

A Juridical Study on the Limitations of the President's Prerogative Right in the Appointment of Public Officials

Wahyu Agung Nuril Fahmi*¹, Erfanda Andi Mada Arectya², Kenneth Sulthon Alafi Al Hallaj³, Suci Yuni Setiawati⁴, Muhammad Fakhri Sajidan⁵

¹Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia, wahyufafa19@gmail.com

²Universitas Muhammadiyah Surabaya, Indonesia, erfandaandi99@gmail.com

³Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia, elaphy07@gmail.com

⁴Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia, suciyuni2002@gmail.com

⁵Universitas Muhammadiyah Surabaya, Indonesia, fakhrisajidan111@gmail.com

*Corresponding author: wahyufafa19@gmail.com

ABSTRACT: The President of the Republic of Indonesia possesses constitutional powers termed "prerogative rights," notably exercised in appointing ministers, the National Police Chief, the Military Commander, ambassadors, and independent state commissioners. Although often portrayed as absolute, the post-reform 1945 Constitution embeds these powers within a distribution of powers framework, subjecting several key appointments to parliamentary approval or consideration. This study examines the juridical scope and constitutional limits of this presidential prerogative, aiming to formulate a normative model that reconciles executive discretion with checks and balances. Employing a normative juridical method with statute, conceptual, and case approaches, the research analyzes primary legal materials alongside secondary academic literature. The findings reveal that presidential prerogative operates along a spectrum: exclusive executive authority, authority requiring DPR approval, and authority requiring DPR consideration or institutional involvement. Constitutional Court Decision No. 22/PUU-XIII/2015 confirms that parliamentary involvement does not violate the presidential system, provided it does not paralyze executive function. The study concludes that a calibrated, function-sensitive limitation distinguishing purely political appointments from appointments to independent, judicial, or oversight institutions safeguards both executive effectiveness and institutional accountability.

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I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) situates the President as both head of state and head of government within a presidential system. One of the most contested dimensions of that position is the so called “prerogative right” (*hak prerogatif*), a term absent from the constitutional text itself yet routinely invoked to describe the President's discretionary authority to appoint ministers, service chiefs, ambassadors, and, indirectly, officials of independent state bodies. In the case of ministerial appointment, research on Susi Pudjiastuti's appointment as Minister of Maritime Affairs and Fisheries shows that although the President enjoys full prerogative in selecting ministers, that discretion is not synonymous with unlimited freedom, since the absence of statutory criteria for ministerial competence creates space for arbitrariness that a fit-and-proper mechanism could mitigate (Kelbulan et al., 2022).

The conceptual confusion surrounding the term is long-standing. A comprehensive review of Constitutional Court Decision Number 22/PUU-XIII/2015 concerning the appointment of the National Police Chief and the Commander of the National Armed Forces demonstrates that the meaning of prerogative in Indonesian constitutional discourse has evolved through at least three currents of juristic opinion: the view of legal experts, the opinion of the majority of constitutional justices, and a dissenting or concurring opinion, each proposing a different threshold for how far parliamentary involvement may reach before it is considered to interfere with executive authority (Susanto, 2016). This ambiguity matters because it directly shapes how far the House of Representatives (DPR) may go in reviewing presidential appointments without being accused of trespassing on executive competence.

Empirically, the tension is most visible in ministerial appointments after the fourth amendment of the 1945 Constitution. A study on the President's prerogative in appointing ministers concludes that, although Article 17 of the Constitution grants the President full authority to appoint and dismiss ministers, that authority is not absolute because ministers must still satisfy statutory qualifications under the State Ministries Law, and because the President remains politically accountable to the public for the composition of the cabinet (Isnawati et al., 2023). A parallel debate arises in the appointment of the Commander of the National Armed Forces, where Article 10 of the Constitution grants the President supreme command over the army, navy, and air force, yet subordinate statutes namely Law Number 34 of 2004 on the National Armed Forces and Law Number 3 of 2002 on State Defence require DPR approval for the appointment of the Commander, thereby narrowing what would otherwise be an unqualified prerogative (Harimurti & Sari, 2021).

