



LEGAL POLICY ON THE FLEXIBILITY OF ESTABLISHING STATE MINISTRIES FOR THE IMPLEMENTATION OF THE GOVERNMENT

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Abstract: The amendment to Law Number 39 of 2008 concerning State Ministries has sparked controversy in society, particularly regarding the flexibility of the number of ministries, which is no longer limited. When a legal norm undergoes regulatory changes, there is certainly a background. Law Number 61 of 2024, issued amidst the government's "efficiency" agenda, is an interesting anomaly to study. This study aims to identify and analyze the legal politics of the flexibility of the formation of state ministries in relation to government administration. This research is normative, using a statutory, philosophical, conceptual, and case-based approach, namely examining laws and legal phenomena. The results of this study, namely the legal politics of the flexibility of the formation of state ministries, which was originally limited to a maximum of 34 (thirty-four) ministries, then changed to "unlimited", indicate an attempt to actualize the strengthening of the President's prerogative, which does not require restrictions on ministerial institutional organs. The change in legal norms does not lead to a reduction in the number of ministries, but to an increase in the number of ministries. Law Number 61 of 2024 does not regulate substantive criteria for the formation of the number of ministerial organs, through the clause "needs for the administration of government by the President", thus giving the President great discretion to determine how many ministerial organs are needed in the administration of government affairs.

Keywords: Government; Legal Policy; State Ministry

I. INTRODUCTION

State administrators have an important role in realizing the goals of the state.¹ The administration of government at the center is carried out by government institutions, ministries (formerly departments) and non-ministerial government institutions.² Following the amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), provisions regarding state ministries were amended. This amendment stipulated that ministers are responsible for specific government affairs and mandated that the formation, modification, and dissolution of state ministries be regulated by law.³ The changes to the constitutional provisions governing state ministries do not fundamentally change the substance. The constitution mandates that state ministries assist the President, so that legally and formally the President then has the authority to appoint and dismiss Ministers.

The position of the President as regulated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "The President of the Republic of Indonesia holds the power of government according to the Constitution" is the main legal basis for the President's legitimacy in forming and complying with institutions that are directly under the President. Consequently, as the holder of the power of state government, the President has the authority to determine the structure of the government under him.⁴ This is known in a presidential system of government, where the president has the prerogative to form a cabinet, consisting of ministers who assist in carrying out executive functions. The process of selecting these ministers is crucial because the ministers selected must possess high integrity and competence to carry out their duties effectively.⁵ Jimly Asshiddiqie stated that

¹ General Explanation of Law Number 39 of 2008 concerning State Ministries.

² Adam Setiawan, 2021. *Analisis Yuridis terhadap Penataan Struktur Organisasi Kementerian dalam Rangka Peningkatan Reformasi Birokrasi*. Supremasi Hukum: Jurnal Kajian Ilmu Hukum 10, no. 2, p. 126.

³ Pasal 17 ayat (3) & (4) UUD NRI Tahun 1945.

⁴ Bilal Dewansyah & M. Adnan Yazar Zulfikar, 2016. *Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi*. Padjadjaran Journal of Law 3, no. 2, p. 285 - 309. As quoted in Qurrata Ayuni & Charles Simabura, 2023. *Pembaharuan Kementerian Negara di Indonesia*. Nagari Law Review 7, no. 2, p. 286.

⁵ Susi Harijanti, et.al., 2021. *Natural Born Citizen as a Requirement of Indonesian President: Significances and Implications*. Padjadjaran Jurnal Ilmu Hukum (Journal of Law) 7, no. 3, p. 289 - 313. As quoted in Firdaus Arifin, 2024. *Pembentukan Kabinet dalam Sistem Pemerintahan Presidensial di*

the selection of ministers in a presidential system should prioritize technical leadership requirements over political support requirements.⁶ The effect is that the President will have complete control over the cabinet he forms. This is what makes the President's prerogative in selecting ministers so significant.

