

Research Article

Position of Deputy Minister in Indonesia (Comparative Study of Good Governance And Fikih Siyāsah)

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Abstract.

Indonesia is a country that adheres to a democratic system, the administration of its territory and its status as a nation-state as well as a state of law. As a constitutional state, Indonesia has many legal products ratified by legislators, one of which is the Deputy Minister. Deputy Ministers are regulated in law (UU) Number 39 of 2008 concerning State Ministries. The objective of Deputy Minister Position is to accelerate the performance of ministries that have excess workloads, by placing career officials who are competent in their fields. Although legally the position of Deputy Minister is valid, in the bureaucratic structure of the Indonesian government, this position is considered ineffective and inefficient. The existence of Deputy Ministers tends to be inefficient in the state budget, prolonging the bureaucratic chain, and often becoming a political bargaining power. This article is a normative research of literature study. Article writing is done through the method of collecting data from library sources as well as reporting in the mass media to written works. The results of the research show that Deputy Ministers in Indonesia are not rigidly regulated in laws and regulations. Based on investigations, the Deputy Minister's diction is only found in Law Number 39 of 2008 concerning State Ministries, Presidential Regulation (Perpres) Number 60 of 2012 concerning Deputy Ministers, along with the amendment regulations. In the study of Islamic law and constitutional practice in the classical period, a caliph's assistant or right-hand man was called a wazīr. The wazīr was authorized to appoint and dismiss regional chiefs, judges, and other government employees. However, in Indonesia, the issue related to the position of Deputy Minister becomes hot and sometimes invites post-election controversies or cabinet reshuffling. The best way to deal with this problem is to emphasize the redaction in Article 10 of Law Number 39 of 2008 concerning Deputy Ministers, which is regarding "workload that requires special handling".

Keywords: position, deputy minister, good governance, Fikih Siyāsah

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1. Introduction

A country is said to be fully sovereign and internationally recognized if it is able to meet three conditions (constitutive elements), namely having a permanent population, definite territory, and government, and one additional condition (declarative elements), namely having the capacity to establish diplomatic relations with other countries. This condition has been contained in Article 1 of the Montevideo Convention of 1933 concerning the Rights and Duties of States.[1]

Indonesia as a sovereign state has consistently fulfilled the four requirements in the above regulation. Indonesia has a state of government from the central level to the lowest level in all its territorial areas. The existence of the Indonesian state certainly cannot be separated from the device of power called government. Where in the government there are office posts, each of which has rights and obligations according to applicable laws and regulations. Therefore, the government that runs in Indonesia consists of office organizations regulated in laws and regulations and their existence cannot be separated from the executive branch of power, both at the central and regional levels.

Johann Heinrich Adolf Logemann called the state in real form an intertwined organization with various functions. The definition of function here is a work environment that is detailed, certain, and rigid in relationships and daily activities holistically.[2] This function is called a position because the state is actually an organization of positions. The position can be said to be an institution with a typical scope of work that is formed for a long time and to whom certain tasks and functions are entrusted.

Ernst Utrecht referred to the position as a permanent work environment and organized in the public interest. He added that each position is a permanent work environment and has an inherent relationship with the highest social organization called the state. Positions can be equated to state tools (staatsorgaan), government tools (bestuurorgan), and other government tools. So the position[3] cannot stand alone, so it requires natuurlijk persoon, which is a human being who is then called an official or legal entity, but the legal entity itself is also represented by humans so that basically humans are the core objects in terms of position.

The position cannot carry out its own duties and functions, because the position is a fictional thing whose legal deeds are carried out through humans, namely ambtsdrager officials.[4] Positions are fixed, while people (subjects) who hold positions can be changed and replaced. The positions of president-vice president, ministers, heads of institutions, heads of agencies, directors general, heads of regions-deputy heads of

regions, heads of services are fixed, but office holders or officials can change according to the development of situations and conditions.[5] Suppose the office of president and vice president, the power of both is limited by a term of office for five years and can subsequently be re-elected to the same office, only for one term.

The position and its officials are quite closely related, but both have different legal positions. The position is regulated in constitutional law, while the person who serves (his official) in addition to being regulated in constitutional law is also regulated in state administrative law. Without being filled by officials, the functions attached to the position will not be able to be carried out properly.

