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Towards Improved Regulatory Efficiency: Reconstruction of Ministerial Regulations to Enhance Regulatory Reform in Indonesia

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Abstract

This study emanates from the intricate nature of Indonesia's legal regulatory framework, resulting in a legal vacuum concerning the substantive content of ministerial regulations. Ministerial regulations, despite not being part of the formal hierarchy of legal regulations, constitute 31.56 % of the total regulations, posing challenges of overlap and overregulation. The constrained legal attribution for ministers within a presidential system becomes a central concern. Employing a normative legal analysis approach and empirical data, this research constructs an efficient regulatory framework. The findings indicate that the elimination of ministerial regulations as a source of legislation can mitigate the issues of overlap and overregulation. Through a restructuring process, the content of ministerial regulations can be consolidated into presidential regulations, ensuring direct presidential control and regulatory efficiency at the central level. Strategic measures, such as the establishment of a special bureau under the president, facilitate synchronization and harmonization of legal regulations. With an emphasis on presidential regulations, this system supports sectoral governance and reduces the proliferation of scattered regulations. The outcome is a more efficient, non-overlapping, and accountable legal framework. In conclusion, this regulatory reform is imperative to realize an efficient and substantive legal framework in Indonesia.

Keywords: Regulatory efficiency; ministerial regulations; presidential regulations; overregulation; legal framework; regulatory reform; Indonesia's presidential system; legislative harmonization; legal hierarchy; governance reform.

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Hacia una mejor eficiencia regulatoria: reconstrucción de normas ministeriales para mejorar la reforma regulatoria en Indonesia

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Resumen

Este estudio surge de la compleja naturaleza del marco normativo legal de Indonesia, lo que genera un vacío legal en cuanto al contenido sustantivo de los reglamentos ministeriales. Aunque estos reglamentos no forman parte de la jerarquía formal de normas legales, constituyen el 31,56% del total de regulaciones, lo que plantea desafíos de superposición y sobrerregulación. La limitada atribución legal de los ministros dentro de un sistema presidencial deviene una preocupación central. A través de un enfoque de análisis jurídico normativo y el uso de datos empíricos, esta investigación propone la construcción de un marco regulatorio eficiente. Los hallazgos indican que la eliminación de los reglamentos ministeriales como fuente de legislación puede mitigar los problemas de superposición y sobrerregulación. Mediante un proceso de reestructuración, el contenido de estos reglamentos puede consolidarse en reglamentos presidenciales, garantizando así un control directo por parte del presidente y una mayor eficiencia regulatoria a nivel central. Medidas estratégicas, como la creación de una oficina especial bajo la autoridad del presidente, facilitarían la sincronización y armonización de las normas legales. Al centrarse en los reglamentos presidenciales, este sistema favorece la gobernanza sectorial y reduce la proliferación de regulaciones dispersas. El resultado es un marco legal más eficiente, sin superposiciones y con mayor responsabilidad. En conclusión, esta reforma regulatoria es esencial para la construcción de un sistema legal eficiente y sustantivo en Indonesia.

Palabras clave: eficiencia regulatoria; reglamentos ministeriales; reglamentos presidenciales; sobrerregulación; marco legal; reforma regulatoria; sistema presidencial de Indonesia; armonización legislativa; jerarquía jurídica; reforma de gobernanza.

Introduction

The formulation of legal regulatory policies in Indonesia is currently beset by several latent issues. A prominent concern lies in the prevalence of regulatory excess and substantial overlaps among legal frameworks.[1] The existing system for organizing legal regulations remains inherently fragile, marked by a growing influx of regulations that deviate from standardized procedural norms. The multitude of state institutions in Indonesia contributes significantly to the rapid proliferation of regulations, primarily driven by technical necessities in state administration.[2] Conversely, the system governing the elaboration of legal regulations exhibits a plethora of legal vacuums. Even in technical facets, such as nomenclature or the hierarchical classification of regulations, it is commonplace to encounter deviations from standardized systems.[3]

The substantive underpinning of regulatory governance in Indonesia is intricately articulated within the legal framework, notably stipulated in Law No. 12 of 2011, which has undergone subsequent revisions, most notably with Law No. 13 of 2022, addressing the Formulation of Legal Regulations.[4] Article 7 of Law No. 12 of 2011 meticulously categorizes seven distinct forms of regulations, encompassing fundamental legal instruments such as the Basic Law, Resolutions of the People's Consultative Assembly, Laws, Government Regulations Formulating Laws, Government Regulations, Presidential Regulations, Provincial Government Regulations, and Regency/Municipality Government Regulations. Furthermore, article 8 introduces a degree of adaptability, extending beyond the confines of the initially delineated seven types. It explicitly states:

> Types of legal regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, Agencies,

1 Jamie S Davidson, "Driving Growth: Regulatory Reform and Expressways in Indonesia," *Regulation & Governance* 4, no. 4 (2010), 465-84, https://doi.org/10.1111/j.1748-5991.2010.01092.x

2 Davidson, "Driving Growth".

3 Ibnu Sina Chandranegara and Muhammad Ali, "Policies on Regulatory Reform in Indonesia: Some Proposals," *Jurnal Media Hukum* 27, no. 1 (2020), 55-67, https://doi.org/10.18196/jmh.20200142

4 Wicipto Setiadi, "Institutional Restructuring to Sustain Regulatory Reform in Indonesia," *Hasanuddin Law Review* 5, no. 1 (2019), 120, https://doi.org/10.20956/halrev.v5i1.1699

> Institutions, or Commissions of equivalent rank established by law or government under the mandate of the law, Provincial Legislative Council, Governors, Regency/City Legislative Council, Regents/Mayors, Village Heads, or equivalent.[5]

The regulations expounded upon in article 8 remain valid as long as they align with superior legal regulations or are established in accordance with delegated authority.[6] Over the course of development, these regulations have evolved into the epicenter of complexity within Indonesia's legal regulatory landscape, giving rise to the pervasive issue of over-regulation.[7] Particularly noteworthy is the category of ministerial regulations, which is noticeable as the most prolific and challenging, significantly contributing to the intricate nature of regulatory governance in the country.

