



## THE PRESIDENT'S AUTHORITY IN THE APPOINTMENT, TRANSFER, AND DISMISSAL OF CIVIL SERVANTS IN DEMOCRACY IN INDONESIA

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**Abstract:** *The purpose of writing this article is to analyze the president's authority in the appointment, transfer, and dismissal of Civil Servants after the issuance of Government Regulation Number 17 of 2020 concerning Amendments to Government Regulation Number 11 of 2017 concerning Management of Civil Servants. In this latest policy, the president is stated to withdraw the delegation of authority if the bureaucracy is not run based on a system of merit and professionalism. This policy has sparked debate because the change is seen as an attempt to dominate and hegemony of the government over the bureaucracy through the creation of undemocratic laws. There are fears that the bureaucracy will become a political tool that will keep it from its primary public servant goal. This research is part of normative legal research (normative research) or doctrinal legal research with a statutory, case, and conceptual approach. The study findings show that constitutionally the president's authority to withdraw the delegation of authority in the appointment, transfer, and dismissal of civil servants has indeed been based on the provisions of the law where the president is the holder of government power. Still, with this regulatory change, presidential power has become more dominant. It opens up opportunities for conflict of interest to intensify in the administration of the bureaucracy so that it is not in line with democratic values.*

**Keywords:** *Democracy; Civil Servants; President's Authority.*

**Abstrak:** *Tujuan penulisan artikel ini adalah untuk menganalisis kewenangan presiden dalam pengangkatan, pemindahan dan pemberhentian Pegawai Negeri Sipil pasca terbitnya Peraturan Pemerintah Nomor 17 Tahun 2020 tentang Perubahan atas Peraturan Pemerintah Nomor 11 Tahun 2017 tentang Manajemen Pegawai Negeri Sipil. Dalam kebijakan terbaru ini presiden dinyatakan dapat menarik kembali pendelegasian wewenang apabila birokrasi tidak dijalankan berdasarkan sistem merit dan profesionalisme. Kebijakan ini telah memicu perdebatan karena perubahan tersebut dipandang sebagai upaya dominasi dan hegemoni pemerintah terhadap birokrasi melalui penciptaan hukum yang tidak demokratis. Muncul kekhawatiran birokrasi akan menjadi alat politik yang menjauhkannya dari tujuan utamasebagai pelayan rakyat. Penelitian ini merupakan bagian dari penelitian hukum normatif (normative research) atau penelitian hukum doktrinal yang dilakukan dengan pendekatan perundang-undangan (statute approach), pendekatan kasus (case approach) dan pendekatan konseptual (conceptual approach). Temuan studi menunjukkan bahwa secara konstitusional wewenang presiden untuk menarik kembali pendelegasian wewenang dalam pengangkatan, pemindahan dan pemberhentian PNS memang telah didasarkan pada ketentuan undang-undang dimana presiden sebagai pemegang kekuasaan pemerintahan, tetapi dengan perubahan regulasi ini kekuasaan presiden menjadi lebih dominan dan membuka peluang menguatnya conflict of interest dalam penyelenggaraan birokrasi sehingga tidak selaras dengan nilai-nilai demokrasi.*

**Kata Kunci:** *Demokrasi; Pegawai Negeri Sipil; Wewenang Presiden.*

## A. Introduction

The appointment, transfer, and dismissal of Civil Servants (PNS) is an important factor in managing human resources in the government bureaucracy. The three mechanisms are closely related to the competence and performance of civil servants. Therefore, in the context of realizing good governance, the appointment, transfer, and dismissal of civil servants must be carried out, taking into account organizational goals, effectiveness, efficiency, and justice. With this aim, as the highest authority in developing civil servants, the president is interested in providing guarantees of a meritocracy based on democratic values. On the other hand, civil servants are obliged to carry out government duties assigned to them. Bureaucracy becomes a state instrument directly involved in producing public goods and services needed by the people. (Tri Yuningsih, 2019)

