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Orderly Principles of State Administration in Selecting Ministers

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Abstract

One of the advantages of the presidential system is the president's authority to appoint ministers without the intervention of others. The President's authority has been confirmed in Article 17 paragraph (4) of the Constitution 1945 which states that the President appoints and dismisses ministers. This regulation is also emphasized by the existence of Law Number 39 of 2008 concerning the Ministry of the State which states that ministers are assistants to the president in leading Ministry. The State Ministry Law does not set limits on how persons can be elected by the president to become ministers, whether from political parties, professionals, academics, practitioners; it is all purely the authority of the president. Limitations on ministerial candidates are only regulated in the Constitutional Court Decision Number 79/PUU-IX/2011asserting that the positions of ministers and ministries may not be sold as a political gift to a person or a group. On that basis, the question regarding what legal principles in the state administrative law can be referred to by the president in forming a competent cabinet is raised. With normative-juridical methods, the purpose of this paper is to find out the principles in state administrative law in the implementation of government, especially in cabinet elections. The results of the study show that the principle of the orderly administration of the state must serve as a reference in the implementation of government, especially in cabinet elections. This principle involves the basis of order, harmony, and balance in state control and administration. Besides, the ministers appointed by the president must avoid and be aware of the occurrence of maladministration that leads to liability personal, not job responsibilities. To strengthen the principle of orderly state administration, The Ministry of State must include this principle in one of its articles.

INTRODUCTION

One of the fundamental differences between the government's presidential system and the parliamentary system of government lies in the status and authority of the head of government and its relationship with the parliament. In the parliamentary system, the Prime Minister serves as the head of the government while the President, a king, or queen serve as the state head. The prime Minister has the prerogative to determine his/her cabinet's composition because the prime Minister is entirely responsible as the leader of the executive branch (Budiardjo, 2008). Meanwhile, the President is only an official symbol of the state. These officials do not have real day-to-day powers and, therefore, cannot be held accountable.

In presidential systems, the mechanisms used are distinctly different. The main focus is on the President as the head of government and head of state (Al-Fatih, 2020a). The legitimacy of the President's power is tremendous because the people directly or indirectly elect the President. For this reason, as the head of the executive branch, the President has full control of the government. The President has the authority to determine the presidential assistants, appointing the right people to occupy positions in the ministry (Saraswati, 2012). Therefore, the ministers must submit and be loyal to the President. By these facts, presidential power is the real political power, and symbolic political power reflects the authority given by the state (Sidqi, 2008).

A strong presidential position balances this real presidential power. This vital position is the same as the parliament's position since both the parliament and the President get their respective legitimacy through elections, be it the presidential election and the legislative election. These two institutions cannot overthrow or dissolve each other. The President is not responsible to parliament, and the parliament cannot dismiss the President (impeachment) except for severe violations of the law. So, politically, the President is responsible to the people through the next election, as with members of parliament (Sidqi, 2008).

A strict separation between the President and parliament becomes the basis of the presidential system. With this separation, the formation of the government does not depend on the political process in parliament, remarkably different ~~in~~ from a parliamentary system where a cabinet's formation heavily depends on parliamentary support. Based on this condition (Umami et al., 2021), the presidential government system is built on a clear-cut separation of power between the executive power holders and the legislative power holders (Yani, 2018). According to Lijphart, the presidential government system is limited (Lijphart, 2007).

Juan J. Linz said that in its development, the presidential system was characterized by a complicated fundamental: managing the relationship between the President and the people's representative institutions. The relationship between these two institutions is frequently trapped in tension, considering that the strength of the majority political party in the parliament is different from what is dubbed as president

politics (Wrage, 1998). It happened because of the merger of the presidential system with the multi-party system. Saiful Mujani explained that these two elements are a tough combination for a democratic government. This difficulty lies not only in the problem of not quickly reaching a consensus between the President and the parliament, but also in the strengths in the parliament itself (Hamidi & Lutfi, 2008).

