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Limiting Presidential Prerogative in Ministerial Appointments: A Synthesis of Constitutional Court Jurisprudence and the Doctrine of Al-Mashlahah

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ABSTRACT

The appointment of ministers and deputy ministers within Indonesia's presidential system exhibits an increasingly complex normative tension between the broad scope of presidential prerogative under Article 17 of the 1945 Constitution and constitutionalism demands to prevent conflicts of interest and bureaucratic inefficiency. This study aims to comprehensively analyze the evolution of the Constitutional Court's constitutional interpretation regarding ministerial appointments—through a critical examination of Decision No. 79/PUU-IX/2011, Decision No. 80/PUU-XVII/2019, and Decision No. 128/PUU-XXIII/2025—alongside the juridical implications of cabinet restructuring following Law No. 61 of 2024. Employing a normative-doctrinal legal research methodology combining statutory, case, and comparative conceptual approaches, this study explores the synthesis between positive constitutional law and Islamic constitutional jurisprudence (siyasah syar'iyyah). In this study, al-mashlahah is positioned as an overarching umbrella concept that integrates and governs derivative principles of siyasah syar'iyyah and legal maxims (qawa'id fiqhiyyah)—specifically tasharruf al-imam, sadd al-dzari'ah, dar'ul mafasid, and al-quwwah wa al-amanah—establishing a coherent logical nexus between the Constitutional Court's constitutional adjudication and Islamic public law norms. The findings reveal two fundamental points. First, the removal of the 34-ministry cap and the deletion of Article 10 under Law No. 61 of 2024 grant expansive executive discretion; however, under both modern constitutionalism and the maxim of tasharruf al-imam 'ala al-ra'iyyah manutun bi al-mashlahah, such discretion must be strictly bound by objective public welfare to prevent fiscal extravagance (israf) that undermines the protection of public wealth (hifzh al-mal). Second, the explicit prohibition of deputy ministers holding concurrent positions as SOE commissioners in the operative verdict (amar putusan) of Constitutional Court Decision No. 128/PUU-XXIII/2025 successfully eliminates constitutional evasion of prior ratio decidendi. Methodologically, this judicial prohibition aligns symmetrically with the preventive instrument of sadd al-dzari'ah, the priority maxim of dar'ul mafasid muqaddamun 'ala jalbil mashalih, and

the meritocratic bureaucratic parameters of al-quwwah wa al-amanah.

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1. INTRODUCTION

The architecture of the presidential government system adopted in the 1945 Constitution of the Republic of Indonesia (1945 Constitution) after the constitutional amendments places the President as the holder of the highest governmental power as well as the head of state and head of government (*single executive*) (Asshiddiqie, 2007). One of the most essential institutional attributes supporting the effectiveness of single executive power is the subjective authority or prerogative of the President in appointing and dismissing state ministers, as explicitly regulated in Article 17 paragraph (2) of the 1945 Constitution (Mahfud MD, 2020). Theoretically, in comparative constitutional law literature, the prerogative of cabinet appointments is designed to ensure internal governmental cohesiveness, guarantee policy loyalty to the President's political platform, and prevent executive structural paralysis caused by parliamentary political fragmentation.

However, within the framework of a democratic constitutional state (*democratische rechtsstaat*), no attribute of public power is absolute or exempt from checks and balances. This principle is constitutionally affirmed through Article 17 paragraph (4) of the 1945 Constitution, which delegates further arrangements regarding the establishment, modification, and dissolution of state ministries to statutory legislation (Republic of Indonesia, 2024). Here, it is crucial to emphasize the normative boundary and potential clash between state administrative discretion (*diskresi administrasi pemerintahan*) regulated under Law No. 30 of 2014 concerning Government Administration and the President's constitutional prerogative (*hak prerogatif konstitusional*) under Article 17 of the 1945 Constitution. While constitutional prerogative originates directly from the supreme law (*attributive constitutional authority*) granting the President political autonomy in selecting cabinet members, its institutional operationalization—such as forming ministries, defining organizational workloads, and enforcing ethical prohibitions on public office—enters the domain of statutory delegation and state administrative law (Hadjon, 2011; Isra, 2010). Consequently, when presidential prerogative is exercised within a statutory framework, subjective political preference collides with and must yield to law-based administrative boundaries, the principle of legality, the General Principles of Good Governance (*Asas-Asas Umum Pemerintahan yang Baik* or AUPB), and the prohibition of abuse of power (*detournement de pouvoir*). Elaborating this normative intersection provides a robust constitutional legal basis for limiting executive power.