A similar pattern is found outside the security sector. Research on the constitutional implications of DPR consideration in the appointment of ambassadors and consuls shows that, prior to the amendment of the 1945 Constitution, ambassadorial appointment was an exclusive presidential prerogative, but Article 13 of the amended Constitution

together with Law Number 37 of 1999 on Foreign Relations now obliges the President to “pay attention” to DPR consideration, even though that consideration is juridically non binding and functions more as an implementation of parliamentary oversight than as a co-decision mechanism (Sakti, 2022).

These four strands of scholarship converge on a single unresolved question: what is the constitutionally legitimate boundary between presidential discretion and legislative or institutional oversight in the appointment of public officials, and how should that boundary differ according to the function of the office being filled? Answering this question is increasingly urgent because Indonesia's post reform state architecture has multiplied the categories of “strategic” officials whose independence, accountability, or professional competence directly affects the quality of democratic governance constitutional justices, members of the Judicial Commission, leadership of the Corruption Eradication Commission (KPK), and heads of other independent commissions. Treating all of these appointments as uniformly “prerogative” risks either paralysing legitimate presidential authority through excessive parliamentary intervention, or, conversely, insulating politically consequential appointments from any accountability at all.

Based on this background, the present study addresses two research problems: first, how does Indonesian constitutional law categorise and justify the President's prerogative right in the appointment of public officials; and second, what normative limitations should apply to that prerogative in order to maintain consistency with the principle of checks and balances inherent in Indonesia's presidential system. The study contributes to the constitutional law literature by synthesising sector specific findings on ministerial, military, diplomatic, and judicial appointments into a single, function based framework for evaluating the constitutionality of future limitations on presidential appointment power.

II. METHOD

This study employs a normative juridical (doctrinal) research method, examining law as a coherent system of norms rather than as a social fact to be measured empirically. The normative approach is appropriate because the central problem of this research the scope and limitation of a constitutional discretionary power is a question of legal interpretation rather than of behavioural measurement.

Three complementary approaches are used. The statute approach examines the 1945 Constitution, the State Ministries Law, the National Armed Forces Law, the State Defence Law, the Foreign Relations Law, the Judicial Commission Law, and the Corruption Eradication Commission Law as the primary normative framework governing presidential appointment powers. The conceptual approach is used to clarify doctrinal concepts such as “prerogative,” “checks and balances,” and “distribution of powers,” drawing on the constitutional law literature to distinguish these concepts from ordinary discretionary administrative authority. The case approach analyses Constitutional Court Decision

Number 22/PUU-XIII/2015 as the leading precedent interpreting the constitutional limits of presidential prerogative in appointment matters.

Data for this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution and its amendments, the statutes identified above, and Constitutional Court decisions. Secondary legal materials consist of peer-reviewed articles published in nationally accredited (Sinta) and internationally indexed (Scopus) journals, textbooks on constitutional law, and legal commentaries. Tertiary materials include legal dictionaries used to clarify technical terminology. All secondary sources were retrieved from official journal repositories and verified for their Digital Object Identifier (DOI) prior to citation, in accordance with reference-management practice using Mendeley Desktop in APA style.

The data were analysed using a qualitative descriptive analytical technique combined with deductive reasoning. General constitutional principles particularly the principle of checks and balances and the principle of a state based on law (*negara hukum*) were used as major premises against which specific statutory provisions and case based findings on ministerial, military, diplomatic, judicial, and independent commission appointments were tested as minor premises, in order to derive a normative conclusion regarding the appropriate limitation of presidential prerogative. This deductive qualitative technique is consistent with established normative legal research practice in Indonesian constitutional scholarship, which typically pairs statutory analysis with doctrinal conceptualisation to produce prescriptive, rather than merely descriptive, findings.

