ISNU Nine-Star Multidisciplinary Journal (INS9MJ)
(eISSN: 3063-8984)
Volume I, Number I, Mei 2024 (08-17)

Position and Content of Ministerial Regulations In the Perspective of the Presidential System

Hari Sanjaya
Postgraduate Program of Jayabaya University, Jakarta
E-mail: 2023010261027@pascajayabaya.ac.id

Info Articles

Article History
Received : 2024-04-13
Revised: 2024-04-15
Published: 2024-05-30

Keywords:
Content material, ministerial regulations, presidential system

Abstract

Regulatory obesity at the central and regional levels causes problems in the arrangement of legislation. The very diverse ministerial regulations make it difficult for local governments to follow up on them. The problems studied in this study are, first, what is the position and content of ministerial regulations in the perspective of legislation and the presidential system in Indonesia? Second, how are efforts to avoid obesity in the formation of ministerial regulations in the administration of government? The two problems will be analyzed descriptively qualitatively, using a legislative and conceptual approach. The results of this study conclude that, first, ministerial regulations are basically not included in the hierarchy of legislation, they can only be issued by ministers as long as there is authority or an order from a higher law to regulate them and only apply internally for the interests of the institutions they lead. However, ministers/ministries in the presidential system are not responsible to parliament but to the President, so the right person to determine the legislation should be the President; second, to avoid obesity in the formation of ministerial regulations, the president only needs to form a Government Regulation or Presidential Regulation, and does not need to delegate to ministers to form implementing regulations.

I. INTRODUCTION

The complexity of legal issues in Indonesia in recent years has become a polemic in society. Not only has it become a concern for academics in universities, non-governmental organizations, local governments, but also in the central government (Huda, 2021). At the 6th National Conference on Constitutional Law with the theme "Strengthening an Effective Presidential Cabinet" in Jakarta, 2-4 September 2019, Minister of State Secretary Pratikno, conveyed the Government's 'complaint' regarding 'Regulatory Obesity' which hampers investment in Indonesia. There are 15 Ministries that make regulations that have the potential to hamper investment. Until October 2018, there were 7,621 Ministerial Regulations, 765 Presidential Regulations, 452 Government Regulations, 107 Laws. Until November 2019, 10,180 regulations have been born, with the following details: 131 Laws, 526 Government Regulations, 839 Presidential Regulations, and 8,684 Ministerial Regulations (Huda, 2021). From the data it is known that regulatory obesity seems to occur precisely in the executive realm (under the President), namely Ministerial Regulations.

'Regulatory Obesity' raises new problems in the form of: (1) potential overlap; (2) burden of harmonization and synchronization; and (3) no institution that carries out monitoring & evaluation. The government is therefore currently cutting 100 regulations every month and forming a Law with an omnibus method to ensure ease of doing business. In addition, the government is also preparing Regulatory Technology (Reg Tech)(Syafriadi, 2023).

In 2016, there were at least 3,143 Regional Regulations (Perda) both provincial regulations and Regency/City regulations that were revoked by the President through the Ministry of Home Affairs. Minister Tjahyo Kumolo stated that the regulations were revoked because they hampered the pace of investment in the regions (Jaya & Tongke, 2023). The President's action to cancel a number of Regional Regulations has drawn reactions from the public and regional head associations throughout Indonesia, which culminated in the judicial review of Law No. 23 of 2014 concerning Regional Government at the Constitutional Court.

The Minister of Finance's recommendations to the Minister of Home Affairs regarding a number of Regional Regulations that are considered problematic are: (1) Overlapping with central taxes; (2) Levy levies that are not in accordance

with levy principles; (3) Causing duplication with regional levies; (4) Hindering the flow of goods; and (5) Resulting in an increase in the burden of government subsidies (Huda, 2021).

The complexity of the problem of obesity legislation in Indonesia issued by the Government seems to be 'left alone' by the Central Government, while Regional Regulations are dealt with firmly by the President in 2016 canceling thousands of Regional Regulations as described above. The variety of Ministerial Regulations actually makes it difficult for regional governments to follow up, because not a few of them are in substance like laws. Regional government apparatus often interpret Ministerial Regulations like laws, so that it seems as if the position of Ministerial Regulations is higher than Regional Regulations. In fact, Regional Regulations are produced by regional institutions (DPRD and Regional Heads) which have autonomous authority attributions both from Article 18 paragraph (3) and paragraph (6) of the 1945 Constitution of the Republic of Indonesia or the Regional Government Law and the Central and Regional Financial Balance Law and other legislation (Huda, 2021).

