

Presidential Power in the Formation of Cabinet Posture after the State Ministries Law 2024

Yuliandri¹ Charles Simabura² Beni Kurnia Illahi³

Muhammad Ichsan Kabullah⁴

¹ Faculty of Law, Andalas University, Indonesia. E-mail: andri1962@yahoo.com

² Faculty of Law, Andalas University, Indonesia. E-mail: charlessimabura@law.unand.ac.id

³ Faculty of Law, Bengkulu University, Indonesia. E-mail: benikurnia@unib.ac.id

⁴ Faculty of Social Science and Politics, Andalas University, Indonesia. E-mail: muhammadichsankabullah@soc.unand.ac.id

The President has the authority to determine the structure of the government under him as part of the President's prerogative rights as regulated by Article 17 of the 1945 Constitution. Ironically, the Government and the House of Representatives insisted on changing the substance of Law No. 39 of 2008 concerning State Ministries through a swift amendment resulting in the enactment of Law No. 61 of 2024. One significant change in the new regulation is the removal of the limitation on the number of state ministries. It is necessary to examine how the constitutional mandate and the Law on State Ministries limit the president's power in designing the cabinet posture in Indonesia. Second, what are the implications of unlimited presidential power in forming the cabinet posture from the administrative law and state finances perspective? This research uses normative juridical legal research with a descriptive nature and a prescription form. Based on the research, there are 4 (four) priority issues, first, the rise in the number of ministries will have an impact on the state budget's ability to finance it, implications for the apparatus and infrastructure that will run government administration, further complicates the coordination function and authority between ministries, and the increasement is not in line with the government's spirit to simplify the state institutions and regulations.

Keywords: Presidential Power; Cabinet Composition; Administrative Law.

1. Introduction

Transition period in state leadership is imperative in state administration. In the aftermath of the Presidential and Vice Presidential Election 2024, news and rumours circulate about opportunities for the president-elect in deciding the cabinet composition and minister to appoint for the running of the government. The readiness of a president-elect in run his leadership is determined by the first pace he takes. As president and vice president-elect of Indonesia, Prabowo Subianto and Gibran Rakabuming Raka need to prepare their government thoughtfully should they wish to avoid being drowned in the 'five year' presidential tenure.

Judging from the experiences in various countries, Patrick Sanaghan, Larry Goldstein, and Kathleen D. Gaval believe that it is uneasy for a new president to face the awaiting challenges.¹ Some instances would be, a new president must face a culture of institutional power, the 'shadows' of the predecessor, insidious problems, the relations between various individual levels and variety of stakeholders, management of problems that suddenly raise and which group to put his trust in?² Sanaghan believes that a new president should be capable of thinking strategically and proactively in designing transitional roadmap that will enable him for meeting the challenges lurking and awaiting.³

As a president-elect, Prabowo's appointees in facing the presidential transition will support him in running his government well, including preparing his cabinet. It must be constitutionally admitted that in forming and conducting compliance with the institutions that are directly under the president as regulated by Article 4 Sentence (1) of the 1945 Constitution "The President of the Republic of Indonesia shall hold the executive power in accordance with the Constitution" serves as the chief legal basis.⁴

As the bearer of state' executive power, the President is lawfully enabled to determine the structure of government under his office as part of his prerogative rights of the president.⁵ The said 'structure' naturally refers to the state ministries as governmental instrument in certain fields. Aside from structure, the President is fully in command to determine who (ministers) will lead the implementation of state government in their respective ministries. Pertaining the State Ministries, Article 17 of the 1945 Constitution rules that:

1. The President shall be assisted by Ministers of State.
2. Ministers of State shall be appointed and dismissed by the President.

1 Patrick Sanaghan, Larry Goldstein, Kathleen D. Gaval, *Presidential Transitions, It's Not Just the Position, It's the Transition*, (Washington DC : American Council On Education/PRAEGER, Series on Higher Education, 2008), p. 7.

2 Maeva P. Carey, "Presidential Appointments, the Senate's Confirmation Process, and Changes Made in the 112th Congress", <http://www.fas.org/sgp/crs/misc/R41872.pdf>. See also Brad Plumer, "Does the Senate really need to confirm 1,200 executive branch jobs?", <http://www.washingtonpost.com/news/wonkblog/wp/2013/07/16/does-the-senate-really-need-to-confirm-1200-executive-branch-jobs/>, accessed on August 10 2024.

3 Patrick Sanaghan, et.al., *Op.cit.*, p. 7

4 Saldi Isra, *Pergeseran Fungsi Legislasi, Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2010), pp. 76-77.

5 Tom Ginsburg and Zachary Elkins, "Ancillary Powers of Constitutional Courts", *Texas Law Review*, 87, 1432, 2009.

3. Each Minister of State shall be responsible for a particular area of Government activity.
4. The formation, change, and dissolution of ministries of state shall be regulated by law.

Based on the aforementioned constitutional provisions, Richard Fenno claims that presidential cabinets (particularly in the USA) is a “secondary political institution” responsible for running presidential power effectively and supporting the President to implement his vision and mission, not the wishes of political parties wherein the ministers are educated as members.⁶ The roles of cabinets in government are more or less similar. In Indonesia, however, ministerial posts frequently serves as embodiment of coalition.⁷

The implication of this condition leads to the number of cabinet posts prepared by the president-elect. Under the circumstances, it seems as though the president should place ministers based on the slices of power for the coalition of political parties with prejudice to the integrity or competence of the appointed ministers. It is somehow undeniable that such appointment not only serves the interests of the president, but also that of the coalition of political parties. The larger the pre-election coalition, the more cabinet seats there are to share. Rumour is even swirling on the addition to the number of ministries beyond the threshold permissible by law.⁸

Ironically, the Government and the House of Representatives (DPR) have now enacted Law Number 61 of 2024 concerning Amendments to Law Number 39 of 2008 on State Ministries. Interestingly, the substance of the changes in Law Number 61 of 2024 primarily revolves around fundamental issues related to the establishment of state ministries, the number of ministries, and the functional relationships between ministries. One of the most striking aspects of this amendment is the issue of the number of ministries. According to the provisions of Point 4 of Law Number 61 of 2024, Article 15 has been amended to state that the total number of ministries established, as referred to in Articles 12, 13, and 14, is determined based on the needs of government administration by the president.

Consequently, the maximum limit of 34 ministries previously stipulated in Article 15 of Law Number 39 of 2008 has been revised and replaced with the phrase “unlimited,” aligning with institutional needs. With this new framework, the public must understand the legal and non-legal considerations of the Government and DPR in increasing the number of ministries, which had already been established at 34 by the State Ministries Law. Sixteen years ago, the lawmakers who drafted the State Ministries Law must have had strong and thorough considerations for determining the figure of 34 ministries.

This lack of limitation on the number of ministries stipulated in Law Number 61 of 2024 has resulted in a bulkier cabinet structure, forcing the government to

6 Richard M. Pious, “Prerogative Power and Presidential Politics”, dalam George C. Edwards III and William G. Howell (ed.), *The Oxford Handbook of the American Presidency*, (Oxford : University Press, 2011), p. 455.

7 *Ibid.*

8 *Ibid.*

reorganize the bureaucratic framework of each ministry. On October 20, 2024, President Prabowo Subianto announced 48 ministers and 59 deputy ministers who will assist him in steering the government for the next five years. From the author's perspective, the figure of 48 ministries is remarkable compared to the 34 ministries before the enactment of Law Number 61 of 2024.

Patrick Weller, based on the experiences of the Australian government, a 'slender' cabinet is needed so it is easier for the ministers to organize themselves for the government management.⁹ With such very limited cabinet members, there is no necessity on the side of the President to conduct limited cabinet meeting; all ministers partake in cabinet meetings so they can successfully come up with solutions to the problems at hand, and the coordination of the cabinet runs well. According to Neustadt, the ability of the President is exhibited from his intelligence to manage his cabinet for the running of the government.¹⁰

Though the president is equipped with a prerogative in designing his cabinet composition, condiseration for a smaller cabinet will improve the running of the government. Unless from the very beginning the president wants to secure his position from the spat with the legislatures, 'cabinet seat distribution'¹¹ is then a necessity. Issues encountered in the real world often serve as the excuse for composing an 'obese' cabinet. Meanwhile a President need to realize that his Ministers, supported by Vice Ministers or Director Generals ought to have agility.¹²

Considering several recent cabinet reshuffle by the president, concerns were raised about the implications resulted by the shift of institutional structures. Such implications may come as legal, social, administrative, and financial implications which serve as the primary instruments in the development of foundations for all state ministries.¹³ This is due to the fact that the status of state ministries within governmental system always serves as the spearhead in policy-making by the president as the head of government.¹⁴

Consequently, the rumour on the addition of ministries cannot be merely viewed through presidential prerogative as various aspects need to be considered by the president in formulating such policy. It takes academic justification for how state ministerial posture administered by the president-elect may well run effectively and proportionally in line with the public necessities.¹⁵ This is due to the fact that despite his prerogative, the President should remain compliant with the limitation set forth by the 1945 Constitution and the State Ministries Act. Moreover, the notion on the addition to the number of state ministries is not about the prerogative on the normative extent but there are other considerations to be accounted for before the

9 Patrick Weller, *Cabinet Government in Australia*, (New Zealand :UNSW Press, 2007), p. 214.

10 Robert Y. Shapiro, Martha Joynt Kumar, Lawrence R. Jacobs (Edt), *Presidential Power: Power, Conflict, and Democracy*, (New York : Columbia University Press, 2000), p. 159.

