by examining secondary data that examines the appointment and dismissal of Ministers in Law Number 39 of 2008 concerning state ministries and the practice of appointing and dismissing Ministers in the reform era (Diantha, 2016). The specification of this research is analytical and descriptive; that is, this research will explain and describe facts related to the process of appointing and dismissing Ministers practiced by the President of Indonesia during the reform era. The approach used in this study is through a statutory approach, a conceptual approach, a historical approach, and a comparative approach with the United States, Iran, and South Africa. Collecting data in research through literature study is then arranged systematically and logically. The analysis is carried out in a qualitative juridical manner, in the form of in-depth interpretation regarding the regulations for the appointment and dismissal of Ministers.

## C. Results and discussion

### 1. Arrangement and Implementation of the Prerogative of the President in Appointing State Ministers

#### a. Minister Appointment Mechanism and Process

Constitutionally, the ministry is placed as an instrument of the state which is understood as an integral and inseparable part of the President; therefore, it is logical and appropriate that the 1945 Constitution gives the prerogative or authority to the President for the appointment and dismissal of ministers. In addition, there is no clear difference between the parliamentary and presidential systems in ministerial recruitment. Specifically, in Law Number 39 of 2008 concerning State Ministries, Ministerial arrangements in Indonesia are regulated, and Presidential Regulation Number 7 of 2015 concerning the Organization of State Ministries. It is a shame that Law Number 39 of 2008 is expected to be a complete guide for the President in appointing Ministers, especially in the reform era; instead, it still creates juridical weaknesses.

So far, every time the President appoints and announces ministers, it always raises pro and con responses from observers and the public. In general, what is highlighted is the discrepancy between a person's education, competence, and experience with the ministry he is in charge of. Choosing a minister who needs to follow his education, competence, and experience with the mandated ministry has a high risk of failing to carry out his duties (Thoha, 2007). There has been a ministerial reshuffle so far; apart from being involved in corruption and lack of coordination, it is also because there have yet to be no breakthroughs or innovations in completing ministerial tasks that the President has targeted to achieve. Weak ministerial breakthroughs and innovations to meet the achievements targeted by the President are very closely related to the educational background, competence, experience, and achievements of the Minister concerned. Therefore, prospective Ministers need certain educational and competency requirements (Nggilu & Wantu, 2020).

The experience of former President Susilo Bambang Yudhoyono in preparing the United Indonesia cabinet can be adopted in setting up the mechanism for appointing ministers in the revision of Law Number 39 of 2008. Former President Susilo Bambang Yudhoyono predetermined the principles in selecting ministerial candidates, namely the principles of democracy, transparency, and accountability. Meanwhile, for ministerial candidates, there are three criteria: integrity, capability, and acceptability. Then at the end of each selection process, a piece of paper containing three points of commitment in a political contract is proffered to be signed, to work hard, to work honestly, and to work in the public interest, not the group. These three commitments will then be used as one of the bases for evaluating the performance of ministers, followed by a cabinet reshuffle. This was done by former President Susilo Bambang Yudhoyono so that the people who gave him the direct mandate could participate in and oversee the process of appointing ministers.

The experience of process of appointing ministers carried out by Former Susilo Bambang Yudhoyono in compiling the United Indonesia cabinet and United Indonesia II cabinet was also followed by President Joko Widodo in forming the Working Cabinet, namely, before announcing the composition of the cabinet; President Jokowi first sent a list of names of prospective ministers to the Corruption Eradication Commission (KPK), to obtain the track record of a candidate for Minister. The advice not to appoint a Ministerial candidate with problems from the results of the track record was accepted by President Joko Widodo, and the name of the Ministerial candidate was also submitted to PPATK to get a Minister with integrity, competence, and professionalism. 2008.

In the United States, the President is also given the authority to appoint and dismiss ministers. However, unlike in Indonesia, the President of the United States requires advice and approval from the Senate when he wants to appoint his ministers (Harris, 2022). Article 2 section 2 item 2 of the United States Constitution provides, and he must determine through and with the advice and approval of the Senate, appoint ambassadors, ambassadors and consuls, judges of the Supreme Court and all other officials of the United States of America. In America, until today, the appointments of Secretary of State M. Albright and Secretary of Defense Cohen are subject to approval by the Senate.