One of the crucial positions in the country is Deputy Minister. It is undeniable that the position of Deputy Minister in Indonesia is synonymous with merit and political. When viewed from a legal perspective, the ministry that is the parent organization for Ministers and Deputy Ministers is located and directly responsible to the President.[6] However, it must be realized that there are legal loopholes in the laws and regulations that became the formal basis for the establishment of the ministry, namely Law Number 39 of 2008 concerning State Ministries. The diction that mentions the Deputy Minister is only contained in Article 10 of the law;

”In the event that there is a workload that requires special handling, the President may appoint a Deputy Minister to a particular Ministry”.

The article above actually causes double interpretation (multiinterpretation) and legal uncertainty. This was proven by the submission of a judicial review of Article 10 of Law Number 39 of 2008 concerning State Ministries by Bayu Segara to the Constitutional Court (MK). The Petitioner argues that the appointment and dismissal of the Deputy Minister is fraught with subjectivity interests and further burdens the State Budget (APBN) which is sourced from people’s taxes including the Principal Applicant himself to finance official travel, operations, official housing, official vehicles, position allowances, and salaries of aides, drivers, bodyguards, and other auxiliary elements of the Deputy Minister.[7]

The Deputy Minister controversy got wilder after the issuance of the Constitutional Court decision Number 79/PUU-IX/2011. The constitutionality of the position of Deputy Minister was subject to judicial review in the Constitutional Court by Adi Warman (Chairman of the National Movement for the Eradication of Central Corruption Crimes). He as the applicant through his lawyer highlighted Article 10 including its Explanatory rules on Law Number 39 of 2008 concerning the Ministry of State. The Explanatory Rules in Article 10 of Law Number 39 of 2008 concerning State Ministries read;

”The Deputy Minister is a career official and not a member of the cabinet”.

However, officials who occupied the position of Deputy Minister in that era were mostly filled by non-civil servants. Although Deputy Ministers are not members of the cabinet and are not regulators in the ministries concerned, the rights and facilities they get are equivalent to those of Ministers. That is what made the Principal Applicant submit a judicial review and ask the Panel of Constitutional Judges in its petition that Article 10 of Law Number 39 of 2008 concerning State Ministries be ruled contrary to the Constitution of the Republic of Indonesia Year 1945, as long as it is not interpreted that the position of Deputy Minister appointed by the President is not the same as the position of Vice President, Vice Governor, Vice Regents, and Vice Mayors who are directly elected by the people democratically.[8]

After the Constitutional Court ruling, the President stipulated Presidential Decree Number 60 of 2012 concerning Deputy Ministers. The decree gave fresh air to the President to choose ministerial assistants from non-civil servant elements. Article 6 of Presidential Decree Number 60 of 2012 concerning Deputy Minister reads;

”The Deputy Minister can come from a State Officer or not a State Officer”.

In the second term of President Joko Widodo-Vice President Ma’ruf Amin’s leadership, the presence of Deputy Ministers increased in number and was dominated by politicians rather than career officials from the ministries concerned. John Wempi Wetipo (PDI-P/Deputy Minister of Home Affairs), Zainut Tauhid Saadi (PPP/Deputy Minister of Religious Affairs), Jerry Sambuaga (Deputy Minister of Trade), Afriansyah Noor (UN/Deputy Minister of Manpower), Raja Juli Antoni (PSI/Deputy Minister of ATR/BPN), and Angela Tanoesoedibjo (Deputy Minister of Tourism and Creative Economy) are a row of partisan deputy ministers in the Advanced Indonesia Cabinet.[9]

This is completely contrary to the reality when President Joko Widodo came to power in the first term. The Working Cabinet during the leadership of President Joko Widodo-Vice President Jusuf Kalla only had three Deputy Ministers, namely Abdurrahman Mohammad Fachir as Deputy Minister of Foreign Affairs, Mardiasmo as Deputy Minister of Finance, and Arcandra Tahar as Deputy Minister of Energy and Mineral Resources (ESDM), and all three of them had nonpartisan backgrounds.[10] So the logic of thinking used in the process of appointing Deputy Ministers is to increase the effectiveness and efficiency of the performance of the main tasks and functions of the ministry itself. It is appropriate that the existence of the Deputy Minister is not just a panacea for politicians who have contributed to winning the ‘certain candidates’ pairs.