In practice, Ministerial Regulations are also widely used as legal instruments to follow up on Constitutional Court (MK) decisions, for example: 8 (i) MK Decision No. 129/PUU-XIII/2015 regarding Indonesia's import policy on animal products, which was followed up by the Minister of Agriculture Regulation No. 17/Permentan/PK.450/05/2016 regarding the Importation of Boneless Meat in Certain Cases Originating from a Country or Zone Within a Country of Origin; (ii) MK Decision No. 82/PUU-X/2012 regarding the Conditional Cancellation of Article 15 paragraph (1) of Law No. 24 of 2011 concerning the Social Security Administering Body, insofar as it is interpreted as eliminating workers' rights to register. The Constitutional Court Decision was followed up with the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Per- 12/Men/VI/2007 concerning Technical Instructions for Registration of Membership, Payment, Contribution, Payment of Compensation and Social Security Services for Workers; (iii) Constitutional Court Decision No. 36/PUU-X/2012 concerning the Dissolution of BP Migas, followed up with the Regulation of the Minister of Energy and Mineral Resources No. 09 of 2013 concerning the Organization and Work Procedures of the Upstream Oil and Gas Business Activity Implementation Work Unit; (iv) Constitutional Court Decision No. 95/PUU-VIV/2016 concerning Advocates, followed up with the Regulation of the Minister of Research, Technology and Higher Education No. 5 of 2019 concerning the Advocate Professional Program; (v) Constitutional Court Decision No. 35/PUU-X/2012 concerning Customary Forests, followed up with the Regulation of the Minister of Environment and Forestry No. P.32/Menlhk-Setjen/2015 concerning Customary Forest Rights (Huda, 2021).

The description above illustrates the existence of legal issues that are still problematic, especially related to the obesity of Ministerial Regulations as one type of legislation in Indonesia. There is a study that was conducted by Sofyan Apendi entitled "The Absence of Ministerial Regulations in the Hierarchy of National Legislation and Its Implications for Regulatory Arrangement in the National Legal System". The study concluded that Ministerial Regulations should no longer be recognized as the final central-level implementing regulations and be eliminated from the national legal system, and the final central-level implementing regulations stop at the Presidential Regulation which may no longer delegate provisions to other types of legislation. Although in principle the same as the substance of this study, the difference with this study is that the author, in addition to using a legislative perspective, also uses a presidential government system perspective in analyzing this problem.

The problems that will be studied in this paper, first, what is the position and content of ministerial regulations in the perspective of legislation and the presidential system of government in Indonesia? Second, what are the efforts to avoid obesity in the formation of ministerial regulations in the administration of government? This study aims first, to analyze the position and content of Ministerial Regulations in the perspective of legislation and the presidential system of government in Indonesia; second, to analyze and formulate efforts to avoid obesity in the formation of ministerial regulations in the administration of government.

II. RESEARCH METHODS

The object of this research is the position and content of ministerial regulations in legislation. The study in this research is normative. The technique of collecting legal materials is carried out through literature study. Literature study is carried out by reviewing legislation and related

literature. This research uses a statute approach to analyze various laws and regulations related to the issue of the position and content of ministerial regulations. In addition, a conceptual approach is used to analyze and formulate concepts to avoid obesity in the formation of ministerial regulations in the implementation of government.(Muhaimin, 2020).

III. RESULTS AND DISCUSSION

A. Ministerial Regulations in Legislative Perspective

Both in the text of the legislation and in various literature related to Indonesian Constitutional Law, various terms are known, namely legislation, legislation, statutory regulations, statutory regulations, and state regulations. The term statutory regulations is used in MPRS Decree No. XX/MPRS/1966 concerning the Source of Legal Order of the Republic of Indonesia and the Order of Legislation. The term used in MPR Decree No. III/MPR/2000 concerning the Source of Law and Order of Legislation, as the name of the MPR Decree is statutory regulations. The term statutory regulations is also used in Law No. 10 of 2004 in conjunction with Law No. 12 of 2011 concerning the Formation of Legislation (Husen, 2019).

Attamimi said that the term statutory regulations comes from the term "wettelijke regels" or "wettelijke regeling"(Qamar & Rezah, 2020). However, the term is not used consistently, because in certain contexts it is more appropriate to use the term "legislation" and in other contexts the term "statutory regulations" is used.

