

CLARITY OF REGULATORY OBJECTIVES REGARDING PRESIDENTIAL APPROVAL IN THE FORMATION OF MINISTERIAL / HEAD OF INSTITUTION REGULATIONS

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Abstract: As the holder of power in the administration of government based on the constitution, the president has set a new policy, namely regarding the mechanism for granting presidential approval to draft regulations of ministers or heads of institutions. With the birth of this arrangement, every policy of ministers or heads of institutions with certain criteria must obtain presidential approval before being determined. The mechanism carried out after harmonization has indirectly obscured the stage of forming laws and regulations that are prevalent today. With juridical normative research methods that use statutory, conceptual, and historical approaches, it was found that the arrangement for granting presidential approval brought back classic problems. The arrangement is harmonized with other regulations. There is vagueness in sentence formulation, and use of words, terms, or phrases, which causes multiple interpretations. The arrangement also comes out of the national policy framework related to simplifying regulations promoted by the president himself. In its formation, there is also the possibility of the influence of bureaucratic political practices or competition among state administrative work units in finding alternative solutions to problems that arise in society.

Keywords: approval, president, minister.



INTRODUCTION

The Constitution of the Republic of Indonesia in 1945 (UUDNRI 1945) states that the President of the Republic of Indonesia holds government power according to the constitution.¹ As the holder of government power, the President is authorized to determine policies that are outlined in the form of laws and regulations, state administrative decisions, or policy regulations (*beleidsregel*) in the framework of government administration. In its development, the president has set a new policy related to regulations that will be formed by ministers or heads of institutions. The policy regulated by Presidential Regulation Number 68 of 2021 concerning Granting Presidential Approval to the Draft Regulation of Ministers or Heads of Institutions (Presidential Regulation 68/2021) introduces a new mechanism, namely the obligation to obtain approval from the president for each policy of ministers or heads of institutions before being determined by a regulation of ministers or heads of institutions.²

Policies of ministers or heads of institutions that must obtain presidential approval, only for draft regulations of ministers or heads of institutions that have certain criteria, namely those that:³ (1) broad impact on people's lives; (2) is strategic, which affects the president's priority programs, government targets set in the National Medium-Term Development Plan (RPJMN) and Government Work Plan (RKP), defense and security, and state finances; and/or; (3) across sectors or across ministries/agencies. Before being regulated by presidential regulation, the presidential approval policy was accommodated by the Circular Letter of the Cabinet Secretary Number B-0144/Seskab/Polhukam/04/2020, dated April 23, 2020, regarding the Granting of Presidential Approval to the Regulation of Ministers or Heads of Institutions. The President has also issued Presidential Instruction Number 7 of 2017 concerning the Taking, Supervision, and Control of Policy Implementation at the Level of State Ministries and Government Institutions (Presidential Instruction 7/2017).

¹ Article 4 paragraph (1) of the Constitution of the Republic of Indonesia in 1945.

² Article 3 paragraph (1) of Presidential Regulation Number 68 of 2021 concerning Granting Presidential Approval to the Draft Regulation of Ministers or Heads of Institutions.

³ Article 3 paragraph (2) of Presidential Regulation Number 68 of 2021 concerning Granting Presidential Approval to the Draft Regulation of Ministers or Heads of Institutions.



These policies are not without reason. Based on data sourced from www.peraturan.go.id, Helmi Chandra SY in his paper entitled "Structuring Ministerial Regulations as an Effort for Regulatory Reform in Indonesia", states that the regulations with the most number and overlap are regulations set by ministers and heads of institutions. Since it was first established in 1946 until September 2019, the number of ministerial regulations or heads of institutions recorded has reached 14,334. This makes it difficult for the government to reform regulations, especially ministerial or head of institution regulations that directly intersect with the community, business actors, and every object of the arrangements stipulated in the regulation.⁴ Overlapping regulations of ministers or heads of institutions are caused by the absence of joint guidelines. Presidential Regulation Number 87 of 2014 concerning Regulations for the Implementation of Law of Republic Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations (Presidential Regulation 87/2014) only regulates the mechanism for the formation of laws and regulations, government regulations in lieu of laws, government regulations, and presidential regulations. However, it does not include regulations of ministers or heads of institutions. This encourages ministries and institutions to set their own guidelines, resulting in various variations of ministerial or head-of-agency regulations.

