

Concurrent Ministerial Positions: Constitutional and Al-Mawardi Perspectives

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Abstract

*Concurrent positions is a political phenomenon that is very widespread nowadays in Indonesia, especially the concurrent ministerial positions from party cadres to even the general chairman of the party. This concurrent position results in the emergence of problems that are very vulnerable to abuse of power and conflicts of interest. The purpose of this study is to find out the arrangements for multiple ministerial posts based on article 23 of the law on state ministries, to find out Al-Mawardi's opinion on the issue of multiple positions, and to find out how the concept of an ideal ministerial position will be in the future. In this study the research method used by researchers is normative juridical, namely the statutory approach and the doctrinal approach. From a juridical perspective, the prohibition of concurrent ministerial positions has been regulated in Article 23 of law number 39 of 2008 concerning state ministries. But in that article the prohibition of holding multiple ministerial posts is not specifically regulated. Implicitly, Al-Mawardi explained that a minister must focus on devoting himself to the head of state in particular and the state in general. Because ministers must be the eyes and ears of the head of state, that is, they are required to be sensitive and observant about a problem that exists in that country. A minister must build integrity in the ministry to prevent the emergence of power instability. Therefore, an alternative concept for dealing with multiple ministerial positions can use a meritocracy system or *zaken* cabinet so that in the future ministers with ideal specifications will not result in conflicts of interest and abuse of power.*

Keywords: *Concurrent positions, Minister, Constitutional, Al-Mawardi.*

INTRODUCTION

One of the manifestations of a rule of law state is that every action and behavior is limited by the applicable laws and regulations. As mandated by the Constitution of the Republic of Indonesia Article 1 paragraph (3) that the State of Indonesia is a country based on law (*Rechstaat*). Therefore all actions taken by

the government, law enforcers and the public must be in accordance with existing laws and regulations. The rule of law is guaranteed by the constitution to achieve a legal objective namely, legal certainty.

In addition to adhering to the rule of law system, Indonesia also adheres to a presidential system of government, which means that the president as head of state also acts as head of government assisted by his ministers. In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia article 17 paragraph (1) "The President is assisted by ministers of state". Based on Article 7 of Law Number 39 of 2008 concerning State Ministries, the minister's duties are to carry out certain affairs in government to assist the president in administering state government.

According to researchers, ministers have a very important role in administering government. Therefore, the selected ministers are required to be disciplined, honest and responsible for the mandate they carry out. Position as a minister has authority that is very prone to abuse of power. But what is very unfortunate is that Indonesia currently has a problem with ministerial positions, so it is very interesting to study because there are multiple positions in the ranks of ministries.

Arrangements regarding the prohibition of concurrent positions have been regulated in Article 23 of the Law on State Ministries "Ministers are prohibited from holding concurrent positions as:

- a. Other state officials in accordance with statutory regulations;
- b. Commissioners or directors in state companies or private companies; or
- c. Leaders of organizations financed from the state expenditure revenue budget and/or regional expenditure revenue budgets.

Concurrent positions are very vulnerable to cause abuse of power. Lord Acton argues in the theory of power, "power tends to corrupt, and absolute power corrupts absolutely". Which means, power tends to make people commit acts of abuse of power. This shows a tendency when holding the position of minister and concurrently as chairman of the party will be prone to conflicts of interest, prone to abuse of power, and prone to practices of corruption, collusion and nepotism.

Ministers who hold multiple positions should not be allowed because they have very important positions in the government. Especially with his position assisting the president in running the government. Even though the minister is entrusted with a certain field in government. So it becomes important to study related to ministerial concurrent positions.

In this study the research method used by researchers is normative juridical, namely the statutory approach and the doctrinal approach.¹² Juridically, the

¹ Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2016), p. 24

² Bismar Nasution, *Penelitian Hukum Normatif dan Perbandingan Hukum*, (Medan: Fakultas Hukum USU, 2003), p. 1

prohibition of concurrent ministerial positions has been regulated in law number 39 of 2008 concerning State Ministries. Primary legal material is authoritative legal material, namely laws and regulations. Is a written regulation that contains legal norms that are generally made and stipulated by state institutions or officials who have authority through procedures for establishing statutory regulations. Secondary legal materials in this research are books and journals that are relevant to the field under study.