The existence of the Deputy Minister in the Islamic treasury is called vizier. Discussions related to viziers are found in the study of *Siyāsah* Jurisprudence, where there are also scholars who call the term *Siyāsah Shar’iyyah*. *Siyāsah* jurisprudence consists of

two words, al-fiqh and al-siyāsī. The word al-fiqh linguistically means to understand well. While in terms of jurisprudence means knowing the practical laws of sharia extracted from detailed sources (tafshilī).[11]

The word Siyāsah comes from sasa al-nas which means to be a human leader, sasa al dawab which means to train animals, sasa al habbu wa al khasyabhu which means on the trunk of the tree there is a caterpillar, sasa al syat which means the sheep has lice, sasa al-umur which means to manage a business.[12] Based on this explanation, the word siyāsah can be understood into two perspectives.

First, siyāsah is understood from the positive side, namely leading, guiding, managing, and controlling something for the sake of creating benefit. Second, siyāsah is understood from the negative side of gnawing trees like caterpillars or bedbugs attached to sheep's wool, so that the subject or culprit is called sus.

Ibn al-Qayyim in his book *l'ām al-Muwaqīn* mentions siyāsah as all actions that bring people closer to benefit and distance from prosperity even though the Prophet did not prescribe it. Based on the description of Ibn al-Qayyim it can be concluded that the decision of the siyāsah must be based on deliberation, the policy taken must concern the public benefit, and everything that is not rigidly regulated (qath'ī) in the Qur'an and Sunnah becomes the authority of the local leadership after going through mutual consideration and discussion that prioritizes the method of qiyās and maslahah mursalah. Therefore, Jurisprudence has provided guidance for leaders in making policies related to the lives of many people.

The appointment of the Minister as assistant to the caliph is one of the jurisprudence in the Islamic political treasury. It is not regulated in the nash of the Qur'an and hadith, but becomes a custom that is passed down from one generation to the next. From this, Imam al-Mawardi in *Ahkām Sulthāniyyah* included the appointment of ministers (taqlīdul wuzarāh) into one of the 20 branches of discussion in Siyāsah Jurisprudence.

Literature sources that review executive, legislative, and judicial powers are numerous. Research related to the duties and functions of presidential institutions, ministries, representative institutions, community organizations, to judicial bodies is milling around in various search engines. The author observes that the number of published constitutional studies related to the position of Deputy Minister in Indonesia is also not small. However, those who discuss the Deputy Minister from the point of view of comparative Islamic legal theory can be said to be limited in number.

Riris Katharina[13], Novira Maharani Sukma and Retno Saraswati[14], Enny Agustina[15], Nisha Floretta Elfani[16], and Zaki Ulya[17], the five authors describe the position of Deputy Minister in terms of authority, position, and position from the

perspective of constitution and legal science. Most writers describe the position of Deputy Minister through the common thread of legislation, and it can be said that little touches from the study of Islamic Law. So in this article the author assumes that a comparative study between Western theory (Good Governance) and Islamic Law (Jurisprudence *Siyāsah*) is a novelty that deserves to be used to dissect the position of Deputy Minister.

2. Methods

This article is prepared based on a literature study, namely by collecting literature references related to the position of Deputy Minister in Indonesia. The data obtained other than the literature, derived from news in the national mass media and scientific papers. Because this article relies on Islamic values, the discussion related to the position of Deputy Minister cannot be separated from the study of Jurisprudence *Siyāsah*. This article is descriptive analytical, so it does not aim to test research hypotheses, but provides an overview of social reality regarding the dynamics of one of the executive positions, namely Deputy Minister.