In Iran, even though it adheres to a Presidential Cabinet system and direct elections for the President, in matters of the formation of the cabinet, it does not fully surrender to the prerogative of the President. The Iranian Parliament (Assembly of Trustees) does not only play a role in the arrangement of ministers in the cabinet but also matters of the Vice President. Two hundred ninety members will debate the proposed Ministerial candidates on whether they can accept or reject the proposed Ministerial candidates from the President of Iran (Buchta, 2000).

As Head of Cabinet, the President of South Africa, based on Article 91 of the South African Constitution, has the power to appoint and dismiss the Vice President from members of the national assembly, including ministers. In addition, Article 93 of the South African Constitution also stipulates that the President of South Africa has the power to appoint and dismiss the Undersecretary of State from among members of the national assembly to assist cabinet members (Bardill, 2000).

Based on the constitutions in the United States, Iran, and South Africa, the appointment of a Minister is not entirely the President's prerogative because the candidate for Minister who is appointed must first obtain approval from the parliament. The involvement of the parliaments of the United States, Iran, and South Africa in approving ministerial candidates to be appointed by the President can be used as material for study for Indonesia.

**b. Composition of Political Parties and Non-Political Parties in the Cabinet**

Law Number 39 of 2008 concerning State Ministries does not regulate the number or composition of political parties and non-political parties in the cabinet

formed by the President, so the President is free to use his prerogative in appointing Ministers, including forcing coalition party cadres to occupy material positions that are not following educational background, competency, and experience.

Neto & Samuels (2010) acknowledge that the greatest differences between the presidential and the two other forms of government can be found. 'The institutional jump from semi-presidential to pure presidential has had the greatest effect on the relative level of partisan composition of cabinets. The system that applies in America also shows that politicians are very interested in appointing state officials because elected officials are expected to reflect the policies of these politicians. Below is described the involvement of ministers from political parties in the cabinet during the reform era in Indonesia, namely:

Table 1. Composition of Ministers in the Cabinet based on background

| No | Cabinet Name | NamePresident | Number of Ministers by Background | | | | Ministers |
|---|---|---|---|---|---|---|---|
| | | | Independent / Professional | % | Political party | % | |
| 1 | Development Reform Cabinet (1998-1999)Inauguration May 22, 1998 | BJ Habibie | 27 | 75 | 9 | 25 | 36 |
| 2 | National Unity Cabinet(1999-2001)Inauguration October 29, 1999 | Abdulrahman Wahid | 17 | 50 | 17 | 50 | 34 |
| 3 | Gotong Royong Cabinet (2001-2004) Inaugurated August 10, 2001 | Megawaty Soekarno Putri | 16 | 53,3 | 14 | 46,6 | 30 |
| 4 | United Indonesia Cabinet (2004-2009) Inauguration October 21, 2004 | Susilo Bambang Yudhoyono | 15 | 44,1 | 19 | 55,8 | 34 |
| 5 | United Indonesia Cabinet II (2009-2014) Inauguration October 21, 2009 | Susilo Bambang Yudhoyono | 17 | 50 | 17 | 50 | 34 |
| 6 | Working Cabinet (2014-2019) Announcement October 26, 2014 | Joko Widodo | 20 | 58,8 | 14 | 41,1 | 34 |
| 7 | Advanced Indonesian Cabinet (2019-2024) Inauguration October 23, 2019 | Joko Widodo | 17 | 50 | 17 | 50 | 34 |

Source: Data processed through Cabinet Profiles

During the reform era, there were only 3 cabinets where the composition of ministers came from more non-political parties than ministers from political parties, namely the Working Cabinet (2014-2019), namely 58.8%, the Gotong Royong Cabinet (2001-2004) namely 53.3% and the Development Reform Cabinet (1998-1999) namely 75%. The Development Reform Cabinet (1998-1999) was a zaken cabinet in which most of the ministers (75%) came from experts or professionals. Zaken cabinet is a cabinet of experts, also known as a business cabinet which is interpreted as a cabinet filled with professionals and experts in their field.

Of the 7 cabinets during the reform era, the President could not be separated from the vortex of political interests, meaning that the ministers represented political parties. Therefore, the practice of the President's prerogative in appointing Ministers so far has not been purely carried out to fulfill the constitutional obligations of the President but has often been used as a reward for political services, meaning that it is given as a gift to those who have contributed politically to the President, both from political parties and from professional circles.