With the mechanism above, the government using a presidential system of government will only be stable and effective if it has the most support of the parliament. For this reason, legislative elections must take precedence to determine this support. To some extent, there are additional requirements for the President to strengthen parliament support through the presidential threshold by parties or coalitions of political parties.

This mechanism implies that an elected President in Indonesia must maintain "Good relations" with political parties. In other words, the President has been being a hostage of his supporting parties. With this logic, the coalition built between the President and the supporting party prioritizes "Cow trading" transactional politics. The elected President must prioritize the interests of the supporting parties rather than the interests of the people (Ayuni et al., 2019).

To avoid transactional interests, choosing an electoral system is an essential issue to strengthen the presidential system. According to Burhanudin Muhtadi, the political system in Indonesia is deemed to be high cost because of the practice of buying and selling votes or money politics involved in every election, both legislative and presidential elections (Muhtadi, 2019).

The implementation of simultaneous elections in the general election of 2019 becomes the primary choice to make a president free from his political coalition. The simultaneous election combined legislative elections with presidential and vice-presidential elections. The aim of the simultaneous election is nothing but a coattail effect. (Apriani, 2019) The results of the election for executive officials will affect the results of the legislative election. Therefore, the victory of certain executive officials will be followed by the party's victory or coalition of parties supporting the executive officials in the legislative election.

From an electoral perspective, simultaneous elections will provide some benefits. First, political parties will be serious in preparing presidential candidates and legislative members in one election package. In this way, political parties prioritize party ideology and platforms and eliminate opportunities for cow trade politics for the sake of a coalition to support the President. Second, merging elections in several countries has succeeded in increasing political participation (Handayani & Fahmi, 2019).

However, several theories relating to simultaneous elections that will give the President the ability to manage the government seemed unproven for Indonesia. Ramlan Surbakti emphasized that the Coattail effect had no effect. A significant increase in party's votes did not happen as expected. The number of votes for the

Jokowi-Ma'ruf pair, as ten political parties, reached 62.01 percent, while the number of votes for the Jokowi-Ma'ruf pair in the Presidential Election accounted for 55.50, meaning that there were 6.51 percent of the voters of 10 parties supporting pair 01 (Jokowi Ma'ruf) and choosing pair 02 (Prabowo-Sandi) (Maulidi, 2019).

There are two reasons why the coattail effect is not running as expected. First, the system used to elect House of Representatives (*Dewan Perwakilan Rakyat*, hereinafter referred to as DPR) members is a candidate-centered open proportional electoral system. Second, political parties taking part in the election do not play a role as election participants in conducting election campaigns to convey public policy plans that will be fought for and to support the proposed presidential and vice-presidential candidates (Maulidi, 2019).

In this case, even though the election is held simultaneously, and the President gets strong legitimacy, in the cabinet's preparation, the votes of political parties supporting the presidential candidates are still a concern. Political parties actively approach the President and offer candidates to be appointed as ministers. Getting a ministerial position is an indicator of 'Remuneration' for political parties' support for the elected President. The greater the number of ministers is, the more the President is concerned with the political parties that support him.

The logic of 'Retribution' politically in the preparation of the cabinet is remarkably different from the logic residential power law. The power of the president after the amendment to the 1945 Constitution ~~is~~ indeed underwent many changes. The presidential powers held in the 1945 Constitution involve (a) the power to administer the government; (b) the power in the field of laws and regulations; (c) the power in the judicial field; (d) the power in relations with foreign countries; (e) the power to declare a state of danger; (f) the power as the supreme power holder of the armed forces; (g) the power to give titles and other honors; (h) the power to form a Presidential Advisory Council; and (i) the power to appoint and dismiss ministers; (j) the power to appoint, assign or inaugurate other state officials (Budiman, 2017).

One of the powers of the president is to appoint and dismiss ministers, and this authority is based on Article 17 paragraph (2) of the 1945 Constitution. Prior to the amendment to the 1945 Constitution, this power was not further regulated by a statutory regulation. The exercise of this power in state practice has so far been handed over independently absolutely to the president. This shows that the prerogative in appointing and dismissing ministers is entirely in the power of the president.