3. Results and Discussion

3.1. Vice Minister, Bureaucracy, and Hegemony

Bureaucracy is the brainchild of secular products. Initially, bureaucracy was classified as an ideal type and the embodiment of modernity. For Maximilian Weber, bureaucracy is an unavoidable representation of power, because it is through bureaucracy that state organizations (ministries, agencies, police, prosecutors, military, local governments, and others) are prepared to excel in terms of accuracy, accountability, stability, and public trust in order to achieve rational-calculation.[18]

Weber's understanding explains that the ideal bureaucracy has six characteristics. First, in the bureaucracy there is a concentration of departments arranged hierarchically. Second, appointments are based on specific technical competencies and skills as well as contractual approvals. Third, the working relationship between superiors as leaders and subordinates is regulated by written regulations, including the rights and obligations of each party. Fourth, there is a clear demarcation or separation between office affairs and personal interests. Fifth, every task is carried out in accordance with

the mandate of laws and regulations with no discrimination. Sixth, salaries are given based on established laws and regulations.[18]

According to Blau and Meyer in their book entitled *Bureaucracy in Modern Society*, it is stated that bureaucracy also contains paradoxes. On the one hand through bureaucracy there will be achievement of targets such as the provision of goods and services, equitable development and economy, community protection and justice, but on the other hand bureaucracy is also contaminated with structural stagnation, inflexibility, excessive procedures, deviation from targets (perversion of goals), neglect (alienation), and closed to dissent.[18]

Hans Haferkamp and Neil J. Smelser, in their work *Social Change and Modernity*, describe bureaucracy as a double-edged knife. On the one hand its existence is inevitable, but on the other hand the bureaucracy can grow and develop into the myth of *Franskenstein*. *Franskenstein* is a fictional scientist who desires to create superhuman beings. Unfortunately, after the creature was created, he grew into a figure that was difficult to control and eventually devoured *Franskenstein*.[19]

Officials in this case deputy ministers who are one level below the minister, to borrow Yusril Ihza Mahendra's term, can give rise to two twin suns in one ministry. Then the position of deputy minister is also seen as overlapping with the officials under him, because referring to Article 9 of Law Number 39 of 2008 concerning State Ministries, Echelon I officials under the leadership (Minister) have been effective and efficient in carrying out the main duties and functions of the ministry concerned.[20]

The addition of officials, in this case deputy ministers, at the ministerial leadership level actually hurts the spirit of organizational structure reform launched by the government. A fat bureaucracy must run slowly because it requires approval and consideration from various parties. To quote a Western proverb, 'the elephant in the room', which means that the issue related to the position of deputy minister is obvious in its political aims and objectives but only becomes a breeze and then aka people do not want to talk about it.

The ministry will be increasingly inefficient if it continues to be added with new leadership elements. If you want to be called effective and efficient, then government ministries or agencies should continue to add and strengthen their functional personnel positions. An agile, fast, and dynamic bureaucracy following the times and minimizing leadership positions can certainly be directly proportional to its performance in order to achieve targets or goals that have been set.[21] Bureaucracy is called effective if the realization of results is directly proportional to the action plan.

3.2. Position of Deputy Minister in Good Governance Perspective

Today most countries lean towards democratic systems. Since the end of the 20th century, the majority of countries have idolized democracy and made it a political fadsun. It is proven that countries in Eastern Europe that were once socialist are now democratic countries such as Czech, Slovakia, Romania, Hungary, Poland, even to Bostwana on the African continent.

The terrible wave of democracy then reached the country after colonialism in 1945. The establishment of the presidential (executive), volksraad (legislative), political parties, to landraad (judiciary) is a series of historical facts that this country is indeed anchored in its political ark in a democratic system. But over time, the practice of democracy actually deviated far from it's khittah and became a tool of legitimacy of the rulers during the Old Order (Orla) to the New Order (Orba).

Not long ago the Indonesian nation underwent the era of Reformation. The historic event is remembered as a form of struggle and resistance from the reformist group who yearned for the formation of a democratic government and clean from dirty practices of corruption, collusion, and nepotism. However, gradually, the results of the Reform struggle are getting dimmer due to slashing and going off track from the goals of nation and state wrapped in the hegemony of short-sighted and undemocratic laws and regulations.

