



Position And Material Contents Of Ministerial Regulation In the Perspective of the Presidential System

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Abstract

Regulatory obesity at the central and regional levels causes problems in the structuring of legislation. Very diverse Ministerial Regulations make it difficult for local governments to follow up. 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 in a qualitative descriptive manner, using legislative and conceptual approaches. The results of this study conclude, *first*, ministerial regulations are basically not included in the hierarchy of laws and regulations, it is just that they can be issued by the minister as long as there is authority or order from a higher law to regulate them and only applies inwards for the benefit of the institution he leads. However, ministers/ministries in the presidential system are not responsible to the parliament but to the President, so the one who should set the laws and regulations 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 there is no need to delegate it to the minister to form the implementing regulations.

I. INTRODUCTION

The complexity of legislative issues in Indonesia since the last few years has become a polemic in society. Not only is it a concern for academics in universities, non-governmental organizations, local governments, but also in the scope of the central government (Huda, 2021). At the 6th National Conference on Constitutional Law with the theme "Strengthening an Effective Presidential Cabinet" in Jakarta on September 2-4, 2019, Minister of State Secretary Pratikno, conveyed the Government's 'complaints' regarding 'Regulatory Obesity' that hinders investment in Indonesia. There are 15 ministries that make regulations that have the potential to hinder investment. As of October 2018, there are 7,621 Ministerial Regulations, 765 Presidential Regulations, 452 Government Regulations and 107 Laws. As of 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 this 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) harmonization and synchronization loads; and (3) there is no institution that conducts monitoring and evaluation. The government is therefore currently cutting 100 rules every month and forming a law with an omnibus method to ensure ease of doing business. In addition, the Government also prepares Regulatory Technology (Reg Tech) (Syafriadi, 2023).

In 2016, there were at least 3,143 Regional Regulations (Perda), both provincial and regency/city regulations, that had been canceled by the President through the Ministry of Home Affairs. Minister Tjahyo Kumolo stated that the regional regulation was canceled because it hindered the pace of investment in the region (Jaya & Tongke, 2023). The President's action to cancel a number of regional regulations drew reactions from the public and regional head associations throughout Indonesia, which led to the testing 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 related to the existence of a number of Regional Regulations that are considered problematic, are: (1)

Overlapping with central taxes; (2) Levy levy that is not in accordance with the principle of levy; (3) Causing duplication with regional levies; (4) Obstructing the flow of goods traffic; 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 have been 'left alone' by the Central Government, while the Regional Regulation was strictly acted upon by the cancellation of thousands of Regional Regulations by the President in 2016 as described above. The variety of Ministerial Regulations is actually troublesome for local governments to follow up, because not a few have the same substance as the law. Local government apparatus often translates Ministerial Regulations like laws, so that it seems as if the position of Ministerial Regulations is higher than Regional Regulations. In fact, the Regional Regulation is produced by regional institutions (DPRD and Regional Heads) which have the attribution of autonomous authority 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 Law on Central and Regional Financial Balance and other laws (Huda, 2021).

Ministerial Regulation in practice is also widely used as a legal instrument to follow up on the decisions of the Constitutional Court (MK), for example: 8 (i) Constitutional Court Decision No. 129/PUU-XIII/2015 related to Indonesia's import policy on animal products, which was followed up with Regulation of the Minister of Agriculture No.17/Permentan/PK.450/05/2016 concerning the Import of Boneless Meat in Certain Cases Originating from a Country or Zone in a Country of Origin of Import; (ii) Constitutional Court 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 Administration Agency, insofar as it is interpreted to negate the right of workers to register themselves. The Constitutional Court's 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 Guidelines for Registration of Membership, Payment, Contributions, 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 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 Rights Forests (Huda, 2021).