11 Ivor Jennings, *Cabinet Government (third edt)*, (Cambridge :the University Press, 1969), p. 24.

12 Saldi Isra, Feri Amsari, et.al., *Op.cit.*, p. 24.

13 Beni Kurnia Illahi, "Mempertanyakan Urgensi Kementerian Investasi", *Hukum Online*, April 23 2021. Accessible at <https://www.hukumonline.com/berita/a/mempertanyakan-urgensi-kementerian-investasi-lt60822aa1bf17c/>

14 Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. (Jakarta : Sinar Grafika, 2010), p. 29.

15 Mario Agritama S W Madjid, "Politics of Law of Limitation of The President's Prerogative in the Formation of Ministries Based on The State Ministry Law," *Constitution Journal*, 1(2), 2009, pp. 169-188.

addition of the ministries comes to fruition, such as human resources, institutional structures that need refurbishment, up to the issue of funding that the State Budget needs to sustain.

The first issue to address in this research shall focus on how the mandate from the constitution and the State Ministries Act limit the the power of the president in designing the cabinet posture in Indonesia. Secondly, the implication of unlimited presidential power in the formation of cabinet posture from the perspectives of state administrative law. It is then deemed necessary to conduct a comprehensive study entitled “The Implication of Unlimited Presidential Power in the Formation of Cabinet Posture Post the enactment of Law Number 61 of 2024 concerning Amendments to Law Number 39 of 2008 on State Ministries from the Perspectives of Administrative Law”.

2. Methodology

The research is a legal research. According to F. Sugeng Istanto, a legal research is a research specifically exercised or implemented to the jurisprudence – science of law. The research method employed in this research is the normative juridical (*juridische normative*).¹⁶ This is due to the fact that the study in this research is conducted by means of library research or by using secondary data. In terms of nature this research is a descriptive research.¹⁷

A descriptive research is a research that depicts an issue within certain space and time. In terms of form, this type of research is prescriptive. The research is aimed at providing depiction or formulation of the problem based on existing condition/facts. The prescriptive nature will be applied to analyze and examine values contained in laws.

Under the descriptive nature and prescriptive form, the research shall reveal the paradigm of the mandate of the constitution and the State Ministries Law in limiting the power of the presidency in designing cabinet postures in Indonesia, while at the same time, provide answer(s) to the implication of unlimited presidential power in the formation of cabinet postures from the perspectives of administrative law. The research applies several approaches, i.e. statute approach, comparative approach, and conceptual approach.¹⁸ The gathering of legal materials is conducted through library research towards primary, secondary, and tertiary legal materials.

3. Mandates of The Constitution and State Ministries Act in Limiting the Presidential Power in Designing Cabinet Postures in Indonesia

3.1. Constitutional Perspectives in the Ruling on Limiting Presidential Power in Designing Cabinet Postures

The existence of State Ministries sits at the very core of executive power

16 Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2006), p. 34.

17 *Ibid.*

18 Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Rajagrafindo Persada, 2006), p. 114.

that runs a function to assist the running of the government.¹⁹ Constitutionally, in shaping and undertaking management to institutions directly under the president, the status of the President as regulated under Article 4 Sentence (1) of the 1945 Constitution rules that “The President of the Republic of Indonesia shall hold the executive power in accordance with the Constitution”, and this clause acts as the chief legal basis. As the holder of executive power, the President is authorized to determine the governmental structure underneath. The structure is the state ministries as governmental instrument that deal with certain areas of the government.

In the post independence period where the 1945 Constitution were promulgated, Ministers were assistants of the President, in the sense, appointed and dismissed by the President. Consequently, a Minister directly answers to the President in terms of responsibility.²⁰ Since the early days of independence, the President has reserved the right to decide the structure and number of state ministries.²¹ This impacts successive governments from independence to present time where the formation, change, and dissolution of state ministries depend on the socio-political landscape of the time. The authority to appoint ministers is the prerogative of the President. Constitutionally, the regulation of ministers and ministries is stipulated on Article 17 of the 1945 Constitution: (1) The President shall be assisted by Ministers of State. (2) Ministers of State shall be appointed and dismissed by the President. (3) Each Minister of State shall be responsible for a particular area of Government activity. (4) The formation, change, and dissolution of ministries of state shall be regulated by law.

From the formulation of Article 17 it is conceptually conclusive that ministers in the presidential system are totally the assistants of the president, which means, ministers of the cabinet are the extensions of the president that undertake the policies the president has outlined.²² There should be no intervention from political parties in terms of policy-setting by the president to his ministers.²³ The formation of cabinet is the prerogative of the president, meaning that the president possesses the absolute right to appoint anyone he wants as his minister. Even further, Jimly Asshiddiqie claims that in the presidential system, ministerial posts can easily be assigned to professionals instead of politicians.²⁴ However, there are tendencies that the executive use positions within ministries, both ministers and vice ministers as a form of support from political party in parliament.

In line with the thought of Lijphart and Sartori that says that traditionally, the presidential system owns the non-collegial characteristic in the decision-making processes, the system is commonly led by one person or figure i.e. the

19 Zaqiu Rahman, “Ketentuan Pertimbangan atau Persetujuan dalam Undang-Undang Kementerian Negara”, *Jurnal Rechtvinding, Media Pembinaan Hukum Nasional*, 2(3), 2014.

20 Mahkamah Konstitusi, *Naskah Komprehensif Perubahan UUD 1945: Buku IV Kekuasaan Pemerintah Negara Jilid I* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), p. 35.

21 Mario Agritama S W Madjid, *Op.cit.*, p. 170.

22 Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta : Sekretariat Jenderal Mahkamah Konstitusi, 2006), p. 176.

23 Fariz Monteza, “Urgensi Pembatasan Kewenangan Presiden Pada Perubahan Nomenklatur Kementerian Negara”, *UNJA Journal of Legal Studies*, 01(1) 2023, p. 95.

24 Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta : Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, 2006), p. 33.

president.²⁵

This power of the President is not only about composing and appoint ministers that will sit in his cabinet but can also be broadly interpreted as the power of the individual president to determine the form, change, and merger of ministries.²⁶

Scott Mainwaring and Shugart elaborate Lijphart and Sartori on the authority of the president particularly in the formation of cabinet and institutional development, and Mainwaring suggests that the authority of the President in forming the cabinet and its institutions does not always stand as the absolute power of the President as head of the government, but instead, there are roles of the legislative at play.²⁷ The more fragmented the legislative power – as in the presidential government with multiparty system – the more the roles played by other institutions in the process of ministerial appointment, forming, modifying, and conjoining of ministries, and the more tendencies that considerations of the legislative institution affect the process.²⁸

Mainwaring's opinion – from the political point of view – that parliamentary political configuration will always affect the policies drawn by a president even in the presidential system of government. Yet, in the study of constitutional law that overlaps with political science, the roles of representative institutions particularly in the formation, change, and merger of ministries should not only accommodate aspects of political interests, but should also put consideration on broader public interests.

The architecture of ministerial postures essentially requires whole, comprehensive and thorough planning as it involves the interests of the public, and efficient and effective government bureaucracy. So far there has been no study that are whole and multidimensional that views the roles played by representative institution in designing the architecture of ministries;²⁹ is such authority the absolute authority of the President as the head of government, or is the involvement of the representative body needed. If there is involvement of legislative body in the formation, change, and merger of ministries, it should then be traced how far such involvement should be that it shall not harm the presidential government system that Indonesia uses.

Upon closer inspection on the history of regulation on ministers and ministries in numerous constitutions ever entered into in Indonesia, it is clear that there has been no rigid number and types of ministries; they all depend on the needs and decision of the president. Even in terms of number of ministries,

25 Victor Araujo, Thiago Silva dan Marcelo Vieira, *Measuring Presidential Dominance over cabinets in Presidential Systems: Constitutional Design and power sharing*, Journal of The Brazillian Political Association, 1981, p. 3.

