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Presidential Nominations from Active Cabinet Ministers: A Delicate Balance between the Interpretation of Constitutional Court Decisions and Political Interests

Article	Abstract
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INTRODUCTION

The Constitutional Court holds a significant role in ensuring the supremacy of law¹, particularly in Indonesia, as regulated² by Article 7B and Article 24C paragraph (1) of the 1945 Constitution. This

¹ Benjamin Bricker, "Breaking the Principle of Secrecy: An Examination of Judicial Dissent in the European Constitutional Courts," *Law and Policy* 39, no. 2 (April 2017): 170–91, <https://doi.org/10.1111/LAPO.12072>.

² Camden Kelliher et al., "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes," *Election Law Journal: Rules, Politics, and Policy* 18, no. 3 (September 2019): 297–308, <https://doi.org/10.1089/elj.2018.0535>.

law states: The Constitutional Court is the primary and final authority for examining material laws against the Constitution,³ adjudicating disputes⁴ related to general election results, settling conflicts over the authority of state institutions granted by the Constitution, evaluating and addressing the opinion of the people's representative council. Additionally, it determines whether the president⁵ or vice president has violated or no longer fulfills the requirements of their respective roles, and decides upon the dissolution of political parties⁶.

Drawing from its powers to scrutinize laws against the 1945 Constitution of Indonesia⁷, the Constitutional Court assessed Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections⁸ and their explanation of the 1945 Constitution. This was initiated by the Indonesian Change Guard Party (Garuda Party) on June 20, 2022, represented by Ahmad Ridha Sabana, the General Chair of the Garuda Party Central Leadership Council, and Yohanna Murtika, the Secretary General of the same council. They subsequently authorized M. Maulana Bungaran, Desmihardi, and Munathsir Mustaman to represent them legally⁹.

In response to this appeal, the Constitutional Court¹⁰ rendered decision number 68/PUU-XX/2022. This decision partially upheld the applicant's request for a review of Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections in conjunction with an interpretation of the 1945 Constitution. Consequently, this led to an amendment of Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections¹¹ as follows:

Nominees for President or Vice-President positions, proposed by Election Contesting Political Parties or Coalitions of Political Parties, are required to resign from their current posts. Exceptions are made for the President, Vice President, leaders and members of the People's Consultative Assembly (MPR), leaders and members of the House of Representatives (DPR), leaders and members of the Regional Representative Council (DPD), Governors, Deputy Governors, Regents, Deputy Regents, Mayors and Deputy Mayors. This also includes Ministers and ministerial-level officials, given that they receive the President's approval and leave permission.

³ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Depok: PT Rajagrafindo Persada, 2017).

⁴ John Gillespie, "Theorizing Continuity and Change in Socialist Regulation," *Law & Policy* 45, no. 2 (April 2023): 211–33, <https://doi.org/10.1111/LAPO.12212>.

⁵ Maria Popova, "Can a Leopard Change Its Spots? Strategic Behavior versus Professional Role Conception during Ukraine's 2014 Court Chair Elections," *Law and Policy* 42, no. 4 (October 2020): 365–81, <https://doi.org/10.1111/LAPO.12156>.

⁶ MD, *Membangun Politik Hukum, Menegakkan Konstitusi*.

⁷ Kelliher et al., "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes."

⁸ Popova, "Can a Leopard Change Its Spots? Strategic Behavior versus Professional Role Conception during Ukraine's 2014 Court Chair Elections."

⁹ Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 68/PUU-XX/2022," 2022.

¹⁰ Bricker, "Breaking the Principle of Secrecy: An Examination of Judicial Dissent in the European Constitutional Courts."

¹¹ Iuliia Krivonosova and Radu Antonio Serrano-Iova, "From the Parliament to a Polling Station: How to Make Electoral Laws More Comprehensible to Election Administrators," *Election Law Journal: Rules, Politics, and Policy* 20, no. 4 (December 2021): 364–81, <https://doi.org/10.1089/ELJ.2020.0670>; See to Tonye Clinton Jaja and Zaka Firma Aditya, "Promoting the Good Governance by Advancing the Role of Parliamentarians and the Term Offices Limitation (Comparing Nigeria and Indonesia)," *Journal of Indonesian Legal Studies* 7, no. 1 (June 1, 2022): 265–98, <https://doi.org/10.15294/JILS.V7I1.54776>.

Subsequently, Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections was further amended by omitting the phrase “ministers and ministerial-level officials”.

As a result, the provision defining “state officials” now reads:

1. Supreme Court’s Chief, Deputy Chief, Junior Chief and Chief Justice;
2. Chairpersons, Deputy chairpersons, and Judges across all judicial bodies, excluding judges referred to this provision;
3. Chairperson, Vice chairperson, and members of the Constitutional Court;
4. Chairperson, Deputy Chairperson and members of the Financial Audit Agency;
5. Chairperson, Deputy Chairperson and members of the Judicial Commission;
6. Chairperson and Deputy Chairman of the Corruption Eradication Commission;
7. Heads of overseas representatives of the Republic of Indonesia holding the title of Ambassador Extraordinary and Plenipotentiary; and
8. Other national offices as determined by law.¹²

Following this ruling¹³, the Constitutional Court reclassified ministers and ministerial-level officials, exempting them from the regulation outlined in Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections. Consequently, the elucidation of Article 170 paragraph (1), letter g of the same law, which previously included ministers and ministerial-level officials, was amended. The outcome of this is that, according to the Constitutional Court Decision number 68/PUU-XX/2022, ministers and ministerial-level officials are no longer mandated to relinquish their roles when nominated as presidential or vice-presidential candidates by a political party or a coalition of political parties,¹⁴ as long as they obtain approval and leave permission from the president.