In contemporary Indonesian constitutional practice, the dynamics of filling ministerial and deputy ministerial positions face two intertwined structural problems that trigger intense doctrinal debate. The first problem relates to the quantitative expansion of the cabinet organization following the enactment of Law No. 61 of 2024 concerning Amendments to Law No. 39 of 2008 concerning State Ministries. The amendment to Article 15 radically removes the maximum limit of 34 ministries that had been maintained for over a decade, leaving the determination of the number and nomenclature of ministries entirely to the "needs of government administration by the President." Furthermore, Law No. 61 of 2024 deletes Article 10, which originally restricted the appointment of deputy ministers to ministries with

specific, heavy workloads. The absence of quantitative and objective parameters limiting the phrase "needs of government administration" opens vast space for bureaucratic politicization through multiparty coalition accommodation (*patronage distribution*), threatening to permanently burden state finances (Anggoro, 2021).

The second problem concerns office integrity, bureaucratic neutrality, and the prevention of conflicts of interest, particularly the phenomenon of ministers and deputy ministers holding concurrent positions (*rangkap jabatan*) as commissioners or supervisory board members in State-Owned Enterprises (SOEs) and private corporations. Although the Constitutional Court, through the *ratio decidendi* of Decision No. 80/PUU-XVII/2019, affirmed that the prohibition of concurrent office-holding for ministers under Article 23 of Law No. 39 of 2008 applies *mutatis mutandis* to deputy ministers, the appointment of deputy ministers to SOE commissioner seats continued massively (Constitutional Court of the Republic of Indonesia, 2020). Executive evasion of the decision's substance relied on the formalistic pretext that the prohibition for deputy ministers was not explicitly stated in the operative verdict (*amar putusan*). This normative tension only reached a judicial turning point with Constitutional Court Decision No. 128/PUU-XXIII/2025, which imperatively incorporated the prohibition into its operative verdict (Constitutional Court of the Republic of Indonesia, 2025; Pratama & Khalid, 2025).

To dissect these constitutional anomalies comprehensively, this study integrates positive constitutional law analysis with the doctrine of *siyasah syar'iyyah* (Islamic constitutional jurisprudence). Philosophically and theoretically, the integration of *siyasah syar'iyyah* into the Indonesian constitutional law system—founded upon Pancasila and the 1945 Constitution—is justified by the position of Islamic legal philosophy as a source of public ethics and substantive material law (*living law*) in Indonesia. Within the prism of the First Precept of Pancasila (*Belief in the One and Only God*) and the *Rechtsidee* (legal ideal) of the 1945 Constitution, universal Islamic legal principles do not seek to establish a formal theocratic state; rather, they function as ethical-normative values that enrich Indonesian constitutionalism (Azhary, 2015). Doctrines such as public welfare (*al-mashlahah*), fiduciary accountability (*al-amanah*), and the prevention of public harm (*dar'ul mafasid*) provide a deep teleological foundation that reinforces positive constitutional norms against executive arbitrariness.