In the era of the industrial revolution 4.0 today, the desire to create an adaptive and innovative bureaucracy is one of the drivers for changing civil servants' appointment, transfer, and dismissal schemes. This hope is captured from the continuous legal reforms. In general, the management or management of civil servants in Indonesia has developed a new pattern after issuing Law (UU) Number 5 of 2014 concerning State Civil Apparatus or ASN Law. This law ends the history of Law Number 8 of 1974 concerning the Basics of Employment, which was amended by Law Number 43 of 1999. This ASN Law was followed up by Government Regulation (PP) Number 11 of 2017 concerning Management of Civil Servants, which was later amended by PP Number 17 of 2020. One of the fundamental changes in the amendment of the PP was the possibility of revocation of the delegation of authority by the president in appointment, transfer, and dismissal of civil servants. Explicitly the change is in Article 3 paragraph 7 PP 17 of 2020 as follows:

“The delegation of authority as referred to in paragraph (2) can be withdrawn by the president if:

- a. Violation of the merit system principle by Commitment Making Official; or
- b. To increase the effectiveness of government administration.”

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With this new authority, the president as “the holder of the power of fostering civil servants”, if he withdraws the delegation of authority in the appointment, transfer, and dismissal of civil servants, applies to all civil servants, outside of the leading high-ranking officials, middle-high leadership officials, and functional officials with key expertise (verse 3). The addition of a new paragraph in this PP makes the president's authority look even more solid. Previously, it was stated in PP 11 of 2017 that the president could delegate the authority to determine the appointment, transfer, and dismissal of civil servants to (a) ministers in ministries, (b) heads of institutions in non-ministerial government institutions, (c) secretary-general at the secretariat of state institutions and non-structural institutions, (d) governors in the provinces, and (e) regents/mayors in regencies/cities. With the above clause, the revocation of this delegation of authority becomes possible, provided that the merit system does not work.

In the view of the State Civil Apparatus Commission (KASN), the change in the PP material is an effort to expand the president's authority to strengthen the system of merit, control, and independence. As the holder of the highest authority for the

development of ASN, the president essentially needs to ensure that the programs that have been determined run through his political authority. (Egi Adyatama, 2020) The addition of paragraph 7 in the amendment to PP 11 of 2017 is considered the right step to strengthen professionalism, especially for recipients of delegation of authority. With a warning that the delegation can be revoked, the receiving official will be more careful. This means if the president considers the meritocracy system is not working well, the revocation of the delegation of authority for appointments, transfers, and dismissals can be done at any time. With this change, no more “little gentlemen” politicize civil servants to work neutrally and professionally.

Against this background, several views of the policy can be put forward. First, the authority to grant or withdraw the delegation of authority is indeed the president’s right. However, if there is a withdrawal of authority, this indicates a violation of the merit system and unprofessional actions. If this happens, there has been a violation of the principles of governance. Revocation of authority is a form of impeachment, and therefore it can be seen that officials in the bureaucratic structure have made mistakes.

Second, the president is the highest supervisor of civil servants. If he revokes his authority, it means that the local official appointed to obtain the delegation of authority no longer has the authority and responsibility at the same time so that the president takes over the authority and position. In other words, the president, who is the head of state, will implement civil servants to a practical level. Of course, this is important to note because it is related to the effectiveness of running the bureaucracy and government administration.

Third, however, the president is a democratically elected political official. However, some of the officials below him who received a delegation of authority were also democratically elected political officials. This position becomes a dilemma because there may be a conflict of interest between the center and the regions. This means that if complaints are made in the mechanism for the appointment, transfer, and dismissal of civil servants, the potential for tug of war for political interests is strong.

Fourth, this condition can open the faucet of “politicization of the bureaucracy” wider. For the sake of the position, bureaucrats have the possibility to build political networks up to the main level, which they think is profitable. This directly strengthens the relationship between politics and the bureaucracy or between politicians and bureaucrats to achieve mutually beneficial goals.