The above description illustrates the existence of legal problems that are still problematic, especially related to obesity Ministerial Regulation as one type of laws and regulations in Indonesia. There is a research that was conducted by Sofyan Apendi with the title "The Absence of Ministerial Regulations in the Hierarchy of National Laws and Regulations and Its Implications for the Structuring of Regulations 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 system of laws and regulations, and that the latest central level implementing regulations should stop at the Presidential Regulation which should no longer delegate provisions to other types of laws and regulations. Although in principle it is the same as the substance of this research, the difference with this research is that the author in addition to using the perspective of legislation also uses the perspective of the presidential government system in analyzing this problem.

The problems that will be studied in this paper are, first, what is the position and content of ministerial regulations in the perspective of legislation and the presidential system of government in Indonesia? Second, how are efforts to avoid obesity in the formation of ministerial regulations in the administration of government? The purpose of this research is to analyze the position and content of Ministerial Regulations in the perspective of legislation and the presidential system of government in Indonesia; Second, 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 laws and regulations. The study in this study is normative. The technique of collecting legal materials is carried out through literature study. Literature studies are carried out by examining laws and regulations and related literature. This study uses a legislative approach (*Statute approach*), to analyze various laws and regulations related to the question of the position and content of ministerial regulations. In addition, a conceptual approach is used (*conceptual approach*) to analyze and formulate a concept to avoid obesity in the formation of ministerial regulations in the administration of government (Muhaimin, 2020).

III. RESULTS AND DISCUSSION

A. Ministerial Regulation in Legislative Perspective

Both in the text of laws and regulations and in various literature related to Indonesian Constitutional Law, various terms are known, namely legislation, legislation, laws and regulations, laws and regulations, and state regulations. The term laws and regulations are used in MPRS Decree No. XX/MPRS/1966 concerning the Source of Legal Order of the Republic of Indonesia and the Order of Laws and Regulations. The term used in the MPR Decree No. III/MPR/2000 concerning Legal Sources and the Order of Laws and Regulations, as the name of the MPR Decree is a law and regulation. The term laws and regulations are also used in Law No. 10 of 2004 jo Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (Husen, 2019).

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

The use of the term "laws and regulations" is more relevant or more relevant in discussions about the type or form of regulation (law). In other contexts, it is more appropriate to use the term legislation only, for example the term Legal Science, Theory of Legislation, Basics of Legislation. The difference in the use of the term is intended to explain different contexts, including to explain 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 "legislative regulation" are derived 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 its form and manner of formation and the meaning of a law based on its content or substance (Yusdheaputra, 2023).

Jimly Asshiddiqie stated that the distinction between the two can be seen only in terms of emphasis or angle of view, that is, 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, whether is the actual task of getting wet (de wetgever) (Huda, 2021).

There are two opinions regarding the meaning of wet formation. First, the formation of wet is the implementation of a certain task. Second, the formation of wet is the beginning of the formulation of formal procedures which are a condition for the formation of wet (Basyar, 2022). In the first opinion, those who adhere to the understanding of the material wet consider that the formation of wet is imposed on certain tasks, so that the definition of what is meant by wet is a regulation that contains certain content or material, and therefore, a certain formation procedure is also required (*the substantive concept of law*).

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

Attamimi related to the above then stated that the word wet is not appropriate when translated as "law". So it is not appropriate to translate the words "wet in formele zin" as "law in the formal sense" or the words "wet in materiele zin" with "law in the material sense". The use of the term "legislation" is originally said to be "law" with the prefix per- and the suffix -an. 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 starting from planning (draft), discussion, ratification or determination and finally promulgation of the relevant regulations (Gusman, 2023). Laws and regulations mean "regulations regarding the procedures for making state regulations." Meanwhile, if what is meant in "regulations born from legislation" is enough to say "regulations only." What is meant by "state regulations" are written regulations issued by official agencies, either in the sense of certain institutions or officials. The regulations in question include Laws, Government Regulations in Lieu of Laws, Government Regulations, Regional Regulations, Decrees and Instructions. Meanwhile, what is meant by laws and regulations is regulations regarding the procedures for making state regulations. According to Bagir Manan, the meaning of laws and regulations is (Manan et al., 2021):