Indonesia's democratic pendulum is not doing well. It can be said that the achievements of Indonesian democracy have not fully touched the substance. The work and practice of statehood carried out by unscrupulous officials sometimes deviate from the spirit of democracy. For example, in the election of leaders of ministries, state institutions, or directors of SOEs (State-Owned Enterprises) not prioritizing quality and competence[22] but more often on reciprocity or remuneration to successful teams and people close to power (ruling party).

The absence of selection (fit and proper test) for deputy ministers seems to give the impression to the people of Indonesia that the position is a privilege or special gift to those who have contributed to the spouse of the elected presidential candidate and vice president. Laws and regulations[23] have mandated the President to appoint Ministers and Deputy Ministers including dismissing both. But choosing partisans to serve as aides to the head of government indirectly leaves the President hostage to political deals.

Actually, there is a concept in a democratic country like Indonesia that gradually fades along with the disappearance of Pancasila democratic values, namely Good

Governance. The concept is often floated when discussing reforms in the public sector. The State Administration Institute (LAN) calls the concept of Good Governance oriented to, first, state orientation to achieve national goals. Second, the government runs effectively and efficiently in its efforts to achieve national goals.[24]

The first orientation refers to the process of democratization in the life of the nation and state with its constituent elements. The second orientation depends on the will of the government to regulate the structure, competence, administrative requirements, and political mechanisms effectively and efficiently. The presence of the Deputy Minister in the leadership structure of each ministry must be able to solve the complexity of the nation's problems which are the main task. The concept of Good Governance emphasizes mutual trust and mutual responsibility for the achievement of (national) government goals.

The concept of Good Governance adopted by the Indonesian nation into its government and constitutional system requires a strong foundation in the form of principles as a support for the upholding of the dignity and dignity of the government. The addition of the position of Deputy Minister should follow the principles of Good Governance, including the rule of law, participatory, transparative, fair, consensus-1oriented and consensus-oriented, accountability, and effective and efficient.[25]

So it can be concluded that the filling of the position of Deputy Minister must follow the prevailing laws and regulations, be open and known to the wider community, based on equality of opportunity for all citizens, and their position is determined based on the needs of the ministry concerned. The selection of officials who will sit in the Deputy Minister seat is not based on likes and dislikes, coalition or opposition parties, but rather on their track record (experience) and competence. It should also be underlined, it would be better if the deputy minister is in accordance with the mandate of Law Number 39 of 2008 concerning State Ministries, especially in the Explanation section of Article 10 that the Deputy Minister is a career official, who automatically comes from ASN (State Civil Apparatus) and has been 'rooted' for a long time in their respective agencies

3.3. Position of Deputy Minister of Jurisprudence Perspectives Siyāṣah

Islam is a teaching that has its own rules and regulations contained in the holy book of the Qur'an. In the Qur'an there are thousands of verses which are the word of God which contain commandments, recommendations, and prohibitions that touch aspects of human life both in the fields of worship, social, moral, economic, including politics. So

it is not wrong to call Islam a comprehensive teaching because it does not dichotomy all aspects of human life.

The close relationship between religion and politics in Islamic teachings is motivated by the words of several prominent figures, such as Ali ibn Abi Talib and Ibn al-Qayyim. Ali explained that, "Religion is like a garden full of all kinds of foodstuffs, while the state is considered as the fence of the garden. The garden will not be positive if it does not bring beauty, and if the garden does not have a fence then the plants in it are useless".[26] Ibn al-Qayyim mentions that, "Politics is in line with religion, even politics is part of religion. Although we call it *siyasah*, the true meaning contained in the word *siyasah* is the justice of God and His messenger".[27]

Imam al-Shafi'i in his book *al-'um* included the chapter *al-siyār* (diplomacy between nations), the expert *ad-dar fi al-Islam* (the rights of citizens of various Islamic countries), the chapter on the expert *ad-dar fi al-harb* (the rights of prisoners of war), as well as the chapter on the *diyatu ahli al-zimmah* (rights of non-Muslim citizens in Islamic countries) into politics (*siyāsah*). Although in the current era, contemporary scholars, one of which is Abdul Wahhab Khallaf, defines *siyāsah* as the management of general problems in order to create benefits and avoid harm by not violating the provisions of the Shari'a.[28]

Over time, the dominance of the *siyāsah* began to shift with the development of the secular system of government and politics. The penetration of Western sciences was later neutralized by some scholars such as Imam al-Mawardi and Ibn Taymiyyah. Ibn Taymiyyah was the first scholar to introduce the term *Siyāsah Shar'iyyah*. [29] Through this knowledge, it affirms that political Islam guarantees stability and prosperity in the world and in the Hereafter based on Islamic law.