26 Purwaningdyah Murti Wahyuni, Beni Kurnia Illahi, et.al., "Constitutional Design of Strengthening DPR Role in Forming, Changing, and Dissolving State Ministries in the Constitutional Views", *Nagari Law Review*, 6(2) 2023, p. 124.

27 Scott Mainwaring, "Presidentialism in Latin America", *Jurnal Latin American Research Review*, 25(1), 1990 pp. 157-179.

28 Victor Araujo, *Op.cit.*, p. 4

29 Nabbs-Keller, G., "Reforming Indonesia's foreign ministry: Ideas, organization and leadership". *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 35(1), pp. 56-82.

from the independence day up to present, the number of ministries keeps changing and very dynamically so. The Constitution mentions no explicit rules on the formation, change, and merger of ministries. The Constitution, however, gave general guidelines on ministries and ministers on several of its Articles. The following table contains the regulation concerning ministry:³⁰

Table 1. Regulations on Ministers and Ministries
In Constitution Ever Entered Into in Indonesia

1945 Constitution	Constitution of the United States of Indo- nesia (1949)	Provisional Constitution of 1950	1945 Constitution (Amended)
The President shall be assisted by Ministers of State. (Article 17 Sentence (1))	Those eligible for Ministerial appointment are people who are 25 years of age and not people who are disallowed to participate or to exercise suffrage, or people whose suffrage have been revoked. (Article 73)	The President composes ministries (Article 50)	The President shall be assisted by Ministers of State (Article 17 Sentence (1))
Ministers of State shall be appointed and dismissed by the President. (Article 17 Sentence (2))	The President shall agree to representatives of the states as stated in Article 69, appoint 3 cabinet formers (Article 74 Sentence (1))	The President appoints one or more people to serve as cabinet former(s) (Article 51 Sentence (1))	Ministers of State shall be appointed and dismissed by the President (Article 17 Sentence (2))
Ministers of State shall lead governmental departments (Article 17 Sentence (3))	Pursuant to the suggestions of the cabinet formers, the president appoints one of them as Prime Minister and appoints other ministers. (Article 74 Sentence (2))	Pursuant to the suggestions of the cabinet former(s), the president appoints one of them as Prime Minister and appoints other ministers (Article 51 Sentence (2))	Each Minister of State shall be responsible for a particular area of Government activity (Article 17 Sentence (3))

30 Purwaningdyah Murti Wahyuni, Beni Kurnia Illahi, et.al., *Op.cit.*, p. 129.

	Pursuant to the suggestions of the said cabinet formers, the President stipulates who among the ministers to lead each ministry. The President may appoint ministers who do not serve as ministry leader. (Article 74 Sentence (3))	Pursuant to the suggestions of the said cabinet former(s), the President stipulates who among the ministers to lead each ministry. The President may appoint ministers who do not serve as ministry leader. (Article 51 Sentence (3))	The formation, change, and dissolution of ministries of state shall be regulated by law (Article 17 Sentence (4))
	The decisions for appointment as stated by Sentences (2) and (3) of this Article shall also be signed by the three cabinet formers. (Article 74 Sentence (4))	The decisions for appointment as stated by Sentences (2) and (3) of this Article shall also be signed by the cabinet former(s). (Pasal 51 ayat (4))	
	Appointment or recall of ministers shall be conducted by means of a Government Regulation (Pasal 74 ayat (5))	Appointment or recall of ministers as well as the termination of a cabinet shall be conducted by means of a Presidential decree (Article 51	

Source: The 1945 Constitution

Based on the above Table, it is conclusive that in 4 constitutions that have been entered into, none of the constitution explicitly regulate the mechanism of formation, change, and dissolution of a ministry. All constitutions speak of the procedures in filling the office of ministers. This is understandable as a constitution is designed regulate things of important and fundamental nature.³¹ The model for filling the office of ministers is imperative to regulate in the constitution as it is related to the system of government implemented. For instance, in a presidential system the principle ‘winner takes all’ is implemented, which means the president-elect reserves the absolute power to determine his assistants and in order to ensure such presidential power, it is regulated in the constitution.³²

31 Tim PSHK FH UII, *Daya Lenting Konstitusi: Teori, Konsep dan Praktek dalam UUD NRI 1945*, (Yogyakarta: FHUII Press, 2022), p. 29.

32 Fitra Arsil, *Teori Sistem Pemerintahan: Pergeseran Konsep dan saling Berkontribusi antar Sistem Pemerintahan di Berbagai Negara*, (Jakarta: Rajawali Press, 2017), p. 12.

Meanwhile, the procedures for the formation, change, and dissolution of ministries are not explicitly regulated as they are not directly related to the presidential government system. It means, the formation, change, and dissolution of ministries should involve state power such as the representative body as it is related to the public interests. The absence of such rigid regulation in the constitution on the formation, change, and dissolution of ministries stands as the reason as to why in cabinets of each Indonesian leaders are varied and different in numbers.³³

Compared to the composition of the time, the number of ministries today has experienced increase and are dynamic. Despite the increase in the number of ministries is relevant considering how the life of the community has developed and how the need for a ministry is, the formation remains to be controlled and supervised by competent institutions so abuse of power in distributing the governmental affairs can be avoided.³⁴ State ministry act was promulgated in the course for regulating the management of ministries in Indonesia. The current Act regulating state ministries is Law No. 39 of 2008 on State Ministry. In the Law, State Ministry is defined as governmental instrument in charge of certain affairs in government.

Referring to the provisions contained in the 1945 Constitution, there are at least two groups of ministries that hold significant importance, either because their existence is explicitly mentioned or because the governmental affairs they handle are expressly regulated in The 1945 Constitution. The ministries that are explicitly mentioned are:

1. Minister of Foreign Affairs (Article 8 Sentence (3), The 1945 Constitution);
2. Minister of Home Affairs (Article 8 Sentence (3), The 1945 Constitution);
3. Minister of Defense (Article 8 Sentence (3), The 1945 Constitution).

The constitutional recognition of the existence of the three ministries has the consequence that the President is not at liberty to change or dissolve them. Further, even though the President has the prerogative to establish state ministries, for these three ministries, the President's rights are limited.³⁵ Moreover, the ministries that hold significant importance due to the tasks they will undertake are related to governmental affairs explicitly stated in The 1945 Constitution. Such governmental affairs are:

1. Affairs on legislation and law enforcement (Articles 5, 14, 20, 22, 22A)
2. Affairs on citizenship and human rights (Articles 26, 27, 28, 28A-J)

³³ Liu, Christin Nathania, "Kedudukan Kementerian Negara Dalam Sistem Pemerintahan Negara Republik Indonesia." *Lex Privatum*, 10.5. 2022.

³⁴ Saldi Isra, Feri Amsari, et.al., *Op.cit.*, p. 28.

³⁵ Bagir Manan, *Lembaga Kepresidenan*, (Yogyakarta : Pusat Studi Hukum Universitas Islam Indonesia dan Gama Media, 1999), p. 119.

3. Affairs on defense and state security (Articles 10, 11, 12, and 30)
4. Affairs on religion/faith (Article 29)
5. Affairs on education and culture (Articles 31 dan 32)
6. Affairs on regional autonomy and government (Article 18)
7. Affairs on finance (Articles 23, Pasal 23A)
8. Affairs on economy (Article 33)
9. Affairs on people's welfare (Article 34)

The nine aforementioned types of governmental affairs hold significant values as they are regulated and expressly stated in The 1945 Constitution. Hence, the structure that will manage these affairs is also of urgent importance. However, the urgency of having such a structure does not necessarily align linearly with the identified affairs. In other words, it is possible that two or three government affairs in The 1945 Constitution could be handled by a single ministry structure, or one affair could be managed by multiple ministries. Therefore, the most important thing is that all government affairs mandated by the constitution must be undertaken by organizations or ministries under the President. Regarding the aforementioned governmental affairs, at least the following ministries must exist, i.e.:

1. Minister of Law and Human Rights to handle three groups of affairs: legal affairs, legislation, and human rights.
2. Minister of Defense.
3. Minister of Religious Affairs.
4. Minister of Education, Research and Technology, and Culture.
5. Minister of Finance.
6. Minister of Manpower and Transmigration (welfare).
7. Minister of Marine Affairs and Fisheries (welfare).
8. Minister of Health (welfare).
9. Minister of Women's Empowerment and Child Protection (welfare).
10. Ministry of Energy and Mineral Resources (welfare).
11. Minister of Industry and Trade (economy).
12. Minister of Cooperatives, Small and Medium Enterprises, and Creative Economy (economy).
13. Minister of State-Owned Enterprises (economy).