Previous studies in constitutional law literature have generally examined ministerial appointments partially—highlighting the doctrinal aspects of presidential prerogative after the 1945 Constitution amendments (Asshiddiqie, 2006), analyzing the legal politics of Law No. 61 of 2024 (Ardiansyah & Sanjaya, 2025), or evaluating disputes over concurrent positions in SOEs (Moeslim et al., 2026). However, studies that systematically synthesize positive constitutional law with the epistemological framework of *ushul fiqh* and *siyasah syar'iyyah*—specifically positioning *al-mashlahah* as an umbrella concept encompassing *tasharruf al-imam*, *sadd al-dzari'ah*, *dar'ul mafasid*, and *al-quwwah wa al-amanah* to dissect recent Constitutional Court jurisprudence—remain scarce. This article fills that academic void by exploring the evolution of the Constitutional Court's interpretation regarding ministerial and deputy ministerial positions and formulating theoretical-normative parameters for limiting presidential prerogative.

2. METHODS

This research is a normative-doctrinal legal study that examines law as an integrated system of positive legal norms, constitutional doctrines, judicial jurisprudence, and philosophical legal principles enriched by *siyasah syar'iyyah* (Negara, 2023). The methodological approach encompasses three primary dimensions:

Statute Approach

Systematically examining the normative provisions of Article 17 of the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 2008 concerning State Ministries, Law No. 61 of 2024 concerning Amendments to Law No. 39 of 2008 concerning State Ministries, Law No. 30 of 2014 concerning Government Administration, and Law No. 19 of 2003 concerning State-Owned Enterprises as amended (Hadjon, 2011).

Case Approach

Analyzing the structure of legal reasoning (*ratio decidendi*), socio-philosophical considerations, and the operative verdicts (*amar putusan*) of key Constitutional Court decisions governing ministerial and deputy ministerial appointments, specifically Decision No. 79/PUU-IX/2011, Decision No. 80/PUU-XVII/2019, and Decision No. 128/PUU-XXIII/2025 (Marzuki, 2017).

Conceptual and Comparative Approach

Constructing an analytical framework that bridges modern constitutionalism doctrines—separation of powers, checks and balances, and good governance—with the institutional concepts of *al-wizarah*, *maqashid al-syari'ah*, and legal maxims (*qawa'id fiqhiyyah*) in classical and contemporary *turats* literature (Azhary, 2015).

To ensure that the conceptual comparison does not merely juxtapose positive law and Islamic jurisprudence in parallel silos, this study operationalizes a four-stage methodological flow of normative synthesis:

a. Stage 1: Normative Inventory and Problem Identification: Mapping the positive legal norms governing presidential prerogative, cabinet formation under Law No. 61 of 2024, and the judicial reasoning across the triad of Constitutional Court decisions to pinpoint structural gaps and constitutional anomalies.
b. Stage 2: Conceptual Abstraction (*Takyif Fiqhi*): Extracting the underlying legal *ratio* (*'illat al-hukm*) and teleological objectives of the positive constitutional norms and correlating them with parallel doctrines in *siyasah syar'iyyah* (*tasharruf al-imam*, *sadd al-dzari'ah*, *dar'ul mafasid*, and *al-quwwah wa al-amanah*) under the overarching umbrella of *al-mashlahah*.
c. Stage 3: Dialectical Verification and Evaluation: Testing the empirical and normative implications of executive discretion and judicial limitations using both positive constitutional standards (Article 17 of the 1945 Constitution and AUPB) and *maqashid al-syari'ah* indicators (specifically public need validation and *hifzh al-mal*).
d. Stage 4: Normative Integration and Prescriptive Formulation: Synthesizing both legal traditions to formulate integrated constitutional conclusions and concrete regulatory recommendations—including measurable administrative parameters and technical legislative clauses—to govern presidential prerogative in Indonesia.

3. FINDINGS AND DISCUSSION

Evolution of Constitutional Interpretation of Ministerial and Deputy Ministerial Positions and the Binding Force of *Ratio Decidendi*

The jurisprudence of the Constitutional Court of the Republic of Indonesia regarding the filling of positions within state ministries demonstrates a dynamic dialectical trajectory between deference to presidential prerogative and systematic efforts to uphold the rule of law (*rechtsstaat*) and constitutional limitations on executive power. This jurisprudential evolution can be mapped across three distinct phases of constitutional adjudication.

