
Cabinet Formation Elections: Among Opposition, Coalition, or Collegiality of The Party's Chairperson

Sulardi Sulardi¹(corresponding author), **Wafda Vivid Izziyana**²¹Universitas Muhammadiyah Malang, Malang, Indonesia; sulardi.mgl@gmail.com²Universitas Muhammadiyah Ponorogo, Ponorogo, Indonesia; wafda.vivid@yahoo.com

Submitted: December 27, 2019 - Revised: January 11, 2020 - Accepted: January 12, 2020 - Published: January 31, 2020

ABSTRACT

Constitutional change is always tinged with a tense and lasting political constellation in both national and international contexts. The existence of transactional politics to gain seats constantly influences political dynamics in the election period. The method used in this research is the doctrinal method. Indonesia applies a presidential government system but does not fully follow the existing doctrine. Several coalitions in the government coalition were made. As a result when the President and Vice President are nominated, political parties that support the nomination feel they have the right to join the government, as in the parliamentary system of government. The cabinet filling model is also influenced by supporting parties. It shows that political parties can collaborate to form a joint government, however, the President has the prerogative in determining who will be his minister. It should be carefully noted down that our country is a country adopting a presidential government system. As a result, the formation and the ministers elections of the government is not at the hand of the chairperson of the political parties coalition, but fully at the hand of the president as the President's prerogative rights. This cannot be proceeded. Chairperson of the Political parties in a coalition may expect to get some seats of powers (minister) from the President

Keywords: cabinet; election; political; party; chairperson

INTRODUCTION

Indonesian constitutional law owns a special history in the journey of the independence of Indonesia. The term special here means that the constitutional trip is always colored with tense and eternal political constellation either at the national or international context.⁽¹⁾ Besides political tension, the dynamics of the government system also needs to be reviewed because each period is always influenced by a political configuration. When in the past the political configuration was nuanced with an authoritarian style combined with a parliamentary government system, in the reformation era, Indonesia encounters a new design of its government system. The novel model is not wholly new but it is in the form of system purification. Presidential system, which is agreed upon, possesses its own dynamics, which is faced with the political constellation of the political party chairpersons.⁽²⁾

Any assumptions of the existence of transactional politics for getting seats and the reclamation of the president by political contracts constantly affect political dynamics in the post-general election period. Based on the descriptions above, this article is intended to reflect them again. Therefore what will be discussed in this writing is to reread the government system of opposition and coalition in the government system, the reinforcement of the President's prerogative right, and the collegial government: comparison and alternative.⁽³⁾

Government system means as a structure consisting of legislative, executive, and judicative functions which are interrelated, cooperative, and influence one another.⁽⁴⁾ Therefore, a government system is the way of the work of the state institutions and their relationships among one and the other. According to Jimly, a government system represents a system of the relations among state institutions. According to Sri Soemantri, a government system is the relationships between legislative and executive institutions. Meanwhile, Ismail Sunny states that a government system is a certain system that explains how the relation among the highest state equipment occurs in a country.⁽⁵⁾

A government system in general is divided into two main systems namely presidential and parliamentary. Out of the two, it is a "mixed" system, or quasi parliamentary or quasi presidential, or some call it a referendum system. In the referendum system, an executive agency is part of the legislative body called legislative working agency. In this system, the legislative agency forms sub-agencies as the government tasks implementers.⁽⁶⁾ The control of the legislative agency is directly carried out through referendum.

According to Jimly Asshiddiqie, there are four models of the government system namely United States, England, France, and Sweden models. United States represents the presidential system, English stands for the parliamentary system, and France signifies the mixed system, while Sweden embodies another system, namely collegial system where its president is an executive board consisting of 7 members. One member serves as the

president for certain years, then it is replaced by another member of the executive board. CF Strong differentiates it into two types, nominal and real executives. As a result, the government system may actually be distinguished into two main systems, namely presidential and parliamentary. S L Witman and J.J Wuest reveal characteristics of the presidential system as follows:

It is Based upon the separation of powers principles: (1).The executive has no powers to dissolve the legislature nor must he resign when he loses the support of the majority of its membership.(2). There is no mutual responsibility between the President and his Cabinet; the latter is wholly responsible to the Chief Executive (3). The executive is chosen by the electorate.

While the features of the parliamentary government are as follows:

It is based upon the diffusion of powers principle;1. There is mutual responsibility between the executive and the legislature ; hence the executive may dissolve the legislature or he must resign together with the rest of the cabinet when his policies are no longer accepted by the majority of the membership in the legislature; 2. There is also mutual responsibility between the executive and the cabinet; 3. The executive (Prime Minister, Premier, or Chancellor) is chosen by the titular Head of State (Monarch or President)according to the support of the majority in the legislature.