According to data provided by the Ministry of Law and Human Rights in 2023, Indonesia witnessed the issuance of a substantial 57,980 regulations, encompassing 55,576 currently in force and 2,815 that have been rendered obsolete. Within this regulatory framework, a significant subset of 9,732 regulations exhibits intricate interrelationships, particularly in the realm of attribution. Notably, ministerial regulations constitute a remarkable portion of this legal landscape, totaling 18,317 or precisely 31.56 % of Indonesia's comprehensive regulatory corpus. Delving further, of these ministerial regulations, 16,966 remain in active force, underscoring their ongoing relevance, while 1,351 have been rendered inactive. The discernible prevalence of ministerial regulations underscores their pivotal role in shaping the legal landscape of the nation. This robust production of regulations annually underscores Indonesia's standing as a global leader in regulatory governance. The sheer volume of regulations reflects a dynamic and evolving legal framework, influencing the governance and legal milieu in Indonesia.

The proliferation of ministerial regulations in Indonesia is disproportionate to the existence of a commensurately robust regulatory management system.[8] In contrast

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5 Ahmad Heru Romadhon and Sadjijono Sadjijono, "Politik Hukum: Menakar Kualitas Reformasi Regulasi Dalam Central Oversight Body," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 20, no. 2 (2022), 1231-39, https://jurnal.iain-bone.ac.id/index.php/ekspose/article/view/1389

6 Rahmat Robuwan and Andri Yanto, *Seluk Beluk Ilmu Dan Teknik Perancangan Peraturan Perundang-Undangan* (Penerbit Megalitera, 2023).

7 Desyanti Desyanti and others, "Legal Implications of Regulating Judicial Review of District/City Regulations in Indonesia," *International Journal of Social Science Research and Review* 5, no. 1 (2022), 45-55, https://doi.org/10.47814/ijssrr.v5i1.148

8 Diya Ul Akmal, "Penataan Peraturan Perundang-Undangan Sebagai Upaya Penguatan Sistem Hukum Di Indonesia," *Jurnal Legislasi Indonesia* 18, no. 3 (2021), 296, https://doi.org/10.54629/jli.v18i3.761

to other legislative frameworks, such as laws requiring collaborative formulation by both the Executive and the Legislative branches, ministerial regulations undergo a relatively straightforward process, necessitating approval solely from the minister and the president.[9]

As mandated by article 8 of Law No. 12 of 2011, ministerial regulations must be predicated on superior-level regulations and authorized by specific competencies. The requirement for a higher-level regulation implies the presence of another regulation superseding it, tacitly suggesting that subsequent regulations will be promulgated through ministerial channels, although such instances are minimal.[10] The preponderance of ministerial regulations is crafted predominantly on the authority delegated to ministers by the president.[11] However, the conundrum arises due to the absence of a clearly delineated system regulating the types, hierarchy, and substantive content of ministerial regulations, coupled with divergent scopes of applicability.[12]

A labyrinthine array of ministerial regulations unfolds, ranging from internally binding directives within ministries, exemplified by the Ministerial Regulation on the Classification of Archives within the Coordinating Ministry for Human Development and Culture in 2023, to regulations possessing general applicability akin to laws, illustrated by the Ministerial Regulation on Youth and Sports Awards in 2023. The lack of stipulated substantive content engenders overlapping regulations, thereby complicating bureaucratic processes. For instance, the Ministerial Regulation on Value Addition through Domestic Management and Refinement in 2017 introduced new norms conflicting with Law No. 3 of 2020 on Minerals and Coal, exemplifying a deficiency in attributing subsequent regulations in ministerial form.[13]

The extensive and unrestrained nature of ministerial regulation content positions it as a tool for addressing legal lacunae by the government. However, the dearth of comprehensive inter-agency communication and prolonged processes, particularly with the legislative branch, results in ministerial regulations "usurping substance"

9 Romadhon and Sadjijono, "Politik Hukum: Menakar Kualitas Reformasi."

10 Juwita Putri Pratama, Lita Tyesta Alw, and Sekar Anggun Gading Pinilih, "Eksistensi Kedudukan Peraturan Menteri terhadap Peraturan Daerah dalam Hierarki Peraturan Perundang-Undangan," *Jurnal Konstitusi* 19, no. 4 (2022), 865-85, https://doi.org/10.31078/jk1947

11 Setiadi, "Institutional Restructuring."

12 Chandranegara and Ali, "Policies on Regulatory Reform in Indonesia."

13 Lely Indah Mindarti and others, "The Governance of Mineral and Coal in Indonesia: The Theory U Approach," *The Journal of Asian Finance, Economics and Business* 8, no. 3 (2021), 1417-25, https://doi.org/10.13106/JAFEB.2021.VOL8.NO3.1417

that ideally should be governed by laws. This conundrum contributes to overlap, intricacy, and over-regulation as inescapable conditions within Indonesia's legal landscape.[14]

Previous research conducted by Charles Simabura et al., the escalating prominence of ministerial regulations within governmental administration has evolved into a predominant form of legislation, witnessing a notable surge in quantity.[15] In this normative exploration, Charles Simabura et al. scrutinize the foundational underpinnings of ministerial regulation formation in the context of a presidential system, particularly regarding the doctrine of presidential lawmaking. This research unveils a nuanced distribution wherein 65 % of ministerial regulations emanate from ministerial authority (attribution), while 35 % derive from higher regulatory directives. This proliferation has ushered in a distinctive dynamic, challenging the constitutional mandate of the president to formulate implementing regulations. The unchecked rise of ministerial regulations based on authority has engendered a power imbalance, eclipsing the role of presidential legislation products. This divergence from the constitutional provisions underscores a deviation from the established principles of the presidential system in Indonesia, where the president traditionally holds the mantle as the executor of the law, as opposed to ministers functioning as lawmaking agents.[16]

In an alternative investigation presented by Helmi Chandra Sy, at the Proceedings of the Academic Forum on Regulatory Reform Policies in 2017, it was contended that ministerial regulations represent a noteworthy source of regulatory preoccupation within the Indonesian context. The research underscores the indispensable necessity for a systematic restructuring of ministerial regulations through the fortification of the functions of the National Legal Development Agency, the establishment of independent regulatory bodies, a comprehensive revision of Law No. 12 of 2011, and a prioritization of efficiency in the formulation of novel regulatory frameworks. Recognizing the prevailing intricacies of regulatory paradigms, the proposal ardently advocates for a judicious and strategic approach, underscoring the imperative of streamlining ministerial regulations to augment the overall legal framework. This entails the empowerment of the National Legal Development Agency and the

[14] Zainal Arifin Mochtar, "Perihal Menata Regulasi" (presented at the Forum Akademik Kebijakan Reformasi Regulasi, PSHK, 2019).