The president does not require parliamentary approval or compliance to form a cabinet he deems capable of governing the country. However, it must also be understood that the president's considerable power in forming a cabinet is also related to the ministerial relationships within a presidential system, where ministers are directly responsible to the president.⁷ In addition, ministers do not only act as heads of government departments, but also play a key role in the relationship between the executive and the legislature in the legislative process.⁸ Therefore, in a presidential system, cabinet appointments are an important key in understanding the president's strategy.⁹

Due to the dynamics of legislation, Law Number 39 of 2008 concerning State Ministries has now been amended by Law Number 61 of 2024 concerning Amendments to Law Number 39 of 2008 concerning State Ministries. In its contents, there are new provisions between Article 6 and Article 7 of Law Number 39 of 2008, namely Article 6A which states that: "In certain cases, the formation of a separate ministry can be based on sub-government affairs or details of government affairs as long as they are related to the scope of government affairs as referred to in Article 5 paragraph (1), paragraph (2), and paragraph (3)." Based on the norms of Article 6A of Law No. 61 of 2024, implementing regulations were then issued, including Presidential Regulation Number 139 of 2024 concerning the Arrangement of Duties and Functions of State Ministries, and Presidential Regulation Number 140 of 2024 concerning the Organization of State Ministries. Based on Presidential Regulation

Indonesia: Studi Komparasi UUD 1945 Sebelum dan Setelah Perubahan. Lex Renaissance 9, no. 2, p. 342.

⁶ Jimly Asshiddiqie, 2010. *Pengantar Ilmu Hukum Tata Negara*. Jakarta: PT. Rajagrafindo Persada, p. 325.

⁷ Charles Simabura, 2022. *Peraturan Menteri dalam Praktik Sistem Presidensial Setelah Perubahan UUD NRI 1945*. Jakarta: Rajawali Pers, p. 325. As quoted in Qurrata Ayuni & Charles Simabura, *Ibid*.

⁸ Octavio Amorim Neto, 2006. *The Presidential Calculus Executive Policy Making and Cabinet Formation in The Americas*. Comparative Political Studies 39, no. 4, in Charles Simabura, *Op.Cit*, p. 325. As quoted in Qurrata Ayuni & Charles Simabura, *Op.Cit*.

⁹ Charles Simabura, *Op.Cit*, p. 325. As quoted in Qurrata Ayuni & Charles Simabura, *Op.Cit*.

Number 139 of 2024, 48 (forty-eight) State Ministries were then formed.¹⁰ This reality has given rise to controversy and diverse perspectives. Historically, Law Number 39 of 2008 concerning State Ministries has been subject to several judicial reviews at the Constitutional Court.

Table 1. List of Judicial Review Testing of Law Number 39 of 2008 Concerning State Ministries at the Constitutional Court

No.	Case Number	Verdict / Status
1	67/PUU-XXI/2024	Rejected in its entirety
2	155/PUU-XXI/2023	Rejected in its entirety
3	76/PUU-XVIII/2020	Not acceptable
4	80/PUU-XVII/2019	Not acceptable
5	30/PUU-XVIII/2020	Withdrawn
6	42/PUU-XI/2013	Not acceptable
7	79/PUU-IX/2011	Partially granted
8	151/PUU-VII/2009	Not acceptable

Source: Constitutional Court of the Republic of Indonesia, data processed.

Based on the existing data, Law Number 39 of 2008 has long been a public dilemma. Following the amendment to the law through Law Number 61 of 2024, this has further fueled the interesting discussion on how the legal policy of flexibility in the formation of state ministries within the government has led to a total of 48 state ministries. This is because the legal policy changes through Law Number 61 of 2024 have impacted the institutional structure of ministries.

II. ANALYSIS AND DISCUSSION

a. Position of State Ministry Institutions Based on the Constitution

The state, as an organ exercising power, possesses state apparatus. According to Bagir Manan, in the constitutional sense, state apparatus is limited to state organs, which are elements of the state organization that act for and on behalf of the state.¹¹ These state apparatuses, also known as state institutions, are commonly used in

¹⁰ Riawan Tjandra, 2024. *Pergeseran Konsep Kelembagaan Kementerian Negara Dalam Perspektif Hukum Administrasi Negara*. Proceeding APHTN-HAN 2, no. 1, p. 478.

¹¹ Bagir Manan, 2006. *Hubungan Ketatanegaraan Mahkamah Agung dan Mahkamah Konstitusi dengan Komisi Yudisial (Suatu Pertanyaan?)*. Jakarta: Varia Peradilan Majalah Hukum Tahun ke XXI Nomor 244, p. 5.

their administration. By definition, state institutions are government organizations that carry out state functions.¹² In the Big Indonesian Dictionary, the word "institution" is defined, among other things: (i) a body (organization) whose purpose is to conduct scientific research or undertake a business; and (ii) an established pattern of human behavior consisting of structured social interactions within a framework of relevant values. The word "body" in the Big Indonesian Dictionary is defined, among other things: (i) a body (the entire human body); (ii) a group of people who form a unit to do something.¹³

In discussing state institutions, there are at least two interrelated main elements: organs and functions. Organs are the form or container, while functions are the contents. Organs are the status of the form, while functions are the movement or how the container operates according to its purpose. Every state institution is always attached to a function, and therefore, this function is linked to authority. Authority, in turn, is inseparable from the legal source that legitimizes every governmental action.