From the characteristics of the presidential and parliamentary systems above it is shown that the presidential system is based on the system of the power separation, while the parliamentary system is on the basis of the power diffusion. In a more detailed manner, Douglas V. Verney in Arend Lijhart proposes characteristics of the presidential government system as follows:

The Permanent Assembly is as an assembly. In the parliamentary government system, the assembly and the executive are fused into an institution known as parliament, while the presidential system is required to make the legislative body separated from the executive as stated in the Trias Politica theory⁽⁷⁾; The Executive is not separated. The president is elected by the people and is dependent upon the support of the people in accordance with the constitution.⁽⁷⁾ United States has found its solution to enable the executive to be single and the presidential election is made when the Assembly is elected. This promotes two governmental branches to unite in solving various matters of state.

The head of the government is also the head of the state. In the pre-parliamentary monarchy, the head of the state is also the head of the government, and in the presidential system, the head of the government is also the head of the state , but the president is elected by the people. The people elect their own political leaders for a predetermined period of time. In the parliamentary system, the prime minister appoints his/her colleague in the Assembly to form a government, while in the presidential government system, the head of the government (the president) assigns his/her associates as the heads of departments under the agreement of the senate like in the United States of America and under the agreement of the appointment of the officers such as those in the Philippines.

The president is a single executive. A parliamentary government system is collective in nature and a prime minister has an equal position with his/her ministers, while a presidential government tends to be individual and the ministers are the presidents' assistants. The Council is not allowed to hold any executive positions. In a parliamentary government system, one may occupy positions in the executive and the legislative boards at once, but in a presidential government system, positions in two institutions are not allowed.

METHODS

Doctrinal research is concerned with the formulation of legal 'doctrines' through the analysis of legal rules. Within the common law jurisdictions legal rules are to be found within statutes and cases (the sources of law) but it is important to appreciate that they cannot, in themselves, provide a complete statement of the law in any given situation. This can only be ascertained by applying the relevant legal rules to the particular facts of the situation under consideration. As will be discussed below in the section on methodology, deciding on which rules to apply in a particular situation is made easier by the existence of legal doctrines (e.g., the doctrine of consideration within the law of contract). These are systematic formulations of the law in particular contexts.

They clarify ambiguities within rules, place them in a logical and coherent structure and describe their relationship to other rules. The methods of doctrinal research are characterised by the study of legal texts and, Doctrinal research is therefore concerned with the discovery and development of legal doctrines for publication in textbooks or journal articles and its research questions take the form of asking 'what is the law?' in particular contexts. At an epistemological level this differs from the questions asked by empirical investigators in most other areas of built environment research.

This is perhaps most obvious in a comparison with research in the natural sciences which typically seeks to explain natural phenomena through studying the causal relationships between variables. Epistemologically, this is clearly very different from the interpretive, qualitative analysis required by doctrinal research. Although the

interpretive nature of the process bears a superficial resemblance to the *verstehen* tradition of the social sciences⁽⁸⁾, there are actually fundamental epistemological differences between doctrinal analysis and all styles of scientific research. Scientific research, in both the natural and social sciences, relies on the collection of empirical data, either as a basis for its theories, or as a means of testing them. In either case, therefore, the validity of the research findings is determined by a process of empirical investigation. In contrast, the validity of doctrinal research findings is unaffected by the empirical world.

Legal rules are normative in character as they dictate how individuals ought to behave⁽⁹⁾. They make no attempt either to explain, predict, or even to understand human behaviour. Their sole function is to prescribe it. In short, doctrinal research is not therefore research about law at all. In asking ‘what is the law?’ it takes an internal, participant-orientated epistemological approach to its object of study⁽¹⁰⁾ and, for this reason, is sometimes described as research in law⁽¹¹⁾. As will be described below, the actual process of analysis by which doctrines are formulated owes more to the subjective, argument-based methodologies of the humanities than to the more detached data-based analysis of the natural and social sciences. The normative character of the law also means that the validity of doctrinal research must inevitably rest upon developing a consensus within the scholastic community, rather than on an appeal to any external reality.

RESULTS

The Executive board is responsible for the voters. The president is not responsible for the Assembly, but to the voters directly. Usually the Assembly asks the president to be responsible for the Assembly on the basis the constitution through an indictment process. but it does not mean that he should be responsible for the Assembly in terms of the parliamentary government system.