The use of the term "legislation" is more related or more relevant in discussions about the types or forms of regulations (law). In other contexts, it is more appropriate to use the term legislation alone, for example the terms Legislative Science, Legislative Theory, Basics of Legislation. The difference in the use of these terms is intended to explain different contexts, including explaining various forms and types of legislation. In addition, it is also used to determine the level/hierarchy of legislation, and also to find out the process of its formation.(Gusman, 2023).

The terms “legislation” and “regulation” come from the word “law”, which refers to the type or form of regulation made by the state. In Dutch literature, the term “wet” is known, which has two meanings, namely “wet in formele zin” and “wet in materiele zin”, namely the meaning of a law based on the form and method of its formation and the meaning of a law based on its content or substance.(Yusdheaputra, 2023).

Jimly Asshiddiqie stated that the difference between the two can be seen only in terms of emphasis or point of view, namely a law that can be seen in terms of its material or seen in terms of its form, which can be seen as two completely separate things. Meanwhile, according to Attamimi, the difference between the two understandings stems from the answer to the main question, what is actually the task of the wet-former (de wetgever)(Huda, 2021).

There are two opinions regarding the meaning of wet formation. First, wet formation is the implementation of a certain task. Second, the formation of a wet is the beginning of the formulation of formal procedures which are the conditions for the formation of a wet(Basyar, 2022). In the first opinion, which adheres to the understanding of material wet, it is considered that the person forming the wet is charged with certain duties, so that the understanding of what is meant by wet is a regulation that contains certain content or material, and because of that, a certain procedure for forming it is also required (het materiele wetsbegrip).

Meanwhile, according to the second opinion, the formation of wet is merely the beginning of a formal procedure, regardless of the material contained in the wet. This opinion is called the formal understanding of wet (het formele wetsbegrip)(Basyar, 2022).

Attamimi relates to the above and then states that the word wet is not appropriate when translated as "law". So it is not appropriate to translate the words "wet in formele zin" with "law in the formal sense" or the words "wet in materiele zin" with "law in the material sense". The term "legislation" is used as long as the word is "law" with the prefix per- and suffix -an added. The word "law" has a different connotation than the word "law". What is meant in the context of the use of this term is that which relates to "law" not the word "law" which has other connotations(Basyar, 2022).

Solly Lubis, what is meant by legislation is the process of making state regulations. In other words, the procedures start from planning (draft), discussion, ratification or determination and finally the enactment of the relevant regulations.(Gusman, 2023). Legislation means "regulations concerning the procedures for making state regulations." Whereas if what is meant by "regulations born from legislation" is sufficient to mention "regulations only." What is

meant by "state regulations" are written regulations issued by official institutions, either in the sense of institutions or certain officials. The regulations in question include Laws, Government Regulations in Lieu of Laws, Government Regulations, Regional Regulations, Decrees and Instructions. Whereas what is meant by legislation is regulations concerning the procedures for making state regulations. According to Bagir Manan, the definition of legislation is(Manan et al., 2021):

1. Every written decision issued by an official or authorized office environment that contains rules of conduct that are generally binding.
2. These are rules of conduct that contain provisions regarding rights, obligations, functions, status or an order.
3. It is a regulation that has general-abstract or abstract-general characteristics, meaning it does not regulate or is not aimed at certain concrete objects, events or phenomena.
4. By taking an understanding in Dutch literature, statutory regulations are commonly referred to as wet in materiil zin, or often also called algemeen verbindende voorschrift which includes, among others: de supranationale algemeen verbindende voorschrift, wet, AMvB, de Ministeriele verordening, de gemeentelijke raadsverordeningen, de provinciale staten verordeningen.

Attamimi, stated that legislation is a state regulation, at the Central and Regional levels, which is formed based on the authority of legislation, both attributive and delegated. Then in his dissertation, Attamimi provides a definition of legislation as all legal rules formed by all levels of institutions in a certain form, with certain procedures, usually accompanied by sanctions and generally applicable and binding on the people.(Muhammad Saleh, 2020). According to Article 1 number 2 of Law No. 12 of 2011, statutory regulations are written regulations containing generally binding legal norms and are formed or stipulated by state institutions or authorized officials through procedures stipulated in statutory regulations.

In Jimly Asshiddiqie's view, the definition of legislation is: the entire hierarchical structure of legislation in the form of laws and below, namely all legal products that involve the role of the people's representative institutions together with the government or that involve the role of the government because of its political position in implementing legislative products determined by the people's representative institutions together with the government according to their respective levels"(Hierarchy & Delegation, 2021).