The relationship between politics and bureaucracy is undeniably close. Political officials and bureaucracy can be likened to two sides of a coin or need each other. For the record, at the level of political contestation, ASN involvement has always been a scourge. The latest data shows that alleged violations of ASN related to its neutrality tend to increase. Data from The General Election Supervisory Agency (Bawaslu) of the Republic of Indonesia recorded 370 cases of alleged violations as of April 2020. This data increased by 28 cases in 3 (three) weeks. (Azhari, 2011)

With this note, political connections, for some bureaucrats, are still considered important in improving careers in the bureaucracy. Therefore, connectivity with politicians’ clients is considered necessary as a mutually beneficial endeavor. On the other hand, politicians get electoral support, and it will be quite profitable if that support comes from high-ranking officials or at least candidates for high-ranking officials. This client patron will be successful when the results of democratic elections place the politician’s client as the winner. This explains that the appreciation of civil servants is

not based on their professionalism but because of their political connections. (Dwimawanti, 2009)

However, political intervention in the bureaucracy is difficult to avoid. According to some scholars, political restrictions in the bureaucracy is something impossible to do. That's why ideas such as representative bureaucracy seem to show the way on how to regulate the bureaucracy so that it is not subordinated to politics but at the same time represents the interests of the majority of its people. (Peters, 2019) In other words, the ideal bureaucracy should be able to accommodate political interests and at the same time have the ability to decide public interests. (Mustofa, 2011) The important point is how the management of civil servants is carried out professionally and with integrity and has a culture of serving for clean and good governance as well as being competitive.

Historically, Indonesia has had a poor record in terms of abuse of power over the bureaucracy. Therefore, this authority (*bevoegdheid*) needs to be examined more closely because it is a core concept in constitutional law and state administrative law (*het begrip bevoegdheid is and ook een kembegrip in het staatsen administratiefrecht*). (Verbist, 2004) Authority implies the ability to carry out certain legal actions (*het vermogen tot het verrichten van bepaalde rechtshandelingen*). With this authority, the government has political and juridical validity to carry out various legal actions (*rechtshandelingen*). (HR, 2003)

As a legal action, the authority needs to be accompanied by responsibility. The principle is that no one can exercise authority without assuming responsibility or without carrying out supervision (*niemand ken een bevoegdheid uitoefenen zander verantwoordingschuldigis zijn ofzander dat ofdie uitaefening cantralebstaar*). In other words, there is no authority without responsibility. It is almost impossible to formulate government functions and authorities in detail in modern countries because these functions and authorities are tied to services to the people who are always developing. With this difficulty, the government's authority is formed by following the principle of a rule of law that upholds the principle of legality (or can be expanded with the principle of expediency and justice), but on the other hand, also upholds the principle of democracy which is based on the interests of the people. With this reality, the president's authority needs to be seen critically from a legal point of view and its compatibility with democratic principles and the fulfillment of welfare for the people. (Sunarno, 2011)

From the description above, this article will discuss the problem, namely, how are the formulation of the president's authority in the appointment, transfer, and dismissal of civil servants in Indonesia and how is the president's authority in the appointment, transfer, and dismissal of civil servants in a democratic perspective?

## **B. Research Method**

This research is part of normative legal research or doctrinal legal research. The research will be conducted using a statutory approach, a case approach, and a conceptual approach. Meanwhile, the presentation of the data is done qualitatively and is descriptive-analytical. The data used in this study are primary data and secondary data. Primary data is taken directly from the field, while secondary data is obtained from primary legal materials, secondary legal materials, and tertiary legal materials.

## **C. Discussion**

### **1. Delegation of the President's Authority in the Appointment, Transfer, and Dismissal of Civil Servants**

As mentioned above, the president is the highest official in the development of civil servants. This indirectly announces that civil servants or the state civil apparatus are the implementers of presidential programs. Therefore, the president has the authority to regulate the governance of civil servants based on the powers determined by law. In line with the granting of authority, the law or constitution also regulates the limitation of authority. In other words, the powers of the president are given and limited by the constitution.

