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The Legal Problems of Ministerial Regulations in the Presidential System of Government

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ABSTRACT
The problem of excessive regulation at the ministerial regulatory level in the presidential system arises because the Minister often exceeds his actual functions. This research aims to analyze the causes of overlapping regulations and authorities that cause legal uncertainty. The results show that excessive regulation is triggered by the unclear type and source of Ministers' authority, limits of authority in the formation of regulations, and the practice of direct delegation that is less controlled.

Keywords: Ministerial Regulation, Overregulation, Presidential System.

I. Introduction

In the Presidential System of Government, the main power is in the hands of the President, based on Article 17 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, that is, the President is assisted by the Minister of State who is directly responsible to the President. Ministers can form policies to carry out their duties and functions in their respective fields, which until now the formation of ministerial regulations has always dominated the number. Based on the data, there are 19,103 regulations that apply to 17,172 and 1,931 ministerial regulations that do not apply. Based on data as of January 30, 2025, there are 47 Ministerial Regulations formed in various ministries. The function of ministerial regulations is the implementing regulations on them, meaning that the minister in forming regulations must not exceed the duties and functions of the Minister. Furthermore, the function of the Minister's regulation itself is to facilitate and assist the implementation of the government, not to be present to create new problems by issuing various regulations that cause excessive regulation. Based on Law Number 12 of 2011 concerning the formation of laws and regulations, Article 8 states that ministerial regulations are a form of laws and regulations whose existence is recognized and can be formed based on delegation and authority.

The consequences of excessive regulation have caused several problems in the Indonesian legal system. First, the formation of Ministerial regulations based on the authority listed in Article 8 of Law Number 12 of 2011 concerning the formation of laws and regulations, which in question is the phrase "based on authority", meaning that the authorized officials have free action to formulate regulations in accordance with the needs of the officials themselves. This results in the formation of many ministerial regulations and can erode the legislative role of the president, which is actually the Minister is the president's assistant. In line with this, as Jimly said, "has a central role in preventing absolutism by monitoring and limiting power. This function goes hand in hand with its role as a fortress for the protection of human rights (HAM) and as a compass that provides direction for the administration of the state." In this case, the Minister's regulation can be said to be a state administrator whose power must also be limited so as not to act carelessly because he is given the

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authority to make regulations. As an implementing regulation, the Minister in formulating the regulation has forgotten the Minister's duties and the actual function of the ministerial regulation. The existence of ministerial regulations significantly interferes with the implementation of the presidential system of government and can even erode the presidential legislative function. Therefore, ministerial regulations should be limited to address the current problem of overregulation and ensure legal certainty in the presidential system of government and the legislative system.

II. Literature Review and Hypothesis Development

The formation of laws and regulations in Indonesia has been regulated in detail in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations and their amendments, which stipulates a legal hierarchy starting from the 1945 Constitution, Government Laws/Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, to Ministerial Regulations. The existence of a Ministerial Regulation is intended as a technical rule of an administrative nature to elaborate further provisions of higher regulations. In practice, however, the functions of Ministerial Regulations often go beyond their actual position in the legal hierarchy. This results in the formation of over-regulation and raises serious problems in the implementation of the presidential system of government, where the main principle is the division of power and legal certainty. The delegation of authority in the formation of regulations is a crucial aspect to understand. The theory of administrative law states that the authority of a state official can be obtained through attribution, delegation, or mandate. At the ministerial level, attribution is usually attached to the main functions and duties of the minister as stipulated in the Law or Presidential Regulation.

The authority to form ministerial regulations mostly comes from delegation, which is the authority given by higher laws and regulations to be further regulated by the Minister. In practice, problems arise when the delegation is not clearly and firmly arranged. Often the law simply mentions that "technical matters are further regulated by Ministerial Regulation" without explaining the limits of the substance that may be regulated. As a result, the Minister has a very wide space to interpret authority, even to matters that should be the realm of government regulation or presidential regulation. The phenomenon of excessive regulation at the Ministerial Regulation level cannot be separated from the culture of legislation in Indonesia which tends to give birth to a very large number of regulations. Data shows that since the reform era until now, the number of Ministerial Regulations has reached tens of thousands, spread across various ministries, and most of them have been issued without going through an adequate quality control mechanism. The Bappenas study even highlights that regulatory obesity in Indonesia mainly occurs at the ministerial and institutional levels, with the characteristic of many sectoral rules that overlap and are less harmonious.