The circulation of power and political struggles in the classical Islamic era was not determined through the mechanism of elections.[30] The practice practiced in the classical Islamic era was *syūra*. *Syūra* is the foundation of people's lives held together with all elements of the state as the main principle for upholding justice, equal welfare, and poverty alleviation. *Syūra* mainstreamed deliberation as the best course in the process of power circulation. The circulation of power is carried out by deliberation, where the procedures for consensus making, and other aspects of governance are handed back to humans as interested legal subjects.[31]

The post of Deputy Minister in the context of the *shari'iyyah siyāsah* belongs to the regime of the executive branch (*siyāsah tanfidziyyah*) as the governing body of government), and the Deputy Minister belongs to the *wizārah* or *wazīr* structure. *Wazīr* is an official whose duty is to assist the head of state in carrying out state and government

activities. As the right hand of the head of state, the position of wazīr is like an expert staff as well as a confidant of the ruler.[32]

Imam al-Mawardi divided the wazīr into two positions: *Wizārah al-Tafwīdh* (assistant to the head of state in government) and *Wizārah al-Tanfīdz* (assistant to the head of state in administration). Based on the breadth of his scope and the burden of his responsibilities, a *Wizārah al-Tafwīdh* is a state official who has been completed from the glamour of the world. The official occupying the position of *Wizārah al-Tafwīdh* must later become a *mujtahid* because he will disseminate and decide legal cases according to the results of his *ijtihad*.[32]

According to the concept of wazīr in Imam al-Mawardi's literature, the post of deputy minister in Indonesia is the same as *Wazīr al-Tanfīdz* in the Islamic constitutional system. The concept of *Wazīr al-Tanfīdz* in the position of Deputy Minister in Indonesia can be seen from the first aspect, namely related to the appointment system, the second related to position, and the third related to the accountability mechanism. First, the process of appointment, the Deputy Minister is appointed and dismissed by the President as stipulated in Article 4 paragraph (1) of Presidential Decree Number 60 of 2012 concerning Deputy Ministers, in line with the concept of *Wazīr al-Tanfīdz* whose appointment is appointed by the caliph.

Second, the position of Deputy Minister is directly under the President and Minister. The positions of Minister and Deputy Minister were equal, while the position of *Wazīr al-Tanfīdz* was subordinate to the caliph. Third, the mechanism of accountability of the Deputy Minister is directly to the Minister, while *Wazīr al-Tanfīdz* is directly responsible to the caliph.

4. Conclusion

The Deputy Minister is one of the state officials whose payroll, benefits, and operations are sourced from the State Budget, so the Deputy Minister is included in public officials. As a democratic country, the Deputy Minister who is a public official in Indonesia, all his actions and daily routines must embody the principles in the concept of Good Governance.

Even if there are contradictions in the laws and regulations governing the position of Deputy Minister, the persons chosen by the President to sit in the Deputy Minister's chair should work effectively and efficiently. Showing to the public that their presence in the cabinet is not merely a complement to coalition parties and rewards for their struggle during the election process. The concept of Good Governance provides the

widest possible opportunity for the public to supervise and provide input to state administrators, in this case the Deputy Minister, so that they consistently carry out their duties and functions in accordance with applicable legal rules, participatory, transparent, accountable and fair.

Deputy Minister in the Fikih Siyāsah study belongs to the realm of the executive regime. The position of Deputy Minister in Indonesia is basically the same as Wazīr al-Tanfīdz (assistant to the head of state in administration). According to Imam al-Mawardi's perspective, Wazīr al-Tanfīdz can not make decisions and other legal products unilaterally. They are tasked with carrying out orders in accordance with the vision and mission of the head of state as the supreme leader who has the right to appoint and dismiss Deputy Ministers (Wazir al-Tanfīdz).

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