[15] Charles Simabura and others, "Ministerial Authority in Formulating Regulations Related to Presidential Lawmaking Doctrine," *Constitutional Review* 9, no. 2 (2023), 297, https://doi.org/10.31078/consrev924

[16] Simabura and others, "Ministerial Authority in Formulating Regulations."

introduction of independent institutional mechanisms, coupled with judicious legislative revisions. The envisaged measures, once implemented, aspire to cultivate efficiency in the regulatory milieu, thereby contributing substantively to a more efficacious and streamlined regulatory landscape in Indonesia.[17]

Given the congruence in thematic focus between the two aforementioned studies, they collectively establish a solid foundation for the current research endeavor.[18] A pivotal departure in this study lies in its distinctive approach to the discourse, specifically scrutinizing the positioning of ministerial regulations within the contextual framework of ministerial attribution and authority, wherein ministers serve as aides to the president during the regulatory formulation process.

Central to the investigation is the earnest attempt to redress legal vacuums by eschewing the propensity for excessive regulation promulgation within ministerial domains. Two paramount considerations guide this exploration: the imperative to forge an efficient and succinct regulatory framework and the necessity to preserve the government's prerogative in crafting regulations while averting the emergence of legal voids. This research aspires to formulate a precise and applicable paradigm, thereby serving as nuanced policy recommendations for the government. The goal is to address the issue of regulatory excess restructuring ministerial regulations in Indonesia. By navigating the delicate equilibrium between regulatory efficiency and governmental regulatory empowerment, the study endeavors to contribute discerning insights that can inform judicious policy decisions, thereby fostering a more streamlined and effective regulatory landscape.

Research Method

This research employs a normative legal research methodology to delve into the reconstruction of ministerial regulations in Indonesia, focusing on the goal of enhancing regulatory efficiency.[19] The study adopts a dual approach, examining both legislative and conceptual dimensions. Through a meticulous analysis of legal texts, statutes, and regulations, the investigation aims to elucidate the historical

[17] Helmi Chandra SY, in *Penataan Peraturan Menteri Sebagai Upaya Reformasi Regulasi Di Indonesia* (PSHK, 2019), pp. 2-18.

[18] Ima Mayasari, "Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law Di Indonesia", *Rechts Vinding: Media Pembangunan Hukum Nasional* 9, no. 1 (2020), 1-15, http://dx.doi.org/10.33331/rechtsvinding.v9i1.401

[19] Philip Langbroek and others, 'Methodology of Legal Research: Challenges and Opportunities', *Utrecht Law Review* 13, no. 3 (2017), 1, https://doi.org/10.18352/ulr.411

evolution and contextual relevance of ministerial regulations.[20] A legislative lens is applied to systematically review laws, especially Law No. 12 of 2011, evaluating the alignment of ministerial regulations with overarching legal principles. Simultaneously, the research integrates a conceptual exploration, delving into theoretical frameworks related to regulatory efficiency and reform.[21] Data collection involves an extensive literature review and qualitative examination of scholarly articles, legal commentaries, and government publications. The synthesis of findings culminates in a descriptive conclusion, providing nuanced insights and policy recommendations for the reconstruction of ministerial regulations to foster improved regulatory efficiency in Indonesia.

Result and Discussion

The organization of ministerial regulations within an efficient and systematic legislative framework has long posed a complex technical challenge, prompting persistent government efforts to address this issue.[22] In 2018, the government promulgated the Minister of Law and Human Rights Regulation No. 23 of 2018, which aimed at harmonizing the drafting process of ministerial regulations, regulatory drafts, and non-structural institutions by legislative drafters. The objective was to ensure alignment with superior legislation, adherence to technical drafting formats, and the specification of agreed-upon substantive material content.[23] Despite these efforts, the regulation encountered implementation challenges. The Supreme Court, in Decision No. 15/HUM/2019, rejected the judicial review of this ministerial regulation. Although conceived to enhance regulatory harmony, the regulation lacked specificity regarding the assignment of responsibilities to a dedicated body or institution for managing regulatory harmonization. Instead, it mandated initiators of regulations to submit requests to the Minister of Law and Human Rights, impeding optimal implementation.[24]

[20] Kornelius Benuf and Muhamad Azhar, 'Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer', *Gema Keadilan* 7, no. 1 (2020), 20-33, https://doi.org/10.14710/gk.2020.7504

[21] Rhuks Ako and Damiola S. Olawuyi, "Methodology, Theoretical Framework and Scholarly Significance: An Overview of International Best Practices in Legal Research," *Journal of Sustainable Development Law and Policy (The)* 8, no. 2 (1970), 225-41, https://doi.org/10.4314/jsdlp.v8i2.11

[22] Vani Wirawan and others, 'Measuring the Land Mafia in Indonesia: New Phenomenon of Extraordinary Crime', *Novum Jus* 18, no. 1 (2024), 311-53, https://doi.org/10.14718/NovumJus.2024.18.1.11

[23] Simabura and others, "Ministerial Authority in Formulating Regulations."