However, after the first and third amendments to the 1945 Constitution, Article 17 underwent a few changes. If before the change, the president was free to make changes and the dissolution of the state ministry, then after the third amendment to the 1945 Constitution, this cannot be done immediately, because all of this is regulated by law.

To carry out the formation, transformation, and dissolution of the ministry of state, the president requires the approval of the DPR. This power shift is likely to lead to political 'retribution' in the appointment of ministers. To avoid this 'retribution', there need to be material guidelines regarding order state administration. This is what underlies the author to dig deeper regarding what legal principles in state administrative law can be used by the president in forming a competent cabinet, recalling that this cabinet will be the executor of the implementation of the president's vision and mission to realize public welfare.

This situation has made the President look as if he were trapped as a hostage. Thus, besides political considerations in choosing his cabinet, the President has many choices and strong legitimacy in determining the best candidates for his cabinet by the presidential system. Thus, this paper aims to provide a problem formulation regarding how the state administrative law strategy is preparing a competent cabinet.

This research is expected to provide a scientific perspective, especially in the scientific treasures of administrative law. The consideration of choosing ministers is always based on political considerations and rarely involves a legal approach. In fact, using an administrative law approach will provide certainty that the candidate for the appointed minister does not have any legal issues.

METHOD

In this article, the research method was juridical-normative, which analyzed norms and legal concepts related to problems by researching library materials as secondary data in the form of primary and secondary legal materials. Primary legal materials were sourced from laws and other related laws and regulations, while secondary legal materials were from books, journals, and many others. These legal materials were used as the basis for the author to analyze how the state administrative law strategy was in the preparation of a competent cabinet (Sonata, 2015).

RESULTS AND DISCUSSION

So far, in the preparation of a cabinet or Minister, the President's formula is the extent to which the elected Minister has a representation from the supporting political parties. It is because the President feels he has 'Remuneration' for the support of the political party. It includes calculating the extent to which government policies have not met with the resistance from the DPR. Based on this explanation, political considerations are still the dominant consideration in cabinet formation.

Political considerations in forming a cabinet are a political compromise model, which reduces the President's authority to elect his cabinet. It is what keeps the President from benefiting from the coalition in the presidential system. As stated by Alfred Stephan and Cindy Skach, there might be only a few advantages achieved by the coalition in the presidential government system (Saraswati, 2012). The President

can elect cabinet members from political parties supporting the coalition, yet they are elected individually, and there is no guarantee of permanent loyalty (Al-Fatih, 2020b).

The politics of compromise does not bring about favorable situations. First, many parties' involvement has implications for slow and unresponsive decision making since the consideration emphasizes the political effects that will occur from the decisions. Second, decisions relating to the interests of the public and the nation's future are hampered by the momentary interests of political parties, slowing down the strengthening and maturation of the program-oriented political system. The work of high state institutions frequently focuses on the political area rather than its substance so that the implementation is not optimal (Saraswati, 2012).

This political logic differs from the principles in the presidential system, where both the President and the legislature have a direct mandate from the people. The consequence of this direct mandate is that the President and the legislature's position is the same. Both could not bring each other down. Even to overthrow the President, there is still a mechanism to go through; it is the Constitutional Court.

The president's authority to appoint ministers without interference from other parties is the advantage of the presidential system. It provides a vast opportunity for the President to choose the best available figure to fill political positions. Because the President holds the responsibility, the appointed figures should be experts in their field. If appointing process is more focused on political considerations, it indicates that the President is not appropriately using the excellence of the presidential system (Saraswati, 2012).

Political considerations in choosing ministers can lead to inappropriate official placement. Political positions require experienced officials, understand the field of work, or have an educational background related to the field of duty concerned. Officials with no such capabilities will face problems in executing their duties, leading to the failure of the officials in carrying out their duties (Saraswati, 2012).

