Legis ratio of minister regulation arrangement in law number 15 of 2019 about the amendment to law number 12 of 2011

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ABSTRACT

The purpose of this paper is to analyze the Legis Ratio in the regulation of Ministerial Regulations in Article 8 of Law 12 of 2011 concerning Formation of Regulations and Regulations as amended by Law 15 of 2019 concerning Amendments to Law 12 of 2011 concerning Formation of Regulations. This research is a normative legal research with a philosophical approach, conceptual approach, comparative law, and historical approach. The legal materials used are primary, secondary and tertiary legal materials. basic norms and laws and regulations, while secondary sources include new and current scientific knowledge which includes books, research reports, journals, magazines Tertiary sources namely black law dictionary, abstracts and other tertiary sources Analysis of legal material is carried out with descriptive perspective. The results showed that the regulation of Ministerial Regulations departs from the desire to re-regulate clearly the existence of Ministerial Regulations previously stated in the Explanation of Law 10 of 2004 concerning Formation of Legislation, so that the existence of Ministerial Regulations has stronger legal legitimacy in the legislation system Indonesia. The Ministerial Regulation provides the legal basis for the Minister to form laws and regulations in their respective fields as an assistant to the President in carrying out governmental power.

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Introduction

In carrying out government administration, the government is given a number of tasks and great responsibilities to realize the welfare of the people. In Indonesia, the aforementioned governmental tasks are carried out by the President as the highest authority having the authority and authority to administer the administration of the country. Therefore, the government is given free space in carrying out government tasks (Erliyana, 2005). In line with the implementation of the task and the authority, the President of the Republic of Indonesia must carry out governmental authority, as well as strengthen and strengthen the presidential system of the Republic of Indonesia as stated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, that "The President of the Republic of Indonesia holds the authority of government", this will simultaneously strengthen and strengthen the presidential system of the Republic of Indonesia as stated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, The State of Indonesia (Ahmad, et al. 2008)). The presidential system is characterized by only one executive executive (single executive). Power (position) as Head of State and as Head of Government (chief of executive) is in one hand (Manan, 2012).

In exercising executive power, the President has a range of authority, including the scope of the outbreak, among other things: the implementation of the government, the implementation of the statutes, and the implementation of the government. Therefore, the President is assisted by state ministers. In assisting the President, ministers of state have the authority to make decisions in the form of regulation (regulatory regulations) or *beschikking* (decisions) which have a determinative nature. In addition, state ministers also have the authority to make *beleidsregel* (policy regulations), this power has to do with the government's task to implement government regulations to implement regional regulations. (Pantja & Suprin, 2008).

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Specifically regarding the authority of state ministers in forming regulations (regulations) as stipulated in Law Number 12 of 2011 concerning the Establishment of the Regulations on the Regulations of Regulations and Regulations, as amended by Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Establishment of the Regulatory Regulations (hereinafter referred to as Law on the Formation of Legislation). These provisions are regulated in Article 8 (1) of the Law concerning the Formation of Regulations that regulate the types of laws and regulations determined by the Minister (hereinafter referred to as Ministerial Regulations). The existence of the Ministerial Regulation is not new but has been arranged since TAP MPRS No. XX/MPRS/1966 until Law Number 10 of 2004 concerning the Establishment of Laws and Regulations, although the current regulation of Ministerial Regulations based on the Law on the Formation of Regulations and Regulations still presents several problems, both philosophically, juridically, and sociologically.

In philosophical problems, the nature and function of laws and regulations in the concept of the rule of law if connected with the existence of Ministerial Regulations. that is, every government/government action must be based on applicable laws and regulations. The state is organized not only by the will of the ruler, but the state is governed based on laws that have been made and provided previously and the ruler is subject to these laws (Rahardjo, 2009). Therefore, every administration must be based on laws and regulations (Pratiwi, 2018). Based on the legal nature of the above, the granting of authority for the formation of legislation to the Minister based either on delegation or attribution authority is often used extensively by ministries, not only to implement technically or administratively but also to expand the authority of ministries and limit community rights (Hyubers, 1990).