[24] Rizal Irvan Amin, "Mengurai Permasalahan Peraturan Perundang—Undangan di IndonesiA," *Res Publica* 4, no. 2 (2020), https://jurnal.uns.ac.id/respublica/article/view/45710

This regulatory framework, perceived as non-binding for other ministries due to the equal standing of ministers, failed to yield significant changes. Consequently, ministers continued to prolifically generate regulations, with a staggering 6,526 ministerial regulations issued in the last six years (2018-2023). This translates to a monthly average of at least 90 new regulations or three new regulations per day. The apparent lack of substantial impact raises questions about the effectiveness of the regulation.

Before determining a framework for the organization of ministerial regulations, a critical examination of their status within the constitutional legal framework is imperative.[25] The bedrock of these regulations lies in the foundation of their authority, and this authority delineates their standing, thereby influencing obligations related to hierarchy, substantive content, and the extent of their binding efficacy.[26] Understanding the constraints of ministerial regulations necessitates a nuanced comprehension of the minister's position within the government and their relationship with the president, who serves as the head of the executive power.[27] A comprehensive understanding of these regulations entails a meticulous examination of the minister's role in governance and its implications for the hierarchical structure, substantive content, and binding scope of ministerial regulations.

This examination will, initially, explain the historical underpinnings and customary practices surrounding the formulation of ministerial regulations in Indonesia. It will delve into the minister's position and the functions of the regulations they promulgate within the governance system of Indonesia. Moreover, it will strive to articulate an ideal restructuring of ministerial regulations that is more efficient, considering their hierarchical significance, substantive content, and binding scope. This comprehensive approach aims to furnish a coherent understanding of the multifaceted aspects influencing the organization and effectiveness of ministerial regulations in the Indonesian legal landscape.

25 Jørn Jacobsen, "Constitutions and Criminal Law Reform," *Bergen Journal of Criminal Law & Criminal Justice* 5, no. 1 (2017), 18-36, https://doi.org/10.15845/bjclcj.v5i1.1351

26 Paola Alexandra Sierra Zamora, "Las globalizaciones, el derecho internacional y las implicaciones del nuevo orden mundial," *Novum Jus* 17, no. 1 (2023), 9-12, https://doi.org/10.14718/NovumJus.2023.17.1.0

27 Istifahani Nuril Fatiha, Amilah Fadhlina, and Kharisma Putri Wardani, "Reformasi Regulasi Nasional Menggunakan Model Sunset Clause Sebagai Penyelesaian Over Regulation Di Indonesia," *Jurnal Studia Legalia* 4, no. 2 (2023).

The Historical Foundation of Ministerial Regulation Formation in the Governance Administration of Indonesia

The promulgation of laws is a shared element in numerous democratic societies, albeit with distinct processes that can vary significantly across countries.[28] Within the framework of a presidential system of government, the direct exercise of legislative power by the president is atypical. Rather, it is typically delegated to ministers who serve as presidential aides. This principle holds true in Indonesia's presidential system, where ministers derive empowerment from both delegated and attributed authority in the formulation of laws and regulations.[29]

During the parliamentary system in Indonesia, which endured for 9 years—from the establishment of the Provisional Constitution in 1950 until the issuance of the Presidential Decree on July 5, 1959—the head of government was the Prime Minister.[30] Tasked with shaping and administering the government alongside the ministerial cabinet, the Prime Minister operated within a system that granted extensive authority to the cabinet in the governance of affairs.[31] This autonomy facilitated ministers in independently promulgating regulations, often taking the form of ministerial regulations—a practice that became increasingly entrenched during the parliamentary democracy era from 1945 to 1959.[32]

Following the conclusion of the parliamentary democracy era with the Presidential Decree of July 5, 1959, President Soekarno initiated a transformation towards guided democracy, where he assumed both the roles of head of state and head of government. This guided democracy essentially operated as a presidential system,

[28] Luciana Cristina Da Conceição Lima, Sara Moreno Pires, and David Nunes Resende, "Acordo União Europeia e Mercado Comum do Sul: novas perspectivas para sua efetivação," *Novum Jus* 18, no. 2 (2024), 305-33, https://doi.org/10.14718/NovumJus.2024.18.2.12

[29] Ibnu Sina Chandranegara, "Bentuk-Bentuk Perampingan dan Harmonisasi Regulasi," *Jurnal Hukum Ius Quia Iustum* 26, no. 3 (2019), 435-57, https://doi.org/10.20885/iustum.vol26.iss3.art1

[30] *Soeharto's New Order and Its Legacy: Essays in Honour of Harold Crouch*, ed. by Edward Aspinall and Greg Fealy, 1st edn (ANU Press, 2010), https://doi.org/10.22459/SNOL.08.2010

[31] Andri Yanto, *Hukum dan Ketertiban: Fragmen Pemikiran Tentang Paradigma Hukum dan Perkembanganya* (Megalitera, 2022).

[32] Yoyon M. Darusman, Bambang Wiyono, and Asip Suyadi, "The Change of Parliamentary System Towards Presidentially System of the Government of Republic Indonesia," *Proceedings of the 1st International Conference on Research in Social Sciences and Humanities (ICoRSH 2020) 584*, (2021), 622-8, https://www.atlantis-press.com/proceedings/icorsh-20/125962379

concentrating executive power in the hands of the president. Throughout this period, the president wielded prerogatives in forming ministries, thereby perpetuating the practice of presidential governance.[33]

The transition from the guided democracy era, marked by Soekarno's downfall in 1966, ushered in a new government led by President Soeharto.[34] In 1966, the Temporary People's Consultative Assembly established Decree No. XX/MPRS/1966 on the DPR-GR Memorandum, affirming various sources of regulations in Indonesia.[35] Notably, ministerial regulations were acknowledged as a valid source of regulations within this new governance system. This validation persisted throughout the New Order regime, spanning 32 years from 1966 to 1998, thereby solidifying ministerial regulations as a legitimate source of legislation in the presidential system.[36]

Embarking upon the era of reform in 1998, a systematic overhaul of the governance framework aimed to dismantle the authoritarian underpinnings of the New Order regime.[37] This transformation entailed a substantial revision of legislation, with a pronounced emphasis on the substantive aspects of regulations. Numerous existing regulations underwent modification, and legal voids were addressed through the creation of new regulations. Nevertheless, the technical facets of organizing the legislative formation system witnessed the enactment of Law No. 12 of 2011 concerning the Formulation of Legislation in 2011.[38] While this legislation provided provisions related to the legislative formation system, it remained silent on regulations concerning ministers and non-structural institutions. Consequently, specific constraints regarding substantive content, the scope of applicability, and unspecified grounds for formulation persisted.