1. Every written decision is issued by an official or an authorized office environment that contains rules of conduct that are general or binding.
2. They are rules of conduct that contain provisions regarding rights, obligations, functions, status, or an order.
3. It is a rule that has general-abstract or abstract-general characteristics, meaning that it does not regulate or is not directed at a particular concrete object, event or phenomenon.
4. Taking an understanding of Dutch literature, laws and regulations are commonly referred to as *wet in materiil zin*, or often also referred to as *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 laws and regulations are state regulations, at the central and regional levels, which are formed based on legislative authority, both attributive and delegated. Then in his dissertation, Attamimi gave the limitations regarding laws and regulations are 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, laws and regulations are written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through procedures stipulated in laws and regulations.

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

According to Ruiter, laws and regulations contain three elements, namely: (a) legal norms (*rechts normen*); (b) applies to the outside (to outdoor work); and (c) is general in a broad sense (*algemeenheid in ruime zin*) (Ni'matul Huda & Nazriyah, 2019). Therefore, the formation of laws and regulations is essentially the formation of legal norms that apply externally and that are general in a broad sense.

The existence of Ministerial Regulations in the context of the system of laws and regulations in Indonesia is regulated in Article 8 of Law No. 12 of 2011 jo. Law No. 15 of 2019 concerning the Establishment of Laws and Regulations. In this provision, it is also not strictly regulated related to the position of the Ministerial Regulation in the hierarchy system of laws and regulations. The legal system in Indonesia itself is admittedly still contains a number of problems, including that not all types of laws and regulations are clearly located in the hierarchy of laws and regulations, and the breadth of content material and similarity of content between laws and regulations.

B. The Minister's Position in the Perspective of the Presidential System of Government

The explanation of the State Government System affirmed in the 1945 Constitution (before the amendment) Roman VI emphasizes that the Minister of State is an assistant to the President; The Minister of State is not accountable to the DPR. The President appoints and dismisses ministers of state (Ihsan, n.d.). The ministers are not accountable to the DPR. His position does not

depend on the Council, but depends on the President. The ministers are assistants to the President.

Ministers are not ordinary high-ranking officials, because they are the ones who mainly exercise the power of government (*pouvoir executive*) in practice, although the position of the minister of state depends on the President.

As the head of the department, the Minister knows the ins and outs of matters related to his work environment. In this regard, the Minister has a great influence on the president in determining the country's politics regarding his ministry. Indeed, what is meant is that the Ministers are the leaders of the state. The Ministers work closely with each other under the leadership of the President (Ihsan, n.d.).

After the 1945 Constitution was amended, Article 4 of the 1945 Constitution of the Republic of Indonesia affirms that the President of the Republic of Indonesia holds the power of government according to the Constitution. The President in exercising government 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 are perfected, so that it reads: (1) The President is assisted by the Ministers of State; (2) The Ministers are appointed and dismissed by the President; (3) Each Minister is in charge of certain affairs in the government. (4) The establishment, amendment, and dissolution of state ministries shall be regulated in the law. The background of the addition of paragraph (4) is due to the large authority of the president in this matter. For example, during the Suharto (New Order) administration, the number and type of state ministries were largely determined by their 'political needs and interests.' Similarly, during the leadership of President Abdurrahman Wahid (Gus Dur), the number and type of state ministries were determined by the political interests of the political and military parties in the House of Representatives (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 formed. To determine the field of ministerial affairs, in Article 4 paragraph (2) of Law No. 39 of 2008 concerning State Ministries, it is emphasized that certain affairs in government consist of:

nomenclature is expressly mentioned in the 1945 Constitution of the Republic of Indonesia;

2. government affairs whose scope is mentioned 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 mentioned in the 1945 Constitution of the Republic of Indonesia include foreign, domestic, and defense affairs. Government affairs whose scope is mentioned in the 1945 Constitution of the Republic of Indonesia include religious, legal, financial, security, human rights, education, culture, health, social, employment, industry, trade, mining, energy, public works, transmigration, transportation, information, communication, agriculture, plantations, forestry, livestock, marine, and fisheries. 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 disadvantaged areas or regions (Manitik et al., 2022).