The legal basis for the formation of state institutions in Indonesia varies. Some state institutions derive their basis from the 1945 Constitution of the Republic of Indonesia, although some are explicitly named, while others are implicitly named. Implicit means their names are not explicitly mentioned in the 1945 Constitution, but only their functions. Furthermore, some state institutions, both their names and functions, are regulated by lower-level laws and regulations.

The hierarchy of state institutions can be divided into three layers, namely: the first layer is called the high state institution; the second layer is called simply the state institution and the third layer is called the regional institution.

- 1) The first tier state institutions, hereinafter referred to as "High State Institutions" are state institutions established based on the constitution (UUD NRI 1945), which include the President and Vice President, the DPR, DPD, MPR, MK, MA and BPK. The authority of these high state institutions is regulated in the UUD NRI 1945 and is regulated in more detail in the Law,

¹² Muhtadi, 2013. *Lembaga Negara: Makna, Kedudukan, dan Relasi*. Fiat Justitia Jurnal Ilmu Hukum 7, no. 3, p. 262 – 269.

¹³ Nyoman Mas Ayani & Bagus Hermanto, 2019. *Gagasan Perluasan Lembaga Negara sebagai Pihak Pemohon dalam Sengketa Kewenangan Antar Lembaga Negara di Mahkamah Konstitusi Republik Indonesia*. Jurnal Legislasi Indonesia 16, no. 2, p. 176.

although the appointment of their members is determined by Presidential Decree as the highest state administrative official.¹⁴

- 2) Second-tier state institutions, hereinafter referred to as state institutions, derive their authority from the 1945 Constitution of the Republic of Indonesia, while others derive their authority from laws. Institutions that derive their authority from the 1945 Constitution include the Judicial Commission, the Indonesian National Armed Forces, and the National Police. Institutions whose authority derives from laws include the National Human Rights Commission, the Corruption Eradication Commission, the Indonesian Broadcasting Commission, the Business Competition Supervisory Commission, and so on.¹⁵
- 3) Third-tier state institutions are those whose authority derives solely from the president as head of government, and therefore their formation is entirely based on presidential policy. This means that their formation, amendment, or dissolution depend solely on presidential policy. Regulations regarding the organization of these state institutions are also outlined in a Presidential Regulation (Perpres), which is a regulation, and their members are appointed by a Presidential Decree (Perpres). These institutions include the National Law Commission and the National Ombudsman.¹⁶

In general, the duties and authorities of state institutions include assisting in the running of the state government; maintaining the stability of security, politics, law, human rights, and culture; creating a conducive, safe, and harmonious environment; acting as a liaison between the state and its people; being a source of inspiration and aspiration for the people; and eradicating criminal acts of corruption, collusion, and nepotism. A country can govern well if the duties and authorities of each state institution are carried out by the relevant officials in the country. At the very least, there must be good cooperation between each state institution in carrying out its duties and authorities.¹⁷

¹⁴ Jimly Asshiddiqie, 2004. *Perkembangan Ketatanegaraan Pasca Perubahan UUD 1945 dan Tantangan Pembaharuan Pendidikan Hukum Indonesia*. Makalah Seminar Nasional Perkembangan Ketatanegaraan Pasca Perubahan UUD dan Lokakarya Pembaharuan Kurikulum Pendidikan Tinggi Hukum Indonesia, p. 106. See also Ni'matul Huda, 2007. *Lembaga Negara dalam Masa Transisi Demokrasi*. Yogyakarta: UII Press, p. 90. As quoted in Didik Sukriono, 2009. *Lembaga – Lembaga Negara dalam UUD NRI 1945 (Sesudah Perubahan)*. Makalah Seminar Nasional Membangun Kesadaran Berkonstitusi, p. 8.