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33 Johan Setiawan, "Understanding Indonesian History, Interest in Learning History and National Insight with Nationalism Attitude," *International Journal of Evaluation and Research in Education (IJERE)* 9, no. 2 (2020), 364-73.

34 Aspinall and Fealy, *Soeharto's New Order and Its Legacy*.

35 Kus Eddy Sartono, "Kajian Konstitusi Indonesia dari Awal Kemerdekaan Sampai Reformasi Konstitusi Pasca Orde Baru," *Humanika: Kajian Ilmiah Mata Kuliah Umum* 8, no. 1 (2018), 1-17, http://dx.doi.org/10.21831/hum.v8i1.21011

36 Sharon Poczter and Pepinsky, 'Bulletin of Indonesian Economic Studies', *Bulletin of Indonesian Economic Studies*, 52.1 (2016), 77-100, https://doi.org/10.1080/00074918.2015.1129051

37 Endang Try Setyasih, "Reformasi Birokrasi dan Tantangan Implementasi Good Governance Di Indonesia," *Kelola: Jurnal Ilmu Sosial* 6, no. 1 (2023), 48-62, https://ejournal.goacademica.com/index.php/jk/article/view/671

38 Mayasari, "Kebijakan Reformasi Regulasi Melalui Implementasi."

During the reform era, there was a notable surge in the proliferation of ministerial regulations, giving rise to concerns of regulatory obesity and overregulation.[39] According to the perspective of Jimly Asshidiqie, the sharp increase in the number of ministerial regulations resulted in overlapping and regulatory chaos, presenting formidable challenges for resolution.[40] Moreover, many ministerial regulations were of short duration and subject to continuous updates, rendering them inefficient.

Under the current administration led by President Joko Widodo, the legal policy is geared towards addressing the backlog in regulatory reform.[41] The objective is to curb the rapid escalation of regulations, particularly ministerial regulations, through the restructuring of the legislative formation system. Although Law No. 12 of 2011 has been amended twice, through laws No. 15 of 2019 and No. 13 of 2022, a comprehensive framework for ministerial regulations is still lacking. In this scenario, the formation of ministerial regulations has become a prevalent "common practice" throughout Indonesia's history, irrespective of the specific governance system employed, whether parliamentary or presidential.

The most substantial upsurge in the quantity of ministerial regulations transpired subsequent to the enactment of Law No. 12 of 2011. Article 8, sentence (2) of Law 12/2011 introduced an additional clause "on the basis of authority," supplementing orders from higher laws and regulations as the foundation for the formulation of other regulations. Following this provision, ministerial regulations can be crafted through two alternatives: either due to attribution and delegation by other laws or by virtue of authority.

The modes of delegation from higher laws to lower laws and regulations encompass diverse forms, such as being stipulated in or regulated by a government regulation, determined by the Government, regulated in or regulated by a presidential regulation, determined by the Minister, stipulated in a ministerial regulation, or regulated by or regulated in a ministerial regulation, including a ministerial decree. Beyond delegation and attribution, ministerial regulations can also be established based on authority. This authority is broadly interpreted, encompassing the minister's

[39] Baharuddin Riqiey and Pandu Satriawan Zainula, "Model Negara Kesatuan Republik Indonesia di Era Reformasi," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020), 302, https://scholarhub.ui.ac.id/jhp/vol50/iss2/2/

[40] Jimly Asshiddiqie, *Oligarki Dan Totalitarianisme Baru* (LP3ES, 2022).

[41] Istifahani Nuril Fatiha, Amilah Fadhlina, and Kharisma Putri Wardani, "Reformasi Regulasi Nasional Menggunakan Model."

jurisdiction in administering governance according to the responsibilities assigned by the president. In the assessment conducted by Charles Simabura et al. spanning the years 2005-2020, only 35 % of all ministerial regulations were crafted based on higher regulatory directives, while the remaining 65 % originated from ministerial authority.[42]

Compatibility of Ministerial Regulations Based on the Presidential System

Indonesia operates within the framework of a presidential system of government, emphasizing the centrality of executive authority.[43] In this system, where ministers wield substantial influence as presidential assistants, the hierarchical positioning of ministerial regulations—a subset of legislative regulations—requires careful reconsideration within the Indonesian legal framework. Despite the inherent flexibility of this system, contextualized within the rule of law, there has been an observable influx of regulations that may not necessarily serve a constructive purpose. It is imperative to acknowledge that halting the surge of regulations entirely may be an unattainable goal. However, concerted efforts can be directed toward managing and rectifying this situation. Consequently, it becomes imperative to rectify various laws and regulations, particularly ministerial ones, through alignment with higher-level laws and regulations, thereby facilitating effective and cohesive legislation.[44]

In a presidential system, non-legislative institutions are constrained to engage in lawmaking based on specific objectives delineated in the laws issued by legislative bodies.[45] The executive power, spearheaded by the president, lacks the authority to initiate new regulations but is restricted to formulating technical ones derived from existing laws. The essence of the separation of powers mandates the executive enforces and implements laws, rather than promulgate regulations. In practical terms, such as in the United States, the president exercises legislative power within constitutional boundaries, collaborating with the Senate on treaties and utilizing

42 Simabura and others "Ministerial Authority in Formulating Regulations."

43 Kuswanto Kusnadi, "Mahkamah Konstitusi Dan Upaya Menegakkan Asas Presidensialisme di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 1 (2020), 1-20, https://doi.org/10.24246/jrh.2020.v5.i1.p1-20

44 Ady Supryadi and Fitriani Amalia, "Kedudukan Peraturan Menteri di Tinjau dari Hierarki Peraturan Perundang Undangan Di Indonesia," *Unizar Law Reviw* 4, no. 2 (2021), 146-152, https://e-journal.unizar.ac.id/index.php/ulr/article/view/471

45 Simabura and others, "Ministerial Authority in Formulating Regulations."

veto power in the legislative process. Nevertheless, the president lacks the unilateral authority to create rules with substantive content, a responsibility typically delegated to ministerial regulations or presidential aides.