14. Minister of Agriculture (economy).

15. Ministry of Communication and Information.

16. Ministry of Environment and Forestry.

Therefore, based on the level of institutional urgency and the urgency of governmental affairs explicitly regulated in The 1945 Constitution, the ministry structure will consist of at least 19 ministries. This structure can also be expanded with other ministries, either to undertake government affairs or in relation to the management of state governance

In addition to the state ministries, the President is also equipped with the authority to form and determine the presidential advisory council in the constitution. This is regulated in Article 16 of The 1945 Constitution, which states that the President forms an advisory council tasked with providing advice and considerations to the President, which is then regulated by law. The Presidential Advisory Council (*Wantimpres*; *Dewan Pertimbangan Presiden*) which was formed to implement Article 16 of The 1945 Constitution is one of government structures that is completely under the authority of the President to form it.

The two institutions (ministries and *Wantimpres*) are government structures that are under the President's absolute authority to compose. In other words, filling ministerial positions and *Wantimpres* members does not require approval from the DPR as a representative body. Thus, the management of the ministerial structure and *Wantimpres* is entirely in the hands of the president. However, the President remains bound by the State Ministry Act (Law No. 39 of 2008) and the Presidential Advisory Council Act (Law No. 19 of 2006). In both Acts, the organization, formation, duties and functions of the ministry and the presidential advisory council are regulated.

Consequently, the implementation of the state government's power in terms of structuring governmental organizations under the President, in addition to having to be implemented based on the provisions of Articles 4, 16 and 17 of The 1945 Constitution, such implementation must also comply with the provisions of the Law governing the organization to be formed. The two types of government organizations under the President as explained earlier have high significance in realizing the mandate of The 1945 Constitution. It can further be explained that the constitutional significance of government organizations under the President can be divided into two types, namely: (1) significant as their existence is expressly stated in The 1945 Constitution; (2) significant as government affairs are expressly stated in The 1945 Constitution. The state ministries and *Wantimpres* can be included in the first type. While in the second type, there are a number of government affairs that must be carried out by various state institutions that must be formed by the President, either through the approval of the DPR or the President's own prerogative.

3.2. The Perspectives of the State Ministry Law in Regulating the Limitation of Presidential Power in Designing Cabinet Posture

In a country wherein the government is a republic, the president is the head of state who is responsible for forming departments that will carry out executive power. Each department is led by a minister. In a Presidential Cabinet, the cabinet will be responsible for government policies that are directly held by the president.³⁶

Consequently, in Article 17 paragraph (2) of the 1945 Constitution, it is stated that the Ministers are appointed and dismissed by the President. Thus, the appointment and dismissal of ministers are entirely under the authority of the president without having to ask for approval or even just confirmation from the representative body. However, regarding changes or dissolution of ministries, the President is required to ask for consideration from the DPR according to the provisions of Article 19 Sentence (1) of Law No. 61 of 2024 regarding the amendment to Law No. 39 of 2008 on State Ministries.

Despite the appointment and dismissal of ministers is the full authority of the President (Article 17 Sentence (2) of The 1945 Constitution), when it comes for changes to ministries, the President must consult DPR for consideration. This provision is binding on the President according to Article 17 Sentence (4) of The 1945 Constitution. This is because the Article states that the formation, change and dissolution of state ministries are regulated by law. The provision in question is a constitutional order to further regulate state ministries. When this provision is followed up with a Law and the Law in question regulates the obligation to ask for the DPR's consideration when changing ministries, the President is obliged to comply.

Article 19 Sentence (1) of Law No. 61 of 2024 regarding the amendment to Law No. 39 of 2008 states that changes resulting from the separation or merger of ministries are made under the consideration from the House of Representatives. Before discussing the substance on consult further, the purpose of changing state ministries will first be reviewed. Article 1 number 5 of the State Ministries Act states that changes to the nomenclature of a Ministry are made by merging, separating, and/or replacing the nomenclature of an existing Ministry. Under such provisions, what is meant is changing the existing state ministries. If a change is to be made, the President is required to consult DPR.

According to Article 19 Sentence (1) of Law No. 61 of 2024 regarding the amendment to Law No. 39 of 2008 on State Ministries, consulting is mandated upon a President. However, the request for consult is merely to carry out confirmation which substantially not binding on the President.³⁷ The president may accept and discharge the considerations from the DPR, and contrarywise, he can also ignore them. The key point of the provisions set in Article 19 Sentence (1) of the State Ministries Act is the mandate to consult.

The non-binding nature of the DPR's considerations is also strengthened by the provisions of Article 19 sentence (2) of the State Ministries Act, which

³⁶ Nggilu, Novendri, and Fence M. Wantu, "Menapaki Jalan Konstitusional Menuju Zaken Kabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi." *Jurnal Hukum Samudra Keadilan* 15.1, pp. 126-140, 2020.

³⁷ Muhammad Raen Puluhawa, Erman Rahim, et.al., "Penggunaan Hak Prerogatif Presiden dalam Pengangkatan Menteri di Sistem Pemerintahan RI." *Jurnal Publikasi Ilmiah Hukum*, 2(1) 2024, p. 103.

states that the considerations as referred to in sentence (1) must be given by DPR within 7 (seven) working days after the President's letter is received, and Article 19 sentence (3) which states that if within 7 (seven) working days as referred to in sentence (2) DPR has not submitted its considerations, DPR shall be deemed as having provided the President its considerations.

Under such provisions, there will basically be no political maneuvers that can hinder the president's steps to streamline the cabinet by merging and/or dissolution existing state ministries due to the assumption of ineffective or overlap with each other.³⁸ At the same time, this provision also confirms that in fact the President's prerogative is not only to appoint and dismiss state ministers, but also to determine the ministries he needs to undertake state government affairs under his authority.³⁹

Law No. 61 of 2024 regarding the amendment to Law No. 39 of 2008 on State Ministries divides governmental affairs into three groups, i.e. (1) governmental affairs whose nomenclature is expressly stated in the 1945 Constitution, including: foreign affairs, domestic affairs, and defense; (2) governmental affairs whose scope is stated in the 1945 Constitution, including: religious affairs, law, finance, security, human rights, education, culture, health, social, employment, industry, trade, mining, energy, public works, transmigration, transportation, information, communication, agriculture, plantations, forestry, animal husbandry, maritime affairs, and fisheries; (3) governmental affairs in the context of sharpening, coordinating, and synchronizing government programs, including: national development planning, state apparatus, state secretariat, state-owned enterprises, land, population, environment, science, technology, investment, cooperatives, small and medium enterprises, tourism, women's empowerment, youth, sports, housing, and development of underdeveloped areas or regions.

Based on the grouping of government affairs as regulated in the State Ministries Act, there are 46 governmental affairs that must be managed by state ministries formed by the President. However, Article 6 of Law No. 61 of 2024 regarding the amendment to Law No. 39 of 2008 on State Ministries also emphasizes that each governmental affair does not have to be formed in a separate ministry. Thus, the 46 affairs can be managed by ministries that are much smaller in number compared to the number of government affairs that must be worked on.

Although, according to the provisions of Point 4 of Law Number 61 of 2024, it is stated that the provisions of Article 15 are amended to read as follows: the total number of ministries established as referred to in Articles 12, 13, and 14 is determined based on the needs of government administration by the president. As long as the changes are made in accordance with the requirements specified in 19 Laws on State Ministries. As discussed earlier, if referring to government affairs contained in the 1945 Constitution, the Law on State Ministries and the vision and mission of the elected President

38 Qurrata Ayuni, Charles Simabura, "Pembaruan Kementerian Negara di Indonesia", *Nagari Law Review*, 7(2) 2023, p. 280.

39 *Ibid.*

and Vice President, the following is the cabinet posture that also needs to be considered:⁴⁰

Portfolio Ministries

1. Ministry of Foreign Affairs
2. Ministry of Defense
3. Ministry of Law and Human Rights
4. Ministry of Religious Affairs
5. Ministry of Education, Culture, Youth and Sports (including Research & Techonology)
6. Ministry of Finance
7. Ministry of Agriculture (plantations, animal husbandry and fisheries)
8. Ministry of Environment and Forestry.
9. Ministry of Health
10. Ministry of Energy and Mineral Resources
11. Ministry of Public Works and Housing

Nonportofolio Ministries

1. Ministry of Home Affairs
2. Ministry of Manpower and Transmigration
3. Ministry of Maritime Affairs
4. Ministry of Women and Children Affairs
5. Ministry of Industry and Trade
6. Ministry of Cooperatives, SMEs and Creative Economy
7. Ministry of State-Owned Enterprises
8. Ministry of Communication and Information
9. Ministry of Tourism
10. Ministry of State Secretary

40 Saldi Isra, Feri Amsari, et.al., *Op.cit.*, p. 33.

Presidential Office

1. National Development Planning Work Unit
2. Apparatus and Bureaucratic Reform Work Unit
3. Supervision Work Unit
4. Decentralization and Regional Autonomy Work Unit
5. Legislation Work Unit