¹⁵ Ni'matul Huda, *Op.Cit.*, p. 90. As quoted in Didik Sukriono, *Ibid.*

¹⁶ Jimly Asshiddiqie, 2004. *Op.Cit.*, p. 106. As quoted in Didik Sukriono, *Ibid.*

¹⁷ Nyoman Mas Ayani & Bagus Hermanto, *Op.Cit.*, p.179.

Article 4 of the 1945 Constitution of the Republic of Indonesia affirms that the President of the Republic of Indonesia holds the power of government according to the constitution. With the presidential system of government adopted in Indonesia, in exercising governmental power, the president is assisted by ministers. Conceptually, ministers in a presidential system fully assist the president, meaning that ministers in the cabinet are extensions of the president, fully implementing the policies outlined by the president. There may be no party interference in determining policy lines from the president to his ministers. Given that in a presidential system, executive programs are entirely based on the social contract between the president and the people. There are no program interests tied to parties, even if the president is nominated by a particular party coalition.¹⁸

The existence of state ministries is the core of executive government power, serving to assist in carrying out governmental duties. When the 1945 Constitution came into effect after independence, ministers served as assistants to the president, appointed and dismissed by the president. Consequently, a minister's accountability rests with the president.¹⁹ The following is a comparison of legal norms in the constitution that regulate state ministries before and after the amendment.

Table 2. Comparison of the Arrangement of State Ministries Before and After the Constitutional Amendment According to the 1945 Constitution of the Republic of Indonesia

Before the Amendment	After the Amendment
Article 17	Article 17
(1) The President is assisted by state ministers.	(1) The President is assisted by state ministers.
(2) These ministers are appointed and dismissed by the President.	(2) These ministers are appointed and dismissed by the President.
(3) These ministers lead government departments.	(3) Each minister is responsible for specific government affairs.
	(4) The formation, modification, and dissolution of state ministries are regulated by law.

¹⁸ Roziqin & Ibnu Sofyhan, 2023. *Kedudukan Kelembagaan Kementerian Negara Dalam Sistem Ketatanegaraan Indonesia*. Jurnal de Jure 15, no. 1, p. 34 – 35.

¹⁹ Mahkamah Konstitusi, 2010. *Naskah Komprehensif Perubahan UUD 1945: Buku IV Kekuasaan Pemerintah Negara Jilid I*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 35. As quoted in Mario Agritama S. W. Madjid, 2022. *Politik Hukum Pembatasan Hak Prerogatif Presiden Dalam Pembentukan Kementerian Berdasarkan Undang-Undang Kementerian Negara*. Constitution Journal 1, no. 2, p. 170.

Based on these provisions, substantively the existence of state ministries since the birth of the 1945 Constitution until the amendments, has not changed the fact that state ministries basically assist the President in exercising governmental powers.

State ministries are established to carry out government affairs that must be carried out by the President comprehensively in order to achieve the nation's goals. These government affairs are those whose ministerial nomenclature is expressly stated in the 1945 Constitution of the Republic of Indonesia, those whose scope is stated in the 1945 Constitution of the Republic of Indonesia, and those related to the sharpening, coordination, and synchronization of government programs. Furthermore, the purpose and objective of establishing state ministries is to build an effective and efficient presidential system of government, which emphasizes improving excellent public services. Therefore, ministers are prohibited from holding concurrent positions as other state officials, commissioners and directors of companies, and leaders of organizations funded by the State Budget and / or Regional Budgets. It is even expected that a minister can relinquish other duties and positions, including positions in political parties. All of this is in order to increase professionalism, the implementation of ministerial affairs that are more focused on their core duties and functions with greater responsibility.²⁰

The relative prerogative of ministerial selection implies that ministers are fully accountable to the President. Institutionally, ministries also fall under the President's jurisdiction, and their formation is highly dependent on the President. However, the President's prerogative does not imply a special right held by certain institutions that is independent and absolute, meaning it cannot be challenged by other state institutions. The arrangement of state ministries also refers to the laws governing them. Given that constitutional norms do not rigidly regulate the institutional structure of state ministries, the laws on state ministries serve as the legal basis for determining the institutional structure of state ministries.