For this reason, the President, as the head of government, has many choices in considering candidates for ministers, including their composition. If the considerations are based on political considerations, at least the President must also consider the candidates capabilities. Therefore, assisting the president to appoint the candidates will require more than political considerations. In this case, the author considers the selection of ministers and cabinet based on the design from the perspective of state administrative law (Ayuni et al., 2019).

Avoiding Abuse of Authority

Nowadays, in the community, becoming a minister is such having a significant privilege as long as candidates do not hold any career position in the government. To be sure, one must have close ties with political parties. Becoming a minister gives one

an official status and a range of facilities from housing to private vehicles in addition to a great amount of responsibility for the interest of the whole state.

From an administrative law perspective, the President and the ministers' positions are in the realm of public law that regulates the relationship between government and society. The President and the Minister have full authority to regulate relations between the community and the government's interests. These interests must be unified to create harmony and social welfare because, if these interests are unfulfilled, the government is always blamed and considered unable to meet the community's needs.

Government from a legal perspective has; broad and narrow meanings. In a broad sense, the government is called regering or government; It is the implementation of the duties of all agencies, institutions, and officers entrusted with the authority to achieve the state's goals. In this broad sense, the government includes legislative, executive, and judicial powers and other state apparatus acting for and on behalf of the state. Meanwhile, the government, in the narrow sense, includes organizational functions performing government tasks. The emphasis on governance in this narrow sense relates only to the power running the executive.

One of the executive groups running government duties, functions, or tasks is the President to his assistants at the center, such as the Vice President, Ministers, and non-departmental institutions (Ibad, 2021). Meanwhile, those who hold decentralization affairs in the regions are the Head of the Level I Region, the Head of the Level II Region, and the Village Government. Including those who hold de-concentration matters such as governors, regents, mayors, sub-district heads, and village heads.

Based on this provision, Logemann explained the state is an organization related to the position (Huda, 2005). President, Vice President, and ministers are positions with specific functions that reflect the goals and work procedures of an organization. In other words, a position is a permanent work environment, which is used for the benefit of the state. The position is permanent, while the office holder can change.

From this position, it is known that positions held for the state's benefit in principle contain public interests. The actions of officials in making policies or decisions in any form always have consequences for the public interest. The public actions include: making regulations (*regeling*), issuing policies (*beleid*), setting plans (*het plans*), and decisions (*beschikking*).

P. Nicolai mentioned the characteristics contained in government positions or organs, among others:

1. Government organs exercise authority on their behalf and responsibility. In the modern sense, it is placed as political and civil service responsibility or the government's responsibility before a judge. Government organs are the bearers of responsibility.

2. Government organs can act as defendants in the judicial process regarding objection, appeal, or resistance.
3. Government organs can also come across as disgruntled plaintiffs.
4. Government organs do not have their assets.

To perform these public governmental actions, the President and the ministers need a norm of authority as the basis of legitimacy for government actions. The authority obtained from statutory regulations is formal legality. It follows the rule of law principle, which puts the legality principle as the principle of governance and the state. The principle of legality in administrative law implies the government is subject to the law, and all provisions that bind citizens must be based on the law.

From the perspective of administrative law, there are two ways to obtain governmental authority. It is attribution and delegation; sometimes, it is also a mandate, positioned as a separate way of obtaining authority. Attribution authority is a standard way of obtaining governmental authority. Attribution is the authority to make decisions derived directly from the law. Meanwhile, delegation authority is a delegation of authority to other government agencies. The nature of the delegation's authority is the delegation coming from the authority of attribution. The legal consequence is once the authority is conducted, the responsibility is stated on the delegate recipient.

From the above perspective, the Minister has the authority from attribution. With this firm basis, the Minister has the authority to make public legal actions. One thing to consider, every use of that authority contains responsibility. If this accountability leads to a criminal act, then the responsibility can be personal.