Seeing such conditions. The Ministry of Law and Human Rights has already harmonized the draft regulation of ministers or heads of institutions. The harmonization process is regulated in the Regulation of the Minister of Law and Human Rights Number 23 of 2018 concerning the Harmonization of Draft Ministerial Regulations, Draft Regulations of Non-ministerial Government Institutions, or Draft Regulations of Nonstructural Institutions by the Drafter of Laws and Regulations (Regulation of the Minister of Law and Human Rights 23/2018). The concept of harmonization above adopts the process of harmonizing, rounding, and solidifying the conception regulated in Presidential Regulation 87/2014. Harmonization, which is carried out after internal discussions of the ministry or institution, aims to:⁵ (1) harmonize a draft regulation of a minister or head of an

⁴ Tim Peneliti Pusat Studi Hukum dan Kebijakan Indonesia, *Menggagas Arah Kebijakan Reformasi Regulasi di Indonesia: Prosiding Forum Akademik Kebijakan Reformasi Regulasi 2019*, Kota Padang, (Jakarta: Yayasan Studi Hukum dan Kebijakan Indonesia, 2019), h.8-9.

⁵ Article 4 of Regulation of the Minister of Law and Human Rights Number 23 of 2018 concerning Harmonization of Draft Ministerial Regulations, Draft Regulations of



institution with: (a) Pancasila, the UUDNRI 1945, higher or equivalent laws and regulations, and court decisions; and (b) techniques for drafting laws and regulations; and. (2) generate agreement on regulated substance.

The mechanism for granting new presidential approval can be applied if a draft regulation of a minister or head of an institution has been completed, harmonization in the Ministry of Law and Human Rights practically adds a stage in forming a draft regulation of ministers or heads of institutions.⁶ The mechanism for granting presidential approval in addition to being contrary to the law, has also obscured the stages in the formation of current laws and regulations. If the harmonization process can be part of or carried out in the initial preparation stage and further discussion stages involving external parties of ministries or institutions, then include at what stage the process of granting presidential approval. The term presidential approval also creates confusion with the term stipulation. The public will have a perception of the current ministerial or head of institution regulation is no longer signed by the minister or head of the institution but by the president.

The process of reviewing and submitting recommendations by the Cabinet Secretariat on the above criteria is also expected to repeat the process of harmonizing the draft regulation of ministers or heads of institutions by the Ministry of Law and Human Rights. Presidential Regulation 68/2021 also does not elaborate further on standards or measures that can be used as a reference in assessing broad impact criteria for people's lives or criteria of a strategic nature. According to research by the Indonesian Center for Law and Policy Studies, Muhammad Nur Sholikin, the content material regarding the regulated criteria is still abstract and can cause broad interpretation.⁷

Since there have not been many references discussing the arrangement for granting presidential approval and regardless of the government's will to find the best alternative to resolve issues related to ministerial or head regulations, there is a curiosity to find out clear goals

Non-Ministry Government Institutions, or Draft Regulations from Non-structural Institutions by Drafters of Legislation.

⁶ Article 4 of Presidential Regulation Number 68 of 2021 concerning Granting Presidential Approval to the Draft Regulation of Ministers or Heads of Institutions.

⁷ Muhammad Nur Sholikin, "Kewajiban Persetujuan Presiden terhadap Rancangan Peraturan Kementerian/Lembaga: Apa Dampaknya terhadap Reformasi Regulasi?", <https://pshk.or.id/aktivitas/kewajiban-persetujuan-presiden-terhadap-rancangan-peraturan-kementerian-lembaga-apa-dampaknya-terhadap-reformasi-regulasi/> (accessed 25 February 2023).



and urgency and see possible causes of overlapping roles between the two ministries and agencies in resolving ministerial regulation issues or head of the institution.