According to article 17 of the 1945 Constitution, ministers are designated as presidential assistants, while article 5, paragraph (2) of the same Constitution empowers the president to formulate government regulations to properly execute laws. In a presidential system, the government is obliged to employ instruments like government regulations to implement laws, and these instruments are not initiated by ministries but rather by the government as a whole, under the direct supervision of the president.[46] Therefore, in a presidential governance system, ministerial regulations ideally should not be in existence or, at the very least, should be internally applicable solely for administrative matters within ministries.

The influence of the parliamentary system, which has become a prevalent practice in Indonesia, has transformed the legislative process into a hybrid practice that transcends the boundaries of both parliamentary and presidential systems. Ministers, entrusted with the task of assisting the president in executing regulations collaboratively crafted with the legislative branch, have instead encroached upon the realm of legislation by formulating their own regulations in the form of ministerial regulations.

While the regulations crafted by ministers generally possess a technical nature and offer detailed specifications for higher-level regulations, the lack of coordination among ministries has resulted in each ministry having its own set of regulations, leading to overlapping and overregulation.[47] This practice of ministers creating such regulations is well-documented in countries with a parliamentary system, where the government is led by a prime minister as the head of the cabinet, as observed in the United Kingdom, the Netherlands, and Germany. This implies an error in legitimizing ministerial regulations as part of recognized and universally applicable legislation.

[46] Muhammad Fajar Sidiq Widodo, Munajad Munajad, and Bahru Rosyid Bazla, "Judicial Review Terkait Presidential Threshold Di Mahkamah Konstitusi Dalam Optik Hak Asasi Manusia," *Verfassung: Jurnal Hukum Tata Negara* 1, no. 2 (2022), 181-204, https://doi.org/10.30762/vjhtn.v1i2.188

[47] Irfan Ardyan Nusanto, "Analisis terhadap Dualitas Peraturan Menteri dalam Sistem Peraturan Perundang-Undangan di Indonesia," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 4, no. 1 (2021), 53-68, https://doi.org/10.24090/volksgeist.v4i1.4245

Ultimately, ministerial regulations have become a primary instrument for the president to establish a legal foundation for political policies. In cases where a policy lacks specific legal provisions in legislation, the government can establish its legal basis through ministerial regulations. The advantage of expedited formation of ministerial regulations, controlled directly under the president, enables a faster process, but the lack of harmonization among these regulations has contributed to a complex regulatory landscape that is challenging to navigate.[48]

Examining the legislative landscape of Indonesia in terms of regulatory options beyond ministerial regulations reveals the existence of government and presidential regulations as standardized formats for enacting laws.[49] The provision for the former is explicitly stated in article 5, paragraph (2) of the 1945 Constitution, while the latter is governed by article 7 of Law No. 12 of 2011. Both legal instruments serve as regulatory frameworks for the government to expound on laws and translate them into policies for societal implementation.

Article 10 of Law No. 12 of 2011 emphasizes the substance of government regulations is confined to the provisions of the law, ensuring it does not exceed or augment the legal content. Likewise, for presidential regulations, as articulated in article 13 of Law No. 12 of 2011, the content encompasses matters directed by the law, implementation of government regulations, or execution of the administration of governmental power. This regulations must not surpass or augment the content of laws or government regulations.

In contrast, ministerial regulations are formulated to facilitate the execution of laws or presidential policies. The content of ministerial regulations typically revolves around technical regulations, procedural implementations, sectoral policies, and the management of units within the ministry's jurisdiction. However, the limitation on the content of these regulations is not explicitly defined by any law, resulting in many ministerial regulations incorporating content from laws or government or presidential regulations. This lack of specification raises inquiries into the scope and appropriateness of ministerial regulations compared to the well-established standards for government and presidential regulations.

[48] Ni'matul Huda, 'Kedudukan Dan Materi Muatan Peraturan Menteri Dalam Perspektif Sistem Presidensial', *Jurnal Hukum Ius Quia Iustum* 28, no. 3 (2021), 550-71, https://doi.org/10.20885/iustum.vol28.iss3.art5

[49] Edgar Córdova Jaimes, "Participación ciudadana y el orden político resultante de las reformas administrativas y constitucionales," *Novum Jus* 18, no. 2 (2024), 63-98, https://doi.org/10.14718/NovumJus.2024.18.2.3

From the perspective of Zainal Arifin Mochtar, the continued prevalence of excessive ministerial regulation formulation in Indonesia can be attributed to four key factors.[50] Firstly, a multitude of entities vying to propose legislation results in numerous laws that may not merit the status of primary legislation. Secondly, the prevalent practice of delegation in Indonesia's legislative process, where laws tend to establish broad regulations, deferring the specifics to government or presidential regulations. Subsequently, these regulations delegate further in subsequent regulations, leading to an accumulation of secondary regulations marked by substantial repetition, inconsistencies, and a lack of coherence.

Thirdly, the ongoing inadequacy of regulations is continually addressed through ministerial regulations. On average, each law generates 2-3 government regulations, 2-3 presidential regulations, and a staggering 16-17 ministerial regulations. This proliferation poses an extraordinary bureaucratic challenge, causing processes to become sluggish, hindered, and protracted. Lastly, the absence of an institution capable of overseeing the entirety of legislative regulations, particularly ministerial regulations, exacerbates the situation. The intended role of the National Law Development Agency to ensure synchronization and harmonization proves ineffective, given its subordination to a ministry and a limited authority design that does not adequately address the needs of regulatory reform in Indonesia.