The first phase began with Constitutional Court Decision No. 79/PUU-IX/2011, which reviewed the constitutionality of Article 10 and the Elucidation of Article 10 of Law No. 39 of 2008 concerning State Ministries (Constitutional Court of the Republic of Indonesia, 2012). The Court addressed whether the position of "Deputy Minister" violated Article 17 of the 1945 Constitution, which textually mentions only "Ministers." Applying a functional-teleological interpretation, the Court affirmed that appointing deputy ministers is constitutional as an extension of the President's attributive authority to manage complex ministerial workloads. However, the Court struck down the Elucidation of Article 10, which had restricted deputy ministerial appointments to career bureaucrats. This ruling eliminated administrative rigidity and granted the President discretion to appoint deputy ministers from both

bureaucratic and non-career professional backgrounds to fulfill functional governance needs (*mashlahah hajiyyat*) (Septiani, 2021).

However, the expansion of executive discretion in the first phase triggered severe constitutional distortions in the second phase when deputy ministers were massively appointed to concurrently serve as commissioners or supervisory board members in State-Owned Enterprises (SOEs). Responding to public and scholarly concern, the Constitutional Court laid a crucial doctrinal foundation in Decision No. 80/PUU-XVII/2019 (Constitutional Court of the Republic of Indonesia, 2020). The Court reasoned that because the appointment of deputy ministers derives from the same presidential prerogative as ministers, their legal status is substantively parallel; therefore, the prohibition against holding concurrent positions under Article 23 of Law No. 39 of 2008 applies *mutatis mutandis* to deputy ministers. Yet, because the petitioners lacked legal standing, the Court declared the petition inadmissible (*niet ontvankelijk verklaard* / NO) in its operative verdict (*amar putusan*), leaving the substantive prohibition embedded solely within the legal considerations (*ratio decidendi*).

This procedural outcome exposed a critical problem in Indonesian constitutional law regarding the binding force (*daya ikat*) of *ratio decidendi* versus the operative verdict (*amar putusan*). Executive authorities adopted a strictly formalistic-positivistic stance, arguing that under Article 10 paragraph (1) of the Constitutional Court Law, *erga omnes* binding force attaches exclusively to an operative verdict that grants a petition, whereas legal considerations in an inadmissible (*NO*) decision constitute mere non-binding *obiter dicta* or moral guidance (Fitrianita & Puspitaningrum, 2022). Theoretically, this executive interpretation is fundamentally flawed. In constitutional adjudication doctrine, the *ratio decidendi*—the core constitutional reasoning that forms the logical nexus of the Court's interpretation of the Constitution—is inseparable from the verdict and carries normative authority as constitutional living interpretation. By divorcing the *amar putusan* from its underlying *ratio decidendi*, the executive engaged in covert constitutional defiance (*constitutional evasion*), perpetuating concurrent office-holding in SOEs by exploiting procedural formalism.

The decisive constitutional correction arrived in the third phase through Constitutional Court Decision No. 128/PUU-XXIII/2025, which substantively re-examined Article 23 of the State Ministries Law (Constitutional Court of the Republic of Indonesia, 2025). Recognizing that the executive had systematically ignored the *ratio decidendi* of Decision No. 80/PUU-XVII/2019 due to its placement outside the operative dictum, the Court elevated the norm directly into the *amar putusan*. Decision No. 128/PUU-XXIII/2025 imperatively declared that Article 23 of the State Ministries Law is conditionally unconstitutional unless interpreted to include deputy ministers, thereby explicitly prohibiting deputy ministers from concurrently serving as other state officials, commissioners or directors in state-owned or private enterprises, or leaders of organizations funded by the State/Regional Budget (APBN/APBD). Normatively, Decision No. 128/PUU-XXIII/2025 serves as a landmark constitutional correction: it bridges the gap between judicial reasoning (*ratio decidendi*) and formal enforceability (*amar putusan*), terminating executive formalism and reasserting constitutional supremacy over political patronage (Pratama & Khalid, 2025).