Sectoral egos among ministries made things worse, as each ministry competed to issue regulations to assert its sectoral authority. This causes disharmony between regulations, sometimes even contrary to norms at a higher level. In terms of impact, the overlap of regulations at the Ministerial Regulation level gives birth to quite serious legal uncertainty. This legal uncertainty has a wide impact, both on the general public, the business world, and government administrators themselves. For example, in the marine sector, it was found that there were regulations from the Ministry of Maritime Affairs and Fisheries that were not in line with the rules of the Ministry of Transportation, thus causing a conflict of authority in the management of fishing ports. Another case can be seen in the micro, small, and medium enterprises (MSMEs) sector, where ministerial regulations from the Ministry of Cooperatives and SMEs often clash with regulations from the Ministry of Trade, causing confusion among business actors. This overlap not only hinders business certainty, but also adds to bureaucratic burdens and compliance costs. Various academic studies emphasize that the main cause of excessive regulation is the lack of clarity of normative design in the delegation of authority. The attribution of authority should be clearly limited so that ministers do not make rules that go beyond the mandate. But in reality, laws often delegate authority in the form of very general statements, giving rise to so-called open legal policy. In this condition, the Minister plays a role as if he is the main regulator, even though constitutionally the minister is only an aide to the President in the presidential system of government. This imbalance shifts

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the presidential system to an administrative tendency, where the president's political decisions are fragmented in thousands of ministerial regulations. This phenomenon is further complicated by the weak quality control mechanism in the formation of ministerial regulations. Law Number 12 of 2011 actually regulates the planning, drafting, discussion, and promulgation of regulations, but the mechanism focuses more on the main legislation products (Laws and Government Regulations). For Ministerial Regulations, there is no standard instrument to assess the impact of regulations before they are issued. Regulations are often made as a quick response to sectoral needs, without going through a regulatory impact assessment (RIA) study.

In fact, RIA is an important instrument used in many countries to ensure that every regulation that is born has been evaluated for the benefits, costs, and risks that may arise. Without RIAs, many ministerial regulations in Indonesia actually incur social and economic costs that outweigh the benefits. The quantitative aspect also reinforces this problem. Reports from various legal and academic institutions state that there has been a significant increase in the number of Ministerial Regulations in the last decade. Data from the Center for Law and Policy Studies (PSHK) shows that between 2000 and 2015, the number of ministerial regulations more than doubled compared to the previous period. This condition shows that the problem is not only normative, but also quantitative, so systemic reform measures are needed. If this trend is left unchecked, Indonesia's legal system will continue to be burdened by excessive regulation, causing legal uncertainty, and ultimately eroding public trust in the legal system. From the perspective of the presidential system of government, this phenomenon poses a paradox. In theory, the presidential system places the President as the holder of the highest executive power, assisted by ministers. The Minister should only carry out the President's policies within the scope of administration. However, with the number of ministerial regulations issued, the role of ministers changes as if they were independent policymakers.In practice, this can weaken the principle of presidentialism, as the direction of government policy becomes determined by individual ministries that may not be in sync with each other. As a result, national policy consolidation has become difficult, and coordination between ministries has become weaker. Several empirical studies suggest the need for regulatory reform through simplification and cleaning up. These recommendations include harmonizing regulations through coordination between ministries, limiting the number of new regulations with a regulatory moratorium mechanism, and strengthening the capacity of institutions tasked with reviewing regulations. One of the proposed approaches is to establish a regulatory gatekeeper, which is a special institution or unit under the President that functions to assess the feasibility of a draft ministerial regulation before it is promulgated.

In this way, every regulation that is born can be ensured to be in line with the President's policy and does not overlap with other rules. In addition, the constitutional law literature proposes a reaffirmation of the position of the Ministerial Regulation in the hierarchy of laws and regulations. Although it is clear that Ministerial Regulations are under Presidential Regulations, in practice there are still many ministers who consider the regulations to be equivalent to the regulations on them. For this reason, it is necessary to strengthen the norms in the law on the formation of regulations to explicitly state that certain content materials should not be regulated through Ministerial Regulations. For example, provisions concerning the rights and obligations of citizens should not be regulated at the level of Ministerial Regulations, but at least in Government Regulations. Another study suggests the need to apply the sunset clause principle to ministerial regulations, namely that every ministerial regulation must have a time limit, such as five years, unless updated with a clear evaluation. With the sunset clause, ministerial regulations that are no longer relevant will automatically fall, thus reducing the accumulation of regulations. This is in line with the practice in several other countries that apply the principle of regulatory review on a regular basis. The overall literature shows that the problem of excessive regulation in ministerial regulations cannot be separated from the institutional design, delegation mechanisms, legal culture, and weak regulatory supervision. If left unaddressed, this phenomenon will continue to create legal uncertainty and weaken the presidential system. Therefore, the solutions offered must be comprehensive, including normative improvements to the law, strengthening administrative mechanisms through the RIA, and institutional reforms to ensure regulatory harmonization.