According to Ruiter, there are three elements in legislation, namely: (a) legal norms (rechts normen); (b) applicable externally (naar buitenwerken); and (c) general in a broad sense (algemeenheid in ruimezin)(Ni'matul Huda & Nazriyah, 2019). Therefore, the formation of legislation is essentially the formation of legal norms that apply externally and are general in nature in a broad sense.

The existence of Ministerial Regulations in the context of the legal system in Indonesia is regulated in Article 8 of Law No. 12 of 2011 in conjunction with Law No. 15 of 2019 concerning the Formation of Legislation. The provisions also do not explicitly regulate the position of Ministerial Regulations in the hierarchy of legal regulations. The legal system in Indonesia itself is acknowledged to still contain a number of problems, including not all types of legal regulations are clearly located in the hierarchy of legal regulations, and the excessive breadth of content and similarity of content between legal regulations.

B. Position of Ministers in the Perspective of the Presidential System of Government

Explanation of the State Government System as stated in the 1945 Constitution (before the amendment) Roman numeral VI confirms that the Minister of State is an assistant to the President; the Minister of State is not responsible to the DPR. The President appoints and dismisses state ministers (Ihsan, n.d.). These ministers are not responsible to the DPR. Its position does not depend on the Council, but depends on the President. Ministers are assistants to the President.

Ministers are not ordinary high-ranking officials, because ministers are the ones who primarily exercise governmental power (pouvoir executive) in practice, even though the position of state ministers depends on the President.

As a department leader, the Minister knows the ins and outs of matters relating to his work environment. In this regard, the Minister has a big influence on the president in determining state politics regarding his ministry. What is meant is that the Ministers are the leaders of the country. The Ministers work together with each other as

closely as possible under the leadership of the President(Ihsan, nd).

After the 1945 Constitution was amended, Article 4 of the 1945 Constitution of the Republic of Indonesia confirmed that the President of the Republic of Indonesia holds governmental power according to the Constitution. The President in exercising governmental power is assisted by state ministers who are appointed and dismissed by the President. The State Ministries regulated in Article 17 of the 1945 Constitution of the Republic of Indonesia were refined, so that they read: (1) The President is assisted by state ministers; (2) The ministers are appointed and dismissed by the President; (3) Each Minister handles certain governmental affairs. (4) The formation, change, and dissolution of state ministries are regulated by law. The background to the addition of paragraph (4) is among other things due to the president's great authority in this matter. For example, during the Soeharto administration (New Order), the number and types of state ministries were determined by 'political needs and interests.' Likewise, during the leadership of President Abdurrahman Wahid (Gus Dur), the number and types of state ministries were determined by the political interests of the political parties and the military in the DPR.(Setiawan, 2021).

1. Following up on the provisions of Article 17 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 2008 concerning State Ministries was established. To determine the field of ministerial affairs, Article 4 paragraph (2) of Law No. 39 of 2008 concerning State Ministries emphasizes that certain affairs in government consist of: government affairs whose ministerial nomenclature is expressly stated in the 1945 Constitution of the Republic of Indonesia;
2. government affairs whose scope is stated in the 1945 Constitution of the Republic of Indonesia; and
3. government affairs in the context of sharpening, coordinating and synchronizing government programs.

Government affairs whose Ministry nomenclature is expressly stated in the 1945 Constitution of the Republic of Indonesia include foreign affairs, domestic affairs, and defense. Government affairs whose scope is stated in the 1945 Constitution of the Republic of Indonesia include religious affairs, law, finance, security, human rights, education, culture, health, social affairs, employment, industry, trade, mining, energy, public works, transmigration, transportation, information, communication, agriculture, plantations, forestry, animal husbandry, maritime affairs, and fisheries. Meanwhile, government affairs in the context of sharpening, coordinating, and synchronizing government programs include national development planning, state apparatus, state secretariat, state-owned enterprises, land, population, environment, science, technology, investment, cooperatives, small and medium enterprises, tourism, women's empowerment, youth, sports, housing, and development of underdeveloped areas or regions.(Manitik et al., 2022).

The ministry that carries out foreign, domestic and defense affairs, in carrying out its duties carries out 4 functions(Huda, 2021):

1. formulation, determination and implementation of policies in the field;
2. management of state property/assets that are his responsibility;
3. supervision of the implementation of tasks in his/her field; and
4. Implementation of technical activities from the center to the regions.