The relationship between competence and political power in the appointment of Ministers for each cabinet can vary according to the strength of the opposition (Grzymala-Busse, 2010), a change of power (Meyer-Sahling & Veen, 2012), or the power of the coalition leader himself (Geddes, 1994). Zakharov (2016) believes that autocrats, fearful of political challenges from competent subordinates, will elevate incompetent lackeys to important positions of power. The same thing was also stated by Buckley & Reuter (2019) that: when autocrats face stronger competition, they are more likely to rely on political considerations rather than technical expertise Protsyk also confirmed that in countries with a 'little tradition of multiparty politics, such a combination will further deter structuration of politics along party lines and will affect patterns of executive accountability and responsiveness.

Baturo & Alexiadou (2016) cite a conceptual difference between 'politician' and 'expert' or 'insider' and 'outsider', which is undoubtedly useful but should not be applied dichotomy rigidly because these categories are only sometimes mutually exclusive. Indeed, many ministers combine both skills. While qualifying as professional politicians, they can also add to expert knowledge gained through previous education and employment training or experience in parliament and government. However, there is also research conducted by Martinez-Gallardo & Schleiter (2015), which is more focused on showing that ministers affiliated with the party are only sometimes reliable agents for the President,' and the President appoints non-partisan ministers to limit the agency's losses.

Considering that the constitution and practical political realities cannot be separated from the relationship between the coalition of political parties and the President both in the general election for the President and in the preparation of the cabinet, however, restrictions on the elements of political parties in the cabinet need to be regulated in the revision of Law Number 39 of 2008, which is based on 4 things, namely: 1) The President's prerogative becomes shackled by the desire

of a coalition of political parties that wants as many political party elites as possible to become ministers. 2) For the sake of the effectiveness of the main function of the DPR, which is to supervise the running of the government led by the President. 3) The DPP chairperson of a political party is constitutionally inappropriately included in the cabinet, given his power and authority in controlling the role of the political party he leads, both in the Legislature and executive, and 4) avoids a bad image of the cabinet, due to the corrupt behavior of ministers who mostly come from political party elements.

Table 2. Number of Corrupt Ministers

| No | Cabinet Name | Name President | Name The Minister of Corruption | Ministry | Element |
|---|---|---|---|---|---|
| 1 | Development Reform Cabinet (1998-1999) | BJ Habibie | - | - | - |
| 2 | Cabinet National Union (1999-2001) | Abdulrahman Wahid | - | - | - |
| 3 | Cabinet Mutual Cooperation (2001-2004) | Megawaty Soekarno Putri | Achmad Sujudi | Health | Professional |
| | | | Patience Day | Domestic | Professional |
| | | | Rokhmin Dahuri | Maritime Affairs and Fisheries | PDIP |
| 4 | United Indonesia Cabinet (2004-2009) | Susilo Bambang Yudhoyono | Bachtiar Chamsyah | Social | PPP |
| | | | Siti Fadilah Supari | Health | Professional |
| 5 | United Indonesia Cabinet II (2009-2014) | Susilo Bambang Yudhoyono | Andi Alfian Mallarangeng | Youth and Sports | Democrats |
| | | | Suryadharma Ali | Religion | PPP |
| 6 | Working Cabinet (2014-2019) | Joko Widodo | Idrus Marham | Social | GOLKAR |
| | | | Christian Imam | Youth and Sports | PKB |
| 7 | Advanced Indonesian Cabinet (2019-2024) | Joko Widodo | Eddy Prabowo | Maritime Affairs and Fisheries | Gerindra |
| | | | Juliari P Batubara | Social | PDIP |

Based on the table above, most of the ministers who were caught in corruption cases came from elements of political parties. Ministerial positions held by the corrupt Minister above are ministries generally reserved for supporting political parties: the Ministry of Social Affairs and the Ministry of Youth and Sports. Therefore, in the future, the number or allocation of Ministers from political parties must be limited so that the main role of political parties in the DPR is more effective and efficient in supervising the running of the government led by the President.

### c. Vice Minister

Article 10 of Law Number 39 of 2008 stipulates: "If there is a workload that requires special handling, the President can appoint deputy ministers to certain ministries." Article 10 of Law Number 39 of 2008 does not regulate at all the terms and number of deputy ministers whom the President can appoint, whether the conditions for appointing deputy ministers are the same as the terms for appointment of ministers stipulated in Article 22 paragraph (2) of law number 39 of 2008 or submitted entirely to the President to determine the conditions for the appointment of Deputy Ministers.