This ruling by the Constitutional Court sparked controversy among various sectors of Indonesian society,¹⁵ with some in favor and others against the decision.¹⁶ The opposition to the decision is not unfounded. Given Indonesia’s presidential governmental system, ministers hold extensive responsibilities and powers as the supreme leader of their respective ministries. Each ministry is tasked with supporting the President in his administrative duties as stipulated in Article 1 point 2 and article 7 of Law No. 39 of 2008 concerning Ministries.¹⁷ These sweeping responsibilities and powers raise concerns about a minister’s ability to effectively perform their primary duties if they are not required to step down when nominated as a presidential or vice-presidential candidate.¹⁸

¹² Indonesia, “Putusan Nomor 68/PUU-XX/2022.”

¹³ Melissa Marschall and John Lappie, “Turnout in Local Elections: Is Timing Really Everything?,” *Election Law Journal: Rules, Politics, and Policy* 17, no. 3 (September 2018): 221–33, <https://doi.org/10.1089/ELJ.2017.0462>.

¹⁴ Ryan D. Williamson, “Examining the Effects of Partisan Redistricting on Candidate Entry Decisions,” *Election Law Journal: Rules, Politics, and Policy* 18, no. 3 (September 2019): 214–26, <https://doi.org/10.1089/ELJ.2018.0505>.

¹⁵ Kelliher et al., “Unconstitutional Authority of Indonesia’s Constitutional Court: The Resolution of Pilkada Result Disputes.”

¹⁶ Angghie Permatasari, Lusy Lianny, and Amir Mahmud, “Disharmonisasi Antara Mahkamah Konstitusi Dan Mahkamah Agung Dihubungkan Dengan Asas Kepastian Hukum (Studi Putusan Nomor 30/PUU-XVI/2018 Dan Putusan Nomor 65 P/Hum/2018 Dengan Pemohon Oesman Sapta Odang),” *JURIS (Jurnal Ilmiah Syariah)* 19, no. 1 (2020), <https://doi.org/http://dx.doi.org/10.31958/juris.v19i1.2043>.

¹⁷ Undang-Undang Republik Indonesia, “Undang-Undang Republik Indonesia Nomor 39 Tahun 2008 Tentang Kementerian Negara,” 2008.

¹⁸ Charles R. Hunt et al., “Assessing Group Incentives, Independent Spending, and Campaign Finance Law by Comparing the States,” *Election Law Journal: Rules, Politics, and Policy* 19, no. 3 (September 2020): 374–91, <https://doi.org/10.1089/ELJ.2019.0570>.

Such a scenario could potentially disrupt the minister's performance and the functioning of the ministry. Additionally, the possibility of power abuse has been flagged as a potential issue by some sectors of society, with any misuse of power by a state official (minister) often leading to a conflict of interest.

From the viewpoint of *Fiqh Siyasa*, the ministerial role is perceived as a paramount position of authority within a nation. Al-Mawardi depicts the minister's role (*vizier*) as *sās al-masūs* (a regulator who is concurrently regulated) by the national leader.¹⁹ As a governing and regulated figure, the minister shoulders a significant state obligation to fulfill the Islamic statehood's objectives, namely, upholding religious freedom and promoting welfare for all citizens.²⁰ In the context of *Fiqh Siyasa*, does the Constitutional Court's decision Number 68/PUU-XX/2022 endorse or undermine the minister's role in achieving statehood objectives? Given the above discussion, the author is keen to explore the implications of the Constitutional Court's decision Number 68/PUU-XX/2022 on ministers within the presidential system of governance and the perspective of Islamic law/*Fiqh Siyasa*.

RESEARCH METHODOLOGY

The present study employs normative legal methodology, which is legal research utilizing written legal sources and literature data (law in book). The primary data consist of the Constitutional Court's decision No. 68/PUU-XX/2022, documented in the state gazette, and other laws and regulations pertinent to the legal subject matter under judicial review through the Constitutional Court's decision. Besides primary data, this research also uses secondary data sourced from law books, legal journal articles, and legal news articles in national media, both print and digital. The collected data are analyzed using a Relational-Dialectical Approach (DRA), a critical discourse analysis approach that interprets the relationship between data. Qualitative descriptive research is a type of research that describes a phenomenon in the form of words and language²¹. The approach in this study is normative-judicial; the object of the normative-judicial approach is statutory regulations and court decisions that have permanent legal force.²²

ANALYSIS AND DISCUSSION

Implications Constitutional Court Decision Number 68/PUU-XX/2022 on the Responsibilities and Powers of Ministers within the Presidential Government System

This analysis originates from the applicant's appeal for the review of Article 170, paragraph (1) of Law Number 7 of 2017 concerning General Elections, complemented by the explanation of the 1945 Constitution. The Constitutional Court, in response, issued Decision Number 68/PUU-XX/2022, which partially granted the applicant's appeal concerning the review of Article 170,

¹⁹ Muhammad Ishom, "Nasehat Al-Mawardi Untuk Menteri-Menteri Pembantu Kepala Negara: Studi Kitab Adab Al-Wazir," *Al-Qisthas: Jurnal Hukum Dan Politik* 7, no. 1 (1996): 1–30.