The ministry that carries out government affairs whose scope is stated in the 1945 Constitution of the Republic of Indonesia in carrying out its duties carries out 5 functions.(Huda, 2021):

1. formulation, determination and implementation of policies in the field;
2. management of state property/assets that are his responsibility;
3. supervision of the implementation of duties in his/her field;
4. implementation of technical guidance and supervision over the implementation of ministerial affairs in the regions; and
5. Implementation of technical activities on a national scale.

The ministry that carries out government affairs in the context of sharpening, coordinating and synchronizing government programs in carrying out its duties carries out 4 functions.(Huda, 2021):

1. formulation and determination of policies in the field;

2. coordination and synchronization of policy implementation in the field;
3. management of state property/assets that are his responsibility; and
4. Supervision of the implementation of tasks in his/her field.

The description above shows that the Minister is an assistant position to the President who receives a mandate to organize the government which is actually the President's power. The Ministry is not responsible to the parliament (DPR) as in the parliamentary system of government, but is responsible to the President. This is in accordance with the presidential system of government adopted in Indonesia. The President in the presidential system of government is an official who is responsible and accountable for his cabinet/ministry to the people(Manitik et al., 2022).

The Minister is therefore an official who is responsible to the President, and the President is responsible to the people, so the right person to have the authority to form and determine laws and regulations is the President, not the Minister. Provisions that are regulatory in nature (regeling) are regulated through Government Regulations or Presidential Regulations, while provisions that are stipulating/administrative in nature can be included in legal products issued by the Minister/official at the Ministerial level.(Huda, 2021).

C. Efforts to Avoid Obesity Formation of Ministerial Regulations in the Implementation of Government

On the one hand, Ministerial Regulations can actually play an important role in the effectiveness of governance, because not all matters whose substance is regulated in higher statutory regulations can be implemented in governance (Hakim et al., 2022). This Ministerial Regulation is also normatively recognized as existing and has binding legal force as long as it is ordered by higher laws and regulations or is formed based on authority. Ministerial Regulations therefore have functions and positions that are actually important for implementing state government policies.

The formation of Ministerial Regulations is based on government policies that need to be stated in the form of regulations that are implementing regulations for higher regulations, therefore the Minister or ministerial-level officials can be given the authority to make regulations that are implementing regulations. If observed, the implementation of the creation of ministerial regulations comes from delegation, namely to implement higher laws and regulations. However, the obesity of the formation of Ministerial Regulations on the other hand also becomes a problem in itself for the effectiveness of government administration.

Saldi Isra had time to put forward efforts to overcome the massive issuance of Ministerial Regulations, including: first, narrowing the space for forming Ministerial Regulations.(Huda, 2021). The simplest way is to eliminate the phrase "formed based on authority" as stated in Article 8 paragraph (2) of Law No. 12 of 2011. Second, even though space is opened based on delegation of Laws, Government Regulations and Presidential Regulations, in forming Ministerial Regulations, this space must be followed by an obligation, namely that every draft Ministerial Regulation must follow the harmonization process at the Ministry of Law and Human Rights.

Jimly Asshiddiqie on the one hand also stated that legal regulatory products stipulated by certain officials who are of equal protocol cannot be said to always follow the level of the official who stipulates them.(Huda, 2021). The position of the regulations set by these special institutions is more appropriately called special regulations (lex specialis). All regulations set by special and independent institutions can be treated as a form of special regulation that is subject to the principle of lex specialis derogat lex generalis(Hiariej, 2021). Included in this category, for example, are the Supreme Court Regulations, Constitutional Court Regulations, Bank Indonesia Regulations, General Election Commission Regulations, Human Rights Commission Regulations, Indonesian Broadcasting Commission Regulations, Financial Transaction Reports and Analysis Center Regulations, and so on.

Agencies or institutions like this can issue their own regulations, as long as the regulatory authority is granted by law. If these institutions are given regulatory authority, then the name of the resulting regulatory product should be called a regulation. Delegation of regulatory authority can be done with three alternative conditions, namely:

1. There are clear orders regarding the subject of the implementing agency that is given delegated authority, and the form of implementing regulations to include the delegated regulatory material;

2. There is a clear order regarding the form of implementing regulations to include delegated regulatory material; or
3. There is a clear order regarding the delegation of authority from the law or the institution that forms the law to the institution receiving the delegation of authority, without mentioning the form of regulation that receives the delegation.