RESULT AND DISCUSSION

History of Multiple Positions in Indonesia

Judging from history, the State of Indonesia has had bad experiences with multiple positions in power. ABRI's dual function history is a reflection of multiple positions in power. ABRI/TNI during the New Order era did not only handle matters of state defense and security, but also on social and political functions.³ This happened when Suharto was elected President of Indonesia through TAP MPRS No. XLIV/MPRS/1968, slowly the military entered the socio-political realm, then coupled with the issuance of Law Number 20 of 1982 concerning Provisions for the Basic Defense and Security of the Republic of Indonesia which later became a complement to the legal basis for the ABRI's dual function. President Soeharto appointed a number of TNI to occupy MPR, DPR, and executive positions, both at the national level and in strategic areas. ABRI's dual function deprived some of the civil rights of the people because they had been filled by members of the military who were elected to occupy positions in the government.

Concurrent positions in the ABRI's dual function during the New Order era had a good initial goal. However, gradually the application of dual positions with the ABRI's dual function led to dispower and malpower which led to abuse of power. As a result, ABRI's function which should have prioritized national defense and security in order to maintain national stability, instead prioritized the state of social and political forces. This means that the main function of ABRI, which has multiple positions, results in one of the positions of power being given is not optimal and leads to more problems. So that Suharto's fall during the Reformation era prohibited ABRI's concurrent positions by abolishing the ABRI's dual function policy. Eliminating the dual position of ABRI's dual function at that time was an ideal step to prevent abuse of power.

A presidential system that makes the president the head of state and head of government in Indonesia. Resulting in the president as the head of government, to assist him in running the government assisted by the ministers. This is as stated in the provisions of article 17 paragraph (1) of the 1945

³ Ni'matul Huda, "Hak Politik Tentara Nasional Indonesia Dan Kepolisian Negara Republik Indonesia Pasca Reformasi," *Jurnal Hukum IUS QUIA IUSTUM* 21, no. 2 (2014), p. 205

Constitution of the Republic of Indonesia which reads “The President is assisted by state ministers”. As an institution that runs the government's executive power, of course, it demands that the ministers appointed to the maximum in carrying out the duties of the position.

Multiple Positions Based on Article 23 of Law Number 39 of 2008 concerning State Ministries.

The purpose of the regulation prohibiting multiple positions in the scope of the main ministry is as a form of effort to limit power so that abuse of power does not occur which causes conflicts of interest. The Prohibition of Multiple Positions has actually been regulated by several regulations in Indonesia. Mainly the prohibition of holding multiple positions in ministerial institutions, if you look at the words of Article 23 letter (a) of the Ministerial Law, is a position as a state official regulated by several laws that exist outside the other. Then, in line with this matter, state officials who are regulated by law may not concurrently serve as Ministers.

The president's prerogative to appoint ministers and be able to choose them directly should be used as best as possible. When indeed someone who is still serving as a state official or government official should be advised to resign or relinquish the previous position. The function of the date of office is also to avoid any discussion among the public. Indonesia is a country of laws, therefore to uphold this milestone, the president can set an example so that all actions are in accordance with existing laws or regulations. According to the researcher in point (a) this is firm in writing and there is no misinterpretation of meaning.

Judging from the sound in article 23 letter (b) which explains that ministers are prohibited from holding concurrent positions as commissioners or directors in state companies or private companies. The Ministerial Law, historically was formed in order to avoid having multiple positions as has happened in the arrangement of ministries. according to researchers, if examined in depth related to the prohibition of ministerial officials who concurrently serve as commissioners or directors, it is a very appropriate form of action. Because the position of commissioners and directors in a company will make it vulnerable to the creation of a conflict of interest. It is feared that this position relationship will have an impact on the abuse of his power as a minister. Minister as an official who runs the government as well as running the program. The emergence of a conflict of interest resulted in not being maximal in his position as a minister, which must prioritize the public interest.