²⁰ Muhammad Iqbal, *Fiqh Siyasa Konsektualisasi Doktrin Politik Islam* (Jakarta: Kencana Prenadamedia Group, 2014).

²¹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT Remaja Rosdakarya, 2017).

²² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta Timur: Prenadamedia Group, 2019).

paragraph (1) of Law Number 7 of 2017. In essence, the Constitutional Court's decision states²³ that ministers and ministerial-level officials are considered as state officials who are exempted from the obligation to resign from their positions when nominated as a presidential or vice-presidential candidate by a political party or coalition of political parties participating in the general election. This exemption, however, is contingent upon these ministers and officials receiving approval and leave permission from the president²⁴.

The Constitutional Court's decision, however, lacks detailed clarification regarding the leave procedure for ministers and ministerial-level officials who are nominated as presidential or vice-presidential candidates in the general election.²⁵ It remains uncertain whether these officials must take leave once they are confirmed as candidates. Contrarily, Judge Saldi Isra, for distinct reasons, asserted that a minister or ministerial-level official should be on leave or inactive from the moment of their appointment as a candidate until the completion of the presidential and vice-presidential election stages.²⁶

The Constitutional Court Decision Number 68/PUU-XX/2022²⁷ paves the way for ministers to assume dual roles and responsibilities in the upcoming 2024 general elections. These dual capacities encompass their current ministerial roles and potential candidacies for the positions of president or vice president. Minister of Defense Prabowo Subianto is a prime example of a definitive minister who could undertake these multiple roles and responsibilities. This is attributed to Prabowo Subianto's declaration of his intention to run for the presidency in 2024, as announced at a national leadership meeting held at the Sentul International Convention Center on August 12-13, 2022.²⁸ In addition to Minister of Defense Prabowo Subianto, several other ministers have been identified as potential candidates for the presidency or vice presidency in 2023 by the Indonesian Survey Institute. These include Airlangga Hartarto, the Coordinating Minister for the Economy; Sandiaga Uno, Minister of Tourism and Creative Economy; Erik Tohir, Minister of State-Owned Enterprises; Moh Mahfud MD, Coordinating Minister for Political Law and Human Rights Defenders; Sri Mulyani, Minister of Finance; Tri Rismaharini, Minister of Social Affairs; Zulfikri Hasan, Minister of Trade; and Tito Karnavian, Minister of Home Affairs.²⁹

²³ Kelliher et al., "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes."

²⁴ Indonesia, "Putusan Nomor 68/PUU-XX/2022."

²⁵ Eric Loepp and Benjamin Melusky, "Why Is This Candidate Listed Twice? The Behavioral and Electoral Consequences of Fusion Voting," *Election Law Journal: Rules, Politics, and Policy* 21, no. 2 (June 2022): 105–23, <https://doi.org/10.1089/ELJ.2021.0037>.

²⁶ Indonesia, "Putusan Nomor 68/PUU-XX/2022."

²⁷ Saiful Risky, Sholahuddin Al-Fatih, and Mabarroh Azizah, "Political Configuration of Electoral System Law in Indonesia from State Administration Perspective," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (2023), <https://doi.org/https://doi.org/10.24090/volkgeist.v6i1.7940>.

²⁸ Detikbali, "Gerindra Deklarasi Prabowo Subianto Sebagai Capres 2024," detikbali, 2022.

²⁹ Lembaga Survei Indonesia, "Survei Nasional Peta Elektoral Pilpres Dan Antisipasi Putaran Kedua," Lembaga Survei Indonesia, 2023.

If the presidential election were held now, who would you choose as president among the following names? (%)

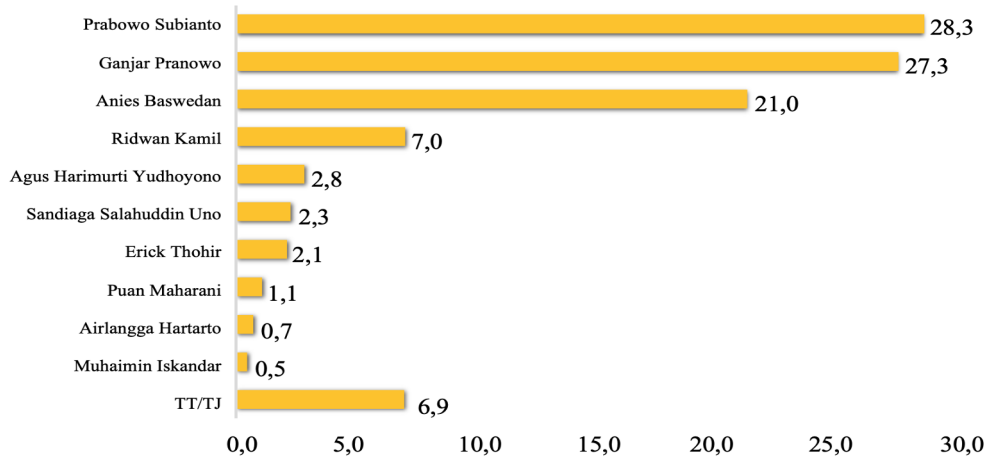


FIG. 1. Indonesian presidential candidates in 2024

Figure. 1. Indonesian presidential candidates in 2024

If the presidential election is held now, in your opinion, who is the MOST DESERVE to become a Vice Presidential candidate among the following names? (%)