The thing that should be worried about when getting a position as Minister is the desire to abuse one's authority. Given the amount of authority they have this abuse of authority in the concept of state administrative law is always parallel to the concept of the improper use of authority. In this case, officials use their authority for other purposes deviated from the goals settled that authority (Rini, 2018).

There must be factual proof of the authority misused performed by the official to assess the power abuse. Abuse of authority is not due to negligence, but it is done consciously.

According to Indriyanto Seno Adjie, as quoted from W. Konijnenbelt (Maryanto, 2012) measuring the abuse of authority in governmental acts refers the following parameters: First, the element of abusing authority is considered whether there is a violation of the written basic rules or the principle of decency that lives in society and the state. Criteria and parameters are alternatives. Second, the principle of appropriateness in implementing a policy is determined if there is no basic rule or the principle of decency is applied if there are basic rules, while the basic (written) rules cannot be applied to specific conditions or circumstances that are urgent (Rini, 2018).

Government Maladministration

In the election of a minister as leader of the department, the President also needs to pay attention to administrative law principles, one of which is related to maladministration. Maladministration is one of the parameters whether there is a personal error or a job error. Maladministration also determines whether maladministration in government actions is the personal responsibility or the responsibility of the position (Firmansyah & Syam, 2021).

Maladministration in the Popular Scientific Dictionary means "bad administration or bad government" Soenaryati Hartono defines maladministration as unnatural and impolite behavior and does not care about the problems befallen to someone caused by abuse of power (Wulandari & Zulkifli, 2017).

With this understanding, maladministration is always associated with behavior in public services. Based on the norms of administrative law ~~norms~~, maladministration is included in behavior norms for officials in public services.

The provisions of Article 1 point 3 of Law No.37 of 2008 concerning ~~the~~ Ombudsman define maladministration as behavior or actions against the law, beyond authority, using authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the provision of public services performed by state and government officials which cause material and or immaterial losses to the public and individuals.

Theoretically, maladministration can occur due to government legal action or state administration, in which, in a state of law, every government legal action must always be based on the principle of legality or the prevailing laws and regulations.

According to Soenaryati Hartono, administrative actions or behavior are not merely a deviation from the procedures for performing state officials or apparatus duties but can also act against the law.

Maladministration acts are closely related to the state administration apparatus's attitudes and behavior (government) as a legal subject (Nadzir, 2017). Maladministration action is an action against the people's will, so determining the morality of a government can be assessed from the extent of the deviations included in the details above. The government is considered acceptable if there is no maladministration, and it is considered flawed if the government commits many irregularities (Herlindah, 2017).

There are several forms of maladministration. The following are some maladministration actions according to several parties:

Table 1. Maladministration Action

Crossman Classification (Wulandari & Zulkifli, 2017)	**National Ombudsman Commission** (Firmansyah & Syam, 2021)	**According to Skyes** (Susanto, 2019)
Prejudice	Counterfeit / conspiracy	Prejudice or bad thoughts
Negligence	Intervention	Ignorance
Heedlessness	Lengthy handling process / not handled	Postponing
Delay	Incompetence	absence of attention
Acting ultra vires	Abuse of authority	incompetence
Unworthy act	Obviously taking sides	unreasonable act
Evil	Receiving rewards (money, gifts, facilities, corruption practice)	Unfair deeds
Cruelty	Embezzlement of evidence	Heinous deeds
Arbitrariness	Act decently	arbitrariness
	Neglect of obligations	

Source: Author analysis, 2022

In Article 1 Point 3 of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, there are nine criteria of maladministration:

1. Behavior and actions against the law
2. Behavior and actions beyond the authority
3. Using authority for purposes other than those for which it is intended;
4. Negligence;
5. Waiver of legal obligations;
6. In administering public services;
7. Conducted by state and government officials;
8. Causing material and or immaterial loss
9. For the community and individuals.