In the cabinet posture offered above, Coordinating Ministry is removed from the cabinet. This is because the existence and function of the Coordinating Ministry are not significant. Moreover, for the purposes of coordination between ministries in the same group, the existence of the Coordinating Ministry is basically inessential. The coordination function can actually be undertaken directly by the Vice President. In fact, such a function of the Vice President has been practiced in the era of President Gus Dur. Where President Gus Dur gave authority to the Vice President through Presidential Decree Number 121 of 2000 concerning the President's Assignment to the Vice President to Carry Out Daily Technical Government Tasks. In addition, there is also no obligation for the President to maintain the Coordinating Ministry. This is because the presence of the Coordinating Minister is only based on the provisions of Article 14 of Law Number 39 of 2008 concerning the State Ministry which reads, "For the purposes of synchronizing and coordinating the affairs of the Ministry, the President may form a Coordinating Ministry"

The formulation above that uses the word 'may' indicates that the ministry can be established or abolished. It all depends on the needs and considerations of the President. If for the purposes of coordinating ministerial affairs a Coordinating Ministry is needed, then the President can form it. Unless, this ministry does not need to be established or maintained. In addition, if referring to Article 17 of The 1945 Constitution which only recognizes state ministers, it is important to retrace the minutes of the amendments to The 1945 Constitution regarding the urgency of forming a coordinating minister

4. Implications of Unlimited Presidential Power in the Formation of Cabinet Posture from the Perspective of State Administrative and Financial Law

The pattern of ministerial relations that are responsible to the president is a logical consequence of the choice of constitutional law to implement a presidential system of government. In a presidential system, the president as head of government and head of state has a crucial role in the implementation of state administration practices. That is why the president becomes a contested power so that in its implementation it must be limited by the provisions of The 1945 Constitution.⁴¹ On the other hand, the quality and level of Indonesian democracy in its current condition with all the turmoil within is also an element that needs to be considered

⁴¹ RM AB Kusuma, *Sistem Pemerintahan "Pendiri Negara" Versus Sistem Presidensial orde Reformasi*, (Jakarta: FHUI Press, 2011), p. 36.

wisely.⁴²

It is then comprehensible that the paradigm of placing prerogative on the president in the current conditions without clear limitations will complicate the running of government in Indonesia.⁴³ One of them is the president's prerogative in preparing the structure and infrastructure of government. Naturally, in preparing the structure and infrastructure of government, the president must be cautious in appointing his ministers, including preparing the posture of the state ministry that will be run based on the prevailing laws.

Once ignored, democracy can at any time be hijacked by oligarchic political elites who control economic and political resources, and people's sovereignty will ultimately be nothing more than a procedural-electoral political procession.⁴⁴ Because, essentially, the presence of the prerogative held by the President is not intended to guarantee the interests of a handful of people in power, but rather to guarantee the interests of a sense of justice for all people without exception.⁴⁵ This notion is bolstered by Sri Soemantri's opinion, that "state institutions must form a unified process that is interconnected with each other in the framework of implementing state functions or actual governmental processes". This means that synergy is needed so that there is no overlapping of authority, duties, functions and is firm and can create an effective and efficient governmental bureaucratic chain.⁴⁶

Currently, the Government and the House of Representatives (DPR) have passed Law Number 61 of 2024 concerning Amendments to Law Number 39 of 2008 on State Ministries. Interestingly, the substance of the changes in Law Number 61 of 2024 focuses more on the foundational issues of the establishment of state ministries, the number of ministries, and the functional relationships among ministries. One of the most notable changes is regarding the number of ministries. According to Point 4 of Law Number 61 of 2024, Article 15 has been amended to state that the total number of ministries established as referred to in Articles 12, 13, and 14 is determined based on the needs of government administration by the president.

As a result, the maximum limit of 34 ministries stipulated in Article 15 of Law Number 39 of 2008 has been revised and replaced with the phrase "unlimited," depending on institutional needs. With this new framework, the public deserves to know the legal and non-legal considerations of the Government and the DPR in increasing the number of ministries, which was previously set at 34 in the original State Ministries Law. Sixteen years ago, the lawmakers who drafted the State Ministries Law must have had strong and in-depth reasons for determining the figure of 34 ministries.

This unlimited number of ministries stipulated in Law Number 61 of 2024 has resulted in a bulkier cabinet structure, forcing the government to reorganize the

42 Djayadi Hanan, *Menakar Presidensialisme Multipartai di Indonesia - Upaya Mencari Format Demokrasi yang Stabil dan Dinamis Dalam Konteks Indonesia*, (Bandung: PT. Mizan Publika, 2014), p. 30.

43 Bachtiar Baital, "Pertanggungjawaban Penggunaan Hak Prerogatif Presiden Di Bidang Yudikatif Dalam Menjamin Kemerdekaan Kekuasaan Kehakiman", *Jurnal Cita Hukum*, I (1), 2014, p. 25

44 Syamsuddin Haris, "Rekonsiliasi Politik dan Kebangsaan pasca Pemilu", *Jurnal Hukum Kenegaraan Konsolidasi Kebangsaan dan Lembaga Negara*, 2(1) 2019, p. 4

45 Mohammad Mahrus Ali, *Tafsir Konstitusi, Menguji Konstitusionalitas dan Legalitas Norman*, (Jakarta: Rajalawis Press, 2019), p. 34.

46 Sri Soemantri, *Bunga Rampai Hukum Tata Negara Indonesia*. (Bandung: Alumni, 1992), p. 46.

bureaucratic patterns in each ministry. On October 20, 2024, President Prabowo Subianto announced 48 ministers and 59 deputy ministers who will assist him in governing for the next five years. From the author's perspective, the figure of 48 ministries is remarkable compared to the previous 34 ministries before the enactment of Law Number 61 of 2024. Even though it is intended to increase the effectiveness of government and compliance with the rules in the constitution, paradoxically it has the potential to perpetuate structural problems that have long disrupted government efficiency.

Constitutionally, according to Article 17 of The 1945 Constitution, it is stated that ministers are appointed and dismissed by the President. Furthermore, Article 3 of the State Ministries Act states that ministries are under and responsible to the President. The purpose of the *a quo* provision is that the structure of the ministry is the prerogative of the President and the Ministers are directly responsible to the President for all their duties and obligations.⁴⁷

The State Ministries Act has actually given the President the freedom to determine the composition of the ministries in his cabinet. For example, based on Article 13, it is stated that the President can form ministries that handle several governmental affairs including foreign affairs, home affairs, defense, religion, law, finance, security, human rights, education, culture, health, social, employment, industry, trade, mining, energy, public works, transmigration, transportation, information, communication, agriculture, plantations, forestry, animal husbandry, maritime affairs, fisheries, national development planning, state apparatus, state secretariat, state-owned enterprises, land, population, environment, science, technology, investment, cooperatives, small and medium enterprises, tourism, women's empowerment, youth, sports, housing, and development of underdeveloped areas or regions.

Though the above provisions actually provide some limitations on the areas wherein the President can form ministries, each governmental matter does not have to be formed into a separate ministry.⁴⁸ This means that determining the ministerial structure for certain matters remains the prerogative of the President. In addition to the authority to form ministries, the State Ministries Act also provides the President with the freedom to appoint deputy ministers in certain ministries and form Coordinating Ministries. The duties, functions, and organizational structure of ministries are also the authority of the President to regulate in the Presidential Regulation. Even the change and dissolution of state ministries is limited to state ministries mentioned in The 1945 Constitution which cannot be changed or dissolved by the President. Furthermore, the President can change or dissolve a ministry without the approval of any party, but based on considerations from the DPR.

Therefore, although the actual purpose of the presence of the State Ministry Law is to limit the President's prerogative in determining the ministries under him, the President still enjoys great liberty to determine the structure of the ministries

47 Tria Noviantika and M. Shofwan Taufiq, "Eksistensi Kementerian Negara Dalam Sistem Presidensial Berdasarkan Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara," *Muhammadiyah Law Review*, 5(1) 2021, p. 4.

48 Bilal Dewansyah and M. Adnan Yazar Zulfikar, "Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi." *Padjadjaran Journal of Law*, 3(2) pp. 285-309. 2016.

under him. DPR's interference in ministerial affairs in this context is only limited to the implementation of the check and balances function between branches of power. Meanwhile, the technical composition and structure of the ministry is the President's domain.

Consequently, increasing the number of ministries for now without an in-depth evaluation to the effectiveness of existing functions will only worsen administrative complexity without substantially solving fundamental government problems. Thus, the issue of increasing the number of ministries cannot only use the legal paradigm through the president's prerogative per se, but there are also many non-legal aspects that need to be considered by the president in formulating the policy. Therefore, academic justification is needed on how the posture of the state ministry run by the elected president can truly run effectively and proportionally in accordance with the public interest. This is because, though the President owns the prerogative in determining the ranks of his ministers, the President is still subject to the restrictions contained in The 1945 Constitution and the State Ministries Act.