The President cannot dissolve the Assembly. The Assembly cannot dismiss the President from his position, or on the way around. They cannot force one another, so that experts call it checks and balances systems. The presidential government system shows mutual relationships among the branches of legislative, executive and judicative powers. The Assembly has a higher position than any other government branches and no fusion between the legislative and the executive powers parts occurs.

In the parliamentary government system, the executive and the Assembly do not have higher positions, since both are parts of the parliamentary institutions. In the presidential government system, each has its own scope of tasks. Their actions may regarded as unconstitutional by the judicial institution. In this case, the position of the constitution is extremely central in terms of a certainty. In the parliamentary system, constitution may be changed by the executive board and the assembly acting as the parliament, while in the presidential government system, the Assembly may change constitution involving the President.

The executive board is directly responsible for the voters. The government in the parliamentary government system is appointed by the head of state, it is not elected. Contrarily, in the presidential government system, the executive is responsible for the voters and the President (and the Vice President) are appointed by the voters, so that the two institutions may claim that they represent the people.

There is no focus of power in the political system. Political activities in the parliamentary government system rests on the parliament, the head of state, the government, the people’s representatives, the parties, the interest groups, and the voters recognize the supremacy of the parliament. In the presidential government system, no power concentration exists, except the separation of power. There is no unification, but fragmentation of power.

1. In the Monarchy system, the parliamentary government system in Europe, when the king is not satisfied with the Assembly, he can dissolve one of the two legislative boards with the aim to get trust through general elections, and the people’s representatives and the cabinet get new mandates. This condition shows that the government is separated into two; the head of state dissolves the parliament and he does it if he is asked by the head of government. Parliament as a unity owns supremacy and does not dominate each other. The concept of parliamentary supremacy is a unity over its parts which are show special characteristics of a parliamentary government system. Each element of the parliament is not allowed to control other elements. The government is dependent on the support from the Assembly. If the government wishes to defend its power, but the Assembly does not possess any supremacy, the government may dissolve the parliament and hold a general election.
2. The government as a unity is indirectly responsible for its voters. Although the government has to make some direct accountability to the Assembly, it is merely to give indirect responsible for the voters. The Prime Minister should become the members of the Assembly before he is appointed as the Prime Minister.
3. Parliament is the focus of power in a political system. The unification of the Executive and Legislative boards in the Parliament causes some buildup of power in the Parliament in the political order. Parliament is a forum to pose various ideas, and the government should not talk too much to the refusals of its programs.

The Assembly should forbear not to implement the functions of the government. It is at this point that the continuation of the power occurs, it should not look for any benefits for each institution.

DISCUSSION

Ministers Elections and A Political Party Chairperson

The term ministers elections is hotly talked about and debated by our society when the elected President and Vice-President were determined by the KPU (General Election Commission) on June 29. In this context, opposition means as the parties that are not in the cycle of the power. Actually, opposition usually exists in a country with the parliamentary government system, especially in a country where its party system employs a bi-party system. It also happens to the term coalition. Coalition also typically exists in a country with the parliamentary government system.

Indonesia once encountered such a situation when in the results of its general election in 1955, there was no political party gained majority vote. Consequently, the government was formed from a combination of political parties called coalition. There were four political parties that were in coalition to develop a government since the parties occupied the four big parties namely *Partai Nasional Indonesia* (Indonesian National Party) gaining votes of 22,32% (57 seats), *Masyumi*, 20,93% (57 seats), *Nahdlatul Ulama* (18.42% (45 seats) and *Partai Komunis Indonesia* (Indonesian Communist Party), 61,66% (39 seats). Therefore, if the four parties formed coalition a government, the rest of the parties served as opposition. It is the weakness that exists in a parliamentary government system with coalition, and the coalition in Indonesia was also very weak. The government was often ups and downs and changes of cabinets often happened.

The disadvantage from often changes in the government through a vote of no-confidence is that it causes some development programs not to be realized, even political parties have in disoriented, namely they oriented to try to make the government fall down. Later in 1959 it became one of the reasons why the Presidential Decree on July 5, 1959 was born where one of the points in the decree was unending political disputes. The Presidential decree caused the state to be operated on the basis of the 1945 Constitution where the government is held using the presidential system.

An ideal parliamentary government may actually be found in England, where in this country, two big parties exist, Liberal and Labor parties. Both parties can rule the country through victories in general elections. Since there are just two political parties, the winner of general elections is the holder of the government power, that loser will serve as the opposition. Even in England, an opposition may also form a cabinet, called a shadow cabinet. This cabinet makes different policies or counters policies made by the working cabinet intended to show to the public and attract its attention as the capital to get votes in the next general election.