With several criteria and indicators of maladministration, government administrators can determine whether they have made personal mistakes or mistakes in their positions. It is to determine whether the responsibility is personal or occupational. The comparison can be illustrated in this chart (Firmansyah & Syam, 2021):

Table 2. Types of Responsibility

Job Responsibilities	Personal Responsibility
Focus: legality of the action -Authority -Procedure -substance	Focus: maladministration Bad behavior of officials in performing their duties - disgraceful behavior Among others: arbitrarily, abuse of power
Parameter -legislation -general principles of good governance	Parameter -legislation -general principles of good governance -code of good administrative behavior (European Union)
Legal questions Is there a juridical defect? - authority - procedure - substance	Legal questions Is there any maladministration in this action?
The principle of *praseumptio iustce causa*	In connection with a criminal act: the presumption of innocence
The principle of vicarious liability: applies	The principle of vicarious liability: does not apply.
Sanctions: administrative, civil	Sanctions: administrative, civil, criminal.

Source: Author analysis, 2022

Redesigning the Ministry Law

One of the principles of a democratic state is that every government action is always bound and subject to applicable law. This applicable law is a written law; it is laws. The rule of law aims to create the state, government, and social activities based

on justice, peace, and benefit or meaningfulness. From this context, the existence of law is used as an instrument in managing the life of the state, government, and society.

The arrangement of governmental duties still requires more complex legal instruments to make every technical government task can run properly. It is where the function of administrative law as public law is always closely related to the authorities' powers and activities. Philipus M. Hadjon stated the measure or indication of the rule of law is the functioning of administrative law; on the other hand, if administrative law does not function, then a country is not a state based on the law (Susanto, 2019).

Based on these assumptions, state administrative law contains two aspects: The legal rules governing how the state equipment performs its duties and the legal rules governing the relationship between government administrative equipment and citizens. The State Ministry is a state government agency led by the state minister and under the president. The Minister of State is an assistant state official to the President, appointed and dismissed by, and responsible to the President (Nadzir, 2017).

The ministry's position is regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) after the amendment. The legal instruments are outlined in Article 17 paragraph (1), (2), (3), and (4):

1. The President is assisted by state Ministers;
2. The ministers are appointed and dismissed by the President;
3. Each Minister oversees specific affairs in the government;
4. The formation, amendment, and dissolution of the ministry are regulated in the law.

Based on the formulation of Article 17 paragraph (1), (2), (3), and (4) above, there are essential changes from the previous arrangement, first, regarding the President's prerogative right. Theoretically, the prerogative is a privilege owned by certain independent and absolute institutions. It means other state institutions cannot challenge this right. Even so, the Constitutional Court (MK) has used another interpretation of the prerogative concept in its decisions. The Court stated the prerogative is not absolute (Harvelian et al., 2020). The President has prerogative rights in some issues, but the President also has a legal obligation to comply with the statutory regulations following the President/Vice President's oath. That is, the presidents may not do things contrary to legality demands that create legal uncertainty.

In connection with Article 17 paragraph (2), the President has absolute power to determine the people who will serve as ministers. Whether these people are from political parties, professionals, academics, and practitioners, it all depends on the President's authority. The President is free to do it anytime and anyone without asking for approval or consideration from other state institutions to elect a minister. Based

on the Constitutional Court decision, ministerial positions may not be put on sale as a political gift to a person or group.

Second, in terms of the nomenclature of the ministry, following the mandate in Article 17 paragraph (4), the formation, amendment, and dissolution of ministries are regulated in law by considering two aspects: the scope of the law on this matter and whether it will be specifically regulated in the law of state ministries or whether it is sufficient in other laws with similar regulatory relevance (Seno, 2020). If it is interpreted narrowly, the scope of this law's regulation will only regulate three things; it is how the President will form, change, and dissolve state ministries. If it is interpreted broadly, the scope of regulation can be extended to the organization and how a state ministry operates.