These three requirements are alternative and one of them must be present in order to grant the delegation of regulatory authority (rule making power). The implementing agency of the law can only have the authority to determine a regulation that is binding on the public if the law as "primary legislation" is indeed ordered or given the authority to do so.(Huda, 2021). Therefore, the first condition for carrying out the delegation of regulatory authority is that there must be an official order or delegation from the law.

The order to regulate can be explicit in its subject and explicit in its form. Sometimes the delegation does not explicitly state the form of the regulation, but only mentions the subject to which the delegation is given.(Huda, 2021). What if the mention of the subject is very general, for example the law determines that the implementation of certain matters of the law in question is further regulated by the government. The President as head of government can issue legal products in the form of Government Regulations, Presidential Regulations, or assign his ministers to stipulate Ministerial Regulations.

Ministers as leaders of government in their respective fields can issue Ministerial Regulations because there is a clear order to accept the delegation of regulatory authority, but the form of implementing regulations to include the delegated regulatory material is not explicitly determined. In such cases, it means that the institution receiving the delegation of authority must determine for itself what form to choose. The President can determine the choice whether to stipulate a Government Regulation, a Presidential Regulation, or in another form, for example only in the form of policy regulations (beleids regel)(Srilaksmi, 2020). Can such arrangements be made in the form of a Ministerial Regulation? Isn't the minister also the government? Regarding this, Jimly Asshiddiqie suggested avoiding delegating the arrangement in the form of a Ministerial Regulation. Furthermore, Jimly Asshiddiqie stated, isn't there no difficulty for the government to simply stipulate a Government Regulation or Presidential Regulation.

Article 12 of Law No. 12 of 2011 concerning the Formation of Legislation, determines that the content of Government Regulations contains material to implement the Law as it should be. While Article 13 determines that the content of Presidential Regulations contains material ordered by Law, material to implement Government Regulations, or material to implement the implementation of government power. This means that both Government Regulations or Presidential Regulations can be legal instruments to implement Laws, as long as the delegation of authority for that is expressly determined or ordered by the relevant Law.(Huda, 2021).

A new problem has emerged which was created through the Explanation of Article 13 of Law No. 12 of 2011 which states: "Presidential Regulations are formed to organize further regulation of the orders of Laws or Government Regulations which are expressly or not expressly ordered to be formed." The provisions in the Explanation are very 'flexible' and can be freely interpreted by the President according to his needs. Thus, it can be stated that even without any order at all, in the context of implementing the President's authority as an attribute of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the President must be considered authorized to stipulate Presidential Regulations whenever needed.

There are 3 possibilities that can be developed regarding the meaning of "indefinite orders", namely:

1. The regulatory order does exist, but it does not clearly determine what form of regulation is chosen as the place for pouring out the material provisions whose regulation is delegated;
2. The regulatory order does exist, but it does not clearly specify the institution that is delegated authority or the form of regulation that must be established to implement the delegated provisions;
3. Such regulatory orders are not mentioned or specified in the relevant law at all, but the need for such regulations is real and inevitable in the context of implementing the provisions of the law itself. In fact, if not due to the negligence or

negligence of the legislators, it is indeed appropriate that further regulations regarding the matters in question should be regulated, so that the provisions of the law in question can be implemented properly.

Conditions such as in the third point above, then based on the principle of "freies ermessen" or the principle of "beleids vrijheid" the President is automatically considered to have the authority to determine the regulations required for the smooth implementation of his duties and authority as the highest government administrator.(Huda, 2021). However, it must also be understood in a limited way, namely: (i) that the material for further arrangements set out in the form of a Presidential Regulation is only internal in the context of government administration needs; and (ii) that the material for the provisions in question is only procedural-administrative in nature to assist the implementing agency in implementing the provisions of the law in question. Its contents do not expand in the form of adding norms or changing norms that reduce the provisions of the law.

Officials or leaders of a ministry can issue regulations set by the Minister. However, not all Ministers are given the authority to regulate. This authority must be limited to being used only by the Minister who leads the department (with a portfolio). The reason is because only the Minister who leads the department has sufficient apparatus to ensure that the regulations made can be implemented properly. The need for the intended regulation is sufficient to be stated in the form of a Ministerial Regulation related to the relevant field.