Based on the description above, state ministries are constitutionally positioned as state institutions within the executive branch of government, functioning to assist the President in exercising governmental authority. The nomenclature of state

²⁰ Christin Nathania Liu, et al., 2022. *Kedudukan Kementerian Negara Dalam Sistem Pemerintahan Negara Republik Indonesia*. Lex Privatum 10, no. 5, p. 7.

ministries is not regulated by the constitution, with regard to their names and number of organs. The authority to establish state ministries rests solely with the President, a prerogative held by the President.

b. Legal Policy on The Flexibility of Establishing State Ministries in The Implementation of Government

In his book, "Politics of Indonesian Law," Mahfud MD defines legal politics as legal policy implemented by the government nationally. According to Mahfud, legal politics examines why politics intervenes in law, how politics influences law, and what political systems produce what kinds of laws.²¹ Legal policy will involve policies regarding the direction, form and material of law.²²

Legislation itself is a form of legal policy. Legal policy encompasses the process of creating and implementing laws, which can indicate the nature and direction in which the law will be developed. In other words, legal policy provides a foundation for the process of creating laws that are more appropriate to the circumstances, culture, and values developing in society, while taking into account the community's needs for the law itself.²³ In the creation of legislation, legal policy is crucial. The existence of legislation and the formulation of articles serve as a "bridge" between the established legal policy and its implementation during the implementation phase of the legislation.²⁴

Regarding the institutional development of this ministry, during the pre-guided democracy period from 1945 to 1959, Indonesia used a parliamentary and presidential system, with some ministers under Prime Minister and Vice President Mohammad Hatta. The number of ministers during this period ranged from 16 (Syahrir's first cabinet) to 37 (Amir Syariffuddin's second cabinet). Subsequently, in the Wilopo Cabinet, the number of ministers was around 18, and in the Ali Sastroamidjojo cabinet, 25. In 1959, with the return of the presidential system, the dynamics of the cabinet structure depended on the wishes of the president. During

²¹ Abdul Latif & Hasbi Ali, 2022. *Politik Hukum*. Jakarta: Sinar Grafika, p. 7.

²² Moh. Fadli, et.al, 2024. *Politik Hukum Pembangunan Hukum Nasional dalam Garis – Garis Besar Haluan Negara Tahun 1973 dan Tahun 1978*. *Diversi Jurnal Hukum* 10, no. 2.

²³ Moh. Mahfud MD., 1998. *Politik Hukum Indonesia*. Jakarta: LP3S, p. 9. As quoted in Abdul Latif & H. Hasbi Ali, *Op.Cit.*, p. 19.

²⁴ Hikmahanto Juwana, 2005. *Politik Hukum UU Bidang Ekonomi di Indonesia*. *Jurnal Hukum* 01, no.1, p. 24 – 39.

the guided democracy period, the number of state ministers reached more than 100.²⁵

The absence of clear regulations on the limitations of the President's Prerogative in appointing ministers has implications for the ineffective and inefficient implementation of government. This was one of the factors that encouraged the Legislative Body of the Indonesian House of Representatives in 2005 to propose the need to establish a Law on State Ministries, although the main reason for the need to immediately establish a Law on State Ministries was to follow up on the provisions of Article 17 of the 1945 Constitution which mandates that the establishment, amendment, and dissolution of state ministries be regulated by law. Following up on the above considerations, on November 6, 2008, Law Number 39 of 2008 concerning State Ministries was passed. However, on October 15, 2024, the government and the House of Representatives amended Law Number 39 of 2008, through Law Number 61 of 2024.

Thus, the proliferation of the number of State Ministries in 2024 looks different from the pattern of institutional formation of State Ministries in the three previous periods of institutional formation of State Ministries (2009/2010, 2014 and 2019). In the first period of President Jokowi's administration, the number of State Ministries was the same as in the second period of President SBY's administration. At that time, Presidential Decree No. 165 of 2014 concerning the Arrangement of Duties and Functions of the Working Cabinet was issued, which formed 34 (thirty-four) State Ministries. In the previous three periods, changes in each cabinet remained at the maximum upper limit of 34 (thirty-four) State Ministries, which is very different from the era of President Prabowo Subianto (48 State Ministries with 7 Coordinating Ministries). The shift in the number of ministries is basically an implication of changes in legal norms through Law Number 61 of 2024 concerning Amendments to Law Number 39 of 2008. The following are the provisions for changes to the articles regulating the number of ministries.

²⁵ Academic Manuscript of the Draft Law Concerning State Ministries, p. 3 – 4. As quoted in Mario Aritama S. W. Madjid, 2022. *Op.Cit.*, p. 171.

