

THE LEGAL ANALYSIS CONCERNING REPETITIVE NOMINATION OF AMBASSADORIAL CANDIDATES WITHIN INDONESIA

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ABSTRACT

The main factors in this research are mainly the legal vacuum pertaining to the re nomination of ambassadorial candidates by the President once rejected by the House of Representatives , as well as the consequences the President would have to face in the event of re nomination. It is to note that Indonesian Regulations does layout the outlying bureaucratic mechanism and procedures for one to become an ambassador. But as articulated in article 13 paragraph 2 of the Indonesian Constitution, the joint cooperation between the Executive “President” and Legislative Branch “House of Representatives” in the form of a consideration from the Legislative is required.

Essentially the mechanism is quite similar to the one owned by the United States of America, pursuant to Article 2 Section 2 of the US Constitution every ambassadorial candidate requires the approval of the Senate, as a means to fulfill the system of a check and balance. However, the apparent difference in terminologies used i.e. “consideration” and “approval” is one to be noted. As it begs the question as to the binding power of such considerations provided by the House of Representatives, and whether it may overrule the decision from the President. In the event of constant rejection from the Legislative, and constant re nomination from the Executive, this also introduces one of the significant points of this paper, which is the dispute mechanism available among state organs or institutions.

The author then found the legal vacuum within re nomination of ambassadorial candidates, since the authority to nominate and appoint ambassadors which was once deemed the prerogative right of the President has been diminished in lieu of Constitutional Amendments. Thence, the aims of this research are to seek, analyze and contribute to the clear legal vacuum of the President’s action of repetitive re nomination of ambassadorial candidates.

Key words:

Article 13 subparagraph 1, and 2 of the 1945 Constitution of the Republic of Indonesia,
Ambassador Nomination, Fit and Proper Test

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Analisis Hukum Mengenai Renominasi

Calon Duta Besar di Indonesia

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INTISARI

Faktor utama dalam penelitian ini adalah kekosongan hukum yang berkaitan dengan pencalonan calon duta besar oleh Presiden Republik Indonesia. Perlu dicatat bahwa Peraturan Indonesia mengatur tata letak mekanisme dan prosedur birokrasi yang ada agar bisa menjadi duta besar. Namun sebagaimana diartikulasikan dalam pasal 13, paragraf 2 Konstitusi Indonesia, kerjasama antara Eksekutif "Presiden" dan Legislatif "Dewan Perwakilan Rakyat" dalam bentuk pertimbangan diperlukan. Di Amerika Serikat, sesuai dengan Pasal 2 Bagian 2 Konstitusi Amerika Serikat setiap calon duta besar memerlukan persetujuan Senat, sebagai sarana untuk memenuhi sistem "check and balance". Namun, perbedaan dalam terminologi yang digunakan yaitu "Pertimbangan" dan "Persetujuan" perlu dicatat. Karena timbul pertanyaan tentang sifat mengikatnya sebuah pertimbangan yang diberi oleh Dewan Perwakilan Rakyat, dan apakah pertimbangan tersebut dapat dikesampingkan oleh Presiden. Jika calon duta besar secara terus menerus dianggap tidak layak oleh legislatif. Inilah pengenalan poin signifikan makalah ini, yang merupakan mekanisme penyelesaian sengketa antar organ atau institusi negara.

Penulis kemudian menemukan kekosongan hukum dalam pencalonan calon duta besar, karena wewenang Presiden untuk mencalonkan dan menunjuk duta besar telah berkurang sesuai dengan amandemen UUD 1945. Tujuan dari penelitian ini adalah untuk mencari, menganalisis dan berkontribusi terhadap kekosongan hukum yang jelas dari tindakan Presiden terhadap penacalonan duta besar secara berulang.

Kata kunci:

Pasal 13 ayat 1, dan 2 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Nominasi Duta Besar, Fit and Proper Test.

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