

Measuring the Implementation of Prerogative Rights of the President in the Multi-Party System and the Viewpoint of the Presidential Government System in Indonesia

Zulwisman Zulwisman*

Fakultas of Law
Universitas Riau
Pekanbaru, Indonesia
*zul_wisman@yahoo.com

Abstract—Constitutionally, Indonesia adheres to a Presidential Government System that is characterized by a Multi-Party System. In its administration, especially in the Presidential System which is characterized by a Multi-Party System, the President has the right called the Prerogative. Organizing a Presidential Government System with a Multi-Party System pattern is emphasized in Article 6 A of the 1945 Constitution so that it has implications for the weak realization of the President's Prerogative Rights.

Keywords: *prerogative, presidential system, multi-party*

I. INTRODUCTION

Constitutionally, Indonesia adheres to a Presidential Government System that is characterized by a Multi-Party System. In its administration, especially in the Presidential System which is characterized by a Multi-Party System, the President has the right called the "Prerogative". Some opinions say that the term Prerogative does not exist and that there is only the power of the president as head of state. Prerogative rights are rights owned by a head of government or head of state without any intervention from any party in using these rights [1]. Therefore, the prerogative is said to be the privilege or privilege of a head of state in carrying out his state duties.

However, this Presidential Government system is applied in multi-party political construction, and the multi-party system is a political context that is difficult to avoid because Indonesia is a country that has a very high level of plurality and that we emphasize in the Constitution. However, it is interesting what was conveyed by Mahfud MD who stated "The presence or absence of prerogative rights in the constitution does not matter, depending on how to interpret the prerogative rights. Because there is a prerogative right if the President has the right to do something without asking for the approval of another person or institution " [1]. Likewise, what was conveyed by Bagir Manan who stated "That one of the characteristics of the Prerogative power is not in written law

[2]. Therefore, the regulation regarding prerogative rights will not be found in the legislation. It only depends on the meaning of us all ". Or what was conveyed by Jhon J. Wuest and Shepard Leonard Witman who stated "One of the characteristics of a presidential system is that there is no joint responsibility between the chief executive and his cabinet members (ministers). Where ministers are fully responsible to the chief executive ".

And in the Constitution of the Republic of Indonesia, namely the 1945 Constitution mandates that in chapter V about the State Ministry Article 17 paragraph (2) states that the ministers are appointed and dismissed by the President. Therefore, the ministers must be accountable to the President. As with the concept of prerogative rights stated above, the President does not need to first consult with other state institutions, because this right is a right granted by the constitution to the President in carrying out the wheels of government. The President's Prerogative Rights can be grouped in four terms, including Executive and Political Administration, legislative authority, judicial authority and diplomatic authority.

However, in its implementation, the president's prerogative rights were not well organized, the president's freedom in policy making was found to be an intervention from a political party and the approval of people with his figure or other institutions, specifically in terms of the president's prerogative rights in the election, appointment and dismissal of the Minister in the context of authority executive and political politics, as well as legislative authority. With the above rationale so as to attract writers to conduct research with the title "Measuring the Implementation of the President's Prerogative Rights in the Multi-Party System and Glasses of the Presidential Government System in Indonesia"

Based on the above background the researcher formulated three issues as follows:

- How is the President's prerogative in regulating Indonesian laws and regulations.
- What are the forms of influence and intervention of political parties in the implementation of the President's prerogative in the administration of the State.
- Efforts such as what is done to strengthen the President's prerogative in organizing the country

II. METHODS

This study tries to examine the problems as mentioned above with the approach used is the normative juridical method (legal research). Normative juridical research is a legal research that puts the law as a building system of norms, the norm system in question is about the principles, norms, rules of legislation, court decisions and doctrines or teachings. The data used in this study were obtained from literature with secondary data types. Secondary legal materials include explanations of primary legal materials in the form of experts' doctrines found in books, journals, and on websites.

III. RESULTS AND DISCUSSION

A. *How are the President's Prerogative Rights Regulated in Indonesian Laws and Regulations*

The President's Prerogative Regulations can be seen in the 1945 Constitution of the Republic of Indonesia both before and after the Amendment, and these arrangements are further explained in Act Number 39 of 2008 concerning State Ministries.

In the 1945 Constitution, the regulation of the President's Prerogative Rights can be grouped in four terms, including Executive and Political Administration, legislative authority, judicial authority and diplomatic authority. In the case of executive and political administration stated in article 17 of the 1945 Constitution which reads as follows:

Article 17

- (1) The president is assisted by state ministers
- (2) The ministers are appointed and dismissed by the President
- (3) Each minister is in charge of certain affairs in the government
- (4) The formation, amendment and dissolution of state ministries is regulated in law.

In Act Number 39 of 2008 concerning State Ministries, it is stated that the President established the Ministry of Foreign Affairs, Domestic Affairs and Defense, as referred to in the 1945 Constitution of the Republic of Indonesia.

President in the Establishment of the Ministry referred to by considering:

- Efficiency and effectiveness;
- Scope of work and proportionality of the workload;

- Continuity, harmony, and integration of task implementation; and / or
- Development of the global environment.

In the interest of synchronizing and coordinating the affairs of the Ministry, the President may form a coordinating Ministry.

In matters of legislative authority, it is emphasized in article 5 and article 22 paragraph (1) of the 1945 Constitution which reads as follows:

Article 5

- (1) The President has the right to submit a bill to the House of Representatives.
- (2) The President establishes Government Regulations to implement the Act accordingly.