Table 3. Comparison of the Regulations on the Number of Ministries Before and After the Amendment to the Law on State Ministries

Law Number 39 of 2008	Law Number 61 of 2024
Article 15	Article 15
The total number of Ministries as referred to in Article 12, Article 13, and Article 14 is a maximum of 34 (thirty four).	The total number of Ministries formed as referred to in Article 12, Article 13, and Article 14 is determined in accordance with the needs of the administration of government by the President.

Changes in the nomenclature of the addition and replacement of ministries directly affect the formation of laws related to the legality of the ministry.²⁶ Based on these legal norms, it demonstrates the desire for there to be no limit on the number of ministries. This has led to the increasingly flexible formation of state ministries, without a "maximum" limit. Consequently, the President has the freedom to determine the number of representative ministries to assist in the exercise of governmental authority. This grants the President full authority to determine the number and nomenclature of ministries according to the needs of the government.

Legal policy can be seen from the changes to Law No. 39 of 2008 concerning State Ministries, which implies the President's prerogative in forming his cabinet. The President is directly responsible for the State Ministries of the Republic of Indonesia that he establishes. The Ministry serves as the center of government in a presidential system, and each ministry is responsible for implementing government policies and programs in specific areas and is expected to contribute to the nation's progress and development.²⁷ Changes in the direction of legal policy regarding the number of ministries that affect the structure of state ministries.

Since the beginning of independence, the President has been given the right to determine the structure and number of state ministries. This has led to the formation, modification, and dissolution of state ministries in each government period, from independence to the present, frequently changing based on evolving

²⁶ Ian Aji Hermawan, 2024. *Sistem Ketatanegaraan Pasca Pemilihan Umum Tahun 2024*. Mandalika Law Journal 2, no. 2, p. 4 – 5.

²⁷ Debora Sanur L. & Jeffrey Ivan Vincent, 2024. *Implikasi Perubahan Undang-Undang Kementerian Negara Terhadap Struktur Pemerintahan*. Info Singkat: Kajian Singkat Terhadap Isu Aktual dan Strategis XVI, no. 18, p. 6 – 10.

socio-political conditions.²⁸ Since then, the design of state ministries has been based on dominant political power. This phenomenon is considered normal, as the number and composition of state ministries fall entirely within the president's purview. This situation demonstrates the absence of a mechanism for balancing power with other state institutions, which is considered to hinder the creation of a system of checks and balances, resulting in a weakening of the presidential system of government and democracy itself. On the other hand, the absence of a checks and balances mechanism in the structure of state ministries can lead to inefficient governance, political instability, and other social risks.²⁹ The checks and balances mechanism that should be formed between the executive and legislative branches is not working well, in fact it is not working at all.³⁰

Cabinet formation is not a simple matter, although under constitutional law, cabinet formation is the president's prerogative. Historically, cabinet formation in Indonesia has always presented complex political challenges. Indonesia has made several changes to its cabinet ministries in accordance with presidential changes. The following is a list of the number of cabinets Indonesia has had under each presidential leadership (Humas, n.d.).³¹

Table 4. List of the Number of Ministries in the Indonesian Government Cabinet

President's Name	Cabinet Name	Number of Ministries
Soekarno	Dwikora II	132
	Kerja IV	61
Soeharto	Pembangunan VI	38
BJ Habibie	Reformasi Pembangunan	36
Gus Dur	Persatuan Nasional	35
Megawati	Gotong Royong	30
Susilo Bambang	Bersatu Jilid 1	35
Yudhoyono	Bersatu Jilid 2	34
Joko Widodo	Indonesia Maju	34
Prabowo Subianto	Merah Putih	48

²⁸ Academic Manuscript of the Draft Law Concerning State Ministries, 2007. Jakarta. As quoted in Mario Agritama S. W. Madjid, 2022. *Op.Cit.*

²⁹ Roziqin & Ibnu Sofyhan, 2023. *Op.Cit.* p. 34.

³⁰ Qurrata Ayuni & Charles Simabura, *Op.Cit.*

³¹ Ahmad Wildan Sukhoyya, 2024. *Dampak Pengesahan UU Nomor 61 Tahun 2024 Tentang Perubahan UU Nomor 39 Tahun 2008 Tentang Kementerian Negara Terhadap Stabilitas Keuangan Negara*. Proceeding APHTN-HAN 2, no. 1, p. 3 – 4.