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

1. formulation, determination, and implementation of policies in their fields;
2. management of state property/assets for which he is responsible;
3. supervision of the implementation of duties in their fields; and
4. Implementation of technical activities from the central to the regions.

The ministry that carries out government affairs whose scope is mentioned 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 their fields;
2. management of state property/assets for which he is responsible;
3. supervision of the implementation of duties in their fields;

4. the 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 their duties carries out 4 functions (Huda, 2021):

1. formulation and determination of policies in their fields;
2. coordination and synchronization of policy implementation in their fields;
3. management of state property/assets for which he is responsible; and
4. Supervision of the implementation of duties in their fields.

The above description shows that the Minister is an assistant to the President who receives the mandate to run a government that is actually the power of the President. The ministry is not accountable to the parliament (DPR) as in the parliamentary system of government, but is accountable 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 a responsible official and is responsible for his cabinet/ministry to the people (Manitik et al., 2022).

Since the Minister is an official who is responsible to the President, and the President is responsible to the people, it is better to be the President who is the right person to form and establish laws and regulations, not the Minister. Regulations are regulated through Government Regulations or Presidential Regulations, while stipulating/administrative provisions can be contained in legal products issued by Ministers/Minister-level officials (Huda, 2021).

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

Ministerial Regulations on the one hand can actually play an important role in the effectiveness of government administration, because not all things whose substance is regulated in the provisions of higher laws and regulations can be implemented to run the government (Hakim et al., 2022). This Ministerial

Regulation is also normatively recognized for its existence and has binding legal force as long as it is ordered by higher laws and regulations or formed based on authority.¹ Ministerial Regulations therefore have functions and positions that are actually important for implementing state government policies.

The formation of Ministerial Regulations is motivated by government policies that need to be outlined in the form of regulations that are implemented to higher regulations, therefore the Minister or ministerial-level officials can be given the authority to make regulations that are implementation. If you pay attention, the implementation of making ministerial regulations comes from delegations, namely to carry out higher laws and regulations. However, the obesity of the formation of Ministerial Regulations on the other hand is also a problem for the effectiveness of government administration.

Saldi Isra had put forward efforts to overcome the issuance of this massive Ministerial Regulation, including: *First*, narrowing the space to form 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 the space is opened based on the delegation of laws, government regulations and presidential regulations, but in forming a ministerial regulation, the space must be followed by an obligation, namely that every draft of a ministerial regulation must follow the harmonization process at the Ministry of Law and Human Rights.

Jimly Asshiddiqie on the one hand also stated that the legal product of the regulation set by certain officials that is procedurally equivalent cannot be said to always follow the level of the official who determines (Huda, 2021). The position of the regulations set by the special institutions is more appropriately also called the special regulations (*lex specialis*). All regulations established by such special and independent institutions may be treated as a form of special regulation subject to the principle of *lex specialis derogat lex generalis* (Hiariej, 2021). Included in this category, for example, are Supreme Court Regulations, Constitutional Court Regulations, Bank Indonesia Regulations, General Election Commission Regulations, Human Rights Commission Regulations, Indonesian

Broadcasting Commission Regulations, Financial Transaction Reporting and Analysis Center Regulations, and so on.

Such bodies or institutions can issue their own regulations, provided that the regulatory authority is granted by law. If these institutions are given regulatory authority, then the name of the resulting regulative product should be called a regulation. Delegation of regulatory authority can be done with three alternative conditions, namely:

1. There is a strict order regarding the subject of the implementing institution that is given delegated authority, and the form of implementing regulations to pour the delegated regulatory materials;
2. There is a strict order regarding the form of implementing regulations to pour out delegated regulatory materials; or
3. There is a strict order regarding the delegation of authority from the law or law-making institution to the institution receiving the delegation of authority, without mentioning the form of regulation that receives the delegation.