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This reform is important not only to maintain legal certainty, but also to strengthen the consistency of the presidential system of government in Indonesia.

III. Research Method

This research begins from the conception of law as an autonomous institution and independent of social reality. Therefore, the relevant method to use is doctrinal (normative jurisprudence) research, which focuses its analysis exclusively on the internal elements of the prevailing positive legal system. Therefore, law as a system has the ability to live, grow and develop within its own system. The approach in this study uses a statutory approach, a conceptual approach, and a historical approach. The research analysis used is descriptive analysis. Descriptive analysis is required in doctrinal research methods, with data inventoried and obtained from primary, secondary and tertiary legal materials. The type of research used in this study is doctrinal law research with a descriptive-analytical approach. Doctrinal research was chosen because the main focus lies on the inventory, analysis, and interpretation of the legal norms that govern the position and authority of ministerial regulations in the presidential system of government. Doctrinal research allows researchers to examine positive legal sources such as laws, presidential regulations, and ministerial regulations, to be analyzed systematically (Soekanto & Mamudji, 2015). In addition, this study also integrates socio-legal research approaches to complement normative analysis with empirical findings. This approach is important because the problem of ministerial regulation regulation can not only be understood from the legal text, but also from the reality of implementation in the field, for example, overlapping rules or difficulties for business actors in complying with excessive regulations (PSHK, 2019).

3.1. Research Approach

The approaches used include:

a. The statute approach is to examine the hierarchy of laws and regulations, especially the position of ministerial regulations in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations and their amendments (Republic of Indonesia, 2011).
b. Conceptual approach, by examining the concept of delegated legislation, the principle of the hierarchy of legal norms, and the principle of the state of law in the presidential system (Asshiddiqie, 2014).
c. The case approach is by looking at the overlapping practices of ministerial regulations that cause problems in the business and investment sectors. For example, a World Bank report shows that excessive regulation from ministries is one of the obstacles to investment (World Bank, 2020).

3.2. Data Source

The data used consisted of:

a. Primary legal materials, namely laws and regulations such as the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 and its amendments, Law Number 39 of 2008 concerning State Ministries, and ministerial regulations relevant to research cases (Usmam, 2023).
b. Secondary legal materials, in the form of research results, legal journals, scientific books, and official reports from institutions such as PSHK, Bappenas, as well as World Bank data related to regulations.
c. Tertiary legal materials, namely legal dictionaries, legal encyclopedias, and additional data that strengthen the understanding of legal terminology.

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3.3. Data Collection Techniques

Data collection techniques are carried out through:

a. Literature study, to examine primary, secondary, and tertiary legal materials related to ministerial regulations and the presidential system of government.
b. Field data collection (field research), through the review of research reports that have been carried out by official institutions. For example, the Bappenas report (2018) on regulatory reform revealed that more than 60% of business actors face difficulties due to overlapping regulations from ministries. This data is used as empirical evidence to complement the normative analysis.

3.4. Data Analysis Techniques

Data analysis was carried out using a descriptive-qualitative analysis method. The stages of analysis include:

a. Positive legal inventory, by collecting relevant rules regarding ministerial regulations.
b. Normative analysis, to outline the position and authority of ministers in the formation of regulations based on legal theories and principles.
c. Empirical analysis, by linking normative findings with field data, such as the PSHK report (2019) which shows the high number of ministerial regulations without evaluation, and the Bappenas report (2018) regarding regulatory barriers.
d. The drawing of conclusions, which is carried out deductively, starts from the general rules in the presidential system to specific problems related to ministerial regulations.