Prohibition of concurrent ministerial positions in the sentence "organizational leadership financed from the State Revenue and Expenditure Budget", if examined in depth has a meaning other than an organization whose sources of funds are funded by the APBN/APBD should also implicitly emphasize that political parties are one of them. Theologically, the meaning of Article 23 letter (c) of this Ministerial Law is that the objective is to include organizations financed by the state. According to researchers, political parties are

also included in it. So the position of minister should not be juxtaposed with positions that are still active as cadres and even chairpersons of political parties. Misinterpretation of the use of this article has recently proven to be misused. Evidenced by the presence of several state officials in the ranks of ministries who were appointed from the general chairman of a political party. It should be seen from the existing regulations, namely that ministers are prohibited from holding concurrent positions with organizational leaders where the source of funds is financed by the state or region, which in turn are not allowed to become ministry officials. If it requires that a person who is appointed minister from the general chairman of a political party must release or resign from his position as the general chairman of the party. This consequence is one form so that in carrying out his position as minister it is carried out optimally. This aims to avoid abuse of power that creates a conflict of interest. Other strengthening regulations that political parties get funds from the APBN/APBD in article 34 paragraph (1) of Law Number 2 of 2011 concerning Political Parties which states that Political Party Finance comes from several sources, including sources from:

- a. membership dues;
- b. lawful donations; And
- c. financial assistance from the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget.

In letter (c) it is clearly stated that one of the sources of political party funds is from the APBN/APBD. It explicitly states that political parties do receive financial assistance from the state/region. So that the impact of this if it is connected with Article 23 letter (c) of the Law on State Ministries, one of the organizational leaders in question should be political parties because their sources are from the state/region.

In the Indonesia Maju cabinet under the leadership of President Ir. Joko Widodo and Vice President KH. Ma'ruf Amin, at least 18 out of 36 political party officials became ministers. Coordinating Minister for Economic Affairs Airlangga Hartarto as chairman of Golkar party, Minister of Defense Prabowo Subianto as chairman of Gerindra party, Minister of Law and Human Rights Yasonna H. Laoly as head of division at PDIP Central Leadership Council, Social Minister Tri Rismaharini as Chair of the cultural division of PDIP Central Representative Council, Minister of Manpower Ida Fauziyah as a cadre of PKB party, Minister of Industry Agus Gumiwang Kartasasmita as Deputy Chairman of Golkar Party, Minister of Trade Zulkifli Hasan as General Chair of PAN Party, Minister of Communication and Information Johnny G. Plate as Secretary General of NasDem Party, Minister of Agriculture Syahrul Yasin Limpo as a cadre of NasDem Party, Minister of Environment and Forestry Siti Nurbaya Bakar as Chairperson of the Central Leadership Council of Nasdem party, Minister of Maritime Affairs and Fisheries Sakti Wahyu Trenggono as Deputy Chairman of Gerindra Party, Minister of Villages, Development of Disadvantaged Regions and Transmigration Abdul Halim Iskandar as Chair of

the Executive, Legislative and Management Strengthening of PKB party's Central Leadership Council, Minister of Development Planning Suharso Monoarfa Former chairman of PPP party, Minister for Empowerment of the State Apparatus and Bureaucratic Reform Abdullah Azwar Anas as the Cadre of PDIP party, Minister of Cooperatives and Small and Medium Enterprises Teten Masduki as a cadre of PDIP party, Minister of Tourism and Creative Economy Sandiaga Salahuddin Uno as Gerindra Party Cadre, Minister of Women's Empowerment and Protection I Gusti Ayu Bintang Darmawati as a cadre of PDIP party, Cabinet Secretary Pramono Anung as a cadre of PDIP party.