In the presidential system in Indonesia, the president serves not only as head of state but also as chief executive. Power with this latter position, according to C.F. Strong, includes five powers, namely diplomatic power (relating to other countries), power in the field of state administration (related to the task of carrying out the law and its administration), military power, judicial power, and power in the formation of laws and regulations. (Prasetianingsih, 2017)

As stated in the 1945 Constitution, "The President of the Republic of Indonesia holds the power of government according to the Constitution" (article 4 paragraph 1). The power of government referred to here is executive power. This power is distinguished between administering the government, which is general in nature and special in nature. General in nature means that the power in carrying out state administration is special, meaning that the implementation of government duties and authorities is constitutionally attached to the president's prerogative. According to Bagir Manan, the duties and authorities of the state administration are divided into several groups, namely (1) administrative duties and authorities in the field of security and public order, (2) the duties and authorities to carry out government administration starting from correspondence to documentation and others, (3) the duties and authorities of the state administration in the field of public services, and (4) the duties and authorities of the state administration in the field of administering the general welfare.

Specifically, in the field of state administration, Bagir Manan, as quoted again by Rahayu Prasetyaningsih, divides it into four forms of decisions, namely (1) decisions on laws and regulations, which include Government Regulations and Presidential Regulations, (2) policy regulations (*beleidregels*, policy rules) which made by the state administration based on the *doelmatigheid* aspect within the framework of *freies ermessen*, (3) state administration provisions (*beschikking*) in the form of administrative decisions in the field of public law that are concrete and individual, and (4) planning (*plannen*) which reflects the vision, mission, goals, objectives, and development programs within a certain period. Thus, it can be seen that the authority to revoke the delegation of authority by the president in the appointment, transfer, and dismissal of civil servants has a legal umbrella whose position is hierarchically recognized in the Law. This is important to emphasize that normatively, regulations (as contained in PP 17 of 2020) meet the elements of good legislation.

With the presidential authority (given by law), in-state administrative law, the president has the authority to delegate his authority. This form of authority can be delegated in various ways, namely through attribution, delegation, and mandate. In other words, the delegation of authority has three forms: the delegation of authority

by attribution, the delegation of authority by delegation, and the delegation of authority by mandate. Theoretically, authority is defined as an ability to carry out public legal actions, or juridically it can be understood as the ability to act given by law to carry out legal relationships. In the perspective of legal association, if an action legally gains authority, then the action automatically gets legal power (rechtskracht). (SF. Marbun, 2011)

As explained by Ridwan HR, the attribution authority is obtained directly from the laws and regulations. Because of its original nature, government organs receive authority from certain articles explicitly in the legislation. In the case of attribution, the recipient of the authority can create new authority or expand the authority he already has. In delegation, there is not the creation of the authority, but the delegation of authority from one official to another. Juridically, the responsibility is no longer with the delegate but shifts to the recipient of the delegation. Whereas in the mandate, the mandate recipient only acts for and on behalf of the mandate giver, the final responsibility for decisions taken by the mandate recipient remains with the mandate giver. In this context, the president’s authority in making Government Regulations is attributive so that the delegation of authority can be divided into two, namely delegation and mandate. The differences are as follows: (Sufriadi, 2014)

	Mandate	Delegation
Delegation Procedure	In routine superior-subordinate relationships: normal unless expressly prohibited	From one government organ to another: by statutory regulations.
Responsibility and accountability	Stay on the mandate	Responsibility and accountability shift to the delegates.
The possibility of the giver using that authority again	At any time, you can use the delegated authority yourself.	Cannot use that authority again except after a revocation by adhering to “ <i>contrarius actus</i> ” principle.

**2. Delegation of Authority in the Appointment, Transfer, and Dismissal of Civil Servants in a Democratic Perspective**

In a modern democracy, to quote Moh. Mahfud MD, law, and democracy cannot be separated. Both are born from the same biological mother. There can be no rule of law without democracy and no democracy without upheld laws. Therefore, these two things are needed to develop good governance to ensure the welfare of the community. Thus, good law by itself reflects democratic values. (Moh. Mahfud MD, 1999)

According to Munir Fuady, democracy itself has the following minimal elements: (Sunarso, 2018)

- a. Inclusive sovereignty belongs only to the people;