Problems of Prerogative Rights Post-Law No. 61 of 2024: Concrete Operationalization of *Tasharruf al-Imam* and *Hifzh al-Mal*

While Constitutional Court Decision No. 128/PUU-XXIII/2025 tightened downstream governance integrity by prohibiting concurrent offices, the enactment of Law No. 61 of 2024 concerning Amendments to Law No. 39 of 2008 concerning State Ministries simultaneously expanded upstream discretion in cabinet organization (Republic of Indonesia, 2024). The amendment to Article 15 abolished the statutory cap of 34 ministries, replacing it with an open-ended clause that leaves the number of ministries entirely to "the needs of government administration by the President." Concurrently, the deletion of Article 10 removed the statutory requirement of demonstrating a "special workload" prior to appointing deputy ministers.

From the perspective of modern administrative law and the doctrine of separation of powers, removing quantitative statutory limits without instituting objective qualitative criteria risks generating

unfettered discretion. Such unchecked authority is vulnerable to political abuse, transforming cabinet formation into an arena for transactional coalition-building (*spoils system* and *patronage distribution*) rather than meritocratic efficiency (Riharto, 2019).

When evaluated through the epistemological framework of *siyasah syar'iyyah*, classical jurists established rigorous boundaries around the discretionary authority of the head of state (*al-imam*). In his seminal treatise *Al-Ahkam al-Sulthaniyyah*, Abu al-Hasan al-Mawardi (2006) distinguishes between *wizarah al-tafwidh* (delegated ministry with broad executive judgment) and *wizarah al-tanfidz* (executive ministry implementing policies determined by the head of state). Within Indonesia's presidential system, ministers and deputy ministers function primarily as presidential assistants executing *wizarah al-tanfidz* alongside strategic policy coordination. Al-Mawardi emphasized that while the head of state possesses discretion to appoint ministers according to administrative complexity, such appointments must strictly correspond to genuine public need (*hajah 'ammah*) and the fiscal capacity of the state treasury (*baitul mal / maliyyah al-daulah*).

More fundamentally, executive discretion in structuring the cabinet is governed by the foundational legal maxim (*qa'idah fiqhiyyah*) codified by Jalal al-Din al-Suyuthi (1990) in *Al-Asybah wa al-Nazha'ir*:

تَصَرُّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مَنُوطٌ بِالْمَصْلَحَةِ

> *"Tasharruf al-imam 'ala al-ra'iyyah manutun bi al-mashlahah"* (The policies and actions of the ruler toward the people are strictly bound by and contingent upon the realization of public welfare).

Izz al-Din ibn Abd al-Salam (1998) reinforces this rule by asserting that any executive action divorced from achieving tangible public benefit (*jalb al-mashalih*) is substantively defective and lacks moral-juridical legitimacy. However, for the maxims of *tasharruf al-imam* and *hifzh al-mal* (protection of public wealth under *maqashid al-syari'ah*) (Al-Syathibi, 2006) to function as effective constitutional constraints rather than abstract moral appeals, the statutory phrase "needs of government administration" in Article 15 of Law No. 61 of 2024 must be translated into measurable quantitative and qualitative administrative parameters:

a. Objective Workload and Institutional Span-of-Control Analysis (Qualitative & Quantitative Parameter of *Mashlahah Dharuriyyat/Hajiyyat)

The creation of a new ministry, the splitting of existing nomenclature, or the appointment of a deputy minister must be preceded by a mandatory, publicly accessible Academic and Technocratic Assessment (*Naskah Urgensi Kelembagaan*). This assessment must demonstrate: (a) an objective surge in sectoral service volume and regulatory complexity that exceeds the span of control of existing Echelon I directorates; (b) a clear functional differentiation guaranteeing zero jurisdictional overlap (*tumpang tindih kewenangan*) with existing ministries or non-ministerial government agencies (LPNK); and (c) direct alignment with measurable targets in the National Long-Term and Medium-Term Development Plans (RPJPN/RPJMN). Cabinet expansion driven merely by post-election coalition power-sharing constitutes *mashlahah mulghah* (an illusory benefit rejected by law) and *ittiba' al-hawa* (political arbitrariness).