RESEARCH METHODS

The type of research used is normative juridical research, which is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced that produce new arguments, theories, and concepts as descriptions in solving the problems faced. According to their fields, research is carried out with a statutory approach, and conceptual, and historical approaches, with the hope of obtaining a study regarding the purpose, urgency, and causes of overlapping roles of such arrangements. Data collection techniques in research are carried out using literature studies, namely a study examining literature that is by the problem as a theoretical basis to be used as an analytical knife in the discussion.

RESEARCH RESULT

The Urgency of Presidential Approval Arrangements

The term urgency comes from the root word urgent, a loanword from English. In the Big Dictionary Indonesian, urgent means a situation that is urgent to be done, very important and serious, so it requires immediate action.⁸ Urgency is a term that is often found in the process of forming laws and regulations. Every policy or regulation that will be formed is always based on a need and/or aims to meet an important need or need. Therefore, to see the urgency of Presidential Regulation 68/2021, we can use the principle of clarity of purpose and the principle of the need for regulation.

a. Clarity of Purpose.

Every formation of laws and regulations must have a clear goal to be achieved.⁹ It can be identified that the objectives of the presidential approval mechanism are to:¹⁰

⁸ Great Dictionary of Indonesian, <https://kbbi.web.id/urgen> (accessed 26 February 2023).

⁹ Explanation of Article 5 paragraph (1) letter a, of Law of Republic Indonesia Number 12 of 2011 concerning Formation of Legislation, as amended twice, most recently by Law Number 13 of 2022.

¹⁰ Considering letter b and letter c of Presidential Regulation Number 68 of 2021 concerning Granting Presidential Approval of Draft Ministerial Regulations or Heads of Institutions.



- 1) produce regulations of ministers or heads of institutions that are qualified, harmonious, non-sectoral, and do not hamper community and business activities; and
- 2) reduce problems in the implementation of ministerial or head of institution regulations.

In general, there are problems related to ministerial regulations or heads of institutions, namely:

(1) Obesity.

According to data from the Directorate General of Laws and Regulations, Ministry of Law and Human Rights, as of March 16, 2023, there have been 51,429 regulations.

Of the total, ministerial or head of agency regulations are the largest and amounted to 23,074 regulations. Details of the amount based on the type of legislation can be seen in Table 1.

Table 1.
Types and Amounts of Regulations

No.	Types of Regulations	Sum
1.	Law of Republic Indonesia	1.729
2.	Government Regulation in Lieu of Law	217
3.	Government Regulation	4.818
4.	Presidential Regulation	2.277
5.	Audit Board of Indonesia Regulation	34
6.	Bank of Indonesia Regulation	206
7.	Financial Services Authority of Indonesia Regulation	452
8.	Ministerial Regulation/Regulation of the Minister	18.145
9.	Non-Ministerial Government Agencies Regulation	4.929
10.	Local Regulation	18.622
Total		51.429

Source: www.peraturan.go.id.¹¹

Such a large amount can be due to the nature of ministerial or head of agency regulations which are the most technical and

¹¹Directorate General of Legislation, Ministry of Law and Human Rights, <https://www.peraturan.go.id/peraturan/list.html?id=11e449f371bb47e09607313231373436>, (accessed 16 March 2023).



operational implementing regulations of higher regulations so the technical substance that needs to be regulated is also quite a lot.

When compared with data on the number of ministerial or head of institution regulations as of January 16, 2020, which amounted to 19,016, there is an addition of around 1,000 regulations per year.¹²

(2) Quality.

According to Yasona H. Laoly, many classic problems are still inherent in regulations in Indonesia, including the regulation of the meter or head of the institution, namely overlapping, multi-interpretation, asynchronous disharmonization, and regulations that are formed not according to needs, so they do not bring any impact or influence.¹³ If you look at the problem and whether or not the mechanism for granting presidential approval, the two can be said to be interrelated. However, to be able to find out more about the suitability of the objectives, it is necessary to pay attention to the substance and formulation of the presidential regulation.