With the emergence of Law No. 39 of 2008 on State Ministries (from now on referred to as Law No. 39 of 2008), the Article 17 paragraph (4) is interpreted more narrowly. Based on Law No. 39 of 2008, there are three types of ministries. Ministries explicitly mentioned in the constitution, ministries implicitly mentioned by the constitution, and strategic ministries.

There are two purposes related to the division of this type of ministry: ~~First,~~ determining the degree of strength of the relationship between the DPR and the President and determining the relationship between the administration of government by the central government and by local governments (Rahman, 2019). Eko Prasojo assessed that the first objective needs to be carefully regulated since it involves the strength between the President and the DPR. Even so, the DPR should not be involved in the formation, amendment, and dissolution of ministries because this is the President's prerogative right (Rahman, 2019).

Based on the explanation above, the number and names of the ministries are still debatable. There are several reasons; first, the constitution does not explicitly mention the nomenclature of ministries set by the President. Second, by following the logic of state government power's flow, the number and types of state ministries are the prerogatives of the President. Third, if the number and types of ministries are regulated in law, the strategic issues of the nation can change at any time. It certainly makes it difficult and inflexible for the President to form ministries (Seno, 2020). Precisely with the restrictions on the number and names of ministries, Law No. 39 of 2008 does not go along with the spirit of the presidential system (Seno, 2020).

Material criteria that can be used by the president in shaping, changing, and dissolving a ministry must be general and flexible. It is intended to provide space for the president in compiling his organization. Material criteria that need to be considered are: (a) efficiency and effectiveness in the ministry organization; and (b) grouping of affairs within the ministry.

These two material criteria are directly proportional to the formulation policy organization. In compiling an organization, what must be determined first is its function, not the other way around (structure follows function). national problems that occur in this nation must be accommodated through a flexible structure determined by the president. Instead, it is constrained by a rigid structure, which does not allow flexibility.

Third, that each minister oversees certain affairs in the government. This matter shows that a minister must have the capacity and ability to manage the ministries for which they are responsible because government affairs are quite a complex matter. The ministry has the following functions: (a) formulation, determination, and implementation of policies in the field; (b) management of state property/wealth under their responsibility;(c) supervision of the implementation of tasks in their respective fields and (d) implementation of technical activities from the center get to the regions.

What must be considered is how to make material criteria in the law regarding the President's conditions in forming, changing, and dissolving the ministry. These criteria must be general and flexible, so it provides spacious room for the President to organize his organization. It is essential since, in the preparation of an organization, its functions must be determined first, not limited by a rigid structure.

Third, each Minister oversees specific affairs in government. It shows that a minister must have the capacity and ability to manage the ministry he is responsible for, considering that the government affairs are quite complex. Based on Article 8 of Law No. 39 of 2008, each ministry has the following functions: (a) formulating, stipulating, and implementing policies in their respective fields; (b) management of state property/assets under its responsibility; (c) supervision over the implementation of tasks in their respective fields and (d) implementation of technical activities from the center to the regions.

CONCLUSION

The President has the prerogative right to choose a cabinet or Minister following his/her authority. Consideration on a political basis is inevitable. However, the President also needs to consider a ministerial candidate from state administrative law, including providing a comprehensive understanding of his position as Minister regarding the powers he has which is to avoid arbitrary action. The considerations as a basis made by the President in the perspective of state administrative law involve the following conditions: (a) The Minister must avoid the abuse of authority; (b) The Minister must be aware of any maladministration resulting in personal responsibility, not office responsibility; (c) The Minister must redesign the Law No. 39 of 2008 on the Ministry because it is not in line with the presidential system.

If the number and types of ministries are regulated in law, then the nation's strategy from each time period can change. This mention will be difficult and make the presidential power inflexible in forming ministries. The existence of Article 17 paragraph (4) regarding the formation, modification and dissolution of ministries is regulated in the Law, which is related to the nomenclature of ministries, which has given limits to the President's authority to regulate his ministries because the President has the prerogative to determine ministries, but that authority is limited by the Law on State Ministries. This is said to be inconsistent with the presidential system.

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