The President, with his authority, issues Presidential Regulation Number 60 of 2012 concerning Deputy Ministers, which places the deputy minister's position under and is responsible to the Minister (Article 1). The deputy minister has the task of assisting the Minister in "leading" the executors of the State Ministries (Article 2 Paragraph (1)). Because the vice minister's job is to help lead," then based on Article 2 paragraph (1), the deputy minister is placed in a leadership position.

In carrying out this authority, there is no mention in Presidential Regulation Number 60 of 2012 concerning the Deputy Minister regarding the authority to replace the Minister if there is a vacancy in the Ministerial position at the State Ministry because the Minister has died, resigned, been dismissed, or the Minister is unable to carry out his obligations during his term of office. His post. The position of Deputy Minister at the Ministry of State cannot be equated with the position of Vice President as assistant to the President,

Then in Article 64 paragraph (2) Presidential Regulation Number 7 of 2015 concerning Organization of State Ministries, it is also specified: Deputy Ministers are under and responsible to the Minister. Article 64 paragraph (2) of Presidential Regulation Number 7 of 2015 is not following state administrative law because an official will be responsible to the official who appointed him, so the Deputy Minister is appointed by the President as stipulated in Article 10 of Law Number 39 of 2008 must be responsibly responsible to the President not responsible to the Minister.

Table 3. Number of Deputy Ministers in the cabinet

| No | Cabinet Name | Name President | Number of Deputy Ministers | Origin | |
|---|---|---|---|---|---|
| | | | | Professional | Political Party |
| 1 | United Indonesia Cabinet II (2009-2014) | Susilo Bambang Yudhoyono | 17 | 17 | 0 |
| 2 | Working Cabinet (2014-2019) | Joko Widodo | 3 | 3 | 0 |
| 3 | Advanced Indonesian Cabinet (2019-2024) | Joko Widodo | 14 | 9 | 5 |

## 2. Arrangement and Implementation of the Prerogative of the President in Dismissing Ministers of State

Even though the President has the prerogative to dismiss Ministers, the President's prerogative is limited by the reasons for dismissing Ministers determined by Law Number 39 of 2008 concerning State Ministries. Based on these provisions, there are 3 (three) procedures for dismissal carried out by the President, namely:

a. Automatic termination, namely the absolute dismissal of the position of Minister, without the approval of the President, due to death or termination of the position of Minister.

b. Dismissal for certain reasons, either with the President's approval or judgment or without the President's approval. Reasons for dismissal that require the President's approval or judgment are a) Resign at his request in writing and b) Reasons determined by the President. While the reasons for dismissal without the approval of the President are a) Unable to perform duties for 3 (three) consecutive months; b) being Found guilty based on a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, and c) Violating the provisions on the prohibition of multiple positions.

c. Temporary dismissal, namely against the Minister who was charged with committing a crime punishable by imprisonment of 5 (five) years or more.

Based on the reasons and procedures for dismissing the Minister in Article 24 of Law Number 39 of 2008 above, according to the author, there are several weaknesses and a legal vacuum, namely:

a. Unclear reasons for dismissal "Other reasons determined by the President". To provide legal certainty, the reasons set by the President must be specified, for example, the ministry's non-fulfillment targets within a certain period, or poor coordination between ministries. The reason for the dismissal of this Minister must be determined and known to the Minister concerned when accepting the position of Minister.

b. The procedure for temporarily dismissing a Minister who has been charged with a criminal offense punishable by imprisonment for 5 (five) years or more, the authors consider being inappropriate because the temporary dismissal was already carried out by the President when the Minister was in the status of a suspect rather than a defendant. This is done so that during the investigation process, the Minister concerned is no longer burdened with government affairs which are his responsibility.

c. Article 24 of Law No. 39 of 2008 does not stipulate the conditions for dismissal when the Minister no longer fulfills the requirements for appointment as a Minister; for example, it is proven that the Minister is legally not having the status of an Indonesian citizen, it is proven that he is physically and mentally unhealthy, the Minister violates the oath of office, and there is strong public pressure. Extraordinary.