There are at least four priority issues that will have implications if the increase in the number of state ministries is still carried out; first, the increase in the number of ministries will have an impact on the state budget ("APBN") ability to finance it; second, the increase in the number of ministries will also have implications for the apparatus and infrastructure that will carry out government administration; third, the increase in the number of ministries will further complicate the function of coordination and authority between ministries; fourth, the increase in the number of ministries is not in line with the government's spirit to downsize state institutions and regulations.

Based on the political symptoms that have emerged recently, it is highly likely that the revision of the State Ministry Act will remain a priority agenda for the current regime. On such basis, the aforementioned four implications need to be mitigated in depth and analyzed so that at least they can be used as an alarm for the government when rolling out the policy.

First, the addition of the number of ministries has an impact on the ability of the APBN to finance it. The number of state institutions is a determining factor in the amount of the state budget allocated for the implementation of government annually. Thus, the more state institutions there are, the more budget allocations have the potential to increase. This is because each state institution in this context, the state ministry, has numerous work programs in carrying out its duties and authorities. The budget overrun will be even more pronounced if the addition of the number of state ministries is not measured by careful planning. Moreover, if a political approach is used through the Presidential prerogative, non-political considerations will be ignored. In fact, the President in exercising the prerogative is also limited by The 1945 Constitution and laws. So the president cannot just fiddle with the posture of state ministries, let alone increase the number of ministries.

There are other things that the president literally needs to consider when discussing the ministry's posture, one of the important ones is the burden of the APBN to support it. This is because APBN is prepared as a guideline for state revenues and expenditures in carrying out state duties to increase production, provide

employment opportunities and grow the economy to achieve common prosperity of the people.⁴⁹ Budget in government is the backbone of government administration. Budget has an important role in the implementation of all government activities and as a tool for planning, stabilization, distribution, resource management, organizational control and performance assessment.⁵⁰ The spending process must be undertaken in a controlled manner, therefore the spending mechanism must be designed as efficiently and effectively as possible.

Upon closer look at the budget posture in each ministry, the Ministry of Finance (*Kemenkeu*) released information that ministries/institutions (K/L) in the first semester of 2024 reaching IDR 487.4 trillion.⁵¹ A rise of 16.82% compared to similar period of the year prior (*year-on-year/yoy*) reaching budget realization of Rp417.2 trillion. This increase was affected by an increase in infrastructure spending, an increase in the number of recipients of *the Smart Indonesia Program* (PIP) assistance; facilities and infrastructure in the defense and security sector (*hankam*); an increase in salaries of civil servants, army and Police salaries; payment of the 13th salary and THR (holiday allowance) with a 100% performance allowance; and the implementation of the 2024 Election. The following is a list of 10 ministries/institutions with the largest spending realizations in the first semester of 2024:

1. Ministry of Defense: IDR 65.3 trillion
2. National Police: IDR 61.2 trillion
3. Ministry of Public Works and Housing: IDR 44 trillion
4. Ministry of Health: IDR 39.5 trillion
5. Ministry of Social Affairs: IDR 39.1 trillion
6. Ministry of Education, Culture, Research, and Technology: IDR 38.7 trillion
7. Ministry of Religious Affairs: IDR 37.4 trillion
8. Ministry of Finance: IDR 29.2 trillion
9. General Election Commission: IDR 21.8 trillion
10. Ministry of Transportation: IDR 14.9 trillion

Based on the list of 10 ministries/institutions with the largest spending realization, it can be concluded that the average spending of the ministries/institutions is between the range of Rp. 30-35 trillion. If the discourse on increasing the number of state ministries from 34 to 41 ministries is implemented, then the government will again burden the APBN with Rp. 245 trillion. With that much budget,

⁴⁹ Arifin P. Soeria Atmadja, *Keuangan Publik dalam Perspektif Hukum*, (Jakarta : Rajawali Pers, 2009), p. 103.

⁵⁰ Beni Kurnia Illahi and Haykal, "Prinsip dan Dinamika Hukum Keuangan Negara Darurat dalam Penanggulangan COVID-19," *Jurnal Rechtsvinding*, 10(1) 2021, p. 2.

⁵¹ Muhamad, Nabilah. "10 Kementerian/Lembaga Dengan Belanja Terbesar Semester I 2024: Databoks." Pusat Data Ekonomi dan Bisnis Indonesia, July 15, 2024. <https://databoks.katadata.co.id/datapublish/2024/07/15/10-kementerianlembaga-dengan-belanja-terbesar-semester-i-2024#:~:text=Kementerian%20Sosial%3A%20Rp39%2C1%20triliun,Kementerian%20Keuangan%3A%20Rp29%2C2%20triliun.>

it should be able to cover the problems of Education, Health, and Employment. Upon closer look at the Central Government Spending Report by Type, Indonesian APBN is dominated by employee spending and goods spending. Meanwhile, the Public Satisfaction Indicator towards government services is still at the low level. This means that the proportionality of the APBN to public services is yet equivalent in meeting the needs of the community. This can be seen in the following table:

Table 2. The Central Government Spending Report by Type 2018-2023

Types	LKPP 2018	LKPP 2019	LKPP 2020	LKPP 2021	Outlook 2022	RAPBN 2023
Employee Expenditure	349,89	376,07	380,53	387,75	416,61	442,57
Expenditure on Goods	347,46	334,41	422,33	530,05	406,01	379,29
Capital Expenditure	184,12	177,84	190,91	239,63	232,77	199,11
Debt Interest Payments	257,95	275,52	31,4	343,49	403,87	441,4
• Domestic	238,43	254,07	297,15	332,86	391,69	426,8
• Foreign	12,51	21,44	16,93	10,63	12,17	14,6
Subsidy	216,88	201,8	196,23	242,08	245,58	297,18
• Energy Subsidy	153,52	136,87	108,84	140,39	208,92	210,66
• Non-energy Subsidy	63,36	64,92	87,39	101,69	75,65	86,52
Grant Expenditure	1,52	6,47	6,27	4,31	5,03	0,01
Social Expenditure	84,31	112,48	202,53	173,65	143,66	148,56
Miscellaneous Expenditure	16,16	11,69	120,03	70,70	477,46	321,97
Total	1.455,32	1.496,31	1.832,95	2.000,70	2.370,02	2.230,02

*LKPPN: *Financial Statements of the Central Government*

*RAPBN: *Draft Budget of Revenue and Expenditure*

Source: Ministry of Finance

Naturally, with this huge budget potential, there will be opportunities for budget deviations both in planning and implementing physical and non-physical development. Hence, increasing the number of state ministries does not serve as the answer and solution to the needs of state apparatus for the public interest, but rather a budget burden and a new problem in the public sphere. Moreover, this concern has never been a serious discussion among the Indonesian government. This is because the orientation is not in the context of benefits and effectiveness in meeting the needs of the community, but rather on transactional political reasons between the president and the political elites who support them during the election. This is because large projects with the addition of the number of state ministries that

are planned with great hope are often trapped in inefficient budgeting bureaucracy, where the funds that have been allocated are not absorbed properly or are even used for things that are not in accordance with the original objectives.

Second, the increase in the number of ministries will also have implications for the apparatus and infrastructure that will run the government administration. It is known that, in order for a ministerial institution to run, it should be supported by a number of qualified apparatus and infrastructure. With the increase in the number of ministries from 34 to 41 ministries, the government will experience the complexity of rearranging the personnel, facilities and infrastructure of a ministry. The issue of the Structure of the Work Organization (OTK) and its nomenclature will also be the government's homework to design it. This is because to organize the OTK and its nomenclature, an in-depth study is needed regarding the functions and authorities of each field and position that will be held by employees. This must also be objective in assessing the extent of the urgency of each field or directorate in a ministry cluster.

In fact, without increasing the number of state ministries, the president is actually already assisted by 34 ministers and an additional Deputy Minister or Director General who can move quickly in the field. So the President's choice to form a slim Cabinet that works will make the Government appreciated by voters for the next Election. In addition to reducing the burden on the state, the potential for the President to communicate well with his Cabinet is also more open. Ironically, such large field problems are often used as an excuse to form an 'obese' – oversized – Cabinet on the grounds that the ministry concerned has not fulfilled the content regulated in The 1945 Constitution. A slender Cabinet actually makes it easy for the President to manage conditions and makes his orders more systematically heard by his subordinates. With too many "heads" in the Cabinet the President will actually be perplexed about undertaking coordination.