Juridically, there are still incomplete problems of legal norms (incomplete regulation), because a ministerial regulation formed on the basis of an order of the law is categorized as legislation on the basis of delegation (delegated legislation), the problem with the contents of the Ministerial Regulation, in the Act concerning the Formation of Regulations and Regulations is not clearly explained about the contents of the Ministerial Regulation, only in the explanation of Article 8 paragraph (1) of the Law concerning the Formation of Regulations mentioned, and the problems with the procedures for establishing Ministerial Regulations, in the formulation of Ministerial Regulations are basically the same as the formation of other legislation such as Laws, Government Regulations, Presidential Regulations and Regional Regulations.

Sociologically, the existence of a Ministerial Regulation as a juridical product is expected to provide legal certainty for the community, as long as it is formed and implemented in accordance with the conditions of the community. Ministerial Regulation should be able to provide legal certainty and legal usefulness for the community, not on the contrary it creates legal uncertainty and is not useful for these laws and regulations in the community. The facts show that there are many Ministerial Regulations that cause turmoil in the government or the community even though in essence the objectives of the Ministerial Regulation are good for the administration of government. One example is the emergence of Minister of Law and Human Rights Regulation No. 23 of 2018 concerning the Harmonization of Ministerial Draft Regulations, Draft Regulations of Non-Ministerial Government Institutions, or Draft Non-Structural Institution Regulations by Drafting Regulations, which require all ministries, non-ministerial government agencies, and structural institutions submit each draft legislation before it is promulgated to the Ministry of Law and Human Rights to be harmonized. Whereas on the one hand, in the Law on the Formation of Legislation there is no authority of the Minister of Law and Human Rights to harmonize the draft ministerial regulations, draft regulations of non-ministerial government agencies, or draft regulations of non-structural institutions, this causes turmoil in the government environment for various reasons among others adding procedures for the formation of Ministerial Regulations. This means that there is an expanded authority with the Ministerial Regulation which should not be allowed in legislation at the ministerial level.

Based on the description of the above statement, it needs to be studied comprehensively regarding the regulation of the Minister of Defense in the regulatory system in Indonesia, so that the existence of the Ministerial Regulation in the legislation system can be effective and effective in providing for the benefit of the Minister of Law in Indonesia.

There are some researchers who discuss specifically about the Ministerial Regulation comprehensively, have similarities, but with different research objects, including Moh. Fadli (2012) who discussed the Development of Delegation in Indonesia (The Development of Delegated Legislation in Indonesia), then Fitriani Sjarief which discussed the Formation of the Delegation of the Delegates from the Underspaces of the Period of 1999 - 2012. Therefore, this research was a continuation of the Delegation of the Underspective of the Period of 1999 - 2012. Therefore, this research was a continuation of the research of the Delegates from the Period of 1999 - 2012. Fitriani Ahlan Sjarif and Dr. Moh Fadli, SH, MH, who wrote about how the ideal arrangement of Ministerial Regulations in the regulatory system, not only in the process of delegation but included the content, position and hierarchy of the Ministerial Regulation in the future, this research will focus on the financing of Ministerial Regulation in the Indonesian Regulatory System.

Theoretical framework of ministerial regulation arrangement in the Indonesian regulatory system

In the level of formation of legislation known the theory of the level of law (Stufentheorie) proposed by Hans Kelsen. In this theory Hans Kelsen argues that legal norms are tiered and multi-layered in a hierarchy (arrangement) in the sense that a higher norm applies, sourced and based on even higher norms, and so on up to a norms that cannot be traced further and are hypothetical and fictitious, namely the Basic Norms (Grundnorm). Basic Norms are the highest norm in a system of norms that are no longer formed by a higher

norm, but the Basic Norms are established in advance by the community as the Basic Norms which are the hangers for the norms that are underneath, so that a Basic Norm said to be pre-supposed (Simamora, 2014).

The hierarchy of statutory regulations in Indonesia is regulated the last time in the Law on the Formation of Laws and Regulations where the Law is a replacement of Law Number 10 of 2004 concerning the Formation of Laws and Regulations. The replacement of Law Number 10 of 2004 is due to the fact that there is still a shortage in the law and cannot accommodate the development of community needs regarding the rules for the formation of good laws and regulations so that they need to be replaced. Ministerial Regulation has been known for a long time in the realm of the hierarchy of national legislation. Based on MPRS TAP No. XX/MPRS/1966 concerning DPRGR Memorandum on Regulatory Sources of Law and Order of Laws and Regulations, Ministerial Regulation is ranked 5th after the Constitution, MPR Decree, Law/Perpu, Presidential Decree, then Ministerial Regulation.