In practice, the reasons for dismissing Ministers by the President during the reform era varied, namely being involved in criminal acts of corruption, the poor performance of Ministers, poor coordination of Ministers, and non-compliance with the President's policies. Of the several reasons for dismissing the Minister, only the reason for being involved in corruption is publicly known. Meanwhile, the reasons for other dismissals are only known to the President based on an assessment of the Minister's performance which could have been supported by public perceptions from polls conducted by survey institutions. Below the author describes several ministerial dismissals during the reform era, namely:

Table 4 Dismissal of Ministerial Reshuffle

| No | Cabinet Name | Name President | Reshuffle Minister | Number of Ministers |
|---|---|---|---|---|
| 1 | Development Reform Cabinet (1998-1999) Inaugurated May 22, 1998 | BJ Habibie | | 36 |
| 2 | National Unity Cabinet (1999-2001) Inauguration October 29, 1999 | Abdulrahman Wahid | | 34 |
| | | | Reshuffle I April 26, 2000 | 34 |
| | | | Reshuffle II March 15, 2001 | 34 |
| 3 | Gotong Royong Cabinet (2001-2004) Inaugurated 10 August 2001 | Megawaty Soekarno Putri | | 30 |
| 4 | United Indonesia Cabinet (2004-2009) Inauguration 21 October 2004 | Susilo Bambang Yudhoyono | | 34 |
| | | | Reshuffle I December 7, 2005 | 34 |
| | | | Reshuffle II May 9, 2007 | 34 |
| 5 | United Indonesia Cabinet II (2009-2014) Inauguration 21 October 2009 | Susilo Bambang Yudhoyono | | 34 |
| | | | Reshuffle I May 19, 2010 | 34 |
| | | | Reshuffle II October 18, 2011 | 34 |
| | | | Reshuffle III June 13, 2012 | 34 |
| 6 | Working Cabinet (2014-2019) Announcement October 26, 2014 | Joko Widodo | | 34 |
| | | | Reshuffle I August 12, 2015 | 34 |
| | | | Reshuffle II July 27, 2016 | 34 |
| | | | Reshuffle III January 17, 2018 | 34 |
| 7 | Advanced Indonesian Cabinet (2019-2024) Inauguration October 23, 2019 | Joko Widodo | | 34 |
| | | | Reshuffle December 23, 2020 | 34 |

Approximately 1 year after the United Indonesia Cabinet led by President Susilo Bambang Yudhoyono, public dissatisfaction with the performance of the Minister was created, resulting in pressure for a ministerial reshuffle. In line with the promise of an annual evaluation, President Susilo Bambang Yudhoyono granted the pressure. The first cabinet reshuffle was announced at the Gedung Agung Yogyakarta palace on December 5, 2005. The reason that arose regarding the cabinet reshuffle needed be stronger coordination. After 2.5 years of Susilo Bambang Yudhoyono's administration, the first cabinet reshuffle, which was expected to bring improvements in addressing problems, turned out to be unable to make significant changes to accommodate the needs of the Indonesian people; the performance of the cabinet was considered poor, President Yudhoyono was again under pressure to reshuffle on May 7, 2007. However, what is interesting in this United Indonesia cabinet reshuffle, is that President Susilo Bambang Yudhoyono should have discussed the Ministerial reshuffle with the leaders of the political parties in the coalition.

The dismissal of Ministers was also experienced by the Working Cabinet led by President Joko Widodo. On August 12, 2015, President Joko Widodo reshuffled the composition of the Working Cabinet by replacing five ministers (including three coordinating ministers) and the cabinet secretary. President Joko Widodo again carried out the ministerial reshuffle on July 27, 2016; President Joko Widodo again announced a reshuffle of his cabinet composition. Then President Joko Widodo also reshuffled it in 2018. The reasons for the reshuffle varied, ranging from steps to improve government management, strengthening synergy and coordination across ministries, and demanding that each ministry work faster and more effectively.

Peter Heyn Nielsen (2022) suggests: By examining opinion polls on the popularity of ministers in Denmark in the period 1978 to 2019, the analysis shows that when Danish Prime Ministers choose to dismiss ministers, they dismiss ministers who are relatively less popular (By examining poll on the popularity of ministers in Denmark in the period 1978 to 2019, the analysis shows that when Danish Prime Ministers voted to dismiss ministers, they dismissed relatively less popular ministers). The absence of coordination between the President and the leadership of the coalition political parties in dismissing Ministers shows the magnitude of the President's prerogative in dismissing Ministers compared to the appointment of Ministers, which cannot be separated from the demands of the leadership of the coalition political parties.