b. Fiscal Capacity Evaluation and Bureaucratic Overhead Threshold (Quantitative Parameter of Hifzh al-Mal)

Every addition of a ministry or deputy ministerial post entails permanent structural costs—constructing physical infrastructure, creating new Echelon I and II secretariats, expanding civil service personnel expenditures, and funding operational facilities from the State Budget (APBN). To operationalize *hifzh al-mal* and prevent structural fiscal waste (*israf*) (Al-Qardhawi, 2001), executive cabinet formation must be bound by a *Fiscal Impact and Cost-Benefit Ratio Assessment*. Specifically, the administrative overhead cost (routine personnel and operational expenditure) of a newly formed or split ministry must not exceed a strict statutory ratio relative to its direct public program budget (e.g.,

maintaining a minimum 70:30 ratio favoring public development expenditure over bureaucratic apparatus expenses), accompanied by a mandatory sunset review every five years to evaluate institutional performance.

c. Prohibition of Dual Positions as SOE Commissioners: Synthesis of Decision No. 128/PUU-XXIII/2025, *Sadd al-Dzari'ah*, and *Dar'ul Mafasid*

The practice of ministers and deputy ministers concurrently serving as SOE commissioners, decisively terminated by Constitutional Court Decision No. 128/PUU-XXIII/2025, highlights the urgency of insulating public governance from structural conflicts of interest. From a state administrative law perspective, concurrent office-holding creates acute institutional dysfunction: public officials tasked as sectoral regulators, policy formulators, and public overseers simultaneously act as corporate board members bound by fiduciary duties to maximize commercial profit under the Limited Liability Company Law and SOE Law. This dual role directly violates the General Principles of Good Governance (AUPB)—specifically the principles of impartiality, non-abuse of authority, and public interest regulated in Law No. 30 of 2014 concerning Government Administration (Nasution, 2021; Panjaitan, 2023).

Within the methodology of *ushul fiqh* and *siyasah qadhaiyyah* (judicial policy), the Constitutional Court's decisive intervention in Decision No. 128/PUU-XXIII/2025 aligns symmetrically with two preventive instruments of Islamic public law:

First, the application of Sadd al-Dzari'ah (blocking the lawful or ostensibly neutral means that lead to harm). Al-Syathibi (2006) explains that an action which appears administratively permissible on the surface—such as appointing a deputy minister as an SOE commissioner under the pretext of accelerating state strategic projects or enhancing state-corporate synergy—must be prohibited (*mahzhur*) when empirical reality demonstrates that such an arrangement functions as a direct conduit (*wasilah*) to systemic harm (*mafsadah*). Specifically, concurrent office-holding opens the door to regulatory capture, preferential treatment in state procurement, compromised corporate supervision, and illicit double remuneration funded by public finances. Historically, Caliph Umar ibn al-Khattab rigorously applied *sadd al-dzari'ah* by barring governors and high-ranking state officials from engaging in commercial ventures during their tenure to preserve the sanctity of public trust.

Second, the prioritization of the maxim Dar'ul Mafasid Muqaddamun 'ala Jalbil Mashalih (preventing public harm takes precedence over securing potential benefits) (Al-Suyuthi, 1990). Even if placing a deputy minister on an SOE board yields minor coordination benefits (*jalb al-mashalih*), the resulting structural harms (*mafsadah*)—the erosion of independent corporate governance, market distortion, conflict of interest, and the division of the official's time and focus away from core ministerial duties—far outweigh any claimed utility. Consequently, Decision No. 128/PUU-XXIII/2025 embodies *siyasah qadhaiyyah* by closing regulatory loopholes and safeguarding state assets (Moeslim et al., 2026).