I.C. Van der Vlies in his book, "*Het Wetsbegrip en Beginselen Behoorlijke Regelgeving*", recognizes one of the principles of the formation of formal legislation, namely the principle of clear purpose (*beginsel van duetlijke doelstelling*). The principle emphasizes three main things, namely:¹⁴

- 1) The accuracy of the location of the formed laws and regulations;
- 2) Conformity with the general policy framework established by the government; and
- 3) Has a specific purpose and purpose of the sections of legislation formed.

The first point is the accuracy of the location of the presidential regulation. The content of the presidential regulation consists of three types, namely:¹⁵

¹² Wicipto Setiadi, "*Simplifikasi Regulasi dengan Menggunakan Pendekatan Omnibus Law*", dalam *Jurnal RechtsVinding*, Vol.9, No.1, (April 2020), h.40.

¹³ Rizal Irvan Amin, "*Mengurai Permasalahan Peraturan Perundangundangan di Indonesia*", dalam *Jurnal Res Publica*, Vol.4, No. 2, (Mei - Agustus 2020), h.210.

¹⁴ Roseno Haryowidigo, *Wetgeving Sleur di Negeri Belanda dan Perkembangan Undang-Undang Saat Ini di Indonesia*, (Jakarta: Badan Pembinaan Hukum Nasional, Departemen Kehakiman dan Hak Asasi Manusia RI Tahun 2004), h.48.

¹⁵ Ahmad Husen, "*Eksistensi Peraturan Presiden Dalam Sistem Peraturan Perundang-*
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- 1) content material for the administration of government by the authority of presidential attribution under the UUDNRI 1945, independent arrangements, and the scope of the substance of decisions that are not certain;
- 2) content material based on the law ordering it to be further regulated by presidential regulation; and
- 3) Content material based on Government Regulations that delegate further regulatory authority to Presidential Regulations.

Presidential Regulation 68/2021 is included in regulations established for the administration of government. The scope of regulation only includes policies or regulations that will be determined by the minister or head of the institution. Presidential Regulation 87/2014, which does not regulate the mechanism for establishing ministerial or head of agency regulations, requires a guideline to temporarily fill the legal vacuum. Presidential Regulation 68/2021 seems to be formed to be able to close the void and complement the existing main regulations. As part of the laws and regulations, the regulation ministers or heads of institutions should follow the stages regulated in the law, which are divided into: (1) planning; (2) preparation or drafting; (3) discussion; (4) harmonization; (5) stipulation or approval; and (6) enactment.

The granting of presidential approval then places itself at a new stage after the implementation of harmonization is complete. If you look back at the discussion of the three criteria, then the president's approval is more appropriate if given a place in the planning stage. If based on the impact analysis carried out, it turns out that the president's rejection results in it, then it will stop or repeat the process that has been going on for quite a long time from planning to harmonization. It will be more effective and efficient if the synchronization of impact analysis is done together from the beginning of the planning process.

Synchronization of joint analysis at the planning stage can also be carried out on the second criterion, namely strategic policies in the national development system because these strategic matters have been broadly arranged within the regulatory framework. Even the third criterion or cross-sectoral, should be implemented in conjunction



with the harmonization process. The Cabinet Secretariat as vice president may oversee the preparation of a draft regulation of ministers or heads of institutions according to the president's policy or direction in a harmonization discussion meeting.

The second point, or conformity with the existing general policy framework of the government. The general policy in state policy stratification is all forms of policy determined by the president and are comprehensive or national, including in the form of government regulations, presidential decrees, and presidential instructions. In policy stratification there are also:¹⁶

- 1) national policies jointly established by the House of Representatives (DPR) and the Government, namely laws, decrees of the People's Consultative Assembly (MPR), or government regulations in lieu of laws;
- 2) technical policies formed by ministers and heads of institutions; and
- 3) operational policies established by the Director-General or other technical echelon I officials within a ministry or agency.