## D. Conclusion

The formation of Law Number 39 of 2008 concerning State Ministries was not aimed at curbing the President's prerogative but rather providing guidelines or guidelines for the President in appointing Ministers. However, Law Number 39 of 2008 does not yet fully regulate the appointment of Ministers, namely the educational and competency requirements for candidate ministers, the mechanism and process for ministerial appointments, the composition of political parties and

non-political parties in the cabinet, the requirements and the number of Deputy Ministers, and the oath of office are not regulated. Minister. The involvement of the DPR/Parliament in selecting and approving Ministerial candidates before being appointed by the President, as happened in the United States, Iran, and South Africa, needs to be considered in the appointment of Ministers in Indonesia because it still gives the President freedom in determining Ministerial candidates to be submitted to the DPR for approval. agreement. There are reasons and procedures for dismissing ministers that are not clear in Law Number 39 of 2008 concerning State Ministries, namely 1) it is not clear why the President, 2, determines the reasons for dismissal) The procedure for temporarily dismissing Ministers whose status as defendants is unclear because the Minister should have already dismissed as a suspect. In Law 24 No. 39 of 2008, conditions for dismissal have not been regulated when the Minister no longer fulfills the requirements for appointment as a minister and violates the oath of office.

## References

Arts, B., & Tatenhove, J. V. (2004). Policy and power: A conceptual framework between the 'old and 'new policy idioms. Policy sciences, 37(3), 339-356.

Baital, B. (2014). Pertanggungjawaban Penggunaan Hak Prerogatif Presiden Di Bidang Yudikatif Dalam Menjamin Kemerdekaan Kekuasaan Kehakiman. Syarif Hidayatullah State Islamic University Jakarta.

Baquero Cruz, J. (2008). The Legacy of the Maastricht-Urteil and the Pluralist Movement. European Law Journal, 14(4), 389-422.

Bardill, J. E. (2000). Towards a culture of good governance: the Presidential Review Commission and public service reform in South Africa. Public Administration and Development, 20(2), 103–117.

Baturo, A. (2016). Cursus honorum: Personal background, careers, and experience of political leaders in democracy and dictatorship—New data and analyses. Politics and Governance, 4(2), 138–157.

Berger, R. (2013). Executive privilege. In Executive Privilege. Harvard University Press.

Bolton, R. (1992). 'Place prosperity vs. people prosperity'revisited: An old issue with a new angle. Urban Studies, 29(2), 185–203.

Buchta, W. (2000). Who Rules Iran. The structure of power in the Islamic Republic, 1.

Buckley, N., & Reuter, O. J. (2019). Performance incentives under autocracy: evidence from Russia's regions. Comparative Politics, 51(2), 239–266.

Diantha, I. M. P. (2016). Metodologi penelitian hukum normatif dalam justifikasi teori hukum. Prenada Media.

Dimyati, K., Nashir, H., Elviandri, E., Absori, A., Wardiono, K., & Budiono, A. (2021). Indonesia as a legal welfare state: A prophetic-transcendental basis. Heliyon, 7(8), e07865.

Fatovic, C. (2004). Constitutionalism and presidential prerogative: Jeffersonian and Hamiltonian perspectives. American Journal of Political Science, 48(3), 429–444.

Ferejohn, J., & Pasquino, P. (2004). The Law of the exception: A typology of emergency powers. International Journal of Constitutional Law, 2(2), 210–239.

Friedrich, C. J. (1972). Authority and Discretion. In Tradition and Authority (pp. 66-75). Palgrave, London.

Geddes, B. (1994). Politician's dilemma: Building state capacity in Latin America. Berkeley: University of California Press.

Goetz, K. H., & Wollmann, H. (2001). Governmentalizing central executives in post-communist Europe: a four-country comparison. Journal of European Public Policy, 8(6), 864-887.

Gordenker, L. (1995). Pluralizing global governance: analytical approaches and dimensions. Third world quarterly, 16(3), 357-388.

Greene, A. S. (1994). Checks and balances in an era of presidential lawmaking. U. Chi. L. Rev., pp. 61, 123.