d. Reconstruction of Meritocracy Based on *Al-Quwwah wa al-Amanah* and the Constitutionality of Limiting Presidential Prerogative

Reforming the appointment of ministers and deputy ministers requires reconstructing bureaucratic meritocracy upon the twin pillars formulated by Taqiy al-Din ibn Taymiyyah (1998) in *Al-Siyasah al-Syar'iyyah fi Ishlah al-Ra'i wa al-Ra'iyyah*: Al-Quwwah (professional competence, technocratic expertise, and managerial capacity) and Al-Amanah (moral integrity, fiduciary honesty, constitutional compliance, and freedom from conflicts of interest).

However, reconstructing meritocracy through statutory rules raises a fundamental constitutional question: *To what extent can statutory legislation regulate the conditions, qualifications, and restrictions for appointing ministers and deputy ministers without violating the President's constitutional prerogative guaranteed under Article 17 paragraph (2) of the 1945 Constitution?*

To resolve this normative tension, a clear constitutional distinction must be drawn between subjective political choice (*personalia selection*) and objective institutional-ethical boundaries (*normative qualification and incompatibility rules*). Under Article 17 paragraph (2) of the 1945

Constitution ("Ministers are appointed and dismissed by the President"), the President holds exclusive authority to select *who* will fill a cabinet post without requiring parliamentary confirmation or external approval; any statute requiring DPR consent for ministerial appointments would unconstitutionally usurp presidential prerogative in a presidential system (Asshiddiqie, 2006; Isra, 2010). Conversely, Article 17 paragraph (4) of the 1945 Constitution explicitly mandates that "the establishment, modification, and dissolution of state ministries shall be regulated by law." Through systematic constitutional interpretation, the Constitutional Court has consistently held that because ministers and deputy ministers exercise public authority funded by the state, the legislature possesses constitutional authority under Article 17 paragraph (4)—read in conjunction with Article 1 paragraph (3) (the Rule of Law) and Article 28D paragraph (1) (legal certainty)—to establish objective qualification standards, ethical prohibitions, and organizational parameters by statute.

Therefore, statutory restrictions do not violate presidential prerogative so long as they regulate the normative framework of the office rather than dictating the personal political choice of the President. Integrating this constitutional boundary with the parameters of *al-quwwah wa al-amanah* yields three concrete institutional reconstruction agendas:

a. Statutory Institutionalization of Al-Quwwah without Infringing Personal Prerogative

While the President retains full discretion to select individuals from political parties, academia, or professional circles, statutory law can validly require that ministerial and deputy ministerial appointees possess demonstrable track records or technocratic competence relevant to the ministry's portfolio (Article 22 of the State Ministries Law) and mandate that the creation of deputy ministerial posts be justified by an objective institutional workload assessment. An official who holds concurrent offices suffers a structural deficit of *al-quwwah* due to divided concentration and administrative overload.

b. Enforcement of Al-Amanah through Strict Incompatibility Rules (Incompatibiliteit)

Statutory prohibitions against concurrent office-holding (Article 23 of the State Ministries Law as interpreted by Decision No. 128/PUU-XXIII/2025) do not restrict the President's freedom to appoint anyone as minister or deputy minister; rather, they establish a regime of *incompatibiliteit* (office incompatibility) that takes effect *upon appointment* to protect public integrity (Manan, 2007). Once appointed, the official must relinquish all conflicting commercial and state positions. Any executive decree appointing a serving minister or deputy minister as an SOE commissioner constitutes an unlawful governmental act (*onrechtmatige overheidsdaad*) that is null and void by law and subject to annulment by the State Administrative Court (PTUN).

c. Harmonization of Sectoral Legislation

Comprehensive regulatory synchronization is required across the State Ministries Law, the SOE Law, and sectoral government regulations to explicitly codify the prohibition of concurrent positions for both ministers and deputy ministers, ensuring a professional, accountable, and public-oriented executive branch.