With this method, the research not only exposes the applicable norms (law in the books), but also relates them to real conditions (law in action), resulting in a comprehensive analysis of the regulatory problems of ministerial regulations in the presidential government system (Usmam, 2023)

IV. Result and Discussion

4.1. The Minister's Decree and Overregulation

Overregulation refers to the excessive accumulation of regulations, often resulting in unnecessary or redundant rules (Ahmad Alif Hidayat & Ihsan Fatah Yasin, 2025). Such regulations are frequently established without a solid foundation, leading to poor-quality legal instruments that nonetheless play a role within the legal system. However, in practice, overregulation often creates new problems, such as regulatory overlap and disharmony. From a quantitative perspective, ministerial regulations are exceedingly numerous and dominant compared to other types of regulations. This large volume indicates a form of excessive regulation. Moreover, the implementation of these regulations frequently results in issues of overlap and disharmony, ultimately affecting both the presidential system of governance and the broader legal framework. The characterization of ministerial regulations as "overregulated" can be understood not only in terms of their quantity but also from a qualitative perspective. This qualitative aspect includes the scope of ministerial authority in forming regulations, the appropriateness of the regulatory content, and the conformity of such regulations with their intended nature, function, and characteristics. Currently, ministerial regulations are issued based on two main foundations: (1) delegation from higher-level regulations, and (2) the exercise of inherent ministerial authority. Because each ministry operates within its own institutional environment, poor coordination among ministries often leads to disharmony and regulatory overlap, further contributing to

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excessive regulation. The over-recognition of ministerial regulations as a form of statutory law also has a significant impact on the legal system.

On February 19, 2025, the West Java Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia held a virtual workshop on the preparation of laws and regulations organized by the Directorate General of Legislation (Ditjen PP). This activity reflected the government's concern over Indonesia's growing number of regulations, which continues to increase every year due to the rapid proliferation of legal instruments. The surge in regulatory production occurs at various levels—ministerial, institutional, and commission (Public Relations of the West Java Ministry of Law and Human Rights, 2025). This initiative represents the government's effort to address the problem of excessive regulation in Indonesia. According to available data, there are currently 60,414 regulations in effect nationwide, ranging from central to regional levels. These include 1,889 laws, 218 government regulations, 4,948 ministerial regulations, 2,585 presidential regulations, 19,103 ministerial decrees, 6,359 institutional or agency regulations, and several others. Interestingly, ministerial regulations account for the largest portion of these rules, despite the fact that, under Indonesia's presidential system, ministers serve merely as assistants to the president—as stated in Article 17 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which provides that "the President shall be assisted by the Ministers of State who are directly responsible to the President." As of 2025, the total number of ministerial regulations reached 19,103, of which 17,172 remain in force and 1,931 have been repealed. The following figure presents a recapitulation chart of ministerial regulations as of 2025:

Figure 1. Recapitulation Chart of Ministerial Regulations by Year

The chart above illustrates that the number of ministerial regulations has increased each year, with 1,164 issued in 2020, 1,130 in 2021, 1,099 in 2022, 640 in 2023, 707 in 2024, and 51 as of February 2025. This demonstrates a consistent upward trend in the issuance of ministerial regulations over time.

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Figure 2. Recapitulation Chart of Ministerial Regulations by Status

Based on the chart above, the data represent a comprehensive recapitulation of ministerial regulations categorized by their status. As shown, 17,024 ministerial regulations remain in force, while 1,931 are no longer applicable. The significant number of ministerial regulations, especially when compared to other types of regulations—including presidential regulations—raises a point of concern. In Indonesia's presidential system of government, ministers serve as assistants to the president. Therefore, ministers should not possess excessive authority in forming legal instruments with the same strength or binding effect as higher-level regulations.

4.2. Implications of Excessive Ministerial Regulation in the Presidential System of Government

In various public forums, the President has consistently highlighted the excessive number of laws and regulations in Indonesia, which are estimated to total 60,414 regulations across both central and regional levels. The phenomenon of disharmony and overlap among these laws and regulations frequently occurs during the drafting and implementation processes (Viona Wijaya, 2024). Beyond quantitative and qualitative aspects, Indonesia's regulatory problems are deeply rooted in the historical and cultural paradigms of the nation. The long-standing influence of feudalism, combined with the legacy of an authoritarian and centralized government during the New Order era, fostered a regulatory approach that emphasizes centralization (Bayu Dwi Anggono, 2019). The implications of excessive ministerial regulation within Indonesia's presidential system include overlapping authority, regulatory redundancy, and the erosion of the President's legislative function.

Table 1. Sources of Ministerial Authority

Presidential Regulation No. 68 of 2012 concerning Deputy Ministers	Law No. 30 of 2014 concerning Government Administration	Law No. 39 of 2008 concerning State Ministries
1. Formulating the strategic policies of the ministry. 2. Managing the ministry's resources.	1. Making decisions and/or taking administrative actions. 2. Issuing permits, dispensations, and/or concessions.	1. Formulating, determining, and implementing policies within their respective areas. 2. Managing state assets under their responsibility.