On the one hand, flexibility in determining the number of ministries is considered to increase the government's responsiveness to global challenges and domestic needs. On the other hand, there are concerns that removing the limit on the number of ministries could be used for political gain, such as accommodating coalition parties, potentially reducing government efficiency.³²

In general, several changes to Law Number 61 of 2024 include, among others:³³ addition of Article 6A concerning the formation of Ministries that can be formed to suit government affairs; addition of Article 9A concerning changes in organizational elements by the President to suit the administration of government; deletion of Article 10 which regulates the appointment of deputy Ministers to suit the workload of a Ministry; changes to Article 15 which regulates the number of Ministries that can be formed by the President; and Article 25 concerning the functional relationship between Ministries and non-Ministerial government institutions, non-structural institutions, and other government institutions.

The implications of the institutional development of the Ministry of State after the enactment of Law Number 61 of 2024 are: ³⁴

- 1) First, the dynamic strengthening of the President's prerogative rights with the justification of changes to Article 15 of Law No. 39 of 2008 which stipulates that the total number of ministries formed as referred to in Article 12, Article 13, and Article 14 is determined in accordance with the needs of the administration of government by the President.
- 2) Second, the organizational dynamics of state ministries are evolving, with the potential for strengthening sub-government affairs, as stipulated in Article 6A, as an additional article inserted between Articles 6 and 7. This model demonstrates an effort to implement the principle of specialization (het specialiteit beginsel) in the institutional design of State Ministries. However, this is also accompanied by a weakening of the capacity to control the formation of institutions subordinated to the President's prerogative.

³² Aznil Tan, 2024. *Masalah Hukum Kementerian Baru*. Kompas.com, <https://nasional.kompas.com/read/2024/10/22/10511231/masalah-hukum-kementerian-baru?page=all>. As quoted in Muhammad Ridha Ramadhan & Mirza Satria Buana, 2025. *Dinamika Politik Hukum dalam Kabinet Gemuk Kementerian di Indonesia*. Jurnal Kolaboratif Sains 8, no. 5, p. 2402.

³³ Ahmad Wildan Sukhoyya, *Op.Cit.*, p. 4 – 5.

³⁴ Riawan Tjandra, *Op.Cit.*, p. 499 – 503.

The expansion of ministerial institutions in Indonesia today is quite similar to the New Order era, where presidential power tended toward an executive-heavy system of government. Examples of executive-heavy governmental patterns that have occurred in Indonesian legal politics include:³⁵ can be re-elected without limit; there is no legislative or judicial control over the judiciary; the executive as the maker of laws and regulations and very little role and function of the legislature in its formation; and the failure of the legislative institution's control function over the executive so that it cannot carry out impeachment.

According to Delfina Gusman, the expansion of ministerial institutions through amendments to the State Ministry Law shares a similar pattern to “unlimited re-election.” The expansion of ministerial institutions tends to be inefficient and ineffective and even fosters corrupt behavior under the pretext of achieving future societal needs.³⁶ Although the President has flexibility in determining cabinet structure, the formation of ministries cannot be done haphazardly or based solely on political considerations. Such decisions must be based on rational considerations, both constitutional and administrative, with the primary goal of increasing the effectiveness and efficiency of government administration.³⁷

When compared with several other countries, based on a report from CNN Indonesia, it is known that the number of Ministries in several developed countries includes:³⁸

Country Name	Number of Ministries
China	24
Australia	30
Amerika Serikat	15
Inggris	22
Jerman	16

³⁵ Khulaifi Hamdani & Ulvi Wulan, 2022. *Rezim Executive Heavy Dalam Penyelenggaraan Pemerintahan Daerah Ibu Kota Nusantara*. Jurnal Legislatif 5, no. 2, p. 91 – 100. As quoted in Delfina Gusman, 2024. *Penambahan Lembaga Kementerian Sebagai Efisiensi dan Efektivitas Pemerintahan Menurut Teori Kelembagaan Negara*. Unes: Journal of Swara Justisia 8, no. 3, p. 662 – 663.

³⁶ Delfina Gusman, *Op.Cit.*, p. 663 – 664.

³⁷ A. Sujito, 2020. *Sistem Pemerintahan Daerah di Indonesia*. Jakarta: Rajawali Pers. As quoted in Muhammad Ridha Ramadhan & Mirza Satria Buana, 2025. *Op.Cit.*

³⁸ Ahmad Wildan Sukhoyya, *Op.Cit.*, p. 10 – 11.