III. RESULT AND DISCUSSION

The Conceptual and Historical Basis of Presidential Prerogative

The term “prerogative” never appears in the text of the 1945 Constitution, either before or after amendment. It entered Indonesian constitutional vocabulary as a doctrinal label attached to a cluster of presidential powers historically associated with the Head of State function the power to grant clemency, amnesty, abolition, and rehabilitation, and the power to appoint high officials. Because the concept has no textual anchor, its scope has always depended on juristic interpretation rather than explicit constitutional definition, which explains why disputes over its limits recur whenever a new appointment controversy arises (Susanto, 2016).

Historically, the exercise of what would later be labelled prerogative authority was already contested in the earliest years of the Republic. As early as January 1947, members of the Working Body (*Badan Pekerja*) objected to a presidential regulation issued without ministerial countersignature, prompting the President to assert personal responsibility for the regulation an early indication that unilateral executive action, even when historically tolerated, has never been free from institutional contestation in Indonesian constitutional practice.

Doctrinally, three broad categories of presidential prerogative in appointment matters can be distinguished. The first category consists of appointments made entirely at the

President's own discretion, such as the appointment of ministers under Article 17 of the Constitution. The second category consists of appointments requiring DPR approval, such as the appointment of the National Police Chief and the Commander of the National Armed Forces. The third category consists of appointments requiring DPR consideration together with the involvement of other institutions, such as the appointment of ambassadors, the granting of clemency, and the nomination of constitutional justices (Kelbunan et al., 2022). This tripartite categorisation is essential because it demonstrates that "prerogative" in Indonesian constitutional law was never intended as a single undifferentiated grant of unlimited power, but rather as a spectrum of discretion whose intensity varies according to the constitutional and statutory design of each office.

Ministerial Appointment as the Core of Presidential Discretion

Ministerial appointment represents the paradigmatic case of presidential prerogative because Article 17 of the Constitution places no substantive qualification requirement on the President's choice, other than the general requirement that ministers assist the President in specific fields of government affairs. Empirical analysis of the appointment of a fisheries entrepreneur without a university degree as Minister of Maritime Affairs and Fisheries shows that, because ministerial office is not classified as a structural civil service position, no formal educational threshold applies, leaving competence assessment entirely to presidential judgement (Kelbunan et al., 2022). The same study argues that this openness, while consistent with the constitutional design of prerogative, creates a governance risk: without any statutory mechanism such as a public interview or fit and proper test, the public has no means of independently verifying a minister's competence before appointment.

This tension between constitutional discretion and public accountability becomes sharper when ministerial appointment intersects with multi-party coalition politics. Research on cabinet formation in Indonesia's multi-party presidential system shows that although appointing and dismissing ministers remains formally the President's prerogative, coalition bargaining in practice constrains that discretion, because presidents depend on legislative support from coalition parties to pass their legislative agenda, making ministerial posts a de facto currency of political negotiation even though no law requires such negotiation (Ansori, 2023). The result is a structural paradox: the constitutional text preserves an unconditioned prerogative, while political reality imposes an unwritten, informal constraint that the Constitution does not regulate and the courts cannot adjudicate.

Security Sector Appointments and the Boundary of Parliamentary Approval

Unlike ministerial appointment, the appointment of the National Police Chief and the Commander of the National Armed Forces is explicitly subjected to DPR approval by statute, even though Article 10 of the Constitution grants the President supreme command over the armed forces in terms that read, on their face, as unconditional. Analysis of Article 13(2) of the National Armed Forces Law and Article 17 of the State

Defence Law demonstrates that these provisions operate as a deliberate statutory narrowing of an otherwise broad constitutional grant, reflecting the legislature's judgement that command of the state's coercive apparatus is too consequential for democratic accountability to be left to unilateral executive choice (Harimurti & Sari, 2021).