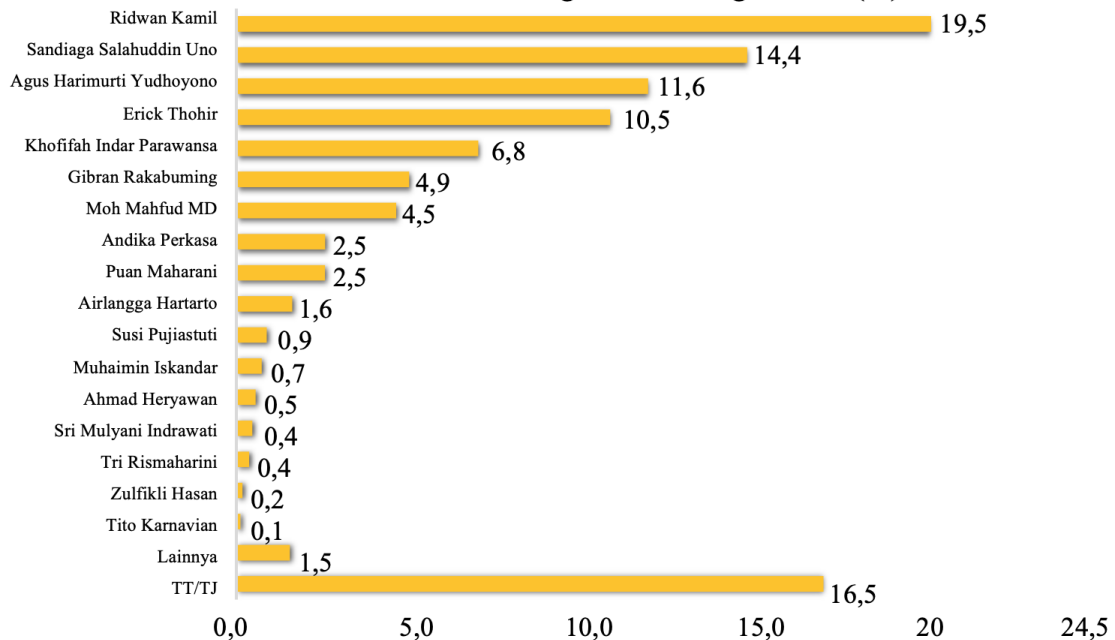


Figure. 2 Indonesian vice presidential candidates in 2024

The Indonesian Survey Institute lists several ministers as potential candidates for the 2024 presidential or vice-presidential elections. This raises the possibility of more than two ministers from a single cabinet contesting for the positions. The implications of such a scenario on the duties and powers of ministers within a presidential system of government warrant a thorough

examination.³⁰ The presidential system of government is a distinct model where the executive branch operates independently of the legislature. In this system, the executive and legislative branches are two separate entities, and the executive cannot be overthrown by the legislature, even if the latter disapproves or opposes the implemented policies.³¹ In the context of the Indonesian presidential government system, the president holds the dual role of the head of state and head of government. Internationally, the president is recognized as the official representative of the Republic of Indonesia. Domestically, as the head of government, the president operates as the chief executive in a cabinet, aided by a vice president and a team of ministers³².

In the presidential system in Indonesia, the president has the authority to appoint and dismiss ministers of state who serve as heads of government.³³ As assistant to the president in administering government affairs, ministers bear significant responsibility and hold a crucial position due to their substantial influence on state policies within their respective ministries. This role is established in Article 17, paragraph (1) of the 1945 Constitution, which states, “The President shall be assisted by state ministers.”³⁴ Furthermore, the duties of ministers are outlined in Article 7 of Law Number 39 of 2008 concerning State Ministries, which emphasizes their role in managing specific government affairs to aid the president in administering state governance.³⁵

Given the crucial role and heavy tasks, ministers in the Indonesian presidential system face a daunting challenge in balancing their responsibilities with aspirations for higher office. The demanding nature of their role makes it nearly impossible for ministers to concurrently serve as presidential or vice-presidential candidates.³⁶ Potential candidates must adhere to the general election stages outlined in General Election Commission Regulation³⁷ Number 3 of 2022 concerning Stages and Schedules for the 2024 General Election. The nomination period for president and vice president runs from October 19 to November 25, 2023, with the inauguration scheduled for October 20, 2024.³⁸

Presidential or vice-presidential candidates in Indonesia must devote substantial time to fulfilling the prerequisites for candidacy, including devising a clear vision, mission and operational plan for managing the Indonesian state, as stipulated in Article 169, letter t of Law Number 7 Year

³⁰ Toby S. James and Sead Alihodzic, “When Is It Democratic to Postpone an Election? Elections during Natural Disasters, Covid-19, and Emergency Situations,” *Election Law Journal: Rules, Politics, and Policy* 19, no. 3 (September 2020): 344–62, <https://doi.org/10.1089/ELJ.2020.0642>.

³¹ Muhammad Fauzan, *Hukum Tata Negara Dan Sistem Politik Kombinasi Presidensial Dengan Multipartai Di Indonesia* (Yogyakarta: Deepublish, 2016).

³² Moh Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia* (Jakarta Pusat: PT Sastra Hudaya, 2010).

³³ Kelliher et al., “Unconstitutional Authority of Indonesia’s Constitutional Court: The Resolution of Pilkada Result Disputes.”