Material of Laws and Regulations is material contained in Laws and Regulations in accordance with the type, function and hierarchy of Laws and Regulations (Article 1 number 13 of the Law concerning the Formation of Laws and Regulations). According to Asshiddiqi and Safa'at (2006), the material contained in the constitution contains at least three main things, namely the existence of guarantees for Human Rights and Citizens, the stipulation of a country's constitutional arrangement that is fundamental, and the existence of fundamental constitutional assignments and restrictions.

A. Hamid S Attamimi (1982) indirectly interpreted the content of laws and regulations as material that must be contained in each type of statutory regulation. So the material content of a statutory regulation is different depending on the type, function, and hierarchy. The contents of the Ministerial Regulation, in Law No. 12 of 2011 is not clearly explained about the contents of the Ministerial Regulation. Lack of clarity about the arrangement of the institutions that could become the poor wife of the Ministerial Regulation has an impact on the wife of the Ministerial Regulation determined by the formation of the Minister of the Minister in this case each ministry. Akibatnya, the Minister of Agriculture can arrange for the wife of any woman to be obeyed by the formator. Then in item 211 Attachment II of Law No. 12 of 2011 is mentioned:

"Delegation of authority regulates from the Act to the minister, leaders of non-ministerial government institutions, or officials who are at the level of the minister limited to technical regulations that are administrative"

The meaning above states that the Ministerial Regulation is only limited to matters that are administrative in nature, this meaning gives rise to many interpretations of administrative technicalities. Based on the description above, the author provides a definition of three types of decisions issued by the minister: (1) Ministerial Regulation, used to provide the legal form of ministerial policy that is regulatory (regeling), as a follow up of the implementation of Government Regulations and Presidential Regulations; (2) Ministerial Decree; used for ministerial policies which are administrative in nature (beschiking); (3) Ministerial Policy Regulations, are used for ministerial policies which are discretion due to a legal vacuum or legal obscurity, or legal conflicts that require immediate policies as long as the material content does not conflict with statutory regulations or general legal principles of good governance (AUPB).

Harmonization of Ministerial Regulations needs to be done both vertically and horizontally. Harmonization aims to form a good and interrelated Ministerial Regulation and to form a unanimity. Therefore, harmonization of the Ministerial Regulation serves as a preventive measure to prevent the occurrence of judicial review of the Ministerial Regulation. In addition to the vertical harmonization mentioned above in the drafting of laws and regulations, consideration must also be given to harmonization of laws and regulations in the same or equivalent hierarchical structure. This type of harmonization is called Horizontal Harmonization of Ministerial Regulation. Horizontal harmonization departs from the principle of *lex posterior derogat legi priori* which means it is a new statutory regulation that overrides the old legislation and the principle of *lex specialist derogat legi generalis* which means a specific statutory regulation that overrides general laws and regulations.

With regard to harmonizing Ministerial Regulations, in the Law on the Formation of Regulations, the harmonizing authority is only carried out on Laws, Government Regulations, Presidential Regulations, and Regional Regulations, whereas the Ministerial Regulations are not clearly regulated. On the one hand, the harmonization of the concept of draft legislation is the process of harmonizing the substance of the draft legislation and the techniques for preparing legislation, so that it becomes a statutory regulation which is a unified whole in the framework of the national legal system. Therefore, the harmonization of Ministerial Regulations needs to be done because Ministerial Regulations are an integral part of the national legal system, Ministerial Regulations can be judged both materially and formally, and guarantees that the formation of Ministerial Regulations is carried out in compliance with principles for the sake of legal certainty. By not harmonizing the Ministerial Regulation, it will result in different interpretations in the implementation of the Ministerial Regulation, legal uncertainty arising from the Ministerial Regulation, the Ministerial Regulation not implemented effectively and efficiently, and legal dysfunction in the Ministerial Regulation, meaning that the law cannot function to provide guidelines for behaving to society, social control, dispute resolution, and as a means of social change in an orderly and orderly manner.