While the framework can be meaningful as a system of concepts, and basic principles so that every general policy of the government should be within the framework or one system with the same basic concepts, values, and principles and comprehensive. However, this is not visible in Presidential Regulation 68/2021. If you look at the general policy of the government regarding the determination of the RPJMN, there is a conflict with the same basic principles or concepts as the arrangement for granting presidential approval. In the 2020-2024 RPJMN, there are six presidential directives, including directives on deregulation or simplification of regulations which include reducing overlap, forming regulations that are more goal-oriented, and quality, not quantity, as well as simplifying bureaucracy which includes simplifying procedures, implementing *e-government*, and reform of the public service bureaucracy. However, the policy contained in Presidential Regulation 68/2021 which extends the stages of regulation formation comes out of the national policy framework set by the president himself.¹⁷

¹⁶D.A.Sumantri, "Tentang Kebijakan Pemerintah", in *Jurnal Hukum dan Pembangunan*. No. 1, Year XXXII (Januari-Maret 2002), h.41.

¹⁷Appendix to Presidential Regulation Number 18 of 2020 concerning the 2020-2024
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The third point, or the existence of specific objectives and objectives of parts of the presidential regulation, is reflected in the consideration of the regulation of the presidential approval mechanism. Another formal principle of I.C. Van der Vlies' opinion that is still related is the principle of the need for regulation or *het noodzakelijkheids beginselen*. The principle intends to remind us that basically there are other alternatives to solve a problem in government and society, without having to form a law and regulation.¹⁸

The existence of criteria and the assessment process carried out after harmonization reflects the fact that there is overlap and disharmonization with the Regulation of the Minister of Law and Human Rights 23/2018. Disharmonization itself is a state of two or more rules governing the same content material, but different in their respective technical arrangements. Disharmonization can also be understood as an overlap between one regulation and another, resulting in conflict with higher laws and regulations, as well as at the same level. The overlap in these regulations is caused of them by too many regulations in Indonesia.¹⁹

In addition, the addition of a stage after the harmonization process of ministerial or head of the institution regulation will increase the cost of forming the regulation itself. The Ministry of Finance in an article on its official website alluded to the discovery of the cost of making a regulation in one of the ministries which reached Rp4 billion.²⁰ Therefore, the Ministry of Finance then determines the maximum limit of the drafting fee ceiling for one ministerial regulation or head of an institution of Rp100-200 million. However, the finance ministerial regulation does not set a ceiling for other stage financings components such as planning, discussion, harmonization, research and study, public consultation, or socialization.²¹

National Medium-Term Development Plan, Chapter I of the 2020-2024 National Medium-Term Development Plan, h.15-16.

¹⁸ Roseno Haryowidigo, *Op.Cit*, h.49.

¹⁹ Zainal Arifin dan Adhi Putra Satria, "Disharmonisasi Peraturan Perundang-undangan di Indonesia: Antara Bentuk, Penyebab, dan Solusi", dalam *Jurnal Pro Hukum*, Vol.9, No.1, (Juli 2020), h.2

²⁰ Muhammad Indra Haria Kurba, "Memangkas Biaya Regulasi", <https://anggaran.kemenkeu.go.id/in/post/memangkas-biaya-regulasi>, (accesed 22 February 2023)

²¹ Appendix I to Regulation of the Minister of Finance Number 123 /PMK.02/2021 concerning Standard Output Costs for the Fiscal Year 2022, h.11.