The constitutionality of this arrangement was directly tested in Constitutional Court Decision Number 22/PUU-XIII/2015, which reviewed the Police Law, the State Defence Law, and the National Armed Forces Law regarding the requirement of DPR approval for the appointment of the Police Chief and the Armed Forces Commander. The Court held that requiring DPR approval for these two offices does not deviate from or contradict the presidential system of government, because such approval functions as an accountability mechanism rather than as legislative co-governance, and because the two offices in question exercise coercive state power whose politicisation or abuse would carry disproportionate risk to democratic order (Susanto, 2016). This precedent is significant because it establishes, for the first time at the constitutional level, that parliamentary involvement in appointment does not automatically violate presidential prerogative the decisive question is instead whether the involvement is proportionate to the function and risk profile of the office concerned.

Diplomatic and Judicial Appointments: Consideration versus Approval

A further gradation appears in ambassadorial appointment. Article 13(2) of the amended Constitution requires the President merely to “pay attention to” (*memperhatikan*) DPR consideration when appointing ambassadors, a formulation weaker than the “approval” (*persetujuan*) standard applied to the Police Chief and Armed Forces Commander. Analysis of this provision concludes that DPR consideration in ambassadorial appointment is juridically non-binding the President may, after considering the DPR's input, still form an independent judgement yet the arrangement nonetheless constitutes a meaningful implementation of the DPR's oversight function over the executive, because in institutional practice presidents have consistently taken DPR consideration into account, to the point that doing so has become an unwritten constitutional convention (Sakti, 2022).

Judicial appointments occupy a still different position on the spectrum. The nomination and appointment of constitutional justices, and the selection of Judicial Commission members, are structured through multi institutional processes involving the President, the DPR, and the Supreme Court, precisely because the independence of the judiciary is considered too foundational to democratic governance to be entrusted to any single branch. A study on the selection process for constitutional justices identifies persistent problems in the existing model including inconsistent selection standards across the President, the DPR, and the Supreme Court, each of which nominates justices through different procedures and proposes a more standardised selection framework to strengthen the independence and integrity of the Constitutional Court (Wantu et al.,

2021). Complementary research applying a prophetic-law paradigm to the reconstruction of Constitutional Court justice selection argues that the current norm requires reform toward greater transparency, participatory public scrutiny, and value-based integrity screening, rather than leaving nomination largely to the discretion of each nominating institution (Lutfi & Nur, 2022).

These findings collectively show that judicial appointments, unlike ministerial or ambassadorial appointments, cannot be adequately explained through the language of presidential prerogative at all. Where the President's role is merely to nominate a limited number of candidates within a tripartite institutional design, prerogative in the traditional sense unilateral, discretionary selection does not exist; what remains is a shared constitutional responsibility for safeguarding judicial independence.

Independent Commissions and the Limits of Executive Discretion

The appointment of leadership for independent oversight bodies, most prominently the Corruption Eradication Commission (KPK), illustrates a further complication, that the President's role is often confined to submitting a shortlist of candidates typically produced by an independent selection committee (*Panitia Seleksi*) for DPR fit and proper testing and final determination. In this model, presidential involvement functions primarily as a formal transmission mechanism between the selection committee and Parliament rather than as substantive discretionary choice, further weakening any claim that KPK leadership appointment constitutes a genuine presidential prerogative.

This institutional design finds support in comparative literature on the performance of independent regulatory and oversight agencies, which finds that agencies insulated from direct political appointment discretion, and instead staffed through competitive, criteria based selection processes, tend to exhibit stronger programmatic performance and greater public trust than agencies whose leadership is subject to unconstrained executive appointment (Keckler, 2022). Although this finding originates from a broader international dataset on research funding agencies rather than from Indonesian anti corruption institutions specifically, it lends comparative theoretical support to the Indonesian legislature's choice to interpose an independent selection committee between the President and the DPR in the KPK leadership process, rather than allowing either institution unmediated discretionary control.