The nature of the existence of ministerial regulations in the Indonesian regulatory system

The executive's strength is the power that does the country's fortune. G.S Dinopolo (1975) enforces that the consequences of the executive will be that of the state. So that executive power can be interpreted as such:

“First of all; In general, the executive said that all of them would be the whole government, including the whole government, including all the government and all ministers”. “Both; In the largest system, the executive is said to be the highest government leader, including the state and ministers of the government called Kabinet. And this executive motorbike who raided the entire system of country activities from the heart of the country to the future, in the country and abroad”.

There are two executive functions, namely political functions and administrative functions. The political function of the executive power is in the form of certain actions aimed at giving a variety of opportunities for implementation. Therefore, the executive function has a political capacity. These actions are carried out by the highest administrative organizations, such as the Head of the State and the leadership of various ministries in the government. In the Indonesian context, even the executive authority at this time does not have the authority to form legislative regulations ranging from Government Regulations in lieu of Laws, Government Regulations, Presidential Regulations to Ministerial Regulations to several types of government regulations in the form of legislative regulations in Indonesia. Of course, the position of the Ministerial Regulation is under the position of the Underspaces which is a product of legislative power. From here it looks like only the development of the authority to pledge that is owned by executives before referring to the concept of political triad, which only has the authority to maintain the authority.

In its function as a type of statutory regulation, Ministerial Regulations are still bound by the nature and function of legislation in the concept of the rule of law. The nature of the formation of good legislation (Ministerial Regulations) is based on several reasons:

First, one element of the rule of law is that every action of the government/government must be based on applicable laws and regulations. The state is organized not only by the will of the ruler, but the state is governed based on laws that have been made and provided previously and the ruler is subject to these laws. (Rahardjo, 2009). Secondly, if it is associated with the type of modern welfare state embraced by the 1945 Constitution, where the government is given very broad authority to participate actively intervene in all socio-cultural and economic fields. With such broad government authority, if not fenced with good and fair legal rules, and monitoring the use of strict authority can lead to arbitrariness from the government. In this context the formation of legislation will become a necessity. Third, in general the purpose of establishing legislation is to regulate and organize life in a country so that the people governed by the law obtain certainty, usefulness, and justice in the life of the state and society. Therefore, one of the main pillars in the administration of a rule of law state is the formation of good, harmonious, and easily applicable laws in society (Indrati, 2002).

Talking about laws and regulations is a written legal issue. Sociological thinkers about law consider that written law contains many weaknesses, especially in terms of following the times. In addition, written law only pursues certainty and ignores the sense of justice of the community that grows along with the development of the community itself. Unlike the sociological thinking above, written law (legislation) has advantages with unwritten laws, because in addition to changes/behavior that is expected to be planned through the formation of legislation. also changes/behaviors that are intended can be done quickly. However, the presence of law (legislation) must not/must be in harmony with the nature of the law as stated by thinkers about the law some of which are:

1. Plato , argued that the law exists because of an agreement or contract. This agreement occurs solely because humans are social creatures, so there is always a desire to live in society. Law and the state aim for order and security. Thus the nature of the law according to them can be said is for order and security (Aditya & Winat, 2018).
2. Cicero, argued that the nature of the law is a necessity of human ratio. The human ratio intended is the divine ratio. So the law is a necessity of divine will for humans to be able to live peacefully as a human being (saraswati, 2009).
3. Thomas Hobes , without human law one will be a wolf to another human being (homo homini lupus). In natural conditions, humans are wolves for others (a state of disorder). There is no concept of being fair or unjust. If you want justice, there must be rules that govern. That is what the state needs. This is where the idea of law and the state as security guards originated (Flores, 2009).

Starting from the opinion mentioned above, in relation to written law (statutory regulations), it must also be understood that the nature of law is also the nature of statutory regulations. It is well known that law is not identical with statutory regulations, because in addition to statutory regulations as written law, it is also found that unwritten laws that apply in society. Legislation as written law that tends towards positivism is made consciously by an institution that has the authority to do so. According to Philipus M. Hadjon (1997) the formation of laws and regulations must be based on the principles of the formation of good legislation (algemene beginselen van behoorlijke regelgeving). The principles underlying the formation of a statutory regulation that can realize the nature of the legislation.