Article 22

- (1) In the case of compulsive matters of concern, the President establishes government regulations as the right to substitute for laws.

Regarding the right of prerogative in terms of Judicial authority, it is stated in article 14 of the 1945 Constitution which reads as follows:

Article 14

- (1) The President grants clemency and rehabilitation by taking into account the considerations of the Supreme Court.
- (2) The President grants amnesty and abolition by taking into account the considerations of the House of Representatives.
- (3) Clemency is the authority of the President to grant forgiveness by eliminating or amending or reducing penalties for someone who has been convicted of a crime and has obtained permanent legal force. Clemency does not negate mistakes but forgives mistakes and Rehabilitation is a return to the original position or condition as before someone was convicted or convicted.
- (4) Amnesty is the president's authority to negate the criminal nature of the actions of a person or group of people. Those affected by amnesty are never seen to have committed a criminal act. Abolition is the authority of the President to eliminate prosecution. Abolition does not eliminate the criminal nature of an act, but the President with certain considerations stipulates that no prosecution be carried out for the criminal act

As well as the President's Prerogative in matters of diplomatic authority Article 13 of the 1945 Constitution which reads as follows:

Article 13

- (1) The President appoints Ambassadors and Consuls in terms of appointing ambassadors, the President pays

attention to the considerations of the House of Representatives.

- (2) The President accepts the placement of the ambassadors of other countries by taking into account the considerations of the House of Representatives.

B. What are the Forms of Influence and Intervention of Political Parties in the Implementation of the President's Prerogative in the Administration of the State

Organizing a Presidential Government System with a Multi-Party System pattern is emphasized in Article 6 A of the 1945 Constitution so that it implies a weakness in the realization of the President's Prerogative Rights, where the article reads "The Presidential and Vice Presidential Candidate Pair is nominated by a political party or a combination of political parties participating in the general election prior to the election implementation. general". The President and Vice President elected get "Intervention" in organizing prerogative rights in the field of executive affairs, in terms of the implementation of article 17 paragraph (2) of the 1945 Constitution. Almost all the general chairmen of the Political Parties Carrying (the Coalition Party) have held closed meetings and discussion very deeply with the President and Vice President elected and submitted a list of names to the President and Vice President elected to be appointed ministers. This is in line with what was conveyed by Ubeidillah as a Political Observer from Jakarta State University (UNJ) who stated "(Jokowi is held hostage by Mega) yes, Mr. Jokowi cannot ignore Mrs. Megawati (in the election of the cabinet of ministers)" (CNN Indonesia).

This was further strengthened by Megawati's speech as Party Chairperson stating "when I made Pak Jokowi (as president), someone like me did not want to know who it was by Jokowi. (they) forgot I have the signature of Pak Jokowi (if he is a party official).

In the previous period, the existence of Puan as the Coordinating Minister for Human Development and Culture (PMK) in the Working Cabinet of Indonesia from 2014 to 2019, Puan became the only minister who was not affected by the Reshuffle or change of work cabinet before the Jokowi administration year in August. 2015, whereas at that time a number of coordinating ministers were replaced (Coordinating Minister for the Economy, Coordinating Minister for Maritime and Coordinating Minister for Politics and Security). Puan Maharani as the ranking minister is always under the board under the minister's performance table in the results of the release of several survey institutions. So it appears that there is a "political space" that President Jokowi is unable to penetrate in the implementation of his prerogative rights as enshrined in Article 17 paragraph (2) of the 1945 Constitution.

C. Efforts such as What is Done to Strengthen the President's Prerogative in Organizing the Country

Departing from the prerogative arrangement of constitutional rights and forms of political party intervention in

the implementation of these rights, then there must be formal legal steps that must be created in the future, which include revoking the position or membership of the President and Vice President Elected from the management of Political Parties in Indonesia so that the President and the Elected Vice President is no longer seen as a "party official". And of course this has good implications for strengthening the Presidential Government System in Indonesia, there is room for freedom and independence that is elected by the President and Vice President elected in compiling his cabinet and giving birth to other policies.

Arrangement of revocation of position or membership of the President and Vice President Elected from the management of Political Parties is sufficient through amendment of Law Number 2 of 2008 which has been amended by Law Number 2 of 2011 concerning amendments to Law Number 2 of 2008 concerning Political Parties and technically through AD / ART Political Parties.

IV. CONCLUSIONS

From the framework of background thought and discussion and in-depth analysis found several conclusions including:

- Arrangement of prerogative rights in legislation in Indonesia found in the Constitution, namely in the 1945 Constitution of the Republic of Indonesia and in its derivatives in the form of Law Number 39 of 2008 concerning State Ministries.
- Implementation of the President's Prerogative Rights in the Multi-Party System and the Glasses of the Presidential Government System in Indonesia appear to be weak, because it is indeed incompatible with the combination of the Presidential Government System with the Multi-Party System.
- legally formal that must be created in the future, including revoking the position or membership of the President and Vice President Elected from the management of Political Parties in Indonesia so that the President and Vice President Elected are no longer seen as "party officials". So that the President's prerogative rights in Indonesia are getting stronger and reinforcing the Presidential Government system.

REFERENCES

- [1] M.D. Mahfud, *Hukum dan Pilar-Pilar Demokrasi*. Yogyakarta: Gama Media, 1999.
- [2] B. Manan, "UUD1945 Tak Mengenal Hak Prerogatif," *Harian Republika*. Yogyakarta: Pusat Studi Hukum Fakultas Hukum UII, 2000.