Grzymala-Busse, A. (2007). Rebuilding Leviathan: Party competition and state exploitation in post-communist democracies. Cambridge University Press.

Harris, J. P. (2022). The advice and consent of the Senate: A study of the confirmation of appointments by the United States Senate. Univ of California Press.

Huda, N. M. (2001). Hak Prerogatif Presiden dalam Perspektif Hukum Tata Negara Indonesia. Jurnal Hukum IUS QUIA IUSTUM, 8(18), 1-18.

Hudi, M. (2018). Kedudukan dan Tanggungjawab Presiden dalam Sistem Presidensial di Indonesia. Mimbar Yustitia, 2(2).

Inghilleri, M. (2005). Mediating zones of uncertainty: Interpreter agency, the interpreting habitus, and political asylum adjudication. The Translator, 11(1), 69-85.

Junior, A. M., Pereira, C., & Biderman, C. (2015). The evolution of theories about the Brazilian multiparty presidential system. Journal of Politics in Latin America, 7(1), 143-161.

Krasner, S. D. (2004). Sharing Sovereignty: New institutions for collapsed and failing states. International security, 29(2), 85-120.

Kuswanto, K. (2018). Consistency of the Presidential System in Indonesia. Sriwijaya Law Review, 2(2), 170-182.

Langston, T. S., & Lind, M. E. (1991). John Locke & the limits of presidential prerogative. Polity, 24(1), 49-68.

Law Number 39 of 2008 concerning State Ministries.

Locke, J. (1961). Two Treatises of Government: With a Supplement, Patriarcha, by Robert Filmer (Vol. 2). Simon and Schuster.

Mahfud, M. D. (1999). Hukum dan pilar-pilar Demokrasi. Yogyakarta: Gama Media, 5.

Majone, G. (2002). Delegation of regulatory powers in a mixed polity. European Law Journal, 8(3), 319–339.

Martínez-Gallardo, C., & Schleiter, P. (2015). Choosing whom to trust: agency risks and cabinet partisanship in presidential democracies. Comparative Political Studies, 48(2), 231-264.

Meyer-Sahling, J. H., & Veen, T. (2012). Governing the post-communist state: government alternation and senior civil service politicization in Central and Eastern Europe. East European Politics, 28(1), 4-22.

Möllers, C. (2013). The three branches: a comparative model of separation of powers. Oxford University Press.

Neto, O. A. (2006). The presidential calculus: Executive policy-making and cabinet formation in the Americas. Comparative Political Studies, 39(4), 415–440.

Neto, O. A., & Samuels, D. (2010). Democratic regimes and cabinet politics: a global perspective. Revista Ibero-Americana de Estudos Legislativos, 1(1), 10-23.

Nggilu, N., & Wantu, F. M. (2020). Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi. Jurnal Hukum Samudra Keadilan, 15(1), 126-140.

Nielsen, P. H. (2022). Public popularity as a part of the job description? Dismissing unpopular ministers. West European Politics, 45(2), 360-380.

Pasquino, P. (1998). Locke on king's prerogative. Political Theory, 26(2), 198–208.

Praptini, S. P., Kusriyah, S. K., & Witasari, A. (2019). Constitution and Constitutionalism of Indonesia. Jurnal Daulat Hukum, 2(1), 7-14.

Rozell, M. J. (2010). Executive privilege: Presidential power, secrecy, and accountability. University Press of Kansas.

Saraswati, R. (2012). Desain sistem pemerintahan presidensial yang efektif. Masalah-Masalah Hukum, 41(1), 137-143.

Schneider, B. R., & Soskice, D. (2009). Inequality in developed countries and Latin America: coordinated, liberal and hierarchical systems. Economy and society, 38(1), 17-52.

Thoha, M. (2007). Birokrasi pemerintah Indonesia di era reformasi. Kencana.

Trench, A. (2006). Intergovernmental relations: in search of a theory. In Territory, democracy, and justice (pp. 224–256). Palgrave Macmillan, London.

Zakharov, A. V. (2016). The loyalty-competence trade-off in dictatorships and outside options for subordinates. The Journal of Politics, 78(2), 457–466.

Zolberg, A. R. (1968). The structure of political conflict in the new states of tropical Africa. American Political Science Review, 62(1), 70-87