Based on the table above, it is clear that the number of Indonesian ministries in the new cabinet far exceeds that of any other developed country. The new ministerial structure has implications for fiscal waste, unnecessarily driven by need, as the state budget follows the government structure. Even if unnecessary, the existence of new organizations necessitates the state providing a national budget to maintain their continuity.³⁹ Eliminating the limit on the number of ministries can increase government responsiveness, but also has the potential to lead to budget waste and overlapping authority if not managed properly.⁴⁰

The amendment to the Law on State Ministries signifies a change in policy direction. Previously, the general explanation of Law Number 39 of 2008 stated that "This law is also intended to carry out bureaucratic reform by limiting the number of ministries to a maximum of 34 (thirty-four). This means that the number of ministries cannot exceed this number and is expected to be reduced." With the subsequent amendment to the legal norms regarding the limitation on the number of ministries, it is clear that the legal policy of state ministries has changed; bureaucratic reform is no longer inherently limited to the maximum number of ministerial organs. In fact, when drafting Law Number 39 of 2008, the intention of the lawmakers was that the number of ministries would not reach 34 (thirty-four) ministries, but rather a reduction.

Based on the provisions in Law Number 61 of 2024, the direction has shifted, in the academic text for the preparation of the draft law amending Law Number 39 of 2008, it states that:

"The provisions of Article 15 of the Law on State Ministries make it difficult for the government to optimize its performance to achieve the desired national goals. The Law on State Ministries is not intended to reduce, let alone eliminate, the President's prerogative in establishing state ministries that will assist him in administering government affairs. Instead, the Law on State Ministries is intended to facilitate the President's formation of state ministries by clearly and firmly regulating the position, duties, functions, and organizational structure of state ministries."

³⁹ *Ibid.*

⁴⁰ Muhammad Ridha Ramadhan & Mirza Satria Buana, *Op.Cit.*, p. 2402.

Furthermore, in the Explanation of Article 15 of Law Number 61 of 2024, it states that what is meant by "the need for government administration by the President" is "every formation of a Ministry is carried out in accordance with the President's policy that pays attention to the harmony of government affairs between ministries and takes into account the provisions of Articles 12, 13, and 14 of Law Number 39 of 2008 concerning State Ministries." The flexibility of the formation of state ministries is expanded, although flexibility has a meaning that is not rigid, and is easy to adjust. However, looking at the transformation of the provisions of the underlying articles, it leads to efforts to fatten the ministry. The limit on the number of ministries of 34 (thirty-four) is identified as problematic from a quantitative aspect. Therefore, based on these sociological needs, a direction for policy changes has emerged so that the formation of ministries can expand from the previous regulations.

Constitutionally, according to Mahfud MD, the characteristics of executive power in a presidential system are shown by the president having great prerogative rights in selecting ministers.⁴¹ This is if we flashback to the Constitutional Court Decision Number 79/PUU-IX/2011 in the case of the judicial review of Law Number 39 of 2008, where the Constitutional Court granted the applicant's request in part. Following the Constitutional Court's decision, it stated that the explanation of Article 10 of Law Number 39 of 2008 no longer has binding legal force because it is contrary to the 1945 Constitution of the Republic of Indonesia. Where the explanation of Article 10 states that "The term "Deputy Minister" is meant as a career official and not a member of the cabinet." The Court considered that the provisions of this explanation have implications for reducing the exclusive authority of the President. This confirms that the provisions of norms in the law are not allowed to limit the prerogative of the President as the holder of government power.

Thus, the flexible legal policy of establishing ministries strengthens the legitimacy of the President's authority to exercise governmental power in accordance with his prerogatives. Eliminating restrictions on the number of ministries will provide room for Presidential discretion to adapt to the needs of government administration to achieve national goals.

⁴¹ Moh. Mahfud MD, 2001. *Dasar dan Struktur Ketatanegaraan Indonesia*. Jakarta: Rajawali Press, p. 74.

III. CONCLUSION

Based on the analysis and discussion that has been described, it can be concluded that: First, the constitution outlines that the position of state ministries is as a state institution that assists the President, with the President having the authority to appoint and dismiss them. State ministries are constitutionally state institutions directly under the President's authority. Second, the flexible legal policy of establishing state ministries requires the President to have freedom in determining the institutional structure of the ministry, not restrictions that would reduce the President's prerogative.

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