The three requirements are alternative and one of them must exist in order to delegate regulatory authority (*Rule Creating Power*). The law enforcement agency can only have the authority to establish a regulation that is binding on the public if the law as "*Primary legislation*" indeed ordered or given authority for it (Huda, 2021). Because the first condition for the delegation of regulatory authority is that there must be an official order or delegation from the law.

The order to regulate can be firm in its subject and firm in form. Sometimes the delegation does not explicitly mention 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 specifies that the implementation of certain matters of the law in question is further regulated by the government. The President as the head of government can issue legal products Government Regulations, Presidential Regulations, or assign his ministers to establish Ministerial Regulations.

The Minister as the leader of the government in their respective fields can issue a Ministerial Regulation because there is a strict order to accept the delegation of regulatory authority, but the form of the implementing regulation to pour the delegated regulatory material is not strictly

determined. In such a case, it means that the institution receiving the delegation of authority must determine for itself what form to be chosen. The President can choose whether to enact a Government Regulation, a Presidential Regulation, or in any other form, for example only in the form of policy arrangements (*Policy Rule*) (Srilaksmi, 2020). Can such an arrangement be made in the form of a Ministerial Regulation? Isn't the minister also the government? In this regard, Jimly Asshiddiqie suggested to avoid delegating the regulation in the form of a Ministerial Regulation. Furthermore, Jimly Asshiddiqie stated, isn't there no difficulty for the government to just set a Government Regulation or a Presidential Regulation.

Article 12 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, determines the content of Government Regulations containing materials to carry out the Law as it should. Meanwhile, Article 13 stipulates that the content of the Presidential Regulation contains material ordered by law, material to implement Government Regulations, or material to carry out the exercise of government power. This means that either a Government Regulation or a Presidential Regulation can be a legal instrument to implement the Law, provided that the delegation of authority for it is expressly determined or ordered by the relevant Law (Huda, 2021).

A new problem has arisen created through the Explanation of Article 13 of Law No. 12 of 2011 which affirms: "*Presidential Regulation is formed to carry out further regulation of the order of Law or Government Regulation expressly or inexpressly ordered its formation.*" The provisions in the Explanation are very 'flexible' and can be freely interpreted by the President as needed. Thus, it can be stated that without any order at all, in the context of exercising the President's authority as an attribution of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the President must be considered authorized to establish a Presidential Regulation whenever needed.

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

1. The regulation order does exist, but it does not expressly determine what form of regulation is chosen as the place for pouring the provisions material that the regulation delegates;

2. The regulatory order does exist, but it is not clearly specified the institution that is given delegated authority or the form of regulation that must be determined for the pouring of the delegated provision material;
3. Such an order of regulation is in no way mentioned or specified in the law in question, but the need for such an arrangement is real and inevitable in the context of the implementation of the provisions of the law itself. In fact, if it were not for the negligence or negligence of the lawmakers, it should have been that further arrangements regarding the matters in question should be regulated, so that the provisions of the law in question could be implemented as they should.

The conditions as in the third point above, are based on the principle "*Freies Erknives*" or basic "*Policy freedom*" The President himself is considered to have the authority to set the necessary regulations 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 further regulatory material outlined in the form of the Presidential Regulation is only internal in the context of government administrative needs; and (ii) that the material of the relevant provisions is only procedural-administrative to assist law enforcement agencies in carrying out the provisions of the relevant law. The content does 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. That authority should be limited to being used only by the Minister who heads the department (with a portfolio). The reason is because only the Minister who heads the department has enough apparatus to ensure that the regulations made can be implemented as well as possible. The need for the regulation in question is simply outlined in the form of a Ministerial Regulation related to the field concerned.