Cabinet Election and Chairperson Dynamics in Indonesia Now

It should be remembered that in the presidential and vice-presidential election, there were two pairs for President and Vice President. Constitutionally, two candidates of President and Vice President are not proposed by political parties, but by a combination of political parties. As stipulated in Article 6 verse (2) of the 1945 Constitution of the Republic of Indonesia year that "Each pair for President and Vice President shall be proposed prior to general elections by a political party or by a coalition of political parties contesting the general elections.

Interestingly, after the pair of the elected President and Vice President are determined, some people propose a discourse and expect that Prabowo-Sandi still serve as the opposition, although some political parties supporting the ex-presidential candidates have shifted their collaboration to the government. Opposition means not to be involved in the government, therefore anyone may claim that he or she is at the opposition side when he is not at the cycle of the government.

It should be carefully noted down that our country is a country adopting a presidential government system. As a result, the formation and the ministers elections of the government is not at the hand of the chairperson of the political parties coalition, but fully at the hand of the president as the President's prerogative rights. This cannot be proceeded. Chairperson of the Political parties in a coalition may expect to get some seats of powers (minister) from the President.

In fact, the President distributes ministers seat of the power to his supporters especially chairperson of the political parties. This causes some impressions that the President gives powers to the political parties that have supported him, even the power is not merely delivered to those that have "worked hard" for the victory of the President candidate and Vice President Candidate and also those who feel to have rights to get powers from the President because their party reach much more voted in the elections. The powers delivered by the President are

not limited to those when the cabinet positions are determined, but even to the deepest layers in other power pillars such as the director general, independent institutions, and also soft positions in as the commissioners in the state-owned enterprises. Enjoy and be happy with the powers!

Reinforcing the President's Prerogative Right

The 2019 Presidential Election entered the last stage after the Jokowi-Amin Ma'ruf pair is determined to win the Presidential Election through the decision made by the Constitution Court, and the Indonesian people felt some relief after Prabowo shook hands with the elected President on July 13, 2019, and Prabowo congratulated to him. At the moment what attracts attention to various parties have started to shift to the fillings in the cabinet positions where the cabinet will be named *Kabinet Indonesia Kerja II (KIK II)*. The formation of the KIK from the Hoax version emerges in the social media.

Actually, the formation of the cabinet is fully under the President's authority, where it is usually called the President's prerogative right. The President's authority to form a cabinet constitutionally is stipulated in the 1945 Constitution of the Republic of Indonesia article 17 verse (1) that "The President is assisted by state ministers" and verse (2) that "The ministers are appointed and dismissed by the President" These articles show that the appointments of the ministers are fully under the President's authority. No single verse in the 1945 Constitution or other regulations state that the ministers are nominated by any parties outside the President.

The articles above were fully effective during the President Soeharto's administration. At that time the cabinet's formation was entirely under the hand of the President. No one or parties tried to proposed himself or other persons to be assigned as ministers. After a person was appointed as a minister, no refusal emerged, even when Soeharto assigned Mrs Tutut, her daughter, as a social minister, anything went smoothly without any ripples of resistance. The prerogative right was really applied and respected at that time. No single political party was brave to propose its cadres to be designated as ministers

A prerogative right is an absolute power of a President, this right cannot be proceeded or even disputed by others. But, the prerogative right attached to the President Joko Widodo wanes politically, although constitutionally, the prerogative right is still fully under the hand of the President. Articles dealing with the President's prerogative right as the head of state do not have any change. The articles stipulating the filling of the cabinet positions still remain the same, where the ministers as the President's assistants are assigned and dismissed by the President but the president needs a political party to made his rule safety against opposition in DPR so the President woul share his cabinet power with the political chairpersons.

When a President is directly elected by the people, any authority attached to him/her is stronger to determine who will become his/her assistants in the cabinet. The President is more flexible in determining the fillings of the positions since he/she has been directly given mandates by the people. It is a pity that the President's flexibility in determining the ministry positions in his cabinet is not smooth due to a stipulation of the presidential threshold of 20% for any political party that will nominate its President and Vice President Candidate. This is caused by the fact that there is no political party that has reached a majority vote in the House of Representative (DPR). As a result, a presidential and vice-presidential candidacy is conducted by a combination of political parties. It is at this point that the weakness of the President's prerogative right exists in assigning ministers. Anyone elected and inaugurated as the President and Vice President must not be flexible in determining the cabinet, since political parties feel also have rights to gain some allocations of ministers because they have joined in supporting the candidacy and also in campaigning him and in the political world, "no free lunch" is commonly applied. It is no wonder that at present the heads of political parties demand for allotment for chairs of ministries to the President, and it is considered to be natural, because the political parties have worked hard to make him win the Presidential election.