Checks and Balances as the Constitutional Justification for Limitation

The theoretical foundation for limiting presidential prerogative lies in the principle of checks and balances that has structured Indonesia's constitutional order since the fourth amendment of the 1945 Constitution. Analysis of the transition from an integralistic, MPR centred system to a genuine distribution of powers model shows that the amendment process deliberately redistributed authority previously concentrated in the presidency including law making power, which shifted from the President to the DPR under the amended Article 20(1) precisely to prevent any single branch from exercising unchecked

authority (Sunarto, 2016). Because appointment power is a species of executive authority with the same potential for abuse as law making or budgetary power, the same constitutional logic that justifies legislative participation in law-making also justifies legislative participation in appointing officials whose functions carry systemic constitutional significance.

Institutionally, the checks and balances principle operates not as a rigid separation of powers but as a distribution of powers in which branches share and mutually supervise the exercise of state functions. A study on the mechanism of checks and balances between the legislative and executive branches in law-making demonstrates that Indonesia's model relies on cooperative rather than adversarial mechanisms joint deliberation, mutual consent, and reciprocal veto points which is structurally consistent with requiring DPR approval or consideration in specific categories of presidential appointment rather than leaving such appointments entirely outside legislative reach (Pulungan & Lita Tyesta, 2022).

At the same time, the checks and balances principle does not license unlimited legislative intrusion into executive functions. Research on the constitutional limits of presidential executive power argues that just as the DPR's legislative and budgetary functions are bounded by constitutional procedure, so too must legislative oversight of appointment be bounded, since converting DPR "consideration" or "approval" into a de facto veto over every strategic appointment would itself constitute a constitutional violation namely, an encroachment of the legislative branch onto core executive prerogatives inconsistent with the presidential system Indonesia has chosen (Prabandani, 2015). This concern is echoed in research identifying persistent problems in the arrangement of the checks and balances system for law formation and judicial review in Indonesia, which finds that without clearer procedural boundaries, mechanisms intended as accountability tools can be misused for either excessive obstruction or excessive deference, undermining the very balance they are meant to protect (Lailam, 2021).

A normative synthesis of these positions suggests that checks and balances in appointment matters should be understood as a principle of proportionality rather than a fixed procedural formula: the intensity of legislative involvement should scale with the constitutional significance and public risk profile of the office being filled, ranging from no involvement (ordinary ministerial appointment) to binding approval (security sector command) to multi institutional co-determination (judicial appointment).

Toward a Function Sensitive Model of Limitation

Building on the preceding analysis, this study argues that the existing categorisation of presidential prerogative into exclusive, DPR approved, and DPR considered appointments should be reconceptualised explicitly around the function of the office rather than around historical or sectoral convention. Three functional categories can be proposed. First, political executive offices, such as ministers, whose accountability runs primarily through the President and the electoral process, should remain within full presidential

discretion, consistent with the constitutional design and with research showing that ministerial prerogative is checked adequately through political rather than legal accountability (Kelbunan et al., 2022). Second, coercive power offices, such as the Police Chief and the Armed Forces Commander, should continue to require binding DPR approval, given the heightened risk of politicisation identified in Constitutional Court Decision Number 22/PUU-XIII/2015 and in the broader literature on state finance oversight, which similarly emphasises the necessity of checks and balances wherever a single office controls resources or instruments capable of being turned against democratic institutions themselves (Ristriawan & Sugiharti, 2018). Third, independent and judicial offices, such as constitutional justices, Judicial Commission members, and KPK leadership, should be filled through multi-institutional, criteria based selection mechanisms in which the President's role is limited to procedural transmission rather than substantive discretion, consistent with proposals for standardising constitutional-justice selection (Wantu et al., 2021) and reconstructing the underlying selection norm around integrity and public participation (Lutfi & Nur, 2022).