Ministerial Regulation (Permen) is a regulation issued by a Minister which contains provisions regarding his/her field of duties.(Wardoyo et al., 2024). A Ministerial Decree is a Ministerial Decree that is specific to a particular issue in accordance with its field of duty. There are Ministers who in practice only use the form of Ministerial Decree (Kepmen). There are also Ministers who use the form of Ministerial Regulation according to its name containing provisions that are regulatory in nature. While Kepmen can be in the form of regulations (regeling) or provisions (beschiking)(Ghafur, 2024). The contents of the Regulation and Ministerial Decree (which are regulatory) include good things that are sourced from attribution or delegation. The limitations of the contents of the Regulation or Ministerial Decree (which are regulatory) are:

1. The regulatory environment is limited to the field of state administration – both in instrumental and treaty (protection) functions.
2. The regulatory environment is limited to areas that are the duties, authority and responsibility of the Minister concerned.
3. It must not conflict with higher level laws and regulations and the general principles of proper governance (algemene beginselen van behoorlijk bestuur).

Explanation of Article 8 paragraph (1) of Law No. 12 of 2011, what is meant by Ministerial Regulation is a regulation stipulated by the minister based on the content of the material in the context of organizing certain affairs in government. In accordance with the duties and functions of a Minister according to Article 17 of the 1945 Constitution of the Republic of Indonesia, the function of the Ministerial Regulation is as follows:

1. Organizing general arrangements in the framework of implementing governmental powers in its field. The implementation of this function is based on Article 17 paragraph (1) of the 1945 Constitution (Amendment) and existing customs.
2. Organizing further regulation of provisions in the Presidential Regulation. Because the function of the Ministerial Regulation here is a delegation of the Presidential Regulation, the nature of the Ministerial Regulation here is a further regulation of the policies set out by the President in the Presidential Regulation.
3. Organize further arrangements for provisions in the Law that explicitly mention it.
4. Organize further arrangements for provisions in Government Regulations that expressly state this.

If there is material that overlaps with the material contained in other Ministerial Regulations or Regulations of other Ministerial-level Officials, is it permissible to issue a joint regulation such as what has been known as a Joint Decree? According to Jimly Asshiddiqie, this habit must be stopped because it can disrupt the systematics of our laws and regulations. In such a case, what should be made is a Presidential

Regulation which is expected to be able to regulate and accommodate regulations related to broader government affairs. Meanwhile, the forms of decisions with the nomenclature of Ministerial Decrees or Decrees of other Ministerial-level Officials can still be maintained, namely limited to containing only administrative materials and only in the form of ordinary administrative determinations (beschkikking). Thus, the Minister no longer needs to stipulate statutory regulatory products in the form of Ministerial Regulations.(Ghafur, 2024).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

This study then concludes as follows. First, the position of ministerial regulations in the Indonesian legal system is actually not included in the definition of statutory regulations in the regime of Law No. 12 of 2011 concerning the Formation of Legislation, however, ministerial regulations can be issued by the Minister as long as there is authority or an order from a higher law to regulate it. The presidential government system designs ministers/ministries not to be responsible to parliament, but to the President, therefore the right person to form and determine statutory regulations should not be the minister but the President, through Government Regulations or Presidential Regulations. Second, efforts that can be made to avoid obesity in the formation of Ministerial Regulations are that the President forms Government Regulations or Presidential Regulations to accommodate arrangements for organizing government affairs, and does not need to delegate to the Minister to form implementing regulations. The Minister only needs to determine decisions that are stipulation/administrative in nature, and not those that are regeling (legislation).

B. Suggestion

The government must conduct a review of all ministerial regulations to assess, first, whether the substance is still relevant or not to the development of state administration; second, the content of the material has been regulated in higher regulations; third, the scope of authority regulated is no longer its authority; fourth, the regulation is indeed no longer needed. Thus, there is no need to wait for a party to file a cancellation regarding the Ministerial Regulation. This is urgent to be done so that in the future the implementing regulations of the President's power are sufficiently regulated through Government Regulations or Presidential Regulations alone.

REFERENCE LISTAN

Basyar, A. M. (2022). *PERJANJIAN PERKAWINAN MENURUT PERATURAN MENTERI AGAMA RI NOMOR 19 TAHUN 2018 (Tinjauan Teori Peraturan Perundang-undangan)*. IAIN Ponorogo.

Ghafur, A. H. S. (2024). *Manajemen Penjaminan Mutu Perguruan Tinggi di Indonesia: Suatu Analisis Kebijakan*. Bumi Aksara.

Gusman, D. (2023). Kajian Ontologi Problematika Pembentukan Undang-Undang di Indonesia Dikaitkan Dengan Kebutuhan Hukum Masyarakat. *UNES Journal of Swara Justisia*, *6*(4), 368–382.