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3. Monitoring policy implementation in accordance with national objectives. 4. Being accountable to the President for the ministry's performance. 5. Representing the ministry in relations with other state institutions.	3. Formulating policy rules. 4. Taking strategic decisions and actions.	3. Supervising the implementation of duties within their areas. 4. Carrying out technical activities from the central to the regional levels.

Based on the table above, it can be seen that the sources of ministerial authority primarily relate to policy formulation. However, within the context of policy formation, ministers are actually authorized only to issue policy or technical implementing regulations, not laws or higher-level statutory instruments. The overlap in ministerial authority occurs partly due to the provisions of Article 8 of Law No. 12 of 2011 on the Establishment of Laws and Regulations, which states that ministerial regulations may be established either through delegation from higher-level regulations or based on inherent authority. The phrase "based on authority" is problematic, as it does not clearly limit the scope of ministerial regulatory power. Consequently, ministers often issue regulations beyond their intended authority, resulting in overlapping and conflicting ministerial rules. It is important to emphasize that under the presidential system of government, ministers do not hold independent control over governmental affairs. Ministers serve merely as assistants to the President, and their actions should always be carried out under the President's direction and supervision. The following table provides examples of ministerial regulations that overlap or conflict with one another:

Table 2. Data on Conflicting Ministerial Regulations

No.	Regulation	Case Example
1	Ministerial regulation	Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples can be seen as in conflict with the Regional Regulation of Sumbawa Regency Number 23 of 2007 concerning Customary Institutions. The Regional Regulation contains the Order of the Sultan of Sumbawa, the Official Statement of the Regent of Sumbawa, which resulted in a clash between the Indigenous People of Cek Bocek Selesek Reen Suri and PT. NNT which adheres to the Regulation of the Minister of Forestry P.62/Menhut-II/2013 which turns out to be contrary to the Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples, resulting in ambiguity, legal dualism in the issuance of the same provision, the impact of which is the principle of lex specialis derogat legi generali, namely the Regulation of the Minister of Home Affairs is declared valid while the Regulation of the Minister of Forestry is set aside.
2	Ministerial regulation	Regulation of the Minister of Transportation No. 18 of 2020 regulates the opposite of the Large-Scale Social Restrictions (PSBB) process. The reason is, Regulation No. 18 of 2020 contains provisions that are contrary to Regulation No. 9 of 2020 from the Minister of Health, which is the basis for the implementation of PSBB.
3	Ministerial regulation	Regulation of the Minister of Health No. 18 of 2021 and the Minister of Health No. 9 of 2020 concerning amendments to the Regulation of

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		the Minister of Health No. 10 of 2021 concerning vaccination in the context of handling the coronavirus disease (COVID-19) pandemic 2019 and regarding large-scale social restriction guidelines (PSBB) in order to accelerate the handling of COVID-19 is contrary to the Regulation of the Minister of Transportation No. 18 of 2020 concerning transportation control in order to prevent the spread of disease coronavirus 2019 (COVID-19). The legal basis of the two Ministerial Regulations is Article 17 of the 1945 Constitution of the Republic of Indonesia. This Ministerial Regulation must refer to Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine and the laws and regulations under it. This is a deviation from the repressive or autonomous actions of officials in exercising freedom of action (functional hierarchy system).

The table above demonstrates that overlapping ministerial regulations arise primarily due to excessive regulation at the ministerial level. Therefore, technical regulations should ideally be issued through presidential regulations, in line with the presidential system of government. In a presidential system, the President is designed to perform three key functions related to policymaking: policy formulation, policy coordination, and policy supervision. Strengthening the President's direct involvement in regulatory processes will enhance coherence and maintain constitutional order. Consequently, the authority to issue binding laws and regulations should be more strictly limited to presidential regulations, thereby reinforcing the President's role. If ministerial regulations continue to proliferate and conflict, the President's institutional authority within the executive branch will gradually be undermined, potentially weakening the effectiveness of the entire system of governance.

V. Conclusion

Based on the results of the study, the factors that cause the regulation of ministerial regulations in the presidential government system are, first, there are legal problems related to the type and source of the Minister's authority, second, the unclear limitation of the Minister's authority in terms of the formation of laws and regulations, and third, the practice of delegating laws directly to the Minister. The Minister does not have the authority to form laws and regulations, but can only form regulations with the type and content of policy regulations (beleidsregel) because the characteristics, functions and nature of ministerial regulations are not forms of laws and regulations (regeling). Then the implication of excessive regulation of ministerial regulations is the occurrence of first, overlapping ministerial authority, second, overlapping regulations and third, eroding the legislative functions of the president which should not occur in the presidential system of government.

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