Regulations regarding the limitation of ministerial powers through a prohibition on concurrent positions are deemed urgently needed. In accordance with the theory of power which states that power will make people abuse their power. Moreover, in concurrent positions as a Minister as well as a cadre and even the general chairman of a political party.⁴

The act of holding multiple positions, apart from being inappropriate and unethical, holding multiple positions will lead to deviating or mixing conflicts of interest, like the mixing of right and wrong.

One of the conflicts of interest referred to is when running as chairman of a political party has an impact on his ministerial position, such as: 1) making decisions in the ministry institution he leads to benefit his political party, 2) carrying out his duties as minister but at the same time carrying out goals in the party as chairman general party; 3) prioritizing recruiting ministerial members from cadres in their political parties; 4) use facilities as a minister for party interests. The conflict of interest mentioned according to the researcher can hinder and cause the position of the minister to not be maximal in serving as an institution that runs the wheels of government.⁵

Concurrent Ministerial Positions According to Al-Mawardi

Imam Al Mawardi's full name is Abu Hasan Ali bin Muhammad bin Habib Al Mawardi. The name Al Mawardi is a *laqob* (nickname) given to him, due to his family's work producing fragrances from rosewater. Imam Al Mawardi was born in Bashroh Iraq in 364 H/973 AD. It coincided with the time of the Abbasid Caliphate, Abbasid II to be precise.⁶ During his lifetime, Imam Al Mawardi held

⁴ May Lim Charity, "Ironi Praktik Rangkap Jabatan Dalam Sistem Ketatanegaraan Indonesia (Irony Practices of The Double Duty In The Indonesian State System)," Jurnal Legislasi Indonesia 13, no. 01 (2016), p. 5

⁵ Moh. Baris Siregar, Analisis Larangan Rangkap Jabatan Menteri Yang Berasal Dari Unsur Partai Politik Dalam Sistem Ketatanegaraan Indonesia, Indonesia Law Reform Journal, p. 98

⁶ Muzayyin Ahyar, Al Mawardi dan konsep Khilafah Islamiyah: Relevansi Sistem Politik Islam Klasik dan Politik Modern, Jurnal A-A'raf, 2018, p. 15.

strategic positions in the Abbasid government. He once held the position of *Aqda al qudha* or *Afdal al Qudhat* (Supreme Judge).⁷

The following works have been written by Imam Al Mawardi. Political Sector;⁸ *Al ahkam al shulthaniyyah* (Islamic constitutional law), *Qawanin al wizarah siyasah al malik* (Provisions of the Ministry and Government Politics). Field of Fiqh; *Al hawl al kabir*, *Al iqra*. field of interpretation; *Tafsir al quranul karim*, *An nukalu wa al uyunu*, *Al amtsalu wa al hikam*. The field of literature and *aqidah*; *Adabu ad dhunya wa ad dhin*, *Alamu an nuburwah*.

Imam Al Mawardi's view of a *wazir* is a person appointed by the caliph to help him run the government. Given the enormity of the duties and responsibilities of the *khalifah* as the head of state, it is necessary to have someone who is able to help relieve the caliph's duties. So that the burden of the caliph becomes lighter. The caliph delegated his duties to a *wazir* with his institution called *wizarah*. A *wazir* is appointed based on the conditions and abilities he has. So that the task delegated by the caliph to the *wazir* can be carried out properly. Al Mawardi divides the concept of *wazir* into two⁹:

1. *Wazir Tafwidh* is a Minister appointed by the caliph with broad authority. A *tafwidh wazir* can perform *ijtihad* according to his own ability without consulting the caliph. Due to the broad authority of the *wazir tafwidh*, Imam Al Mawardi provided criteria based on the letter of the Prophet Muhammad. That the *tafwidh wazir* must have a collaboration between pen and sword skills. In this case, administrative skills and also fighting. Because both are state power.¹⁰
2. *Wazir Tanfidh* is a minister who has limited authority. A *wazir tanfidz* can only act according to the orders of the caliph. He does not have the right to perform *ijtihad* like a *tafwidh wazir*. *Wazir Tanfidz* can also be likened to being a mouthpiece for the caliph with his people. The requirements to become a *wazir tanfidz* are not as strict as being a *wazir tafwidh*.¹¹

To build the integrity of ministry institutions to prevent power instability. Al-Mawardi mentions integrity in four contexts at once, as follows: *First*, Divine Context. Integrity must be built on morality and theological teachings by obeying God's commands and avoiding His prohibitions. *Second*, the context of power. According to Al-Mawardi, the integrity of ministers needs to be built based on

⁷ Yanuar Arifin, *Pemikiran-Pemikiran Emas Para Tokoh Pendidikan Islam*, Yogyakarta: IRCiSoD, 2018, p. 89.