The President must be observant in 'reading' the ministers and their subordinates. The President must know in detail why his Ministers appoint their subordinates. The President's mission to form a professional cabinet must not be devastated by the composition of the 'right hand' of the Ministers. The President can hold several meetings using the circle method. In the first circle meeting, the President and Ministers meet to discuss the main problems and general solutions. In the second circle meeting, the President, Ministers, Deputy Ministers, and Director Generals hold a meeting to read to what extent the problems can be resolved at the subordinate level. In the third circle meeting, the President and the Ministers's subordinates hold a meeting to 'read' the situation on the ground. This meeting is important for the President to find out to what extent the Ministers understand the implementation of the government program in accordance with his intentions.

The President-elect must be able to make the cabinet effective from its origin, which is 'a small meeting room/room'. The President must be able to hold quick meetings not only formally but also informally. The formation of a slender cabinet is not an easy matter. However, the President must be able to combine the interests of professionalism, ethnic representation, and supporting parties. In the case of America, George Bush Senior, for example, prioritized a pragmatic and professional cabinet which made him choose people he trusted – many of them were Bush's

closest circles.

Contrarywise, during the Bill Clinton' administration, the Cabinet was filled with representatives from various elements of society, taking into account the ethnic, gender and geographic backgrounds that exist in America.⁵² The formation of an ideal cabinet, i.e. consisting of professional people who work, are free from corruption, are not tied to a party, and represent ethnicity and gender, is certainly impossible to achieve.⁵³ The president-elect must be able to arrange his Cabinet to be more professional and work on behalf of the various existing elements. So placing a particular ethnic group in the Cabinet is important as long as it can work to protect and realize the rights of other ethnic groups. The Minister of Manpower may not have to be a Labor activist but could be a lawyer who often participates in protecting workers' interests.

Third, the addition of the number of ministries further complicates the coordination function and authority between ministries. Under a simple logic, it is quite clear that the addition of the number of ministries often does not result in improving the quality of services or the effectiveness of government. On the contrary, it tends to invite complexity in coordination and reduce the speed of decision-making.

Substantially, this problem leads to complexity in inter-agency coordination which results in redundancy and chaos in the delivery of services to the community. One manifestation of this complexity is the overlapping data on social assistance (*bansos*) recipients. In Indonesia, several government agencies such as the Ministry of Social Affairs, the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration, and the Central Statistics Agency often have different data on aid recipients. As a result, there is a discrepancy in the distribution of aid, where aid often does not reach the right target due to inaccurate or duplicated data. For example, in the distribution of social assistance during the COVID-19 pandemic, many residents who should have been entitled to receive the assistance were not recorded in the data, while several other people were recorded in more than one database.⁵⁴

Overlapping tasks and functions (*tupoksi*) between ministries also often occur in terms of natural disaster management which in Indonesia involves BNPB (National Disaster Management Agency) and the Ministry of Social Affairs. Both have a role in disaster management, but there is often a lack of clarity in the distribution of responsibilities, which can hinder a quick response in emergency situations. Similarly, there is overlapping tasks and functions between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Environment and Forestry in terms of land registration activities both inside and outside the region. These facts show that the sectoral ego of each ministry to show its performance to the president is increasingly evident.

The increase in the number of ministries can indeed be seen as an effort to deepen specialization and increase focus on certain issues. However, without

52 Ludger Helms, *President, Prime Minister and Chancellors, Executive Leadership in Western Democracies*, (New York: Palgrave Macmillan, 2005), p. 1.

53 *Ibid.*

54 Nagara, Grady. "Kesalahan Fatal Penambahan Jumlah Kementerian." kumparan, May 8, 2024. <https://kumparan.com/grady-nagara/kesalahan-fatal-penambahan-jumlah-kementerian-22hMVBQwSKZ/full>.

effective coordination and good data integration, this addition will only add layers of bureaucracy without improving government performance. A possible solution to overcome this problem is through bureaucratic reform that does not only increase the number of ministries, but rather strengthens the capacity for inter-ministerial coordination. Integration of data platforms that allow real-time information sharing between agencies can be a first step. The use of modern information and communication technology can help in more accurate and efficient data management.

Fourth, the increase in the number of ministries is not in line with the government's spirit to streamline state institutions and regulations. From 2014 to 2020, President Joko Widodo has dissolved 18 state institutions (non-structural institutions) considered ineffective in carrying out government performance. In addition, the issue of overlapping authority with other state institutions was also a factor in the dissolution of a number of state institutions throughout 2014-2020. From the argument in question, it is suspected that state ministries are also part of state institutions. When there is a discourse on increasing the number of state ministries, this is very inconsistent with President Joko Widodo's policy of dissolving 18 state institutions since 2014. This will actually increase the budget to realize this.

On the other hand, a Minister, in performing his duties to assist the President in carrying out government duties, is also given the authority to issue ministerial regulations.⁵⁵ The position and validity of ministerial regulations together with other laws and regulations formed by independent state institutions/agencies/commissions (state auxiliary bodies) and institutions/agencies under the President (executive bodies) are regulated in Article 8 of Law No. 12 of 2011 on the Formation of Laws and Regulations.⁵⁶ Based on these provisions, each ministry has the authority to issue ministerial regulations in order to carry out its duties and functions as ordered directly through higher regulations or based on its general authority.⁵⁷

The fairly broad authority held by the minister to form regulations has in fact caused problems in terms of disharmony, both vertically with the regulations above it, and vertically with regulations between other ministries. The overlying and overlapping of authority causes overlapping of regulations inevitable.⁵⁸ This is due to the fact that, each ministry issues its own regulations as a technical basis for implementing its duties. Another problem that then complicates the situation of forming laws and regulations in Indonesia is the regulation flood due to the many ministerial regulations that exist and are not revoked.⁵⁹

Based on research conducted by Charles Simabura in his dissertation, in the period 2004-2019 there were 2,964 delegations and attributions of regulations from laws to statutory regulations under the law.⁶⁰ Out of the figure, 1,098 (37.1%) delegations were given to ministers in various forms of legislation.⁶¹ When associated

55 Charles Simabura, *Peraturan Menteri dalam Praktik Sistem Presidensial Setelah Perubahan UUD NRI 1945*, (Jakarta: Rajawali Pers, 2022), p. 304.

56 Zainal Arifin Mochtar and Iwan Satriawan, "Efektivitas Sistem Penyeleksian Pejabat komisi Negara di Indonesia", *Jurnal Konstitusi*, 6(3) 2009, p. 147.

57 Qurrata Ayuni, Charles Simabura, *Op.cit.*, 281.

58 Jimly Asshididqie, *Perihal Undang-Undang di Indonesia*, (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi RI, 2006), p. 239.

59 Charles Simabura, *Op.cit.* 7.

60 *Ibid.*, p.257.

61 *Ibid.* p. 258.

with the theory of delegation, this form is inappropriate, as the concept of forming implementing regulations (delegated delegation) of ministerial regulations should be sub-delegated regulations, but in reality the law often chooses ministerial regulations as a form of regulation that receives direct delegation.

The erosion on Presidential power in the field of legislation with the presence of too many ministerial regulations on one side is also caused by the state practice in Indonesia which tends to be less than ideal. Because, on the level of practice, ministers do play a greater role in the policy-making process. In the formation of laws, for example, which is part of the Presidential legislative function, ministers have a much greater task. It is visible from the process of discussing laws between the DPR and the President. In fact, those who are present and play a role in every stage of the formation of laws, up to the granting of joint approval are ministers on behalf of the President. Thus, ministers substantially understand the contents of each law that is formed much better than the President,⁶² while in fact, the authority to form legislation lies in the hands of the President, not the minister.

5. Conclusion

In order to run the government, determining the framework and structure of government is crucial. Law Number 61 of 2024 concerning Amendments to Law Number 39 of 2008 on State Ministries – the State Ministries Act – is present as a form of limitation on the Presidential prerogative in determining the ministries under him. The legal character resulting from the *a quo* Law is responsive because it has provided clear limitations and guidelines for the government to form ministries below it. This is also inseparable from the political configuration of the current government regime. There are at least 4 (four) priority issues that will have implications if the addition of the number of state ministries is still rolled out, first, the addition of the number of ministries will have an impact on the ability of the APBN to finance it; second, the addition of the number of ministries will also have implications for the apparatus and infrastructure that will run government administration; third, the addition of the number of ministries further complicates the coordination function and authority between ministries; fourth, the addition of the number of ministries is not in line with the spirit of the government to downsizes state institutions and regulations.

6. Acknowledgments

Through various opportunities and insights gained during the discussions and drafting of the study titled *Presidential Power in the Formation of Cabinet Posture after the State Ministries Law 2024*, the author was inspired to further examine and research this issue. The author would like to extend their gratitude to:

1. The Dean and the entire leadership of the Faculty of Law, Universitas Andalas;
2. Fellow lecturers and academic staff at the Faculty of Law, Universitas Andalas;

62 *Ibid.* 393.