The oversight of ministerial regulations becomes intricate and challenging due to the multitude of ministries.[51] During President Joko Widodo's tenure from 2019 to 2022, a total of 32 ministries comprised the cabinet. When laws are enacted by the government and the legislative branch, alongside the formulation of government and presidential regulations, each pertinent ministry is bestowed with the authority to formulate ministerial regulations in line with their implementation.[52]

The absence of synchronization and harmonization among institutions, sectoral ego interests among ministries, and the disparate timing of regulation creation led to numerous ministries generating regulations that lack uniformity.[53] Rather than

50 Mochtar, "Perihal Menata Regulasi.".

51 Nusanto, "Analisis terhadap Dualitas Peraturan Menteri."

52 Fauzi Iswari, "Aplikasi Konsep Negara Hukum dan Demokrasi Dalam Pembentukan Undang-Undang di Indonesia," *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020), 127, https://doi.org/10.33760/jch.v6i1.285

53 David Mendieta and Juan Fernando Gómez-Gómez, "El presidente de Colombia y su elusión constitucional en época de crisis," *Novum Jus* 18, no. 2 (2024), 17-36, https://doi.org/10.14718/NovumJus.2024.18.2.1

producing comprehensive regulations, the sheer quantity of regulations impedes bureaucratic processes. President Joko Widodo himself has identified the abundance of regulations as one of the obstacles to foreign investment in Indonesia.

Moreover, within the presidential system of governance in Indonesia, ministers do not wield attributive authority. Article 17 of the 1945 Constitution explicitly states that ministers serve as presidential assistants, obtaining their authority through presidential delegation. The creation of implementing regulations could be confined exclusively to government and presidential regulations, excluding ministerial regulations. Furthermore, ministers are not directly accountable to the people and the constitution but rather to the president. Ideally, presidential regulations should serve as the ultimate implementing regulations in the presidential system.

Reconstruction of Ministerial Regulations for Enhanced Regulatory Reform Efficiency in Indonesia

The latent issues that urgently need addressing in the restructuring of ministerial regulations extend beyond mere quantitative concerns, delving into the substantive realm of content.[54] The sharp escalation in the number of them over time cannot be allowed to persist within the current system, as it is no longer congruent with the presidential system and the legislative regulation formation system.[55] The content of ministerial regulations, not explicitly regulated within the legal framework, opens the door to executive overreach, allowing the assumption of legislative tasks that should rightfully be performed by the legislative authority through the formation of ministerial regulations. Furthermore, in contrast to government and presidential regulations, ministerial ones operate without the constraints posed by the attribution provisions of the law and should refrain from creating new norms. In the context of regulatory reform, the issues of overlap and over-regulation necessitate resolution by ensuring that all forms of regulations have limited and synchronized content in alignment with higher-level regulations.

[54] Ahmad Sururi, "Analisis Formulasi Instrumen Simplifikasi Regulasi menuju Tatanan Hukum yang Terintegrasi Dan Harmonis," *Ajudikasi : Jurnal Ilmu Hukum* 1, no. 2 (2018), 15-26, https://doi.org/10.30656/ajudikasi.v1i2.493

[55] Gunawan A. Tauda, Andy Omara, and Gioia Arnone, "Cryptocurrency: Highlighting the Approach, Regulations, and Protection in Indonesia and European Union," *BESTUUR* 11, no. 1 (2023), 1, https://doi.org/10.20961/bestuur.v11i1.67125

Considering the minister's constitutional position and the regulatory forms delineated in Article 7 of Law No. 12 of 2011, it can be unequivocally asserted that ministerial regulations are entirely superfluous. All content addressed in ministerial regulations can be effectively incorporated into government and presidential regulations. In the realm of legal reasoning, the regulatory domain ideally concludes with the latter. The executive wields two forms of regulatory authority, encompassing government and presidential regulations. Presidential regulations rightfully assume the role of the ultimate technical regulations owing to their direct control under the president, who serves both as the head of state and the head of government. It is evident that executive power in Indonesia is vested in the president, thereby endowing them with essential authority and legitimacy derived from the constitution.

Presidential regulations represent the lowest tier of regulations with broad applicability.[56] Presently, there exists no content that is genuinely "only regulable through ministerial regulations;" conversely, much of the content that could be regulated by them has been assumed by ministerial regulations.[57] Despite ministers representing the president in specific affairs, the multitude of matters intersecting multiple ministries results in a varied and numerous set of regulations, given each ministry's equivalent authority to enact regulations.[58]

Regulating matters through presidential regulations provides the president with a clear supervisory role over the proposed regulations.[59] Ministers can contribute policy input aligned with the interests of their respective sectors, allowing presidential regulations to accommodate the full spectrum of governance interests. The minister's role as a presidential assistant becomes far more compatible, as ministers execute policies set by the president through presidential regulations rather than innovating regulations independently.[60] While the number of presidential regulations will naturally increase due to sectoral interests consolidated under them,

56 Ahmad Husen, "Eksistensi Peraturan Presiden dalam Sistem Peraturan Perundang-Undangan," *Lex Scientia Law Review* 3, no. 1 (2019), 69-78, https://journal.unnes.ac.id/sju/lslr/article/view/30733

57 Mahendra Wijaya Kusuma, Galang Asmara, and Chrisdianto Eko Purnomo, "Kewenangan Presiden Dalam Pembentukan Undang- Undang (Studi Komparasi Indonesia Dan Amerika Serikat)," *Jurnal Diskresi* 2, no. 2 (2023), 210-218, https://journal.unram.ac.id/index.php/diskresi/article/view/3684

58 Titik Triwulan Tutik, "Kedudukan Konstitusional Menteri Triumvirat Sebagai Pelaksana Tugas Kepresidenan Dalam Sistem Pemerintahan Presidensisil di Indonesia," *Al-Daulah: Jurnal Hukum dan Perundangan Islam* 10, no. 2 (2020), 275-302, https://doi.org/10.15642/ad.2020.10.2.275-302

59 Kusuma, Asmara, and Purnomo.

60 Tutik, "Kedudukan Konstitusional Menteri Triumvirat."

regulatory oversight becomes significantly more efficient as it is unified under a single body directly coordinated by the president. This prevents regulatory overlap and the proliferation of regulations.