- b. There is a space where the people can participate actively, in addition to participating from the parliament, which is also the representatives of the people;
- c. There is maximum protection of human rights;
- d. There is a trias politica system;
- e. There is a system of checks and balances between the executive, legislature, and judiciary;
- f. There is recognition and respect for human rights;
- g. There is a common understanding among the people towards the policies taken by the government;
- h. The existence of a general election that is free, secret, honest, and fair;
- i. There is the right to vote equally, and the right to be elected is also evenly distributed to determine representatives and to fill various public positions;
- j. The existence of alternative sources of information to the people in addition to official sources of information from the government in power;
- k. The existence of a system that ensures that the exercise of state power can realize as much as possible the results of the votes and aspirations of the people which are reflected in a general election;
- l. There is equal treatment of all groups in society;
- m. There is protection for minorities and vulnerable groups;
- n. Decision making with a one-man-one-vote system;
- o. There is a strong opposition system;
- p. There is respect for differences of opinion in society;
- q. The recruitment system for state powers and positions is carried out openly and fairly;
- r. The existence of a system that can guarantee the implementation of an orderly, peaceful, and natural rotation of the power system;
- s. There is easy and fast access to the wider community to any information about government policies;
- t. There is a system that is accommodating to the voices/opinions/interests that exist in the community;
- u. Implementation of a government system following the principles of good governance;
- v. The embodiment of the principle of the rule of law and the rule of law;
- w. The realization of a civil society-based social system (civil society).

When implemented, the values above certainly have a different style because values are something abstract after all. But basically, our practical need is to present a democratic legal, political configuration. Democratic law is reflected in proportional politics. So proportional democracy exists when the law has a democratic character.

Before discussing the president's authority in the appointment, transfer, and dismissal of civil servants in a democracy, it is important to know the government's position in maintaining its political power in achieving state goals. This perspective is used because essentially every country, from year to year, requires new schemes in its government to serve the increasingly complex needs of society, and indirectly it makes the government's tasks also grow more complex. There are at least three perspectives in this regard. (Asshidique, 2005)

The first perspective is a perspective that minimizes government power. The doctrine adopted is the best government, the least government. This perspective explains that the less government intervention concerning implementing its interests or programs, the better. In the context of the bureaucracy, the role of the government—which the president then personifies—is getting smaller. The bureaucracy will become more independent and oriented to people's services. The government and bureaucracy would be good if these two components cooperated and were in an equal position. The balance of roles between the two is more favorable politically.

The second perspective is the perspective of the welfare state, where the state is given greater authority or role to ensure the welfare of the people. This authority is given as a reflection of greater responsibility. In realizing this ideal, the basic need needed is a strong government. This strong power can come from the parliament or the bureaucracy. However, in its development, a strong government gave birth to abuse of authority which was then conceptualized as *detournement de pouvoir*. The essence of this concept is that government officials are likely to use their authority for other purposes that deviate from the purpose for which the authority is given. (Muhlizi, 2012)

The third perspective is a perspective that mediates between the first and second perspectives. This perspective puts forward aspirations and relies on individualistic independence. Competence is an important matter in this case because it is a measure of the social reward system. Suppose used in the context of bureaucracy, the real need of the people in the presence of a competent government and bureaucracy in their respective authorities. Here the government and the bureaucracy stand in parallel and dynamically internally to achieve the best form of service to the people.

According to the author, the third perspective can be a perspective in the development of democratic law. In state administration, laws with such character will create a good and clean government and achieve a fair, prosperous, and prosperous society. (Muhlizi, 2012) As revealed by Scheltema, quoted by B. Arief Sidharta (Sidharta, 2004), one of the legal principles for welfare is the rationality of government actions in achieving clear and effective goals (*doelmatig*). In other words, the government needs to conduct its affairs effectively and efficiently.

Effectiveness and efficiency are two important variables in governance. Delegation of authority is intended as a way for administration efficiency because of the complexity stored in the bureaucracy. In Weber's perspective, bureaucracy does need to be organized in such a way with a connected hierarchical structure, but Weber's typology has been criticized as a typical control bureaucracy. As is well known, Weber's bureaucratic principles are (1) rules by which tasks are organized; (2) a division of labor which produces specialization; (3) hierarchy, meaning superior-subordinate relationships; (4) decisions by technical and legal standards; (5) administration based on filing systems and institutional memory; and (6) administration as a vocation. (Enrico Giovannini, 2014) The character of the Weberian bureaucracy indirectly minimizes the role of the bureaucracy itself. The submission of the bureaucracy to hierarchical authority here seems very beneficial, but from the point of view of democracy, it is the opposite. First, if democracy is to develop, the bureaucracy needs to be established and solid.