The principles of the formation of laws and regulations have been regulated in Article 5 of the Law concerning the Formation of Laws and Regulations that in forming laws and regulations must be carried out based on the principle of establishing good laws and regulations, which includes Clarity of objectives, Institutions or forming organs appropriately, Conformity between type and material content, workability, usefulness and usefulness, clarity of formulation, and transparency. Then in Article Article 6 of the Law concerning the Formation of Legislation, the contents of the laws and regulations must reflect the principles of Protecting, Humanity, Nationality, Kinship, Nationalism, Unity in Diversity, Justice, Equality in the position in law and government, Order and legal certainty, and/or Balance, and harmony (Anggono, 2018).

To realize a good law and regulation, Seidmenn (2001) proposed a method of drafting legislation including a good Ministerial Regulation using the category R.O.C.C.I.P.I. (Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology). Bagir Manan stated about the function of legislation namely internal and external functions (Wicaksana, 2013).

1. Internal Function.

This function is more related to the existence of laws and regulations referred to in the legal system. Internally, the laws and regulations carry out the functions of creating law (rechts chepping), the function of legal renewal, the function of integration, and the function of legal certainty.

2. External Functions

- a. Change Function;
- b. Stability Function; and
- c. Ease Function.

The function of the statutory regulations as stated by Bagir Manan mentioned above, describes/relates to the organ that is authorized to make the laws and regulations, the law has been planned, needed to achieve the desired goals, emphasizing the environment of the enactment of a rule of law (legislation), serves as an instrument, both as an instrument of control and as an instrument of change (engineering) society. The function of statutory regulations included in the Ministerial Regulation as stated by Seidmenn, emphasized that the laws and regulations contain government policies (plans) to be achieved, to answer various interests of the community and especially as a means of legitimacy for the government to run the government. Referring to the opinion of experts on the function of legislation, the formation of legislation must be made in accordance with the principles of the formation of good legislation (proper) so that the said laws and regulations can have/contain simultaneously juridical aspects, sociological aspects and philosophical aspects.

The nature of the establishment of ministerial regulation

The formation of Ministerial Regulations in Indonesia as part of the legislation follows the ups and downs of government travel. Since the enactment of MPRS Decree Number XX/MPRS/1966, MPR Decree Number III/MPR/2000, Law no. 10 of 2004, and Law No. 12 of 2011, the process of forming Ministerial Regulations was never clearly regulated in the said laws and regulations. The administration of government seems to be very dependent on the policies issued by the central government through a Ministerial Regulation. As a result, there are many overlapping laws and regulations at the Ministerial Regulation level and often interfere with regional authority in carrying out regional autonomy, so that autonomy is ignored in the region. The results of the survey, both conducted by Government agencies (Coordinating Ministry in the field of Politics, Law, and Security), show that ministries are competing to make Ministerial Regulations, based on reports from the Directorate General of Legislation can be issued around 50-100 Regulations Ministers per ministry every year. Ironically, from the many Ministerial Regulations produced, many of them have problems and are actually not suitable for publication. Data from the Online Law in September 2018 mentions that many Ministerial Regulations were deregulated by the Coordinating Ministry in the Economy) because they inhibited the investment world while the rest contradicted the regulations above and created overlap, while in the permit sector as many as 47 Ministerial Regulations, in the investment sector 8 Ministerial Regulations, in the field of Export and Import Commerce 47 Ministerial Regulations, in the area of business ease 100 Ministerial Regulations (<http://www.hukumonline.com>).

If examined further, the birth of this problematic Ministerial Regulation was due to the nature and function of the statutory regulations (reflecting the will of the people) which could not yet be implemented into the practice of establishing statutory regulations (Ministerial Regulations). This is consistent with the results of research conducted by the author that the Ministerial Regulation is problematic due to 3 (three) factors; (1) the process of making Ministerial Regulation that is not in accordance with the provisions of the legislation (both procedure and material content); (2) ministries that are not ready with human resources (draft law) so that many do not understand the science of laws; (3) Culture or behavior of ministerial officials who erroneously understand the meaning of the material contained in the Ministerial Regulation in the context of carrying out certain affairs in government as well as administrative technical as described in Article 8 paragraph (1) and Attachment II point 211 of Law No. 12 of 2011.