Hakim, A. R., Pratiwi, Y. D., & Sugiastari, Y. P. (2022). Model Instrumen Yuridis Pengusahaan Industri Energi Baru Dan Terbarukan Dalam Mewujudkan Ketahanan Energi Nasional. *Bina Hukum Lingkungan*, *7*(1), 110–129.

Hiariej, E. O. S. (2021). Asas Lex Specialis Systematis dan Hukum Pidana Pajak. *Jurnal Penelitian Hukum De Jure*, *21*(1), 1–12.

Hierarki, P. M., & Delegasi, O. R. (2021). *Ketiadaan Peraturan Menteri Dalam Hierarki Peraturan Perundang-Undangan Nasional Dan Implikasinya Terhadap Penataan Regulasi Dalam Sistem Hukum Nasional*.

Huda, N. (2021). Kedudukan Dan Materi Muatan Peraturan Menteri Dalam Perspektif Sistem Presidensial. *Jurnal Hukum Ius Quia Iustum*, *28*(3), 550–571.

Husen, A. (2019). Eksistensi Peraturan Presiden Dalam Sistem Peraturan Perundang-Undangan. *Lex Scientia Law Review*, *3*(1), 69–78.

Ihsan, R. B. (n.d.). IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI NOMOR 91/PUU-XVIII/2020 DALAM PERSPEKTIF EKONOMI MAKRO (IMPLICATIONS OF THE CONSTITUTIONAL COURT'S DECISION NUMBER 91/PUU-XVIII/2020 FROM A MACROECONOMIC PERSPECTIVE). *JURNAL PERUNDANG-UNDANGAN*, 412.

Jaya, K., & Tongke, F. (2023). Implikasi Kewenangan Mendagri Dalam Membatalkan Perda Pasca Putusan Mahkamah Konstitusi Republik Indonesia. *Prosiding SISFOTEK*, *7*(1), 338–342.

Manan, B., Abdurahman, A., & Susanto, M. (2021). Pembangunan Hukum Nasional Yang Religius: Konsepsi Dan Tantangan Dalam

Negara Berdasarkan Pancasila. *Jurnal Bina Mulia Hukum*, *5*(2), 176–195.

Manitik, J. Y., Pondaag, A., & Prayogo, P. (2022). PENGGABUNGAN KEMENTERIAN DITINJAU DARI UNDANG-UNDANG NOMOR 39 TAHUN 2008 TENTANG KEMENTERIAN NEGARA. *LEX ADMINISTRATUM*, *10*(3).

Muhaimin, M. (2020). Metode Penelitian Hukum. *Dalam S. Dr. Muhaimin, Metode Penelitian Hukum, Mataram-NTB: Mataram*.

Muhammad Saleh, S. H. (2020). *REKONSEPTUALISASI PENDELEGASIAN WEWENANG LEGISLASI (DELEGATED LEGISLATION) DALAM PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN*. universitas islam indonesia.

Ni'matul Huda, S. H., & Nazriyah, R. (2019). *Teori dan pengujian peraturan perundang-undangan*. Nusamedia.

Qamar, N., & Rezah, F. S. (2020). *Ilmu dan Teknik Pembentukan Peraturan Perundang-Undangan*. CV. Social Politic Genius (SIGn).

Setiawan, A. (2021). Analisis Yuridis terhadap Penataan Struktur Organisasi Kementerian dalam Rangka Peningkatan Reformasi Birokrasi. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, *10*(2), 117–142.

Srilaksmi, N. K. T. (2020). Fungsi Kebijakan Dalam Negara Hukum. *Pariksa: Jurnal Hukum Agama Hindu*, *4*(1), 30–38.

Syafriadi, S. (2023). Undang-Undang Cipta Kerja Pasca Revisi Kedua Undang-Undang Nomor 12 Tahun 2011. *Jurnal Hukum IUS QUIA IUSTUM*, *30*(2), 277–299.

Wardoyo, J. H., Rumokoy, D. A., & Siar, L. (2024). PENDELEGASIAN WEWENANG PEMBENTUKAN PERATURAN KEPADA MENTERI. *LEX ADMINISTRATUM*, *12*(2).

Yusdheaputra, W. (2023). Kedudukan Surat Edaran Menteri Dalam Hierarki Peraturan Perundang-Undangan. *Jurist-Diction*, *6*(1).