The filling of the cabinet coming from the political parties supporting the president candidate is actually almost the same with that of the parliamentary model, but when the president's policy is not intended by the supporting political parties, a vote of no-confidence to the president cannot be applied. However, the President may still be able to change the ministers in his cabinets who seem not to be in line with the president's policy but in this case we can observer the KIK I the President would replace some of ministers with new ministers from same political party.

The assignment of ministers from the supporting political parties causes great enough risks namely loyalty. A minister is proposed by his/her political parties, although he is assigned and dismissed by the President. Then concerning with loyalty, to whom the ministers devote? To the president who has assigned them as ministers, or to their political parties that have also proposed them to be minister to the president. This condition is worsened when certain deals are made between the heads of political parties and their cadres who will be proposed to occupy chairs in the cabinet.

Besides such bias loyalties, this also causes the performance of the cabinet is not optimal, since it might happen that changes of ministers are made when their working period is not completed yet. It should be understood that ministers also need expensive political costs, remembering that in this country a jargon changing the ministers will also change the policies is prevailed.

Due to the President's weak prerogative right, the situation in the next five year will not be far from what is described above. This situation is supported by the change of the cabinet in the middle of its working period, the weak controls to the President, and the stubborn-headed attitudes shown by the government to anyone that opposes it although such an opposition is actually needed in Indonesia that is said to uphold any values of democracy and diversity.

Collegial Government: Comparison and Alternative

A collegial government in the constitutional perspective and in assuring the sustainability of this country has more positive values than that of a coalition government. Any coalition built by the previous government proved ineffective, because the President determining who would become the ministers seems to distribute powers to the political parties that supports him in the coalition. The President should assign ministers from trusted prominent figures who are able to do their tasks as ministers. As a result, if the idea of coalition will be applied again, it means that this country would return to a problem that was solved in the previous government.

In the same vein, the idea of a collegial government may start being discussed far before the general election is carried out, because in such a collegial government, the president should be one and single. President may be interpreted to be plural, so that the President may come from various political parties. In this present situation, this country needs a strong government. Such a strong government may be established if it is supported by various components in the society.

After the government era when the President is directly elected, the government is weak either in facing other countries, handling sovereignty, Indonesian manpower, tapping, monetary, or in international trade problems. This is also the case when the government encounters its political opponents at either the executive level, or legislative level. Even the government tends to create a certain image in order to get positive evaluations from the society.

This image is actually needed by the government, but it may be conducted at the end of its administration after it has been able to carry out its vision and missions to show that it has good competences and characters as the state organizer. In this era, it is the image which is focused on, but it has not been capable of realizing the vision-missions, showing its high competences and good characters.

As a result, it is still relevant to form a collegial government for the condition in Indonesia, at least to reduce any internal conflicts, so that it can focus its attention to organize the government to attain the state goal. This collegial government model is now new since it has been being applied in Sweden where its constitutional system adopts a working committee model. In this country there is a harmonious network between the executive and legislative bodies. This harmony occurs since in this country it is improbable that the legislative and the executive bodies are in conflict, since the executive or the cabinet in Sweden called *Bundes Rat* is a collegial executive body. This body consists of 7 (seven) persons elected by the legislative body or parliament (*Bundesversammlung*). The power of this executive body lasts for a period of three years. During the implementation of its power in the period, one of the seven members of the executive body serves as the head of state in turn one another.

CONCLUSION

Cabinet formation depends on the pattern of relationships among the state organs, called its government, when the dichotomy between the presidential and parliamentary government systems is employed. Although between the two a quasi-government system, quasi-presidential or parliamentary government system exists. In Indonesia, the government system does not fully follow the existing doctrines. At present, a presidential government system is adopted, but some coalitions in its government coalition are made, at least when the President and Vice President are nominated. Consequently, political parties supporting the nomination of the President and Vice President feel to have some rights to join in the government like that in the parliamentary government system. Accordingly, a model in filling the cabinet is born where it involves political parties, mass organizations, and also proposals from various cycles. An idiom existing in the parliamentary government system presents ahead of a cabinet formation: opposition, coalition. Between opposition and coalition, actually a collegial government system where the government is collectively organized is existent. It is one of the alternatives to show that political parties may collaborate to form a government jointly. But, in this paper it is suggested that it is necessary to provide the Presidents with a great chance to determine his own choice, namely

in forming his cabinet. Anyhow, the President still has his prerogative right in determining who is their assistants. In other words, the President has some discretion to decide who will become his ministers.

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