4. CONCLUSION

The dialectic between presidential prerogative and Constitutional Court jurisprudence in the appointment of state ministers and deputy ministers confirms that Indonesia's constitutional presidential system rejects absolute and unchecked executive power. Based on a synthesis of positive constitutional law and the doctrine of *al-mashlahah* as an overarching principle of *siyasah syar'iyyah*, this study concludes that presidential authority in cabinet formation and executive appointments must remain subject to constitutional, legal, and ethical constraints. Although Law No. 61 of 2024 removed the statutory cap of 34 ministries and deleted Article 10, the President's prerogative under Article 17 of the 1945 Constitution remains bounded by the principle of the rule of law, the General Principles of Good Governance (AUPB), and the maxim *tasharruf al-imam 'ala al-ra'iyyah manutun bi al-mashlahah*. Accordingly, statutory regulation of cabinet architecture and qualification standards under Article 17

paragraph (4) is constitutionally legitimate insofar as it addresses objective institutional rationality and incompatibility of public offices without usurping the President's personal political discretion. Cabinet expansion driven primarily by coalition patronage rather than measurable workload parameters risks undermining public welfare and violating the principle of *hifzh al-mal* through structural fiscal waste *(israf)*.

Furthermore, the evolution of Constitutional Court jurisprudence, culminating in Decision No. 128/PUU-XXIII/2025, constitutes a significant constitutional correction to the ambiguity surrounding the binding force of the ratio decidendi and the *amar putusan*, which had been exploited following Decision No. 80/PUU-XVII/2019. By incorporating the prohibition of concurrent office-holding for deputy ministers directly into the operative part of its decision, the Court has effectively closed avenues for executive circumvention and strengthened the enforceability of constitutional restrictions. This prohibition is consistent with the preventive principle of *sadd al-dzari'ah*, the legal maxim *dar'ul mafasid muqaddamun 'ala jalbil mashalih*, and the meritocratic standards embodied in *al-quwwah wa al-amanah*. Taken together, these principles reinforce the understanding that executive appointments must prioritize institutional integrity, accountability, and public welfare over political accommodation or personal interests.

To translate these constitutional and normative conclusions into actionable legal reform, this study recommends amending the Presidential Regulation governing the organization of state ministries to incorporate a mandatory Institutional Workload and Fiscal Impact Assessment. The establishment of a new ministry, the separation or merger of existing ministries, and the appointment of deputy ministers to address administrative needs should be supported by an Academic Institutional Assessment demonstrating, first, through objective workload and span-of-control analysis, that the relevant governmental functions cannot be adequately accommodated by existing Echelon I units; second, that a clear demarcation of authority exists to prevent institutional overlap; and third, that the Ministry of Finance has issued a Fiscal Capacity Verification confirming that routine apparatus expenditure does not exceed 30% of the ministry's total programmatic budget allocation. Such an assessment would provide an objective and transparent basis for cabinet restructuring, ensuring that institutional expansion is justified by administrative necessity, fiscal sustainability, and the public interest rather than political considerations.

In addition, this study recommends the codification of an explicit incompatibility clause within the State-Owned Enterprises (SOEs) regulatory framework and relevant presidential appointment decrees. The Government and the House of Representatives (DPR) should harmonize the SOE Law and Government Regulation No. 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of SOEs by expressly prohibiting ministers and deputy ministers from being nominated, appointed, or serving concurrently as members of the Board of Commissioners, Supervisory Board, or Board of Directors of SOEs, Regional-Owned Enterprises (ROEs), or their subsidiaries. Any appointment made in violation of this prohibition should be declared null and void by law (batal demi hukum), with an explicit prohibition on the disbursement of double remuneration, honoraria, or tantiem from state or corporate budgets. This regulatory harmonization would strengthen the separation between public authority and corporate interests, prevent conflicts of interest, and ensure that executive appointments remain consistent with constitutional accountability, meritocratic governance, and the overarching principle of al-mashlahah.

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