Second, the robustness of this bureaucracy must be in the right portion. (Yuniningsih, 2019)

Groenveld, Sandra, and de Walle, as quoted by Amirul Mustofa, state that a democratic bureaucracy is related to what they call a representative bureaucracy. The essence of this idea is that bureaucracy is a reflection of the interests of diverse community groups. Because this bureaucracy is a reflection of plural interests, the decisions taken must be accommodated. There are three types of representative bureaucracies: representative bureaucracies as power, representative bureaucracies as equal opportunity, and representative bureaucracies as diversity management. Like power, the bureaucracy has the power to administer government based on the vision of democratic power. An equal opportunity, the bureaucracy has the awareness to absorb the aspirations of the public interest equally. Meanwhile, as diversity management, the bureaucracy is carried out by distributing authority according to its duties and giving autonomy to its subordinates to carry out their duties adequately. (Sanrego & Muhammad, 2013)

Here it becomes understandable that the possibility of withdrawing the delegation of authority by the president in the appointment, transfer, and dismissal of civil servants becomes a paradox with democratic values. In fact, with the original presidential authority—meaning before the change—the president's power as the highest supervisor of civil servants was undeniable. Still, this change degrades the purpose of an effective and efficient bureaucracy. The distribution of authority through delegation of authority needs to be carried out and given autonomously. Although this change is still tentative, this policy needs to be reviewed to develop a solid-state administrative law based on democratic principles.

As mentioned, legal development based on democratic government politics is needed within the framework of government and bureaucracy alignment to build good governance in achieving people's welfare. This shows that the real loyalty of the bureaucracy to the duties and functions covered by the law. In historical records, Indonesia's experience with the position of civil servants is considered not good enough. In the past, the bureaucracy was formed more because of the needs of the government, both royal and colonial, as an instrument of power. His nature from the start was to serve the master or who was the boss. So it can be said that the bureaucracy in Indonesia has no historical roots as a public servant. It's just that in self-image, the bureaucracy often appears as a civil service that protects the people or as teachers and educators. (Thoaha, 2002)

This bureaucratic self-image was strong even until the end of the New Order period. The reformation indeed mandates the transformation of the bureaucracy to a more modern direction, such as strengthening the merit system and professionalism in determining civil servants' appointment, transfer, and dismissal. However, in practice, this is still quite difficult. Some of the inhibiting factors are (1) "tradition" in the New Order era made the bureaucratic system very strong in terms of monoloyalty to the political power in power, (2) the performance of the bureaucracy today is influenced by the attraction of various forces that have various values such as legislative institutions, official organizations, professional organizations, and political organizations, (3) limited vacancies, especially in positions, is the reason for strong recruitment based on impersonality or

recommendation (power), and (4) people from political parties often fill the top leadership of the bureaucracy. (Thoha, 2002)

In other words, what can be said in the development of the bureaucracy today is its dependence on forces outside the bureaucracy or politics. This is what makes the merit system not work, and the effectiveness of government administration is disrupted. However, it should not be forgotten that government administration has been carried out through a democratic procedure. For this reason, changes to PP 11 of 2017 through PP 17 of 2020, especially related to the ability to withdraw the delegation of authority by the president, need to be viewed from this perspective.

First, that Indonesia has implemented a decentralized system in which political power is no longer centralized. In the context of developing civil servants, local leaders substantially need the tools under them to support the targeted programs. A Governor, Mayor, or Regent needs a bureaucracy in his area for the administration of his government. In this case, delegating the president's authority is the right choice because the responsibility for fostering civil servants in the regions is shared with local leaders through democratic procedures. By law, the president certainly remains the highest leader in the development of civil servants. Still, a president cannot carry out the increasingly complex government administration functions centered on himself.