A Ministerial Regulation (Permen) is a regulation issued by a Minister that contains provisions on his field of duties (Wardoyo et al., 2024). A Ministerial Decree is a Ministerial Decree that is specific to a specific issue in accordance with its field of duties. There are Ministers who in practice only use the form of Ministerial Decrees

(Kepmen). There are also Ministers who use the form of Ministerial Regulation according to their name containing provisions that are regulating. While the Ministry of Agriculture can be in the form of regulations (*Regulation*) or a determination (*Squirting*) (Ghafur, 2024). The content material of the Ministerial Regulation and Ministerial Regulation (which is regulating) includes good things that are sourced from attribution or delegation. The restrictions on the content of the Ministerial Regulation or Ministerial Regulation (which are regulating) are:

1. The regulatory environment is limited to the field of state administration – both in instrumental functions and treaty (protection) functions.
2. The regulatory environment is limited to the areas that are the duties, authorities, and responsibilities of the Minister concerned.
3. It must not be contrary to the laws and regulations of a higher level and the general principles of the proper administration of government (*algemene beginselen van behoorlijk bestuur*).

Explanation of Article 8 paragraph (1) of Law No. 12 of 2011, what is meant by the Ministerial Regulation is a regulation determined by the minister based on the content material in the context of the implementation of certain affairs in the 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 functions of the Ministerial Regulation are as follows:

1. Organizing general arrangements in the context of the implementation of government power in their fields. The implementation of this function is based on Article 17 paragraph (1) of the 1945 Constitution (Amendment) and existing customs.
2. To carry out further arrangements of the provisions in the Presidential Regulation. Because the function of the Ministerial Regulation here is a delegation of the Presidential Regulation, the Ministerial Regulation here is a further arrangement of the policies outlined by the President in the Presidential Regulation.
3. Organizing further arrangements for the provisions in the Law that expressly mention it.
4. Organizing further arrangements for the provisions in the Government Regulation that expressly mention it.

If there is content material that overlaps with the content of other Ministerial Regulations or other ministerial-level Official Regulations, is it justified to issue a joint regulation as it has been known as a Joint Decree? According to Jimly Asshiddiqie, this kind of 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 regulate and accommodate arrangements related to broader government affairs. Meanwhile, forms of decisions with the nomenclature of Ministerial Decrees or Decrees of other Ministerial-level officials can still be maintained, which are limited to containing only administrative materials and only ordinary administrative determinations (*disambiguation*).² Thus, the Minister no longer needs to stipulate laws and regulations in the form of Ministerial Regulations (Ghafur, 2024).

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

This study then concluded as follows. First, the position of ministerial regulations in the Indonesian legal system is actually not included in the sense of laws and regulations in the regime of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, however, ministerial regulations can be issued by the Minister as long as there is authority or order from a higher law to regulate it. The presidential government system designates ministers/ministries that are not responsible to the parliament, but to the President, therefore the appropriate person to form and establish laws and regulations should not be ministers but the President, through Government Regulations or Presidential Regulations. Second, efforts that can be made to avoid obesity in the formation of Ministerial Regulations, namely the President establishes Government Regulations or Presidential Regulations to accommodate arrangements to carry out government affairs, and there is no need to delegate (delegate) to the Minister to form implementing regulations. The Minister only needs to determine decisions that are determinative/administrative, and not those that are *regeling* (legislation).

B. Suggestions

The government must conduct a study of all ministerial regulations to assess, first, whether

their substance is still relevant to constitutional developments; second, the content material has been regulated in higher regulations; third, the regulated scope of authority is no longer his authority; Fourth, the regulation is no longer needed. Thus, there is no need to wait for a party to submit a cancellation related to the Ministerial Regulation. This is urgent to be done so that in the future the implementing regulations of the President's power are enough to be regulated through Government Regulations or Presidential Regulations only.

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