³⁴ “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (n.d.).

³⁵ Indonesia, “Undang-Undang Republik Indonesia Nomor 39 Tahun 2008 Tentang Kementerian Negara.”

³⁶ Rick Larue, “Presidential Second Terms Are Not Cursed, But the Timing of Reelection Has Become So,” *Election Law Journal: Rules, Politics, and Policy* 17, no. 2 (June 2018): 151–68, <https://doi.org/10.1089/ELJ.2017.0476>.

³⁷ Andrew W. Appel, Richard A. Demillo, and Philip B. Stark, “Ballot-Marking Devices Cannot Ensure the Will of the Voters,” *Election Law Journal: Rules, Politics, and Policy* 19, no. 3 (September 2020): 432–50, <https://doi.org/10.1089/ELJ.2019.0619>.

³⁸ Komisi Pemilihan Umum Republik Indonesia, “Peraturan Komisi Pemilihan Umum Nomor 3 Tahun 2022 Tentang Tahapan Dan Jadwal Penyelenggaraan Pemilihan Umum Tahun 2024,” 2022.

2017 concerning General Elections.³⁹ Moreover, they are required to campaign⁴⁰ across Indonesia to communicate their vision, mission, and presidential and vice-presidential programs to the citizens.

Feri Amsari, a constitutional law expert at Andalas University, opines that ministers who officially become presidential or vice-presidential candidates should resign from their positions. According to Amsari, such ministers would be unable to fully concentrate on their principal duties as presidential assistants.⁴¹ This view is echoed by Jimly Asshidiqie, who points out that ministers serve as technical leaders in their respective fields, overseeing day-to-day government operations.⁴² In contrast, a presidential or vice-presidential candidate must focus on personal interests, primarily campaigning across Indonesia to secure a victory. Therefore, it would be untenable for a minister to continue their duties without interruption if they become a candidate for president or vice president without stepping down. Refly Harun, another constitutional law expert, concurs that ministers who are candidates for president or vice president should resign or be replaced by President Joko Widodo, as their performance would not be optimal while they campaign across various locations and regions.⁴³ Indeed, Harun suggests that ministers who are chosen as presidential or vice-presidential candidates should be obliged to resign from their positions or be replaced by the president, as their candidacy could impinge on their effectiveness in managing government affairs.

The Court's decision⁴⁴ not only impacts ministerial responsibilities but also potentially undermines ministerial authority. A minister, being the highest ranking official within their ministry as per Article 1, Number 2 of Law Number 39 of 2008 concerning State Ministries, wield substantial power.⁴⁵ This correlates with Jimly Asshiddiqie's perspective that the minister, as the top authority in their ministry, oversees all activities. The president, though the head of state and government, does not delve into the minutiae of daily governmental operations.⁴⁶ The vast authority of a minister raises concerns when they decide to run for president or vice president without stepping down from their ministerial post. This apprehension is not unfounded as ministers who become candidates could potentially misuse their power.⁴⁷

The improper use of authority, or "abuse of power," as defined by Philipus M. Hadjon, involves officials deviating from the objectives of their authority for unrelated purposes. In this context, it implies that a minister-cum-candidate might use their ministerial authority for personal electoral gain, straying from their original mandate of serving the public.⁴⁸

³⁹ Undang-Undang Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 Tentang Pemilihan Umum," 2017.

⁴⁰ Netina Tan, "Electoral Management of Digital Campaigns and Disinformation in East and Southeast Asia," *Election Law Journal: Rules, Politics, and Policy* 19, no. 2 (June 2020): 214–39, <https://doi.org/10.1089/ELJ.2019.0599>.

⁴¹ Ardito Ramadhan, "Pengamat: Secara Etik, Menteri Maju Jadi Capres Semestinya Mundur," Kompas.com, n.d.

⁴² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Depok: PT Rajagrafindo Persada, 2014).

⁴³ Evi Nur Alfiah Dany Garjito, "Menteri-Menteri Jokowi Yang Ngebet Jadi Capres Dan Cawapres Mending Undur Diri Deh!" (Suara.com, 2022).

⁴⁴ Ahmad Jamaludin Jambunanda et al., "Marriage Law in Religious Court: Regulation and Decision on Marital Property in Sustainable Legal Development," *Journal of Law and Sustainable Development* 11, no. 10 (October 2023): e1759, <https://doi.org/10.55908/sdgs.v11i10.1759>.

⁴⁵ Indonesia, "Undang-Undang Republik Indonesia Nomor 39 Tahun 2008 Tentang Kementerian Negara."

⁴⁶ Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*.

⁴⁷ Richard L. Hasen, "Three Pathologies of American Voting Rights Illuminated by the Covid-19 Pandemic, and How to Treat and Cure Them," *Election Law Journal: Rules, Politics, and Policy* 19, no. 3 (September 2020): 263–88, <https://doi.org/10.1089/ELJ.2020.0646>.

⁴⁸ Dkk Philipus M. Hadjon, *Hukum Administrasi Dan Good Governance* (Jakarta: Universitas Trisakti, 2012).