By abolishing ministerial regulations as a source of legislation and replacing their role with presidential ones, the regulations issued by ministries subsequently serve the same function as those of other non-structural institutions, namely, only applicable internally within the ministry's domain. Ministers can issue regulations related to the technical implementation within the ministry but no longer possess the binding authority beyond their scope. This applies to all ministerial regulations created after the abolition of ministerial regulations as a source of legislation. Consequently, ministers can only provide recommendations to the president in the formulation of presidential regulations and are no longer authorized to regulate independently.

The elimination of one source of legislation is not unprecedented in Indonesia's constitutional history. Previously, under Law No. 10 of 2004 regarding the Formation of Legislation, the government and the People's Consultative Assembly agreed to abolish the validity of the People's Consultative Assembly decrees from the hierarchy of legislation. A total of 137 People's Consultative Assembly decrees were declared invalid, and the Assembly was prohibited from enacting new ones. In Law No. 12 of 2011, some People's Consultative Assembly decrees were reinstated, but not all—only 13. To date, these decrees remain in effect, binding despite the Assembly's inability to enact new decrees.[61]

The removal of ministerial regulations from the sources of legislation does not imply the nullification of all existing ones. The regulations in force before the abolition will continue to apply and will only be declared invalid upon the issuance of a presidential regulation updating their provisions. However, ministers are no longer allowed to create regulations. In this manner, the government can focus on synchronization and harmonization without the need to establish new ministerial regulations but instead consolidating all relevant substance and adapting it in the form of presidential ones. Gradually, overlapping and overregulation will be addressed, enabling the government to realize a more efficient legal framework.

[61] Hernadi Affandi, "Prospek Kewenangan MPR dalam Menetapkan Kembali Ketetapan MPR yang Bersifat Mengatur," *Jurnal Hukum Positum* 1, no. 1 (2016), 39, https://doi.org/10.35706/positum.v1i1.526

In fortifying the efficacy of government regulations and abolishing ministerial regulations, the establishment of a legislative drafting institution under the president's purview is deemed imperative.[62] The current functions of existing institutions under the Office of the President are evidently insufficient to encompass the diverse interests of ministries in formulating comprehensive presidential regulations.

Hence, the creation of a specialized bureau under the president's purview, tasked with the synchronization and harmonization of legal regulations, is warranted. A similar institution already exists—the National Law Development Agency under the Ministry of Law and Human Rights.[63] This agency could be established directly under the president or revitalized by transforming its status from being under a minister to being directly under the president.

Placed directly under the president, this institution's role could be significantly more optimal than the current National Law Development Agency, reaching the entire ministerial landscape comprehensively. Moreover, with ministers no longer having the authority to create regulations, the legislative role of this institution automatically becomes vital and crucial. This organizational scheme not only enhances the efficiency of centrally issued executive regulations but also ensures that the regulatory reform process can be executed more swiftly and well-controlled. It is crucial to understand that regulatory reform does not solely pinpoint ministerial regulations as the epicenter of the issue but acknowledges it as one facet.

Obesity of regulations is also encountered at the regional level, and material content errors persist in laws and government ones. Nonetheless, by instituting changes in the organization of ministerial regulations and reverting the mechanism of executive regulation formation in line with the actual presidential system, the symptoms of regulatory obesity and overregulation can be significantly reduced. This becomes a catalyst for fulfilling the need for efficient and substantive regulations in Indonesia.

62 Tetyana Gudz and others, "Reforming the System of Administrative and Territorial Organization in Ukraine and the Polish Republic," *Novum Jus* 17, no. 1 (2023), 69-97, https://doi.org/10.14718/NovumJus.2023.17.1.3

63 Muhammad Reza Winata and Ibnu Hakam Musais, "Menggagas Formulasi Badan Regulasi Nasional Sebagai Solusi Reformasi Regulasi Di Indonesia," *Rechts Vinding: Media Pembangunan Hukum Nasional* 10, no. 2 (2021), 303-321, http://dx.doi.org/10.33331/rechtsvinding.v10i2.709

Conclusion

The legal framework governing legislation in Indonesia has left a legal void in regulating the substantive content of ministerial regulations. Despite not being among the seven regulations in the hierarchy of legislation, ministerial regulations have assumed equal importance, constituting the largest proportion at 31.56% of the entire legal framework in Indonesia. The proliferation of these regulations results from each minister's ability to create regulations within their authority without obtaining attribution from the law. However, in a presidential system of governance, the minister's authority to enact regulations is incongruent with their role as presidential assistants.

The non-regulation of the substantive content of presidential regulations has led to continued issues of overlap and overregulation. Many ministerial regulations address substantive content that should be governed by presidential or government regulations, or even laws. Various ministerial regulations introduce new norms that have not been addressed in laws. However, regulations at higher levels, such as government and presidential regulations, are not permitted to be broader than the law or create new norms.

To ensure the success of regulatory reform and address the challenges of overlap and overregulation, strategic measures are needed to eliminate ministerial regulations as a source of legislation. The substantive content of them should be transferred back to presidential regulations, aligning more compatibly with the presidential system. This approach ensures direct presidential control over regulations that serve as the implementation of laws and government regulations. Presidential regulations should be designated as the final technical regulations under executive authority, with general applicability. Meanwhile, ministerial regulations should remain technical and applicable only within the ministry's internal domain.

This restructuring accommodates two essential interests. Firstly, it addresses the sectoral interests of each ministry in the formulation of presidential regulations, facilitating effective governance. Secondly, it caters to the need to reduce the scattered number of regulations, synchronize and harmonize rules through presidential regulations, and eliminate ministerial regulations. Existing ministerial regulations will remain in force until presidential ones revoking their substantive content are enacted. This approach ensures a more efficient, substantive, non-overlapping, and accountable regulatory system within the Indonesian constitutional framework.

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