Second, the clause on the withdrawal of the delegation of authority as stated in PP 17 of 2020 makes the president's authority very broad towards civil servants. If re-examined, initially in PP 11 of 2017, the president still has complete authority in the appointment, transfer, and dismissal of civil servants from positions as main high leadership officials, middle high leadership officials, functional officials with significant expertise, the Attorney General and the Head of the State Police of the Republic of Indonesia, for now, the power of appointment to dismissal can be owned by the president even with notes. In other words, if the president withdraws his authority, all civil servants will be under the direct guidance of the president. It is enough for the president to ask for accountability or reports from officials who are superiors of civil servants under him in government administration.

Third, the clause on the amendment to this PP also opens up opportunities for strengthening conflicts of interest between the center and the regions. It is possible that in the process of appointment, transfer, and dismissal of civil servants, there will be a tug-of-war between central and regional interests as long as the merit system mechanism does not have a standard and strong procedure. Civil servants become objects of dispute when the (political) interests of the center and the regions are different because they have the same legitimacy to be elected based on democratic procedures.

Due to the above considerations, the PP changes above do not represent a lean law. Withdrawal of authority centrally represents a power that is still dominant in the administration of government. This happens due to several factors. First, the central government wants to build centralized power in the administration of government. The regulation of civil servants from the highest to the lowest level shows that the president is the sole authority in managing civil servants' resources, thus forgetting the complexities in this state administration.

Second, it seems that the central government does not fully entrust the management of civil servants to leaders or officials under the president who is actually indirectly responsible to the president. The division of power is a form of

avoiding the authoritarian state system. Of course, the bureaucracy needs such an arrangement so that it is able to act efficiently and effectively because it is close to service needs at the practical level. That's why the bureaucracy should not be subordinated to politics (executive ascendancy), but the bureaucracy stands parallel to politics (bureaucratic sublation or attempt at co-equality with the executive). In a meritocratic system, this alignment is needed so that bureaucrats do not become executors or subordinates to politicians or power holders, but rather as teamwork to control and balance each other, not dominate.

In addition, as stated by Muladi, the reform of legal reform in the post-reform era has one goal to democratize the law. This step contains basic efforts such as constitutional amendments, regulating the political system, creating good governance, promoting and protecting human rights, increasing public participation, etc. Democracy, thus, becomes a benchmark for the interests of creating a bureaucracy oriented to public service through the development of good governance. In this case, the state civil apparatus plays a strategic role. Politics and law have an interest in creating this situation. The law needs to be a mediator between political interests and bureaucratic interests to ensure the implementation of good governance.

In the description of David E. Lewis, it is stated that it is important for a state leader to create a bureaucracy that has the character of "responsive competence". This bureaucratic model is a bureaucracy that is "capable, flexible, and responsive to the president, not insulated from their control". But at the same time, responsive competence bureaucracy also requires a president to reduce the span of control over the bureaucracy. (David E. Lewis, 2004)

## **D. Closing**

### **1. Conclusions**

- a. Constitutionally, the president's authority to withdraw the delegation of authority in the appointment, transfer, and dismissal of civil servants is based on the provisions of the law where the president is the holder of government power.
- b. From a democratic perspective, the delegation of authority in the appointment, transfer, and dismissal of civil servants represents centralized power in government administration. In this context, the changes to Government Regulation No. 11 of 2017 through Government Regulation No. 17 of 2020 have not fulfilled the values of democratic development that accommodate the interests of the elite and diverse communities, have the willingness to absorb public interests, and are carried out with an autonomous distribution of power. In other words, the change in PP opens up opportunities for the orientation of the duties and functions of the bureaucracy as a servant of the political elite rather than a servant of the people.

### **2. Suggestion**

- a. Changes in Government Regulations related to the clause on the withdrawal of the delegation of authority as stated in Article 3 paragraph 7 of PP 17 of 2020 need to be reviewed. This review is based on the political implications of this policy change.

- b. Delegation of authority in the appointment, transfer, and acceptance of civil servants must be aligned with democratic principles. Policymakers are expected to be aware of the importance of developing democratic law in government administration through the bureaucracy as a path to good governance.