Professors Jean Rivero and Waline categorize power abuse into three distinct forms:

1. Power abuse occurs when an individual uses their authority in a way that conflicts with public interest or favors personal or group interests.
2. Power abuse may also be the misuse of authority for public interest but in a manner that diverges from the legal intent of that authority.
3. Power abuse can manifest when unconventional methods are employed to attain certain objectives.⁴⁹

Such abuse can be evident when ministers exploit their powers for purposes that stray from their intended objectives, such as leveraging ministry programs to boost popularity and electability or utilizing state facilities for countrywide campaigns.⁵⁰ This perspective aligns with the opinion of Constitutional Law Expert Refly Harun, who fears power abuse by ministers running for presidential or vice-presidential office without resigning from their current posts. For instance, the Minister of State-Owned Enterprises misuse the network of State-Owned Enterprises for covert to campaigning⁵¹.

Moreover, Khairunnisa Nur Agustyati, Executive Director of the Association for Elections and Democracy (Perludem), concurs with the potential for power abuse.⁵² She notes that ministers might misuse ministry work programs, such as nationwide tours, as promotional platforms. Media appearances by ministers could also serve as subtle self-promotion. This is particularly concerning when state facilities are exploited for campaigning. Therefore, prior to the Constitutional Court's decision, it was mandatory for ministers running for president or vice president to resign from their current roles.⁵³

Power misuse by state officials, such as ministers, often stems from conflicts of interest in exercising their authority. As defined in Article 1, paragraph (14) of Law Number 30 of 2014 concerning Government Administration,⁵⁴ a conflict of interest occurs when government officials use their authority to benefit themselves or others, impairing their neutrality and the quality of their decisions and actions.⁵⁵ May Lim Charity, drawing from a book on conflict of interest, elaborates that such a conflict arises when a state official, vested with power and authority by law, has personal interests that could compromise their performance and decision quality.⁵⁶

Looking at international perspectives, the U.S. has been debating the issue since 1950s, focusing on whether high-ranking officials (e.g., the president) should take leave when running for

⁴⁹ Tri Jata Ayu Pramesti, "Arti 'Menyalahgunakan Wewenang' Dalam Tindak Pidana Korupsi," *Hukumonline.com*, 2015.

⁵⁰ Todd Lochner et al., "Calculating, Credible, or Both? Third-Party Monitors and Repeat Players in Federal Campaign Finance Enforcement," *Election Law Journal: Rules, Politics, and Policy* 20, no. 2 (June 2021): 178–97, <https://doi.org/10.1089/ELJ.2019.0597>.

⁵¹ Refly Harun, *Putusan MK: Menteri Mau Nyapres Tak Perlu Mundur, Cukup Izin Presiden! Makin Pro Istana?*, 2022.

⁵² David L. Wiltse, "Subsidizing Equality: Female Candidate Emergence and Clean Elections," *Election Law Journal: Rules, Politics, and Policy* 17, no. 2 (June 2018): 85–99, <https://doi.org/10.1089/ELJ.2017.0435>.

⁵³ Sadida Hafsyah Muthia Kusuma, "Menteri Maju Capres Tanpa Mundur Dari Kabinet, Etiskah?," *kbrprime.id*, n.d.

⁵⁴ Krivososova and Serrano-Iova, "From the Parliament to a Polling Station: How to Make Electoral Laws More Comprehensible to Election Administrators."

⁵⁵ Undang-Undang Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan," 2014.

⁵⁶ May Lim Charity, "Ironi Praktik Rangkap Jabatan Dalam Sistem Ketatanegaraan Indonesia (Irony Practices of the Double Duty In the Indonesian State System)," *Jurnal Legislasi Indonesia* 13, no. 01 (2016).

re-election.⁵⁷ This discussion is relevant to Indonesia, as both countries operate under a presidential government system. Although the Indonesian Constitutional Court's decision focused on ministers, who serve at the president's behest, this ruling could potentially apply to other high-ranking officials due to its general nature. This raises the question: Should the president, like a minister, not need to take leave when running for re-election, as per the Constitutional Court's decision? This interpretation could significantly impact the governance rules for Indonesian presidents seeking re-election.

Jentera Bivitri Susanti, a constitutional law expert at the Indonesian Law College, suggests that ministers intending to run for presidency should resign or take a leave of absence. This approach would help avoid conflicts of interest, misuse of state facilities, and undue influence.

Similarly, constitutional law specialist Susi Dwi Harijanti sees potential for conflicts of interest in this situation. Consequently, she urges the General Election Commission⁵⁸ to establish specific rules on leave duration and restrictions on the use of state resources. This proactive measure aims to prevent conflicts of interest for ministers seeking presidential or vice-presidential roles in the 2024 general election.⁵⁹

Based on this insight, it can be concluded that Constitutional Court decision⁶⁰ Number 68/PUU-XX/2022 could have negative implications for ministerial duties and powers within a presidential system. Notably, it could interfere with the primary functions of a minister and raise the risk of power abuse. One of the main causes of such abuse by state officials, including ministers, is conflicts of interest. The Constitutional Court's decision, while upholding the principle of legality due to its final and binding nature, appears to conflict with the principle of justice.

Understanding the Role of a Minister in Light of *Fiqh Siyasa* and the Constitutional Court Decision Number 68/PUU-XX/2022

In the realm of Islamic politics, the role of a minister is often likened to that of a *wazir*. The term *wazir* or *wizarah* originates from *al-wazr*, which signifies *al-tsuql* or weight. This metaphorical representation underscores the heavy responsibility a *wazir* shoulders, as they are tasked with implementing key state policies and directives.⁶¹ A head of state, be it a king or caliph, relies on trustworthy individuals with expertise in diverse fields, including but not limited to, political, economic, social and social matters.⁶² The reason is clear: effective governance is impossible without the support of such trusted advisors. In essence, a *wazir* acts as the right hand of the head of state, taking on complex governance issues delegated to them.⁶³ Therefore, it can be inferred that a *wazir* (or, in contemporary terms, a minister) serves as a crucial aide to the head of state, assisting

⁵⁷ Lynn Vavreck, *The Message Matters: The Economy and Presidential Campaigns*, STU-Studen (Princeton University Press, 2009).