⁸ Mutasir, *Non-Muslim Sebagai Menteri Tanfidzi Perspektif Pemikiran Al-Mawardi*, *Jurnal An-nida'*, 2018, p. 8-10.

⁹ Al Mawardi, *Al Ahkam as Shulthaniyah*, Beirut: Dar al-fikr, p. 38.

¹⁰ Muzayyin Ahyar, *Al Mawardi dan konsep Khilafah Islamiyah: Relevansi Sistem Politik Islam Klasik dan Politik Modern*, *Jurnal A-A'raf*, 2018, p.14

¹¹ Mutasir, *Non-Muslim Sebagai Menteri Tanfidzi Perspektif Pemikiran Al-Mawardi*, *Jurnal Annida'*, 2018, p. 31

subjective loyalty. What is meant by subjective decency here is that ministers are required to help the head of state in earnest but by maintaining individual vigilance to avoid arbitrariness that the head of state may one day inflict upon him. According to Al-Mawardi there are three things that are uncertain, namely politics, oceans and changing times. *Third*, personality context. The integrity of a minister's personality is manifested in the form of discipline, intelligence, firmness and avoidance of actions that can degrade such as corruption and justify all means and betrayal. As an assistant to the head of state, ministers must be disciplined in supporting the dignity of their superiors in four matters, namely matters of government governance, matters of military defense, matters of management of state assets, and matters of public protection. Fourth, the context of the situation and conditions. The integrity of ministers and the institutions they lead must be built based on a vision for the future to face the political dynamics and challenges of changing times.¹²

Implicitly Al-Mawardi explained that a minister (*wazir*) is required to focus on devoting himself to the head of state in particular and the state in general. Because ministers must be the eyes and ears of the head of state, that is, they are required to be sensitive and observant about a problem that exists in that country. A minister must build integrity in the ministry to prevent the emergence of power instability.

The Concept of an Ideal Ministerial Position in the Future

The application of a presidential system results in ministers being subject to and responsible to the president. In Indonesia, which uses a presidential system of government which means that ministers can be appointed by the president who is also responsible for them. These provisions have been regulated through Article 17 paragraph (1), (2) and (3) of the 1945 Constitution which states, "The President is assisted by state ministers", "Ministers are appointed and dismissed by the President", "Each minister is in charge of certain affairs in the government".

In line with this, constitutional law expert Prof. Jimly Asshiddiqie argues that in a presidential system of government ministers are expected to meet the prerequisite qualifications that are more technically professional than political as in a parliamentary system. In a presidential system, it is the president who is responsible, not ministers, so the nuances of the work of ministers in a presidential system should be more professional than political.¹³ agree with this, because in ministerial accountability it is also the responsibility of the president later in selecting ministers. So as to show that the authority to appoint ministers is used optimally by the president by selecting the required capacity qualifications in the ministry. The consequence is that if the chosen minister abuses his power

¹² Al-Mawardi, *Adab al-Wazir* (Kairo: Maktabat Al-Khani, 1994), p. 31

¹³ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*. (Jakarta: Rajawali Persada, 2006), p. 315.

or the worst thing is corruption, then one side of the president is also responsible and can be blamed for this action. so that the thick notes become the president's duty to select ministerial candidates who truly have integrity during his reign.

There are several approaches used in understanding employee recruitment in both government and private organizations. This explains the concept that tries to provide an understanding of the subject of this discussion. The two approaches are:¹⁴

1. Merit System

The Merit System is the policy and management of Apparatus HR based on qualifications, competence and performance in a fair and reasonable manner, without discriminating against political background, race, skin color, religion, origin, gender, marital status, age or disability.