Given some of the problems that can be caused, it is necessary to first find alternatives that can reduce the problem, without having to form a new presidential regulation. The alternatives that can be suggested, among others:

- 1) Sort out which Ministerial Regulations or Head of Institutions are delegates from higher regulations, regulations formed based on the attribution authority of Ministries and Institutions, and other administrative policy regulations so that not all regulations set by Ministers or Heads of Institutions follow the formation process up to promulgation like law and regulation.
- 2) Reduce delegation for further arrangements derived from the law directly to a ministerial regulation or head of the institution and strive for the existing content material to be fully regulated in government regulations unless there are highly technical and operational matters. One example is the government regulation on licensing which is a follow-up to the Law on Job Creation, which thoroughly regulates business licensing in several ministries or institutions, which was previously regulated in the regulation of ministers or heads of institutions.
- 3) The President may assign the Cabinet Secretariat to be more involved from the outset in drafting ministerial or agency regulations and the conformity of the regulatory framework in the CTR and strategic plans of ministries or agencies, engaging in the assessment and analysis of the potentially broad impact of a ministerial or head policy to be taken, and involved in the harmonization process. Thus, indirectly the Cabinet Secretariat has implemented Presidential Instruction 7/2017 more optimally, where the order in it is to be involved in drafting the regulation of ministers or heads of institutions from the beginning and then report and provide recommendations to the president, not as a filter at the end of the formation process.²²

b. Bureaucratic Politics

Presidential Regulation 68/2021 indirectly causes a shift in the harmonization function that has been carried out by the Ministry of Law and Human Rights to the President through the Cabinet Secretariat. This arrangement seems to have eliminated the authority

²² Third Dictum of Presidential Instruction Number 7 of 2017 concerning Adoption, Supervision, and Control of Policy Implementation at the Level of State Ministries and Government Agencies.



of attribution of ministries or institutions originally granted by applicable laws and regulations.²³

The presidential regulation then authorizes the Cabinet Secretariat to determine the implementing regulations for granting presidential approval. Even though the Cabinet Secretariat does not have the task and function to formulate, determine, and implement policies such as ministries or other sectoral institutions.^{24,25}

Jan Michiel Otto, Suzan Stoter, and Julia Arnscheidt in their article entitled "*The Use of Lawmaking Theory for Improving Legal Quality in Development Projects*", conveyed one of the theories of legal policy-making in developing countries, namely the theory of *political bureau*. According to this theory, policy formulation or lawmaking that occurs can be caused by a clash between various sectors or bureaus in government administration. Every bureau in a ministry or government work unit was designed from the beginning to advance the public interest. However, their obligations or duties are understood and interpreted differently by one bureau to another, so that when there are new problems that arise and they must be regulated, there will immediately arise a conflict of interest among government agencies or agencies, each of which will try to include the affairs of the new matter into the scope of their authority. In other words, the bureau will be the only agency that monopolizes matters of definition, diagnosis, or analysis and proposes solutions to new problems that arise.²⁶

The theory can be used as a tool to examine a policy and legislation in developing countries formed and formulated, where the history of the emergence of legislation is evidence of competition and conflict between various government agencies or administrations. Conflicts of interest within ministries or institutions in Indonesia are

²³ Moh. Amar Khoerul Umam dan Fitriani A. Sjarif, "Pengaturan Pemberian Persetujuan Presiden terhadap Rancangan Peraturan Menteri Berdasarkan Teori Peraturan Perundang-Undangan", dalam *Jurnal PALAR (Pakuan Law Review)*, Vol. 7, No.2, (Juli-Desember 2021), h.511

²⁴ Article 11 of Presidential Regulation Number 68 of 2021 concerning Granting Presidential Approval to the Draft Regulation of Ministers or Heads of Institutions.

²⁵ Article 3 Letter d of Presidential Regulation Number 55 of 2020 concerning the Cabinet Secretariat.

²⁶ Sulistyowati Irianto, dkk, *Seri Unsur-Unsur Penyusun Bangunan Negara Hukum: Kajian Sosio-Legal*, (Ed.1.Denpasar: Pustaka Larasan, bekerja sama dengan Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012.), h.183-184



nothing new. The overlap of authority between the Ministry of Law and Human Rights and the Cabinet Secretariat can be seen from several laws and regulations regarding the formation and organizational structure that have been established by the president. The history of the arrangement of organizational structure can show a glimpse of the development and evolution of tasks and functions in the formation of policies or regulations of the two agencies. The chronology of the development of the tasks and functions in question is as follows:

- 1) at the end of the new order, the Cabinet Secretariat was part of and tasked with assisting the State Secretariat in providing day-to-day staff and administrative support to the President in exercising State government powers including in the field of laws and regulations;²⁷
- 2) In the early days of the reform, the duties and functions of the Cabinet Secretariat in the field of laws and regulations were still the same as in the previous period;²⁸
- 3) The Cabinet Secretariat was separated from the State Secretariat in 2005 and carries out the functions of monitoring, evaluating, and delivering analysis on the implementation of government policies and programs in the fields of politics and security, economy, and people's welfare;²⁹
- 4) In 2005, the term harmonization first appeared and was carried out by the department that organizes affairs in the field of laws and regulations during discussions in the interdepartmental committee. Harmonization is carried out on the draft Law, Government Regulation in Lieu of Law, Government Regulation, and Presidential Regulation, as well as technical adjustments to the drafting of laws and regulations;³⁰
- 5) In 2010, there was a change in the function of the Cabinet Secretariat which originally carried out monitoring and

²⁷ Article 5 of Presidential Decree Number 62 of 1998 concerning the Position, Duties, Functions, and Organizational Structure of the State Secretariat.

²⁸ Article 6 of Presidential Decree Number 156 of 1998 concerning the Position, Duties, Functions, and Organizational Structure of the State Secretariat.

²⁹ Article 24 of Presidential Regulation Number 31 of 2005 concerning the State Secretariat and Cabinet Secretariat.

³⁰ Article 8 of Presidential Regulation Number 68 of 2005 concerning Procedures for Preparing Draft Laws, Draft Government Regulations in lieu of Laws, Draft Government Regulations, and Draft Presidential Regulations.



evaluation as well as analysis of policy implementation to formulate and deliver an analysis of government policy plans in the fields of politics, law, and security, economy and people's welfare;³¹

- 6) In 2014, there was an additional harmonization process for the draft Law, Government Regulation in Lieu of Law, Government Regulation, and Presidential Regulation outside the scope of work of the interministerial committee;³²
- 7) In 2015, the Cabinet Secretariat still carried out the same function, namely the formulation and analysis of government policy plans. At this time, the possible origin of analysis and formulation activities on a draft Government Regulation or draft Presidential Regulation that has been harmonized at the Ministry of Law and Human Rights;³³
- 8) In 2018, the Ministry of Law and Human Rights arranged that the draft regulation of ministers or heads of institutions needs to be harmonized as well because it is still part of its duties and functions in drafting regulations listed in Presidential Regulation Number 44 of 2015;³⁴
- 9) In 2020, the Cabinet Secretariat issued Circular Number B-0144/Seskab/Polhukam/04/2020, dated April 23, 2020, reminding the president's direction in a cabinet meeting that ministerial or head of institution regulations need to obtain presidential approval;
- 10) The circular was later upgraded to Presidential Regulation 68/2021.

From the chronology, it appears that the Cabinet Secretariat, which during the New Order period was still part of the Cabinet Secretariat, experienced changes in duties and functions during the

³¹ Article 3 of Presidential Regulation Number 82 of 2010 concerning the Cabinet Secretariat.

³² Article 51-Article 58 of Presidential Regulation Number 87 of 2014 concerning Regulations for Implementing Law of Republic Indonesia Number 12 of 2011 concerning Formation of Legislation, amended by Presidential Regulation Number 76 of 2021.

³³ Article 3 of Presidential Regulation Number 25 of 2015 concerning the Cabinet Secretariat.

³⁴ Article 2 and Article 3 of Regulation of the Minister of Law and Human Rights Number 23 of 2018 concerning Harmonization of Draft Ministerial Regulations, Draft Regulations of Non-Ministerial Government Institutions, or Draft Regulations from Non-structural Institutions by Drafters of Legislation.