⁵⁸ Gowri Ramachandran and Dara Gold, "Using Outlier Analysis to Detect Partisan Gerrymanders: A Survey of Current Approaches and Future Directions," *Election Law Journal: Rules, Politics, and Policy* 17, no. 4 (December 2018): 286–301, <https://doi.org/10.1089/ELJ.2018.0503>.

⁵⁹ Muthia Kusuma, "Menteri Maju Capres Tanpa Mundur Dari Kabinet, Etiskah?"

⁶⁰ Kelliher et al., "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes."

⁶¹ Iqbal, *Fiqh Siyasahterapan dan Konsepnya*.

⁶² Alec Ramsay, "Estimating Seats–Votes Partisan Advantage," *SSRN Electronic Journal*, March 2022, <https://doi.org/10.2139/ssrn.3996574>.

⁶³ Iqbal, *Fiqh Siyasahterapan dan Konsepnya*.

them in carrying out their gubernatorial duties.

The al-Qur'an uses the term *wazir* to describe Prophet Harun's role in assisting Prophet Musa with his mission to Pharaoh. This association is evident in QS. Al-Furqan, 35, which states: "Indeed, We bestowed the Book (Torah) onto Moses and made his brother Harun his *wazir* (assistant)."⁶⁴ Al-Mawardi further elaborates on the role of a *wazir*, distinguishing between two types: *wazir al-tafwidh* and *wazir al-tanfidz*. *Wazir al-tafwidh* is a minister with extensive authority to shape the nation's political policies, exercising nearly all powers of the head of state. In contrast, *wazir al-tanfidz* is responsible for implementing the national policies determined by either the head of state or *wazir al-tafwidh*. The execution of these policies by the *wazir al-tanfidz* aims to facilitate public understanding and acceptance of the head of state's or *wazir al-tafwidh*'s political strategies.⁶⁵

As for the dismissal of a *wazir*, Al-Mawardi, as cited by Muhammad Ishom, presents eight possible reasons: treason, incompetence, negligence or errors in duty, indiscipline, possessing expertise beyond original responsibilities (leading to a reshuffle or task transfer), the presence of more qualified individuals, other figures seeking ministerial positions, or the intention to hold multiple positions simultaneously.⁶⁶

Among the eight grounds for a *wazir*'s dismissal, one noteworthy factor is the desire to simultaneously hold another position. Al-Mawardi posits that this mere intention is sufficiently serious to warrant removal from office. The rationale behind prohibiting the holding of multiple positions is to prevent potential harm to the community, as it can disrupt government operations. Islamic law underlies this principle in the rule: "Averting harm (*mafsadah*) takes precedence over pursuing benefit (*maslahah*)".⁶⁷ This rule emphasizes that when faced with a choice between averting harm and acquiring benefit, the priority should be given to mitigating harm. The primary motivation for this study is to underscore the need for justice to prevent societal harm. The misappropriation of authority for personal or political gains by officials can lead to an unfair distribution of benefits, only enjoyed by a select few.⁶⁸ This undermines the principle of fairness that should be inherent in governance, as officials should maintain objectivity and work towards the collective good.

The Constitutional Court Decision⁶⁹ Number 68/PUU-XX/2022 permits ministers to retain their positions while being nominated as presidential or vice-presidential candidates.⁷⁰ This decision paves the way for ministers to juggle dual roles—as a minister and as a presidential or vice-presidential candidate. The potential implications of this dual role, particularly in the context of the general election slated for February 14, 2024,⁷¹ are significant. While navigating these dual

⁶⁴ Yayasan Penyelenggara Penterjemah Al-Qur'an Departemen Agama RI, *Mushaf Al-Qur'an Dan Terjemah Hadis* (Bandung: Cordoba, 2018).

⁶⁵ Iqbal, *Fiqh Siyasah Konsektualisasi Doktrin Politik Islam*.

⁶⁶ Muhammad Ishom, "Nasehat Al-Mawardi Untuk Menteri-Menteri Pembantu Kepala Negara: Studi Kitab Adab Al-Wazir," *Al Qisthas; Jurnal Hukum Dan Politik* 7, no. 1 (2016): 1–14.

⁶⁷ A. Djazuli, *Kaidah-Kaidah Fikih: Kiadah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana, 2006).

⁶⁸ Ahmad Zaini, Iin Ratna Sumirat, and Moh. Zainor Ridho, "Identity Politics in Electoral Politics," *POLITICON: Jurnal Ilmu Politik* 5, no. 2 (2023): 137–62, <https://doi.org/https://doi.org/10.15575/politicon.v5i2.25108>.

⁶⁹ Kelliher et al., "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Disputes."

⁷⁰ Indonesia, "Putusan Nomor 68/PUU-XX/2022."