This model also responds to concerns raised in comparative constitutional scholarship regarding the risk of an overly powerful legislature undermining presidential effectiveness. A comparative study of legislative checks and balances in Indonesia and the United States shows that Indonesia's "joint approval" design under Article 20 of the Constitution already positions the President as a dominant co-legislator relative to the strict separation of powers model adopted in the United States, indicating that Indonesian constitutional design generally favours cooperative rather than confrontational inter branch relations a disposition that should also inform how appointment related checks and balances are calibrated, favouring consultative rather than obstructive legislative review except where coercive power is at stake.

The proposed function sensitive model is further supported by research on the broader political legal foundations of legislative socio equilibrium in Indonesia, which argues that legal instruments distributing power among state institutions should be evaluated by their capacity to maintain social and institutional equilibrium rather than by rigid adherence to a single doctrinal label such as "prerogative," since equilibrium, not categorical purity, is the underlying constitutional value that both presidential discretion and legislative oversight are meant to serve (Hidayat & Arifin, 2019). Read together with the historical account of the *rechtsstaat* (*negara hukum*) tradition in Indonesian constitutional theory, which holds that all exercises of state power including appointment power must ultimately be traceable to and constrained by law rather than by the unchecked will of any single organ (Soemarsono, 2007), this model offers a principled basis for future statutory reform: appointment procedures should be revised office by office, guided by function and risk rather than by inherited but conceptually unstable prerogative labels.

Finally, this reform agenda must be understood within the broader trajectory of Indonesia's constitutional transition. Research tracing constitutional reform as a phenomenon of power transition observes that the redistribution of authority away from a dominant executive has been a defining, if incomplete, project of the post 1998 constitutional order, and that vigilance against both executive overreach and legislative overreach remains necessary as new institutional forms including independent commissions unforeseen by the original constitutional text continue to emerge (Polamolo, 2013). Judicial review remains the ultimate safeguard in this trajectory; as scholarship on the Constitutional Court's practice of *ultra petita* decisions demonstrates, the Court has at times gone beyond the strict boundaries of petitioners' claims in order to protect constitutional coherence, a progressive posture that has proven valuable precisely in disputes, such as Decision 22/PUU-XIII/2015, concerning the proper distribution of appointment authority between the President and the DPR (Sasmito, 2011). The overarching lesson from this body of scholarship, together with research on the practical mechanisms of good governance through checks and balances among state institutions (Sulardi & Sastra, 2017), is that limiting presidential prerogative in appointment matters is not an erosion of presidential authority but a constitutionally mandated refinement of it one that allows the President to govern effectively while ensuring that the officials appointed to exercise coercive, judicial, or oversight power remain accountable to the constitutional order as a whole.

IV. CONCLUSION

This study concludes that the President's prerogative right in the appointment of public officials under Indonesian constitutional law is not a unitary, unconditioned power but a differentiated spectrum of authority whose intensity depends on the constitutional and statutory design of each office. Three categories can be identified: exclusive presidential discretion in political executive appointments such as ministers; DPR approved appointments in coercive power offices such as the National Police Chief and the Armed Forces Commander, as affirmed in Constitutional Court Decision Number 22/PUU-XIII/2015, and multi institutional, criteria based selection in judicial and independent oversight offices such as constitutional justices and KPK leadership, where the President's role is largely procedural rather than substantively discretionary. The principle of checks and balances embedded in the post amendment 1945 Constitution provides the normative justification for these limitations, provided that legislative involvement remains proportionate to the constitutional significance and risk profile of the office concerned and does not degenerate into an unwritten legislative veto over ordinary executive functions. Future statutory reform should therefore move away from treating "prerogative" as a single doctrinal label and instead adopt a function sensitive framework that calibrates the degree of parliamentary or institutional involvement to the specific accountability needs of each category of public office, thereby reconciling presidential effectiveness with democratic and constitutional accountability.

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