3. The Director and all researchers at the Center for Constitutional Studies (PUSaKO), Faculty of Law, Universitas Andalas.

Bibliography

Books

- Arifin P. Soeria Atmadja, *Keuangan Publik dalam Perspektif Hukum*, Jakarta : Rajawali Pers, (2009).
- Bagir Manan, *Lembaga Kepresidenan*, Yogyakarta : Pusat Studi Hukum Universitas Islam Indonesia dan Gama Media, (1999).
- Charles Simabura, *Peraturan Menteri dalam Praktik Sistem Presidensial Setelah Perubahan UUD NRI 1945*, Jakarta: Rajawali Pers, (2022).
- Djayadi Hanan, *Menakar Presidensialisme Multipartai di Indonesia – Upaya Mencari Format Demokrasi yang Stabil dan Dinamis Dalam Konteks Indonesia*, Bandung: PT. Mizan Publika, (2014).
- Fitra Arsil, *Teori Sistem Pemerintahan: Pergeseran Konsep dan saling Berkontribusi antar Sistem Pemerintahan di Berbagai Negara*, Jakarta: Rajawali Press, (2017)
- Ivor Jennings, *Cabinet Government (third edt)*, Cambridge :the University Press, (1969).
- Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta : Sekretariat Jenderal Mahkamah Konstitusi, (2006)
- Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Jakarta : Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, (2006)
- Jimly Asshiddiqie, *Perihal Undang-Undang di Indonesia*, Jakarta: Sekretariat Jenderal Mahkamah Konstitusi RI, (2006)
- Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta : Sinar Grafika, (2010).
- Liu, Christin Nathania, “Kedudukan Kementerian Negara Dalam Sistem Pemerintahan Negara Republik Indonesia.” *Lex Privatum*, 10.5. (2022).
- Ludger Helms, *President, Prime Minister and Chancellors, Executive Leadership in Western Democracies*, New York: Palgrave Macmillan, (2005).
- Mahkamah Konstitusi, *Naskah Komprehensif Perubahan UUD 1945: Buku IV Kekuasaan Pemerintah Negara Jilid I*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, (2010).
- Mohammad Mahrus Ali, *Tafsir Konstitusi, Menguji Konstitusionalitas dan Legalitas Norman*, Jakarta: Rajalawis Press, (2019.)
- Patrick Sanaghan, Larry Goldstein, Kathleen D. Gaval, *Presidential Transitions, It's Not Just the Position, It's the Transition*, Washington DC : American Council On

Education/PRAEGER, Series on Higher Education, (2008).

Patrick Weller, *Cabinet Government in Australia*, New Zealand :UNSW Press, (2007).

Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, (2006).

Richard M. Pious, "Prerogative Power and Presidential Politics", dalam George C. Edwards III and William G. Howell (ed.), *The Oxford Handbook of the American Presidency*, Oxford : University Press, (2011).

RM AB Kusuma, *Sistem Pemerintahan "Pendiri Negara" Versus Sistem Presidensial orde Reformasi*, (Jakarta: FHUI Press, (2011).

Robert Y. Shapiro, Martha Joynt Kumar, Lawrence R. Jacobs (Edt), *Presidential Power: Power, Conflict, and Democracy*, New York : Columbia University Press, (2000).

Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Rajagrafindo Persada, (2006).

Sri Soemantri, *Bunga Rampai Hukum Tata Negara Indonesia*, Bandung: Alumni, (1992).

Tim PSHK FH UII, *Daya Lenting Konstitusi: Teori, Konsep dan Praktek dalam UUD NRI 1945*, Yogyakarta: FHUII Press, (2022)

Journal

Bachtiar Baital, "Pertanggungjawaban Penggunaan Hak Prerogatif Presiden Di Bidang Yudikatif Dalam Menjamin Kemerdekaan Kekuasaan Kehakiman", *Jurnal Cita Hukum*, I (1), (2014).

Beni Kurnia Illahi and Haykal, "Prinsip dan Dinamika Hukum Keuangan Negara Darurat dalam Penanggulangan COVID-19," *Jurnal Rechtsvinding*, 10(1) (2021).

Bilal Dewansyah and M. Adnan Yazar Zulfikar, "Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi." *Padjadjaran Journal of Law*, 3(2) pp. 285–309. (2016).

Fariz Monteza, "Urgensi Pembatasan Kewenangan Presiden Pada Perubahan Nomenklatur Kementerian Negara", *UNJA Journal of Legal Studies*, 01(1) (2023).

Mario Agritama S W Madjid, "Politics of Law of Limitation of The President's Prerogative in the Formation of Ministries Based on The State Ministry Law," *Constitution Journal*, 1(2), (2009).

Muhammad Raen Puluhawa, Erman Rahim, et.al., "Penggunaan Hak Prerogatif Presiden dalam Pengangkatan Menteri di Sistem Pemerintahan RI." *Jurnal Publikasi Ilmiah Hukum*, 2(1) (2024).

Nabbs-Keller, G., "Reforming Indonesia's foreign ministry: Ideas, organization and

leadership". *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 35(1).

Nggilu, Novendri, and Fence M. Wantu, "Menapaki Jalan Konstitusional Menuju Zaken Kabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi." *Jurnal Hukum Samudra Keadilan* 15.1, pp. 126-140, (2020).

Purwaningdyah Murti Wahyuni, Beni Kurnia Illahi, et.al., "Constitutional Design of Strengthening DPR Role in Forming, Changing, and Dissolving State Ministries in the Constitutional Views", *Nagari Law Review*, 6(2) (2023).

Syamsuddin Haris, "Rekonsiliasi Politik dan Kebangsaan pasca Pemilu", *Jurnal Hukum Kenegaraan Konsolidasi Kebangsaan dan Lembaga Negara*, 2(1) (2019).

Qurrata Ayuni, Charles Simabura, "Pembaruan Kementerian Negara di Indonesia", *Nagari Law Review*, 7(2) (2023).

Scott Mainwaring, "Presidentialism in Latin America", *Jurnal Latin American Research Review* , 25(1), (1990).

Tom Ginsburg and Zachary Elkins, "Ancillary Powers of Constitutional Courts", *Texas Law Review*, 87, 1432, (2009).

Tria Noviantika and M. Shofwan Taufiq, "Eksistensi Kementerian Negara Dalam Sistem Presidensial Berdasarkan Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara," *Muhammadiyah Law Review*, 5(1) (2021).

Victor Araujo, Thiago Silva dan Marcelo Vieira, *Measuring Presidential Dominance over cabinets in Presidential Systems: Constitutional Design and power sharing*, *Journal of The Brazillian Political Association*, 1981.

Zainal Arifin Mochtar and Iwan Satriawan, "Efektivitas Sistem Penyeleksian Pejabat komisi Negara di Indonesia", *Jurnal Konstitusi*, 6(3) (2009).

Zaqiu Rahman, "Ketentuan Pertimbangan atau Persetujuan dalam Undang-Undang Kementerian Negara", *Jurnal Rechtvinding, Media Pembinaan Hukum Nasional*, 2(3), (2014)

Online Sources

Beni Kurnia Illahi, "Mempertanyakan Urgensi Kementerian Investasi", *Hukum Online*, April 23 2021. Accessible at <https://www.hukumonline.com/berita/a/mempertanyakan-urgensi-kementerian-investasi-lt60822aa1bf17c/>

Maeva P. Carey, "Presidential Appointments, the Senate's Confirmation Process, and Changes Made in the 112th Congress", <http://www.fas.org/sgp/crs/misc/R41872.pdf>. See also Brad Plumer, "Does the Senate really need to confirm 1,200 executive branch jobs?", <http://www.washingtonpost.com/news/wonkblog/wp/2013/07/16/does-the-senate-really-need-to-confirm-1200-executive-branch-jobs/>, accessed on August 10 2024.

Muhamad, Nabilah. "10 Kementerian/Lembaga Dengan Belanja Terbesar Semester I

2024:Databoks."PusatDataEkonomidanBisnisIndonesia,July15,2024.<https://databoks.katadata.co.id/datapublish/2024/07/15/10-kementerianlembagadengan-belanja-terbesar-semester-i-2024#:~:text=Kementerian%20Sosial%3A%20Rp39%2C1%20triliun,Kementerian%20Keuangan%3A%20Rp29%2C2%20triliun>.

Nagara, Grady. "Kesalahan Fatal Penambahan Jumlah Kementerian." kumparan, May 8, 2024. <https://kumparan.com/grady-nagara/kesalahan-fatal-penambahan-jumlah-kementerian-22hMVBQwSKZ/full>.