⁷¹ Kharisatul Janah, Siti Fatimah, and Hajar Salamah Salsabila Hariz, "The Role of Aceh Local Parties in The 2024 General Election in Realizing Democratization," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 2023): 33–47, <https://doi.org/10.24090/volkgeist.v6i1.7532>; See to Khamami Zada, "Sharia and Islamic

roles, these candidates could disseminate political campaigns⁷² during working hours, resulting in a failure to fulfill their governmental duties effectively. This situation can lead to inherent bias, conflicts of interest, and even the potential for power abuse.⁷³

Gugum Ridho Putra argues that current campaign regulations for the upcoming 2024 elections present a legal vacuum. This vacuum could potential allow for structured, systematic, and widespread violations, as well as conflicts of interest, given the lack of restrictions on self-promotion. Echoing this sentiment, Muhamad Iqbal Sumarlan Putra points out that the Election Law fails to address the potential for interference or power abuse stemming from familial ties or connections.⁷⁴

Various forms of conflicts of interest frequently faced by State Administrators include situations that invite the acceptance of gratuities, misuse of assets for personal and group benefits, and role conflicts across multiple agencies or companies. These conflicts can lead to the exploitation of one's position for personal gain, the abuse of office through the exposure of confidential information, and engagement in external work beyond their foundational role.⁷⁵

The root causes of these conflicts of interest are diverse.⁷⁶ Gratification, in its broadest sense, can include the giving of money, goods, other facilities. Systemic weaknesses can obstruct the achievement of the objectives of the state administrators' authority due to existing rules. Positional constraints can occur when a State Administrator holds multiple roles. Abuse of the authority can manifest as making decisions or actions that deviate from or exceed the limits of the authority granted by laws and regulations. Finally, personal interest, or 'vested interest', refers to the personal desire or needs of a state administrator, which can potentially interfere with their professional responsibilities.

The author suggests that ministers who are nominated, or who nominate themselves, for presidential or vice-presidential candidacy without resigning from their current roles share similarities with those holding multiple positions.⁷⁷ Although candidacy for president or vice president is not, strictly speaking, a 'position', a minister who becomes a candidate for these roles takes on additional responsibilities. This dual role can potentially lead to societal and governmental harm in the form of conflicts of interest and abuse of power. Therefore, it is recommended that ministers aspiring to presidential or vice-presidential candidacy resign from their ministerial roles upon nomination. This would prevent the accumulation of multiple roles and responsibilities that could potentially harm society and government.

State in Indonesia Constitutional Democracy: An Aceh Experience," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023), <https://doi.org/https://doi.org/10.18326/ijtihad.v23i1.1-18>.

⁷² Paulo Rita, Nuno António, and Ana Patrícia Afonso, "Social Media Discourse and Voting Decisions Influence: Sentiment Analysis in Tweets during an Electoral Period," *Social Network Analysis and Mining* 13, no. 1 (December 2023): 46, <https://doi.org/10.1007/s13278-023-01048-1>.

⁷³ Sholahuddin Al Fatih and Asrul Ibrahim Nur, "Does the Constitutional Court on Local Election Responsive Decisions ?," *Journal of Human Rights, Culture and Legal System* 3, no. 3 (November 20, 2023): 569–96, <https://doi.org/10.53955/JHCLS.V3I3.74>.

⁷⁴ Mimi Kartika, "Pejabat Negara Kampanye Berpotensi Konflik Kepentingan," Mahkamah Konstitusi Republik Indonesia, 2023.

⁷⁵ KPPN Selong, "Mengenal Konflik Kepentingan," Kementerian Keuangan Ditjen Perbendaharaan, 2021.

⁷⁶ Tanto Lailam, Putri Anggia, and Nita Andrianti, "Proportionality Analysis in Competing Rights Cases: A Model from the German Federal Constitutional Court," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (November 2023): 235–54, <https://doi.org/10.22373/petita.v8i2.220>.

⁷⁷ John A. Curiel and Tyler Steelman, "Redistricting Out Representation: Democratic Harms in Splitting Zip Codes," *Election Law Journal: Rules, Politics, and Policy* 17, no. 4 (December 2018): 328–53, <https://doi.org/10.1089/ELJ.2018.0528>.

In light of the above, the author concludes that the decision of the Constitutional Court⁷⁸ number 68/PUU-XX/2022, viewed from the perspective of *fiqh siyasah* (Islamic political jurisprudence), could lead to societal and governmental harm. This harm, taking the form of conflicts of interest and power abuse, could ultimately affect the smooth running of the government.

CONCLUSION

In light of the preceding discussion, it becomes clear that the Constitutional Court Decision Number 68/PUU-XX/2022 has potentially negative ramifications for the roles and authority of ministers within a presidential governmental system. Specifically, this decision may lead to disruption in ministerial duties, adversely affecting their performance and efficiency. Furthermore, it opens up avenues for potential for abuses of power, particularly in instance where conflicts of interest may arise. From the viewpoint of *fiqh siyasah*, or Islamic political jurisprudence, the implications of this decision extend to potential harm to society and government. To mitigate these risks, the author recommends that the General Election Commission of the Republic of Indonesia establish specific regulations regarding the duration of leave and the limits on the use of state facilities for state officials (ministers) who are campaigning. This could help prevent potential abuses of power and conflicts of interest. In addition, the author suggests that the president should closely evaluate the performance of ministers and consider dismissing those who are not fully committed to their duties. As for the Election Oversight Body and the public, they are encouraged to maintain vigilant oversight of ministers who are nominated as presidential or vice presidential candidates.

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