Reform period, which was originally only in the form of monitoring, evaluation, and analysis of government policy implementation, into the formulation and evaluation of government policy plans. The changes follow changes in regulations regarding harmonization which is the task of the Ministry of Law and Human Rights so that there are two processes, namely harmonization, and analysis of policy plans or draft regulations. Even after there is a harmonization arrangement for the draft regulation of ministers or heads of institutions, the Cabinet Secretariat finally analyzes or reviews a draft regulation of the minister or head of the institution with certain criteria.

In Marie Fainsond's opinion, there is a pattern of relationship between bureaucracy and politics. The pattern consists of:³⁵

- 1) Representative Bureaucracy, is a condition that shows the bureaucracy is responsive to the will of political leaders and society. Every policy that will be taken is based on awareness of the prevailing consensus.
- 2) Apart state Bureaucracy, is a condition where bureaucracy is formed within a country that adheres to a single-party system. The bureaucracy in pol aini is controlled by the party apparatus.
- 3) The military-dominated bureaucracy is a condition in which bureaucracy grows in a country where political positions in the field of government are dominated by the armed forces.
- 4) A personal instrument of the Autocratic, is a condition in which a relationship places bureaucrats solely as tools of autocratic or dictatorial rulers. The bureaucrats individually will depend largely on the qualities that the ruler needs.
- 5) Colonial administration on a nominal ruling person or group, is a condition in which the bureaucracy can govern, either directly as a colonial administrator or indirectly on behalf of a person or group of businessmen.

Looking at the current condition of the Indonesian bureaucracy, the representation of political party members from a large coalition in the government who become ministers or heads of institutions is quite a lot and not infrequently in positions considered strategic. Therefore,

³⁵ Mashur Hasan Bisri, "Kontrol Politik Birokrasi Dalam Kebijakan Publik", in *PUBLISIA (Jurnal Ilmu Administrasi Publik)*, Vol.2, No.2, (Oktober 2017), h.127.



if referring to Marie Fainson's opinion, the pattern of Indonesian bureaucratic and political relations is included in the Representative Bureaucracy, every policy that will be taken based on agreements between the government and political party elites by looking at or on behalf of the will of the community. This can be seen from the tug-of-war of the function of aligning government regulations or policies since the reform period which is only distinguished by the mention of the terms harmonization and analysis or study. Furthermore, coincidentally the current positions of President, Cabinet Secretary, and Minister of Law and Human Rights are held by members of the same political party.

Other examples of competition or conflict of interest between ministries or institutions and political interests can also be seen in legal products or government policies, such as arrangements by the Coordinating Ministry. Although according to the Presidential Regulation on ministerial organization, the coordinating ministerial group cannot formulate, determine, and implement policies in their fields. In general, arrangements by the coordinating ministry are internal in the form of archives, staffing, benefits, organizational structure, and other internal affairs. Until now, based on traces, the Coordinating Ministry for Political, Legal, and Security Affairs is still consistent in this path. However, the Coordinating Ministry for Maritime Affairs and Investment has set an exit policy because it received a delegation from the Lake Toba Tourism Area Management Authority to regulate procedures for granting certain strategic cooperation approvals to business entities and related institutions or parties.³⁶

CONCLUSION

Arrangements regarding the granting of presidential approval are intended to suppress acute obesity and improve the quality of regulations made by ministers or heads of institutions. However, its presence brings classic problems in legislation in Indonesia, such as disharmony with other

³⁶ Article 18 paragraph (3) of Presidential Regulation Number 49 of 2016 concerning the Lake Toba Tourism Area Management Authority Body and Regulation of the Coordinating Minister for Maritime Affairs and Investment Number 4 of 2019 concerning Procedures for Granting Cooperation Agreements That Have Certain Strategic Values Executing Agency Agency Authority Management Agency for Lake Toba Tourism Areas with Business Entities and Institutions or Related Parties.



laws and regulations. Even though it has a clear objective and the location of the appropriate type of regulation, the mechanism that adds to the stages and has the potential to hinder it is contrary to the national policy framework in the form of simplification of regulations that have been set by the president himself. In addition, there is the possibility of the influence of bureaucratic political practices or competition among state administration agencies in solving problems that arise in society.

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