2. Spoil Sytem

This system places more emphasis on the aspects of kinship and colleagues as well as emotional closeness to someone who will occupy a certain position. These methods are often used in various organizations including government agencies. In Indonesia, since the reformation era, the recruitment of employees has begun to be abandoned because this system has caused a lot of harm to the bureaucracy from various aspects. Both from performance issues and from the aspect of public service.

The appointment to become a minister should be someone who really has the technical and professional qualifications to lead in carrying out government tasks based on the principles of a meritocratic system. In a presidential system of government, it will demand a cabinet that is structured as a *zaken*-cabinet rather than a cabinet in a parliamentary system that is prominent in its political character. Therefore, in determining someone to be appointed as a minister, the President and Vice President should prioritize requirements that are not political, such as those that must be possessed, including technical leadership, rather than requirements for political support.

In the book "Rise of Meritocracy" meritocracy also has a meaning, namely as a view or giving an opportunity for someone to occupy a position based on merit, namely based on the appropriateness of expertise or skills. So that the term meritocracy is often derived into the term merit system.¹⁵

While the implementation of the *zaken*-cabinet system is actually a cabinet of experts, or also known as a "business cabinet" which is interpreted as a cabinet filled with professionals and experts in matters in their field.¹⁶ *Zaken*

¹⁴ Firman, "Meritokrasi Dan Netralitas Aparatur Sipil Negara (Asn) Dalam Pengaruh Pilkada Langsung," *IJPA-The Indonesian Journal of Public Administration* 3, no. 2 (2017): p. 11

¹⁵ Farhan Abdi Utama, "Meritocracy In Various Countries Around The World (Constitutions Comparison)," *Civil Service* 10, no. 2 (2016), p. 18

¹⁶ Novendri M. Nggilu and Fence M. Wantu, "Menapaki Jalan Konstitusional Menuju *Zaken* Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi," *Jurnal Hukum Samudra Keadilan* 15, no. 1 (2020), p. 130.

cabinet is a system that has the quality of a person who will be appointed as a minister and comes from a figure or figures who have a track record of having a professional nature, have intellectual expertise in their field that cannot be doubted, and where the nomination of the name of a political party is not just one name in the ranks Ministry. But there are several names, this is so that the president in selecting, taking and appointing his ministers can do the maximum.

CLOSING

Based on the results of the research and discussion conducted by the researcher, the researcher concludes that the Concurrent Positions of Ministers Derived from Elements of Political Parties based on Article 23 of the Law on State Ministries, namely the emergence of concurrent conflict of positions has existed since the New Order era, namely in the ABRI's Dual Functions. This dark experience became the background for the banning of multiple positions. The reason is that there is abuse of power which results in arbitrariness when in office. ABRI at that time was not only in charge of national defence, but also in charge of and occupied the government department. In order to limit the minister not holding concurrent positions with other officials, namely both as state officials and government officials, Article 23 letter a of the State Ministry Law reads "Ministers are prohibited from holding concurrent positions as other state officials in accordance with laws and regulations". This is used as a regulation both in harmonization and synchronization between other regulations in order to prevent multiple positions in the future. So that in enforcing the prohibition of multiple positions in the ministry it can also make it easier because there is already a legal basis. Prohibition of concurrent ministerial positions by serving as commissioners or directors in state companies or private companies is regulated in Article 23 letter (b) of the State Ministry Law. The reason for the prohibition of concurrent positions is that the position of commissioner or director is a very important position in a company. Therefore, it will be vulnerable to abuse of his position as minister. Implicitly Al-Mawardi explained that a minister (*wazir*) is required to focus on devoting himself to the head of state in particular and the state in general. Because ministers must be the eyes and ears of the head of state, that is, they are required to be sensitive and observant about a problem that exists in that country. A minister must build integrity in the ministry to prevent the emergence of power instability.

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