## REFERENCES

- Asshidiqie, J. (2005). Hukum Tata Negara dan Pilar-Pilar Demokrasi Serpihan Pemikiran Hukum, Media dan Hak Asasi Manusia. In *Konstitusi Press (KONpress)*.
- Azhari, A. (2011). Politik Dan Birokrasi Di Negara Bagian Sabah Malaysia (Studi Kasus Intervensi Pejabat Politik Terhadap Pejabat Birokrasi). *Jurnal Hukum & Pembangunan*. <https://doi.org/10.21143/jhp.vol41.no4.255>
- David E. Lewis. (2004). Presidents and the politics of agency design: political insulation in the United States government bureaucracy, 1946-1997. *Choice Reviews Online*. <https://doi.org/10.5860/choice.41-4318>
- Dwimawanti, I. H. (2009). Netralitas birokrasi dan kualitas pelayanan publik. *Jurnal Kebijakan Dan Manajemen PNS*.
- Egi Adyatama. (2020). *Komisi ASN: PP Manajemen PNS Minimalisir Pelanggar Sistem Merit*. Tempo.Co. <https://nasional.tempo.co/read/1343243/komisi-asn-pp-manajemen-pns-minimalisir-pelanggar-sistem-merit/full&view=ok>
- Enrico Giovannini. (2014). Human resources management and training. In *Human resources management and training*. <https://doi.org/10.18356/6604b68f-en>
- HR, R. (2003). Pertanggungjawaban Publik Pemerintah dalam Perspektif Hukum Administrasi Negara. *Jurnal Hukum IUS QUIA IUSTUM*. <https://doi.org/10.20885/iustum.vol10.iss22.art3>
- Moh. Mahfud MD. (1999). *Hukum dan Pilar-pilar Demokrasi*. Gama Media.
- Muhlizi, A. F. (2012). Reformulasi Diskresi Dalam Penataan Hukum Administrasi. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*. <https://doi.org/10.33331/rechtsvinding.v1i1.108>
- Mustofa, A. (2011). Reformasi Administrasi: Pendekatan Birokrasi Representatif Dalam Meningkatkan Performa Birokrasi. *Ilmu Komunikasi Dan Ilmu Administrasi Negara*.
- Peters, B. G. (2019). The Politics of Bureaucracy after 40 years. *British Journal of Politics and International Relations*. <https://doi.org/10.1177/1369148119866220>
- Prasetianingsih, R. (2017). Menakar Kekuasaan Presiden dalam Pembentukan Peraturan Perundang-undangan Menurut Undang-Undang Dasar 1945. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*. <https://doi.org/10.22304/pjih.v4n2.a3>
- Sanrego, Y. D., & Muhammad, R. (2013). Analisa Perbandingan Model Birokrasi Indonesia: Model Modern David Osborne, Ted Gaebler, dan Pendekatan Konsep Islam Perspektif Umer Chapra. *Al-Muzara'ah*. <https://doi.org/10.29244/jam.1.1.19-38>
- SF. Marbun. (2011). *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*. FH UII Press.

- Sidharta, A. (2004). Kajian Kefilsafatan tentang Negara Hukum. *Jentera (Jurnal Hukum)*, "Rule of Law", Pusat Studi Hukum Dan Kebijakan (PSHK).
- Sufriadi. (2014). Tanggung Jawab Jabatan dan Tanggung Jawab Pribadi dalam Penyelenggaraan Pemerintahan di Indonesia. *Yuridis*.
- Sunarno. (2011). Negara Hukum yang Demokratis. *Jurnal Wacana Hukum*.
- Sunarso, S. (2018). Demokrasi Di Indonesia (Konsep, Prospek, Dan Implementasinya). *HUMANIKA*. <https://doi.org/10.21831/hum.v10i1.21002>
- Thoha, M. (2002). Reformasi birokrasi pemerintah. *Makalah Disampaikan Dalam Seminar Good Governance Di Bappenas*.
- Tri Yuningsih. (2019). *Kajian Birokrasi*. Departemen Administrasi Publik Press.
- Verbist, S. (2004). Administratiefrechtelijke aspecten inzake onteigening: de onteigeningsvoorwaarden, rechtsbescherming in de administratieve fase, milieurecht en onteigening. In *Cahiers Antwerpen Brussel Gent*.
- Yuningsih, T. (2019). Kajian Birokrasi. *Definis Manajemen*.