Existence of Ministerial Regulation based on Law No. 12 of 2011 can be sourced from 2 (two) authorities, first, based on orders from higher laws and regulations, secondly, based on authority. With the Minister's authority in drafting Ministerial Regulations based on authority, many Ministerial Regulations were issued which gave burdens to the public and overlapped with the authority of ministries in other sectors. Therefore, in 2017, the President issued Presidential Instruction No. 7 of 2017 concerning Taking, Supervising, and Controlling Policy Implementation at the State Ministry and Government Institution Levels. In the First Presidential Institution Dictum it is stated:

"Ministers, Heads of Non-Ministerial Government Institutions, Commander in Chief of the Indonesian National Army, Attorney General of the Republic of Indonesia, and Heads of the Indonesian National Police, hereinafter referred to as Ministers and Heads of Institutions, so that in each formulation, determination and implementation of the policy heed the provisions as following:

1. *In the event that the policy to be decided is the implementation of the duties and authorities of the Minister or Institution Head who are strategic and have a wide impact on the community, the Minister and Institution Head shall submit the policy in writing to the Coordinating Minister whose coordinating scope is related to the policy, to obtain consideration before the policy set.*
2. *In the event that the policy to be decided is cross-sectoral or has wide implications on the performance of other Ministries or Agencies, the Minister and Institution Head shall submit the policy in writing to the Coordinating Minister whose coordinating scope is related to the policy, to be discussed at the Coordination Meeting to obtain an agreement.*
3. *In the event that the policy to be decided is a policy of a national scale, important, strategic, or has a broad impact on the community, the Minister and the Head of the Institution submit the policy plan in writing to the President through the Coordinating Minister whose scope of coordination is related to the policy, to be discussed in the Session Plenary Cabinet or Limited Meeting to get a decision."*

The existence of the Presidential Instruction is intended in order to maintain that every policy to be issued by the Minister in the form of statutory regulations and not statutory regulations that has the potential to have a broad impact on the community, must be coordinated first to the Coordinating Minister whose coordinating scope is related to the policy, to get consideration before the policy is set. This is because the existence of Ministerial Regulations and over-regulation at the Ministerial Regulations level has been very worrying, so President Jokowi ordered the Minister of Justice and Human Rights to take steps to organize future Indonesian regulations (<http://detiknews.com>). As a result of the many Ministerial Regulations used as a policy at the government level, causing problems where the ministries in making Ministerial Regulations many contrary to the provisions of the legislation. This is as the result of the author's research, many Ministerial Regulations are problematic so that the writer classifies in three levels the problem, First is a matter of principle, Second is a substance problem, and Third is a technical or juridical problem.

The problem that then arises is the understanding of Ministerial Regulations that reflect the will of the people (the nature of laws and regulations). Do Ministerial Regulations that are in conformity with the higher laws and regulations and the public interest automatically reflect at the same time the will of the people? A priori we can answer that already reflects the will of the community, but if we want to go deeper into our understanding, of course it will still cause debate given there is an adage that says that where there is a community there is a law. This means that in every group, certain community's living environment has a living and maintained value system in their daily lives in addition to the laws and regulations made by the government/state.

At the Ministerial Regulation level, the mission carried out by a legal product such as a highly technical Ministerial Regulation is a legal function to provide benefits, certainty, and public order from the old attitude patterns towards the new attitude desired in casu for example; from derailing licenses to obeying permits, from using bombs to catch fish to using environmentally friendly fishing tools (law as social engineering). However, if the law (Ministerial Regulation) is indeed intended to manipulate the community, there should be four principles proposed by Podgorecki, so that the regulations made reach maximum results requiring special activities before the design (Ali, 2002), after the design and after the application of a product that law (Ministerial Regulation), that is:

- a. a good picture of the situation at hand;
- b. make an analysis of existing judgments and place them in a hierarchical order. The analysis in this case also includes assumptions about whether the method to be used will not have a more adverse effect;
- c. verifying hypotheses such as whether a method that is thought to be used in the end will indeed lead to the desired goal; and
- d. measurement of the effects of existing legislation.

Mechanisms and Procedures for the Preparation of Ministerial Regulations stipulate that in the formation of Ministerial Regulations it must pay attention to philosophical, sociological aspects, and juridical aspects. philosophical aspects of the formation of Ministerial Regulation must reflect the legal ideals and ideals of justice and the values that are essential, living and developing in the midst of society. sociological aspects, the formation of Ministerial Regulations must be accepted and adhered to fairly by the community and in accordance with the needs of the community, and juridical aspects, the formation of Ministerial Regulations, must pay attention to the legal basis, and the hierarchy of applicable laws and regulations. Every draft Ministerial Regulation must harmonize the material and synchronize the regulations.

Sources of authority establishment of ministerial regulations

The Ministerial Regulation is one of the types of legislative regulations which are the formation of the Minister. Berbeda dengan peraturan perundang-undangan lainnya yaitu undang-undang, Peraturan Pemerintah pengganti undang-undang, dan Peraturan Pemerintah yang disebutkan dalam UUDNRI 1945. Selain ketiga perundang-undangan peraturan form the masih ada satu peraturan form perundang-undangan yang disebutkan dalam UUDNRI 1945 that is, the regulations. The status of the operation was earlier mentioned in the 1945 Constitution of the Government of the 18th year (6) which implements the "Government of the Republic of Indonesia and is expected to set the statute of the year to 6 years (6) which implements the" *Government of the Republic of Indonesia and is expected to stipulate the statute of the year for the purpose of the operation*".

In the regulatory system of the legislation that is currently being carried out, it is also the form of the Minister of Trade in 1945. His position with the term of the Ministerial Regulation was initially recognized in the order of the Indonesian legislative regulations since the formation of MPRS Decree Number XX/MPRS/1966. Even though the Ministerial Decree and Ministerial Decree have been known for a long time in MPRS Decree Number XX/MPRS/1966 and MPR Decree Number III/MPR/2000, which substantially differed from each other, even though in practice at that time many Ministerial Decrees were regulating so after Law No.10/2004 only known Ministerial Regulations. The term of the Minister of Regulation was not mentioned in the 1945 Constitution even before the amendment and after the amendment. However, the existence has always been related to the presence of the President as the highest authority holder of government which must be assisted by state ministers. This Ministerial Regulation becomes the Minister's authority to form him as an embodiment of the Minister's position as the highest leader in a ministry in the context of organizing the government to assist the President because the President's authority is very broad.

As a result, the State of the law in building the system and the institutions as a constitution must always pay attention to the principles of the State of modern law. The concept of the State of law always develops according to the development of social constituents. The principles of legal land can be elaborated in the past two years, i.e.:

1. Supremacy of the Law (Supremacy of law)
2. The equality in law (Equity before the Law)
3. Principles of legality (Due Process of Law)
4. Restriction of power
5. Independent Government Agencies
6. Free and impartial judicial.
7. State Administrative Juridiciary.
8. Constitutional Judiciary.
9. Protection of Human Rights
10. Be democratic (Democracy Rechtsstat)
11. Serve as a means of realizing the objectives (Self-Rechtsstat)
12. Transparency and Social Control

In paragraph 17 paragraph (1) of the 1945 Constitution the Indonesian government recommends that "the President is assisted by state ministers", then paragraph (3) states "*each minister is in charge of a particular department within the government*". This article is considered as the authority of ministers to form a form of regulation. The authority that is owned is an authority that can be attributed to a delegation or delegation. The question is in the 1945 Constitution before the amendment and after the amendment is not mentioned in the position of the Minister of Agriculture which is the Minister's authority to form the authority of the Minister?

According to Article 8 paragraph (2) of Law No. 12 of 2011 the laws and regulations referred to (Ministerial Regulations) are recognized and have binding legal force insofar as they are ordered by higher Regulations or are formed based on authority. The sentence "ordered by higher legislation" means the authority of the delegation. But the phrase "based on authority" has a ambiguous meaning. Elucidation of Article 8 paragraph (2) provides the meaning referred to as "based on authority" is the implementation of certain affairs in government in accordance with the provisions of the legislation. This understanding is prone to give rise to the notion that the provisions in Article 8 paragraph (2) of Law no. 12 of 2011 is a form of distributing authority to regulate separately to the institutions referred to in Article 8 paragraph (1) of Law no. 12 of 2011. So that in the absence of laws that attribute authority to regulate these ministries and government agencies, the said ministries and government institutions can still form laws and regulations because they already have attribution authority under Law No. 12 of 2011.

For some institutions contained in Article 8 paragraph (1), they do already have the authority in attribution of the Acts of their respective sectors, such as Bank Indonesia can make Bank Indonesia Regulations because they get attribution authority from the Law on Bank Indonesia, the Financial Services Authority (OJK) based on the Law on OJK, etc. However, the authority of the Minister in making laws and regulations, as an organ of the government is still being debated, when referring to Law No. 39 of 2008 concerning the State Ministry, actually there is no explicit mention of the governing authority possessed by the Minister, only in Article 8 it is stated that in carrying out its duties the Minister has the function of formulating, determining and implementing policies in his field, differing from the Law on BI or the aforementioned OJK Law which explicitly mentions the types of laws and regulations that can be determined by the competent authority in their respective institutions.

Attribution authority regulates in general can be found in the legislation governing the establishment of institutions that accept these attributions. Whereas in Law No. 39 of 2008 concerning State Ministries, no form of attribution of regulatory authority was found. In Law No. 39 of 2008 only regulates the authority to administer (*bestuur*) ministries, but does not attribute authority to regulate the

Minister. This gives a conclusion that the Minister does not have attribution authority in forming regulations. The logical consequence is that a Ministerial Regulation can only be formed if there is a delegation from legislation which is higher in hierarchy. This is reinforced by the sound of Article 8 paragraph (2) of the torso and its explanation, as follows:

"Legislation as referred to in paragraph (1) is recognized and has binding legal force insofar as it is ordered by a higher legislation or formed based on authority,

Then in the explanation:

"What is meant by "based on authority" is the administration of certain government affairs in accordance with the provisions of the legislation.

The sentence "ordered by law" clearly refers to the understanding of the delegation's authority. That is, the regulations issued by the minister referred to in Article 8 paragraph (1) must be based on one of them on the authority of the delegation. The meaning of the sentence "ordered by legislation" can be understood clearly as a form of one source of authority to form rules in accordance with the theory of laws and regulations. However, the phrase "based on authority" has multiple interpretations in the formation of a Ministerial Regulation, the phrase does not indicate what the view actually means. Is the authority to regulate (regeling) or the authority to administer (bestuur), if it refers to the explanation in Article 8 paragraph (2) of Law No. 12 of 2011 is interpreted as the authority to administer (bestuur) not the authority to regulate (regeling). But many are misunderstood that the authority is the granting of authority to regulate to the Minister.

With these provisions, the Minister considers himself to have the authority to make laws and regulations based on the explicit attribution of Law No. 12 of 2011. Even though this is justified in the theory of attribution of laws and regulations, because the attribution of formation of legislation must be submitted explicitly and clearly, first, by mentioning the institution that receives the attribution, secondly, it clearly states the type of legislation which can be formed by the recipient. With this provision, the attribution authority that is accepted by the institution can clearly be implemented only by establishing the laws and regulations mentioned in the attribution. So the sentence "based on authority" in Article 8 paragraph (2) cannot be considered as a form of attribution, but must be seen as a condition in the formation of regulations, based on attribution authority where such authority must be expressly stated in a separate Act, not through UU no. 2011. Whereas what is meant by "the administration of certain government affairs in accordance with statutory provisions" is that the authority of the attribution of the regulation is carried out by establishing the attribution regulation where the scope of the regulation is limited to functions which are indeed the authority of the attribution recipient institution, according to the delegation, attribution or mandate (governmental authority) obtained.

Conclusions

The arrangement of Ministerial Regulations in the Law on the Formation of Legislation Regulations is departing from the desire to re-regulate clearly the existence of Ministerial Regulations previously stated in the Explanation of Law 10 of 2004 concerning Formation of Legislation, so that the existence of Ministerial Regulations has stronger legal legitimacy in Indonesian legislative system. The existence of the Ministerial Regulation is also in the framework of providing a legal basis for the Minister to form laws and regulations in his respective fields as an aide to the President in carrying out governmental powers whose scope is very broad.

A comprehensive legal foundation and legal research is needed to list Ministerial Regulations as one type of statutory regulation in Indonesia. So, in the future there will be no more legal issues and theoretical debates related to the existence of Ministerial Regulations in the legal system in Indonesia.

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